

November 9, 2015

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

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REPORT AND DECISION

SUBJECT: Permitting and Environmental Review File No. **E0201148**

BARBARA LINSTEDT
Code Enforcement Appeal

Location: 11207 248th Avenue NE, Redmond

Appellant: **Barbara Linstedt**
11207 248th Avenue NE
Redmond, WA 98053
Telephone: (206) 920-5911
Email: saddlerockllc@aol.com

King County: Department of Permitting and Environmental Review
represented by **Jeri Breazeal**
35030 SE Douglas Street Suite 210
Snoqualmie, WA 98065
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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:

October 28, 2015

Hearing Closed:

October 28, 2015

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

FINDINGS:

1. Barbara Linstedt is the owner of an approximately 27 acre property located at 11207 248th Avenue NE.
2. On July 15, 2015, the Department of Permitting and Environmental Review (DPER) issued a Notice of King County Code Violation (Notice and Order) to Mrs. Linstedt alleging construction of an accessory structure (barn with habitable space above) without required permits (Alleged Violation 1); creation of 2,000 square feet or more of new and/or replaced impervious surface without required permits (Alleged Violation 2); and occupancy of a substandard dwelling (recreational park model) and construction of additions to the dwelling in violation of the King County Code, International Property Maintenance Code, and International Building Code (Alleged Violation 3). Ex. 2.
3. Mrs. Linstedt (Appellant) timely appealed the Notice and Order. Ex. 3. In her appeal, she conceded that she had not obtained the required permit for the barn and asked for additional time to complete a boundary line adjustment (BLA) which would allow her to sell a portion of her property to obtain funds to permit the barn. She contended that she had obtained a grading permit for the impervious surface and that she had sold the recreational park model to an individual who intended to move it from her property. She also requested relief from the estimated permit fees, arguing that they are unjust and unfair. Ex. 3, 2015 Construction Permit Fee Estimate.
4. Evidence submitted and testimony offered by Appellant demonstrated that she was/is eager to resolve the alleged violations. Linstedt testimony; Exs. 11 and 12.

Alleged Violation 1

5. At the time DPER issued its Report to the Hearing Examiner, DPER had approved the BLA (BLAD15-0033), but it had not yet been recorded. Ex. 1; Officer Breazeal Testimony. DPER concluded that the BLA showed that the barn extended across the southern property line of the parcel on which it would be located and must be demolished. DPER's conclusion was based on a BLA drawing on which the placement of a lot dimension concealed the southern portion of the barn. The Appellant submitted a more recent copy of the BLA drawing (Ex. 10) on which the surveyor had moved the location of the lot dimension so that it no longer conceals the southern portion of the barn. Ex. 10 shows that the barn (labeled as "garage") will be located entirely within new Lot A, the southeast corner of the barn is 24 feet from the south property line of Lot A, and the southwest corner is 94 feet from the west property line of Lot A. *See also*, Ex. 18.
6. An interior lot line is a lot line that delineates a property lot line along portions of the property that do not abut a street. KCC 21A.06.730. The southern lot line of Lot a is an interior lot line. The minimum interior lot setback for any structure housing livestock is 25 feet. KCC 21A.12.122.B. Horses are livestock. KCC 21A.06.695. Mrs. Linstedt

testified that it is very important for her to be able to stable horses in the barn and that she will remove a portion of the southeast corner of the barn so that the entire structure is located at least 25 feet from the south property line.

Alleged Violation 2

7. In the hearing in this matter, the parties variously referred to the impervious surface which is the subject of Alleged Violation 2 as a sports court or parking area. For permitting purposes, the crucial fact is that the area is an impervious surface, not whether that surface is used for parking or a sports court. For ease of reference, this decision refers to the impervious surface as a “sports court.”
8. The Appellant testified that the area in which the sports court is located was graveled in the late 1990s to provide a staging/parking area for heavy equipment during the construction of her residence and that her late husband poured concrete over the graveled area to create the sports court in 2002.
9. Appellant contends that the site plan submitted in conjunction with the permitting of her residence authorized the sports court. In support of this contention, she offered as part of Exhibit 3 a site plan recorded under recording number 9802091150, Exhibit 14, and Exhibit 19. Appellant and her consultant, Four Waters Aquatics, contended variously that one could pour concrete without a permit and that the pouring of the concrete constituted maintenance which did not require a permit Ex. 12, p. 3; Ex. 19.
10. Exhibit 7, submitted by DPER, is a site plan prepared by Crenshaw & Associates on February 26, 1997 with the handwritten notation “B97R0448” on the top of the page. DPER issued Permit B97R0448 on December 8, 1998 for a single family dwelling unit and an accessory living quarters. Ex. 1.
11. The site plan contained in Exhibit 3 and Exhibit 7 both show an attached garage to the west of the residence and a parking area to the south of the residence on the west side of the driveway. Neither shows a parking area or other impervious surface in the location of the sports court.
12. Figure 1 in Exhibit 14 is a Site and Exploration Plan prepared by Associated Earth Sciences, Inc. dated May, 1997. Figure 1 states that the base document for this plan is the Linstedt Residence Site Plan prepared by Crenshaw & Associates dated October 25, 1996. Exhibit 14 Figure 1 shows the residence and attached garage, guest house, and parking area in the same locations as those shown on Exhibit 7 and the site plan contained in Exhibit 3. The residence and attached garage, guest house, and parking area are labeled. Figure 1 also includes a rectangular outline to the north of the garage in the approximate location of the sports court. The rectangular area is not labeled.
13. There is no evidence in the record that DPER reviewed or approved Exhibit 14, Figure 1. Moreover, as explained in Finding 12, the site plan which is the base document for Figure 1 was prepared by Crenshaw & Associates on October 25, 1996. Exhibit 7 is a more recent site plan prepared by Crenshaw & Associates on February 26, 1997.

14. Exhibit 19 is a report entitled “Washington Property Evaluation of Environmental Impacts of parking pad vs. parking pad removal,” prepared by Four Waters Aquatics. The report does not indicate the identity or qualifications of its author. Nor did Appellant call the author as a witness. Exhibit 19 makes unsupported assertions that: (a) the sports court was identified in the King County grading permit for the house, guest house, and driveway; (b) pouring concrete for the sports court constituted a maintenance activity which did not require a permit in 2002; (c) the sports court is currently a “heavy use area;” and (d) the sports court is “over 50 feet from the nearest slope.”
15. The preponderance of the evidence is that the sports court was not permitted by Permit B97R0448. Therefore, there was no impervious surface to “maintain.”
16. Appellant’s testimony contradicts Four Waters Aquatics’ statement that the sports court is currently an area of heavy use. Nor would such use be relevant to the question of whether the sports court requires a permit.
17. Exhibit 15 and Exhibit 19, Figure 1 demonstrate that the sports court is within 50 feet of the top of the slope. In contrast, Ex. 19, Figures 2 and 3 contain a rectangle in the approximate location of the sports court. The rectangle, which is somewhat more than 50 feet from the top of the slope, is clearly a hand drawn addition to the Figures.
18. The preponderance of the evidence is that the sports court was installed in 2002.
19. In 2002, KCC 21A.24.310 required a 50-foot buffer from the top of any slope 40% or steeper unless, based on a special study, the County determined that a reduction will adequately protect the proposed development and slope. Ex. 8.
20. The preponderance of the evidence is that the sports court is located partially within the 50 foot buffer from the top of the slope.
21. Four Waters Aquatics contends that removal of the sports court would be more environmentally damaging than leaving it in place. That may well be true, but is not relevant to the question of whether the sports court required a permit. The Notice and Order offers the Appellant the option of seeking a building permit (if combined with a permit for the barn) or a grading permit (if the Appellant elects to demolish the barn) for the sports court. Ex. 2.

Alleged Violation 3

22. As of the date of the Staff Report, DPER considered Appellant to have achieved “technical” compliance for Alleged Violation 3. Ex. 1. At the hearing in this matter, DPER confirmed that Alleged Violation 3 has been resolved and was not before the Examiner.
23. Any Conclusion of Law that is more correctly a Finding of Fact is incorporated herein as a Finding of Fact by this reference.

CONCLUSIONS:

1. Any Finding of Fact that is more correctly a Conclusion of Law is incorporated herein as a Conclusion of Law by this reference.
2. DPER has proven by a preponderance of the evidence that Appellant failed to obtain the required permits for the barn and sports court.
3. DPER did not permit the sports court in conjunction with the construction of the Linstedt residence.
4. Because it was not permitted, the sports court is not vested to the code in effect at the time of its construction.
5. Alleged Violation 3 had been resolved prior to the hearing in this matter and was not before the Examiner.
6. The scope and nature of an administrative appeal must be determined by the provisions of the ordinances that authorize it. *Chausee v. Snohomish County Council*, 38 Wn. App. 630, 639, 689 P.2d 1084 (1984). The King County Council has not given the Hearing Examiner the authority to grant relief from permit application fees.

DECISION:

The appeal is **DENIED**.

Appellant apply for and obtain the required permits, inspections, and approvals with complete application to be submitted by the **following schedule**:

A. Violation 1

i. Option 1

- (1) A complete application must be submitted to the Health Department for any required approvals by **February 9, 2016**; provide a copy of the Health Department application to Code Enforcement.

Note: a critical areas designation (CAD) from DPER may be required prior to Health Department submittal if a new septic design is required. If required, a complete CAD application is to be submitted within 15 days of Health Department notification and resubmit to Health Department within 30 days of CAD issuance.

- (2) A complete building permit application is to be submitted within 30 days of the Health Department approval.

Note: Application for a permit does not ensure that a permit will be issued. An applicant should also be aware that permit fees and/or

site conditions and/or repair expenses may make the application cost prohibitive. The only alternative may be to demolish the non-permitted construction.

- (3) Meet all deadlines for requested information associated with the permit(s) and pick up the permit(s) within the required deadlines. Request a building inspection at time of permit issuance, make any required corrections and obtain final approval for occupancy within one year of permit issuance.
- (4) If permit application or any required approval including but not limited to Health Department approval is denied, apply for and obtain a demolition permit to remove the new construction within 30 days of final denial of any of the permit approvals. Demolition must be completed within 60 days of permit issuance even though a demolition permit is good for one year.

ii. Option 2

- (1) Apply for and obtain a demolition permit to remove the new construction by **February 9, 2016**. Demolition must be completed within 60 days of permit issuance even though a demolition permit is good for one year.

B. Violation 2

i. Option 1

- (1) If an application to permit the barn structure is pursued, the application for the sports court is required to be included with the building permit submittal. A complete building permit application is to be submitted according to the Decision ¶ A.i above.

ii. Option 2

- (1) If an application to permit the structure is not pursued or is not approved, a complete grading permit application to permit the sports court, or to restore the site to its original condition or as close to that condition as possible, is to be submitted by **February 9, 2016x**, or within 30 days of building permit denial.

Note: Application for a permit does not ensure that a permit will be issued. The Applicant should be aware that permit fees can be expensive and zoning or critical area restrictions may require a variance or reasonable use exception to county regulations in order to legalize work done without permits. Application for a variance or reasonable use exception can be an expensive and time consuming option and there is no guarantee that approval will be obtained. The alternative is to obtain a clearing/grading permit to

restore the site to its original condition or as close to that condition as possible.

- (2) A complete restoration permit application shall be submitted within 30 days of final denial of any of the permits or approvals listed above.
 - (3) Meet all deadlines for requested information associated with the permit(s) and pick up the permit(s) within the required deadlines. Request an inspection within 15 days of permit issuance, make any required corrections and obtain final approval within one year of permit issuance
- C. No penalties shall be assessed against the Appellant or the subject property if the actions described in ¶¶ A and B are completed by deadlines specified therein.

ORDERED November 9, 2015.



Alison Moss
Hearing Examiner pro tem

NOTICE OF RIGHT TO APPEAL

Pursuant to King County Code Chapter 20.24, the King County Council has directed that the Examiner make the final decision on behalf of the county regarding code enforcement appeals. 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 OCTOBER 28, 2015, HEARING IN THE APPEAL OF BARBARA LINSTEDT, DEPARTMENT OF PERMITTING AND ENVIRONMENTAL REVIEW FILE NO. E0201148.

Alison Moss was the Hearing Examiner in this matter. Participating in the hearing were Jeri Breazeal and Barbara Linstedt.

The following exhibits were offered and entered into the record:

- | | |
|----------------|---|
| Exhibit no. 1 | Department of Permitting and Environmental Review staff report to the Hearing Examiner for file no. E0201148. |
| Exhibit no. 2 | Notice and Order, issued July 15, 2015 |
| Exhibit no. 3 | Notice and Statement of Appeal, received August 3, 2015 |
| Exhibit no. 4 | Codes cited in the Notice and Order |
| Exhibit no. 5 | Aerial photographs of the subject property
A. 2002
B. 2005
C. 2015 |
| Exhibit no. 6 | Photographs of the subject property
A. taken June 15, 2015
B. taken June 16, 2015
C. taken October 7, 2015 |
| Exhibit no. 7 | Site plans from 1997 building permits |
| Exhibit no. 8 | Ordinance 13190 |
| Exhibit no. 9 | Assessor map |
| Exhibit no. 10 | Boundary Line Adjustment map |
| Exhibit no. 11 | Email correspondence between Appellant and Jeri Breazeal |
| Exhibit no. 12 | Email correspondence between Appellant and Jeri Breazeal |
| Exhibit no. 13 | Contract between Appellant and Associated Earth Sciences dated October 9, 2015 |
| Exhibit no. 14 | Subsurface exploration, geologic hazards and geotechnical engineering report, dated June 1997 |
| Exhibit no. 15 | 2009 Site plan TESC template |
| Exhibit no. 16 | Conceptual map, 1997 |
| Exhibit no. 17 | Site and exploration plan, May 1997 |
| Exhibit no. 18 | Mead Gilman Land Surveyors letter to Appellant, dated October 16, 2015 |
| Exhibit no. 19 | Four Water Aquatics evaluation of environmental impacts |

AM/vsm

November 9, 2015

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CERTIFICATE OF SERVICE

SUBJECT: Permitting and Environmental Review File No. **E0201148**

BARBARA LINSTEDT
Code Enforcement Appeal

I, Vonetta Mangaoang, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **REPORT AND DECISION** to those listed on the attached page as follows:

- ☒ EMAILED to all County staff listed as parties of record/interested persons and primary parties with e-mail addresses on record.
- ☒ caused to be placed with the United States Postal Service, with sufficient postage, as **FIRST CLASS MAIL** in an envelope addressed to the non-County employee parties of record/interested persons at the addresses indicated on the list attached to the original Certificate of Service.
- ☒ caused to be placed with the United States Postal Service, with sufficient postage, as **CERTIFIED MAIL** with a return receipt requested in an envelope addressed to the primary parties.

DATED November 9, 2015.



Vonetta S. Mangaoang
Clerk/Manager

All Parties of Record

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