

July 14, 2009

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**REPORT AND DECISION**

SUBJECT: Department of Development and Environmental Services File No. **A08F0012**

**COSTICA LUPU**  
Fee Appeal

Location: Parcel 3751606815

Appellant: **Costica Lupu**  
34836 Military Road South  
Auburn, Washington 98001  
Telephone: (253) 939-5578

King County: Department of Development and Environmental Services (DDES)  
*represented by* **Doug Dobkins**  
900 Oakesdale Avenue Southwest  
Renton, Washington 98055  
Telephone: (206) 296-7087  
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**SUMMARY OF RECOMMENDATIONS/DECISION:**

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Deny appeal

**EXAMINER PROCEEDINGS:**

Hearing opened:	June 3, 2008
Hearing closed:	June 3, 2008
Hearing reopened:	June 27, 2008
Hearing reclosed:	July 11, 2008

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.  
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. Clearing and grading activities were conducted within critical areas on the subject property without a clearing and grading permit required by county code. In response to such activity, DDES posted the property with a Stop Work Order (SWO) on April 29, 2005. In response to the SWO, Appellant Costica Lupu submitted a clearing/grading permit application to the county on May 5, 2005.
2. In reviewing the Lupu clearing/grading permit application, DDES expended staff review time. The review hours included attempts to communicate with Mr. Lupu to obtain necessary additional documentation from him for finalization of the permit review and approval, and onsite meetings and field checks, which culminated in correspondence being sent to Mr. Lupu on August 13, 2007.
3. In part due to lack of communicativeness and response from Mr. Lupu, requested information was not easily obtained. The lack of information required compensating additional field checks, meetings and document reviews by DDES staff in part to ensure that erosion and sedimentation controls were installed in conformity with King County Best Management Practices (BMP's). Such inspections were necessary to ensure that critical areas, public right-of-way and adjacent properties were not adversely impacted by the subject clearing and grading activities.
4. DDES billed charges totaling \$1,738.81 to Mr. Lupu for the staff time charged to the subject project review.
5. Mr. Lupu filed an appeal of the billing, stating a general complaint that the billed charges are excessive and making the following more-specific contentions (which are gleaned from a lengthy list of very general complaints and hardly any of which amount to specific claims of error in the subject charges):
  - A. DDES informed Mr. Lupu that some or all of the charges constituted a "fine."
  - B. Mr. Lupu's grasp of the English language is only as a second language.
  - C. Mr. Lupu is being discriminated against (with no specific claim of the actual nature or type of discrimination or bias being allegedly conducted, except for Mr. Lupu's claim that he is disabled.)
  - D. DDES staff person Fred White's time expended on his March 5, 2007 field visit (one of two such visits) on the project amounted to only approximately 5 to 10 minutes (rather than the 0.5 hour charged<sup>1</sup>). (Appellant Lupu acknowledged at hearing, however, that he was not aware of activities Mr. White may have engaged in during that field visit besides direct contact time with Mr. Lupu.)
  - E. Mr. Lupu also claims discrimination based on his (presumably ethnic; it was not specified) origin and first language.

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<sup>1</sup> 2.0 hours of the 2.5 hour visit were "pre-paid balance" hours incorporated in permit fees.

- F. Mr. Lupu also notes that he is under some medical constraints.
6. The appeal claims do not expressly assert any specific unreasonableness of the charges, except for the assertion that Mr. White's time has been overstated. The evidence in the record does not support that contention.
  7. At hearing, Appellant Lupu raised additional untimely claims of the unreasonableness of other DDES staffpersons' charged time. Although untimely, these additional claims are in any case not substantiated by the evidence and testimony brought out in hearing, including via cross-examination by Mr. Lupu of the pertinent staff (called as witnesses by Respondent DDES).<sup>2</sup>
  8. At hearing, Mr. Lupu stipulated that there had not been any discrimination visited upon him by DDES personnel.
  9. Although it was not claimed by Appellant Lupu as an unreasonable charge and thus cannot form the basis for reversal in this case, the Examiner notes for DDES's edification that some charged time was expended in "passing on institutional memory and case knowledge" (in this case after reassignment of the Appellant's project to a different case officer).

#### CONCLUSIONS:

1. The specific claims of unreasonably charged staff time are not borne out by the record.
2. Though not raised specifically as an issue in this appeal, as noted above, and therefore presenting no grounds for reversal or modification in this case, time charged for intra-DDES consultation associated with transfer of project responsibility, if for reasons which are organizationally motivated rather than specifically *project*-driven, would seem to be a general overhead-related expense rather than one properly assignable to an individual project; there would be insufficient *nexus* (relevance) for project assignment. Organizationally-driven "handover" time cost would seem certainly reasonable to build into general administrative overhead, since it could be reasonably expected from time to time, but since it is a randomly occurring burden, it should not fall disproportionately on the unfortunate project applicant whose assigned personnel are transferred and replaced in mid-stream for non-project reasons.

#### DECISION:

The appeal is DENIED as not supported by the record presented.

ORDERED July 14, 2009.

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Peter T. Donahue  
King County Hearing Examiner

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<sup>2</sup> The Examiner cannot help but note for the Appellant's benefit that from the record presented it appears that DDES staff has on balance been rather conservative in their approach to billing charges to this case.

MINUTES OF THE JUNE 3, 2008, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT  
AND ENVIRONMENTAL SERVICES (DDES) FILE NO. A08F0012

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Doug Dobkins, Ramon Locsin, Fred White and Robert Manns, representing the Department, and Costica Lupu, the Appellant.

The following Exhibits were offered and entered into the record:

Exhibit No. 1	DDES staff report to the Hearing Examiner for A08F0012
Exhibit No. 2	Copy of Fee Waiver/Adjustment of Fees Authorization file
Exhibit No. 3	Copy of the Notice and Statement of Appeal received April 16, 2008
Exhibit No. 4	Copy of DDES' Time Reporting System entries, printed May 19, 2008
Exhibit No. 5	Copy of DDES' Time Reporting System abbreviation definitions
Exhibit No. 6	Letter from Ramon Locsin to Appellant, dated August 13, 2008, regarding actions required to complete permit application
Exhibit No. 7	Letter from Ramon Locsin to Appellant, dated April 8, 2008, detailing response to Fee Waiver Request
Exhibit No. 8	Copy of DDES' Permits Plus entries, printed May 19, 2008
Exhibit No. 9	Copy of Clearing and Grading Permit Application Worksheet, dated May 5, 2005
Exhibit No. 10	Copy of Clearing and Grading Permits Application Fee Worksheet, dated May 5, 2005
Exhibit No. 11	Notice of Hearing before King County Hearing Examiner, dated April 30, 2008
Exhibit No. 12	DDES witness list for June 3, 2008 hearing
Exhibit No. 13a	King County Geographical Information System (GIS) Topography map
Exhibit No. 13b	GIS Aerial photo, taken 2007
Exhibit No. 14a-c	Photographs of subject property, taken for Code Enforcement file E05G0122
Exhibit No. 15	Copy of DDES Financial Policy Summary No. 10.5
Exhibit No. 16	Copy of DDES' Permits Plus entries, printed June 3, 2008
Exhibit No. 17	Copy of updated version of DDES Financial Policy Summary regarding billable hours

PTD:gao  
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