

January 14, 2011

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

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ORDER DISMISSING APPEAL

SUBJECT: Department of Development and Environmental Services File No. **A10F0002**

ALOKE RAY
Fee Appeal

Location: 26239 SE 162nd Place

Appellant: **Aloke Ray**
26239 SE 162nd Place
Issaquah, Washington 98027
Telephone: (425) 281-7340
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King County: Department of Development and Environmental Services (DDES)
represented by Steve Bottheim
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Renton, Washington 98057
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SUMMARY OF RECOMMENDATIONS/DECISION:

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

Deny appeal
Motion to dismiss appeal
Dismiss appeal

EXAMINER PROCEEDINGS:

Hearing opened:
Hearing closed:

December 30, 2010
December 30, 2010

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. Appellant Alope Ray obtained a building permit in March 2008 for a residence on the subject property.
2. County staff time expended in permit review and construction inspection is a chargeable expense to the permittee under county code. [Title 27 KCC]
3. DDES billed Appellant Ray for its staff time expended in various review and inspection activities associated with the subject development and its approved permit.
4. Appellant Ray filed a fee waiver request with DDES on October 7, 2009, expressing objection to the inspection activities of DDES inspector Robert Manns, contending that many of his visits to the site had not been pre-approved by Appellant Ray and that his charged inspection time was unjustified as was the travel time charged. On November 16, 2009, DDES administratively granted a partial waiver in response to the October 7, 2009 fee waiver request.
5. Appellant Ray did not appeal the November 16, 2009 DDES decision on the October 7, 2009 fee waiver request. On December 6, 2009, he filed a second fee waiver request, to which DDES responded by waiving three additional hours of review and inspection time, by a fee waiver decision dated December 30, 2009.
6. On January 13, 2010, Appellant Ray filed an appeal of DDES's December 30, 2009 fee waiver decision.
7. After a pre-hearing conference held by telephone on March 4, 2010, the matter was continued on call to allow for the parties to narrow the issues and/or achieve settlement. Settlement was not reached, so the matter came to hearing on December 30, 2010.
8. At the commencement of the December 30, 2010 hearing on the instant appeal, DDES made a motion for dismissal of the appeal, contending that Appellant Ray's appeal was untimely. DDES argues that the issue under appeal, disputation of Mr. Mann's billed hours, was first raised in Appellant Ray's initial October 7, 2009 fee waiver request, which as noted was decided by DDES on November 16, 2009 and which was not appealed. DDES contended that Appellant Ray's January 13, 2010 appeal of the December 30, 2009 DDES fee waiver decision is an untimely appeal of DDES's November 16, 2009 fee waiver response which decided Appellant Ray's first disputation of Mr. Mann's billed hours. As the appeal is asserted to be untimely, DDES contends that it should be dismissed as outside of the Hearing Examiner's jurisdiction.
9. Appellant Ray stipulated at hearing that he had no objection to the activities of any other inspectors other than Mr. Manns, and indeed praised the work conducted by the other inspectors. He stipulated that his only disputation was of Mr. Mann's charged billable hours.


CONCLUSIONS:

1. Since Appellant Ray's stipulated disputation is of matters addressed by the first October 7, 2009 fee waiver request and the respective DDES fee waiver decision of November 16, 2009, which was not appealed by Appellant Ray, he failed to exhaust his administrative remedies in a timely fashion. His opportunity to appeal the November 16, 2009 DDES decision on his October 7, 2009 fee waiver request, which contained the disputation of Mr. Mann's time, expired without his filing a timely appeal.
2. Appellant Ray's subsequent December 6, 2009 appeal, which again raised his objection to Mr. Mann's inspection billings, was a second attempt to dispute Mr. Mann's billed time. While DDES is free to respond administratively to additional requests for consideration of certain disputations, fee appeals to the Examiner are subject to the principles of *collateral estoppel*, or *issue preclusion*, which mandate that an Appellant exhaust his administrative appeal remedies at the first viable opportunity and that untimely appeals of administrative decisions which decide the first disputation of such billings are not actionable and do not invoke Hearing Examiner jurisdiction. [Hearing Examiner Rule of Procedure IV.B.1]
3. In summary, Appellant Ray failed to file a timely appeal of the November 16, 2009 DDES decision in review of his October 7, 2009 fee waiver request in which he first raised his disputation of Mr. Mann's billed hours. Having failed to file a timely appeal of DDES's decision in response to that first fee waiver request, Appellant Ray failed to exhaust his administrative remedies in a timely fashion and forfeited any further right to appeal such issue.
4. As acknowledged by Appellant Ray at hearing, he had no other substantive disputation to pursue in the instant appeal.
5. Accordingly, as Appellant Ray failed to file a timely appeal of the DDES decision on his disputation by fee waiver request of Mr. Mann's billed hours, and no other substantive issue is brought forward as stipulated by Appellant Ray, DDES's motion shall be granted and the appeal shall be dismissed.

ORDER:

DDES's motion for dismissal is GRANTED. The January 13, 2010 appeal filed by Appellant Ray is untimely as to the stipulated appeal issue, is unactionable and is therefore outside of the Examiner's jurisdiction to consider. Accordingly, it is DISMISSED.

ORDERED January 14, 2011.



Peter T. Donahue
King County Hearing Examiner

NOTICE OF RIGHT TO APPEAL

The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within 21 days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE DECEMBER 30, 2010, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. A10F0002

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Appellant Alope Ray and Steve Bottheim representing the Department.

PTD:gao
A10F0002 RPT