

November 13, 2009

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**
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ORDER DISMISSING APPEAL AS UNTIMELY¹

SUBJECT: Department of Development and Environmental Services File No. **A09F0006**

BHAG SINGH KHELA
Fee Appeal

Location: 10818 SE 236th Street

Appellant: **Bhag Singh Khela**
103 Christensen Road
Othello, Washington 99344
Telephone: (206) 478-3409

King County: Department of Development and Environmental Services (DDES)
represented by **Steve Bottheim**
900 Oakesdale Avenue SW
Renton, Washington 98055-1219
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1. Appellant Khela filed on April 13, 2009 a development review fee waiver request with Respondent Department of Development and Environmental Services (DDES), disputing certain DDES fees² billed for the review and approval of a three-lot short plat processed under county file L04S0056.
2. The fee waiver request commenced a fee billing appeal under Chapter 27.50 KCC. [KCC 27.50.100.C]

¹ This is the second order of dismissal issued in this matter. The first, an order of dismissal by default issued August 27, 2009 (for failure to appear), was stricken on reconsideration September 15, 2009 after receiving Appellant's contention of lack of notice, which contention was upheld in a motion hearing conducted October 29, 2009. The matter then moved to considering anew DDES's motion for dismissal for untimeliness, which is decided herein.

² Development permit fees are authorized by Title 27 KCC.

3. DDES denied the waiver request by letter dated April 27, 2009.
4. On May 14, 2009, Mr. Khela filed an appeal of DDES's denial to the Hearing Examiner.
5. On June 5, 2009, DDES filed a motion to dismiss the appeal based on its asserted untimeliness. DDES cited as support for its motion the initial one-time appeal grace period provision for development permit fee appeals, set forth in KCC 27.50.100, which reads:
 - A. Applicants with fee disputes on billings that the agency first issued between January 1, 2004, and the effective date of this section may, for one year after the effective date of this section, commence billing appeals under this chapter.
6. Ordinance 16026 enacting the subject code section became effective March 17, 2008. DDES contends therefore that a fee waiver request received more than one year later, *i.e.*, after March 17, 2009, is not eligible for consideration due to untimeliness.
7. The initial fee billings pertinent to the subject short plat review were made starting December 8, 2004, with the last statement issued in January of 2009 (but reflecting no new work; the last entry of billed project review hours is for work conducted January 2, 2008).
8. Accordingly, the billed project review fees at issue in this case were all billed prior to the effectiveness of KCC 27.50.100, and more particularly were "first issued between January 1, 2004, and the effective date of this section." Therefore such billings were eligible for consideration under the grace period filing allowance cited in the above finding no. 4.
9. The grace period terminated March 17, 2009, however, and in so doing expired prior to the Appellant's April 13, 2009 filing of his development review fee waiver request with DDES.
10. Since the filing of the fee waiver request (and therefore commencement of his billing appeal; see KCC 27.50.100.C) was made after the March 17, 2009 deadline which applied to his grace period appeal right, it is untimely.
11. Under the ordinance, the Appellant had a full year's grace period under the fee appeal process in which to file his appeal. The Examiner has no authority to extend the grace period.
12. Untimeliness of a fee waiver request/appeal deprives the Examiner of appellate jurisdiction. "Timely filing of the notice of appeal and appeal fee (if required) is a jurisdictional requirement; appeals which do not meet the filing requirements cannot be considered by the examiner." [Hearing Examiner Rule of Procedure (ROP) VI.A]
13. The Appellant acknowledges that the appeal may not have been timely filed, but argues that the substance of the appeal, the objections of the Appellant to the project review fees billed by DDES and the fee waiver request denial, should be considered.
14. The Examiner cannot consider the substance of the appeal without appellate jurisdiction. As noted above, the Hearing Examiner ROP, formally promulgated under the code direction set forth in KCC 20.24.170, establish that timely filing is a jurisdictional requirement. Absent timely filing and subsequent jurisdiction, the Hearing Examiner has no authority to adjudicate the substantive claims brought in the appeal.

15. As the Examiner has no jurisdiction over the appeal, the only dispositive action available to the Examiner is to dismiss the appeal.

ORDER:

DDES's motion for dismissal on untimeliness grounds is granted. The instant appeal is dismissed.

ORDERED November 13, 2009.



Peter T. Donahue
King County Hearing Examiner

NOTICE

County code provides that the Hearing Examiner decision on fee appeals under Chapter 27.50 KCC is the final decision of the county.

MINUTES OF THE OCTOBER 29, 2009, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. A09F0006

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Steve Bottheim representing the Department, Bhag Singh Khela, the Appellant, and Surinder Khela.

The following Exhibits were offered and entered into the record:

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| Exhibit No. 1 | Department of Development and Environmental Services (DDES) fee appeal packet |
| Exhibit No. 2 | Copies of invoices/statements mailed to the application regarding short plat L04S0056 |

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