

June 13, 2017

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

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REPORT AND DECISION

SUBJECT: Department of Permitting and Environmental Review file no. **ENFR130839**

CANDACE WELCH AND GERI SCHOCK
Code Enforcement Appeal

Location: 4218 338th Place SE, Fall City

Appellant: **Kirk Welch**
PO Box 756
Fall City, WA 98024
Telephone: (425) 864-5244
Email: kgw841@yahoo.com

Appellants: **Candace Welch and Geri Schock**
Telephone: (425) 985-4111
Email: globalvinyasa@gmail.com

King County: Department of Permitting and Environmental Review
represented by **Jeri Breazeal**
35030 SE Douglas Street Suite 210
Snoqualmie, WA 98065
Telephone: (206) 477-0294
Email: jeri.breazeal@kingcounty.gov

SUMMARY OF RECOMMENDATIONS/DECISION:

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

Deny appeal
Deny appeal
Deny appeal

EXAMINER PROCEEDINGS:

Hearing Opened: June 13, 2017
Hearing Closed: June 13, 2017

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 Hearing Examiner's Office.

FINDINGS:

1. Geri Schock is the record owner of parcel number 2475900075, the address of which is 4218 338th Place SE in the Fall City area of unincorporated King County in the CB-SO zone "Property". Exhibit 1.
2. On October 25, 2013, in response to a complaint relating to placement and operation of a drive-up espresso stand on the Property, former Enforcement Officer Erroll Garnett conducted a site visit. Officer Garnett advised the operator, Candace Welch, that the espresso stand would require Health Department approval and subsequent building permits and provided her with an already-built construction (ABC) pre-application packet. Exhibit 1. According to the compilation of comments, Exhibit 5, during that site visit, Ms. Welch advised Officer Garnett that "she [was] almost done with the Health approval." She repeated these assurances a few days later and again in February 2014.
3. On June 11, 2014, Ms. Welch advised that she had hired Huard Septic Design to design a new septic system for the property.
4. On August 18, 2015, nearly two years after the initial site inspection, when Ms. Welch had still not submitted an application to the Health Department, the Department of Permitting and Environmental Review (DPER) issued a Notice and Order to Ms. Welch and Ms. Schock alleging: (1) placement and operation of an espresso stand without the required permits, inspections, and approval; and (2) grading creating 2,000 square feet or more of new and/or replaced impervious surface without the required grading permit, inspections and approvals. Exhibit 2.
5. Ms. Welch timely appealed the Notice and Order. She did not contest the alleged violations but, rather, asked for more time (6-12 months) to obtain the required permits. Exhibit 3.
6. The Examiner held a pre-hearing conference on January 8, 2016, at which Ms. Welch reported that the Health Department has had recently approved an alternative which may not require her to install a new septic system. The Examiner granted the parties' request that the appeal be placed on hold to allow them to explore a solution short of an adversarial hearing.
7. In August 2016, Kirk Welch (Appellant), Ms. Schock's son, advised that he is now acting as the representative for the property owner and has assumed the responsibility for resolving the alleged violations. Exhibits 1 and 5 and Testimony of Kirk Welch.

8. In enforcement cases such as this in which Health Department approval is required, DPER typically requires that the person responsible for code compliance schedule and attend a pre-application meeting with DPER prior to submitting an application to the Health Department.
9. The Examiner has held several status conferences at which Appellant explained that he did not want to incur the expense of a pre-application meeting with DPER if he could not obtain Health Department approval. While that is a reasonable and understandable goal, it is predicated upon making an effort to obtain Health Department approval, including the most basic step of submitting an application to the Health Department.
10. On March 17, 2017, Officer Jeri Breazeal sent the Appellant information from the Health Department regarding a tank system that may be appropriate but that it would require a critical areas designation because it is considered a new septic system. Exhibits 1 and 5.
11. At the hearing in this matter, Appellant testified that the Health Department advised him that he can install a holding tank that would need to be pumped bi-weekly. Testimony of Kirk Welch.
12. On June 6, 2017, Appellant provided Huard Septic Design with an executed contract for “corrective work” which Appellant described as a contract to provide the design, submit the application to the Health Department, and obtain Health Department approval. Exhibit 9; Testimony of Kirk Welch. That same day he also provided Huard Septic Design with a check for the design work and the Health Department application fee. Exhibit 10; Testimony of Kirk Welch.
13. At the hearing in this matter, Officer Breazeal clarified that the grading which was the subject of the Notice and Order will not require a separate grading permit, but can be resolved through the building permit if the Appellant elects to seek a building permit for the espresso stand.
14. Appellant has operated an espresso stand on the Property without the required permits, inspections, and approvals since October 2013, some three years and eight months. As of the date of the hearing in this matter, Appellant has not submitted an application to the Health Department, but testified that he will be able to do so within 30 days of the Examiner’s decision in this matter.

CONCLUSIONS:

1. Appellant concedes the violations alleged in the Notice and Order and that he is a person responsible for compliance.
2. Appellant’s appeal requested 6-12 additional months to achieve compliance. The first compliance step directed by the Notice and Order was the submittal of a pre-screening request by September 18, 2015, nearly 21 months ago. There is no basis for further delay.

DECISION:

1. The appeal is **DENIED**.
2. No penalties shall be assessed against the Appellant or the subject property if the following actions are completed by the deadlines set forth below:
 - A. By **July, 14, 2017** submit to DPER written verification from the Health Department that it will not require a new septic system.
 - i. **Within 30 days of submittal to DPER of such verification**, submit a complete application to the Health Department for approval.
 - ii. Submit a pre-application packet to DPER **within 15 days of Health Department approval**.
 - iii. Submit a complete building permit application to DPER **within 30 days of the pre-application meeting**.

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.
 - iv. Meet all deadlines for requested information associated with the permit(s) and pick up the permit(s) within the required deadlines. Request an inspection at the time of the permit issuance, make any required corrections, and obtain final inspection approval **within one year of permit issuance**.
 - v. If the permit application or any required approvals including but not limited to Health Department approval is denied, remove the espresso stand **within 30 days of final denial of any of the permit approvals**.

OR

- B. By **July, 14, 2017** submit to the DPER a complete critical areas designation (CAD).
 - i. **Within 30 days of submittal to DPER of a CAD**, submit a complete application to the Health Department for approval.
 - ii. Submit a pre-application packet to DPER **within 15 days of Health Department approval**.
 - iii. Submit a complete building permit application to DPER **within 30 days of the pre-application meeting**.

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.

- iv. Meet all deadlines for requested information associated with the permit(s) and pick up the permit(s) within the required deadlines. Request an inspection at the time of the permit issuance, make any required corrections, and obtain final inspection approval **within one year of permit issuance**.
- v. If the permit application or any required approvals including but not limited to Health Department approval is denied, remove the espresso stand **within 30 days of final denial of any of the permit approvals**.

OR

- C. Remove the espresso stand and all related accessory items **by July 14, 2017**.

ORDERED June 13, 2017.



Alison Moss
Hearing Examiner pro tem

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.

**MINUTES OF THE JUNE 13, 2017, HEARING IN THE APPEAL OF CANDACE
WELCH AND GERI SCHOCK, DEPARTMENT OF PERMITTING AND
ENVIRONMENTAL REVIEW FILE NO. ENFR130839**

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

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. ENFR130839 |
| Exhibit no. 2 | Notice and order, issued August 18, 2015 |
| Exhibit no. 3 | Notice and statement of appeal, received September 3, 2015 |
| Exhibit no. 4 | Codes cited in the notice and order |
| Exhibit no. 5 | Compilation of all comments of record no. ENFR130839 |
| Exhibit no. 6 | Aerial photographs of subject property, dated 2013 and 2015 |
| Exhibit no. 7 | Photographs of subject property, dated May 24, 2017 |
| Exhibit no. 8 | Email from Huard Septic Design to Appellant with scheduled date for property visit, dated June 7, 2017 |
| Exhibit no. 9 | Huard Septic Design contract, dated May 1, 2017 |
| Exhibit no. 10 | Copy of check no. 1369 to Health Department, dated May 1, 2017; copy of check no. 1367 to Huard Septic Design, dated May 1, 2017 |

AM/ed

June 13, 2017

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CERTIFICATE OF SERVICE

SUBJECT: Department of Permitting and Environmental Review file no. **ENFR130839**

CANDACE WELCH AND GERI SCHOCK
Code Enforcement Appeal

I, Elizabeth Dop, 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/interested persons and 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/interested persons to addresses on record.

DATED June 13, 2017.



Elizabeth Dop
Legislative Secretary

Breazeal, Jeri

Department of Permitting and Environmental Review

Deraitus, Elizabeth

Department of Permitting and Environmental Review

Geri Schock, Candace Welch

Lux, Sheryl

Department of Permitting and Environmental Review

Welch, Kirk

Hardcopy

Williams, Toya

Department of Permitting and Environmental Review