

February 9, 2024

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**
Telephone (206) 477-0860
hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

ORDER

SUBJECT: Department of Local Services file no. **2718511**

KRISTEN DORRITY AND LEIGH MCMILLAN
Conditional Use Permit Appeal

Location: [REDACTED] Seattle

Appellants: **Kristen Dorrity and Leigh McMillan**

[REDACTED]
Seattle, WA 98116

Telephone: [REDACTED]

Email: [REDACTED]

King County: Department of Local Services
represented by **Bruce Kessler**
Department of Natural Resources and Parks
201 S. Jackson Street
Suite 5601
Seattle, WA 98104
Telephone: (206) 477-5501
Email: bruce.kessler@kingcounty.gov

An examiner has only the authority granted by ordinance. *HJS Dev., Inc. v. Pierce Co.*, 148 Wn.2d 451, 471, 61 P.3d 1141 (2003). The County code does give the examiner authority over *certain* Department of Natural Resources and Parks (DNRP) sewer-related decisions. However, that is limited to, “Appeals from decisions of the department of natural resources and parks related to permits, discharge authorizations, violations and penalties under K.C.C. 28.84.050 and 28.84.060.” KCC 11.04.040.GG. Appellants agree they are not trying to challenge a decision on a permit, discharge authorization, violation, or penalty.

Appellants point to broad language about the examiner’s purpose of expanding the principles of fairness, due process, openness, and equity. We take that responsibility very seriously in all cases we have jurisdiction to entertain, including sewer-related appeals on permits, discharge authorizations, violations, and penalties. But that purpose language does not expand the *type* of cases an examiner has authority to weigh in on.

Nor does the examiner’s jurisdiction enlarge even if we accept, for purposes of argument, that DNRP had zero authority to impose a second capacity charge six years after the initial capacity charge. The threshold question is *who* gets to decide whether DNRP had such authority (and, if DNRP had such authority, whether it correctly exercised that authority). The examiner is simply *not* a tribunal with authority to make that determination.

Finally, DNRP states that the proper place to appeal a capacity charge assessment is King County superior court. We offer no opinion on that, as this is not our area of expertise. But even if it turns out that superior court does *not* have jurisdiction over Appellants challenge, either because the court never had that authority (again, we have no inside knowledge)—or because the court *would have* had jurisdiction if Appellants had timely filed their challenge during the appeal window but now the courthouse doors are shut—that still would not create jurisdiction for the examiner to be the tribunal here.

We DISMISS Appellants appeal for lack of subject matter jurisdiction.

DATED February 9, 2024.



David Spohr
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

King County Code 20.22.040 directs the Examiner to make the County’s final decision for this type of case. This decision shall be final and conclusive unless proceedings for review of the decision are timely and properly commenced in superior court. Appeals are governed by the Land Use Petition Act, Chapter 36.70C RCW.

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CERTIFICATE OF SERVICE

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KRISTEN DORRITY AND LEIGH MCMILLAN

Conditional Use Permit Appeal

I, Lauren Olson, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **ORDER** to those listed on the attached page as follows:

- EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.
- placed with the United States Postal Service, through Quadient-Impress, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED February 9, 2024.



Lauren Olson
Legislative Secretary

Erickson, Marla

Department of Natural Resources and Parks

Kessler, Bruce

Department of Natural Resources and Parks

Leigh McMillan, Kristen Dorrity

Hardcopy