October 26, 2017

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON
King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
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www.kingcounty.gov/independent/hearing-examiner

ORDER OF DISMISSAL

SUBJECT: Department of Permitting and Environmental Review file no. **ENFR120354**

DONALD AND LESLIE WEAR
Code Enforcement Appeal

Location: 5017 S 347th Place, Auburn

Appellants: **Donald and Leslie Wear**
5017 S 347th Place
Auburn, WA 98001
Telephone: (360) 510-6942

King County: Department of Permitting and Environmental Review
represented by **David Bond**
35030 SE Douglas Street Suite 210
Snoqualmie, WA 98065
Telephone: (206) 477-3654
Email: david.bond@kingcounty.gov

We mailed on October 9, 2017, the notice of hearing on motion to dismiss for today's hearing. We received no communication in response. Appellant's failure to appear constitutes abandonment of the appeal. The appeal is therefore DISMISSED.

However, before exiting the scene, we make four points.

First, DPER explained this morning that the shop has received its final approval, and thus violation #2 is in compliance. Only violations #1 and #3 remain.

Second, to the extent it may make the Wears feel a little better, even if they had participated today, it is hard to see how we could have done anything but dismiss their appeal. In many scenarios an examiner has a fair amount of discretion and flexibility, but untimely appeal statements are decidedly different. The examiner "shall" (not "may") dismiss an untimely appeal. KCC 20.22.090.A. There is no alternative option an examiner can select. KCC 20.22.080.H.

Third and similarly, even if the Wears had gotten their original appeal statement in on time, and we had reached the merits of the patio and the commercial truck repair, we have not divined any golden avenue for challenge that the Wears missed. Certainly, we have not heard the testimony and seen the exhibits, and (had a timely appealed been filed) DPER would have borne the burden to prove its facts. But the law reads in DPER's favor. As to the patio, KCC 16.02.240 is strict in terms of what construction activities are exempt from the need to apply for a building permit. Even many minor items one might not think twice about are not exempt; nothing on the exemption lists jumps out as covering what the Wears say they did. As to commercial truck repair, home occupations in the R zone are fairly restrictive in general, and KCC 21A.30.080.E.1 explicitly calls out "automobile, truck and heavy equipment repair" as the first type of use on a list of uses that "shall not be permitted as home occupations." Again, that is not to judge what the facts might have shown, only to note that, on our first read, no fertile grounds for appeal really jumped out as us.

Fourth and finally, the Notice and Order set a 30-day deadline to apply to the Health Department to keep the patio/walkway construction or to apply to DPER for a demolition permit to remove the construction, as well as a 30-day deadline to cease the commercial truck repair business. Those 30 days ran out at the end of September, meaning the Wears would immediately be subject to monetary penalties. That is an unnecessarily harsh remedy. We will kick back the deadline to 30 days from *today's* dismissal.

The Wears appeal of the August 25 Notice and Order is DISMISSED except that:

- The shop permit has been filed, and thus violation #2 two has been resolved; and

- The initial September 25 deadlines set in the August 25 Notice and Order for applying for a permit to correct or demolish the patio/walkway construction (violation #1), and for ceasing the commercial truck repair business (violation #3), are extended to **November 27, 2017**.

DATED October 26, 2017.

David Spohr
Hearing Examiner

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.

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CERTIFICATE OF SERVICE

SUBJECT: Department of Permitting and Environmental Review file no. **ENFR120354**

DONALD AND LESLIE WEAR
Code Enforcement Appeal

I, Elizabeth Dop, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **ORDER OF DISMISSAL** 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 October 26, 2017.

Elizabeth Dop
Legislative Secretary

Bond, David
Department of Permitting and Environmental Review

Breazeal, Jeri
Department of Permitting and Environmental Review

Deraitus, Elizabeth
Department of Permitting and Environmental Review

Lux, Sheryl
Department of Permitting and Environmental Review

Wear, Donald-Leslie
Hardcopy

Williams, Toya
Department of Permitting and Environmental Review