



**DECISION AND ORDER
of the SNOHOMISH COUNTY
HEARING EXAMINER**

Gordon Sivley
Hearing Examiner

M/S 405
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Everett, WA 98201

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DATE OF DECISION: September 6, 2013

RESPONDENTS: Robert and Saira Coronado

FILE NO.: 08-107088 CT

TYPE OF REQUEST: Imposition of Monetary Penalties

DECISION (SUMMARY): Penalties Imposed.

LOCATION: 11603 and 11527 Highway 99, Everett, WA 98204

TAX ACCOUNT NOS: 004429-002-029-00 and 004429-002-029-01

This matter having come before the Hearing Examiner on September 4, 2013, and the testimony of witnesses having been heard and all exhibits admitted into evidence having been considered, the Hearing Examiner enters the following:

FINDINGS OF FACT

The following Findings of Fact are supported by a preponderance of the evidence presented in the record pertaining to this matter:

1. Robert and Saira Coronado, Respondents, are the owners of record of the property located at 11603 Highway 99, Everett, WA. The property located at 11527 Highway 99, Everett, WA is adjacent to the Coronado's property (both parcels are hereinafter referred to as the "subject property").
2. On September 8, 2008, the Coronados signed a Voluntary Correction Agreement (VCA) in which they stipulated to the existence of certain violations on the subject property, specifically, that grading (clearing of vegetation and the adding of gravel and soil) had occurred within a critical area and its buffers without first obtaining the required permits and approvals. (Exhibit 14) These violations are ongoing.
3. The Respondents began some efforts with the Department of Planning and Development Services (PDS) to resolve the violations. An ownership dispute between the Coronado's and the Carlisle Creek Condominium Association (the owner of the

parcel adjoining that of the Coronados) which resulted in litigation, delayed resolution of the violations. However, that property dispute was resolved by the court in March 2013.

4. PDS Code Enforcement Officer Stephanie Lyon granted numerous extensions of the compliance date in the VCA. The last compliance date was granted on March 28, 2013 extending the compliance date to May 30, 2013. (Exhibit 35)
5. The May 30, 2013 compliance date passed with no resolution of the violations. On June 27, 2013, Officer Lyon sent the Coronados a letter notifying them that this matter was being submitted to the Hearing Examiner for imposition of penalties. (Exhibit 37)
6. Neither Mr. nor Mrs. Coronado responded to the Notice of Hearing for Imposition of Monetary Penalties and they did not appear at the September 4, 2013 hearing either in person or through an attorney.
7. Although the violation and the execution of the VCA in this case pre-dated the revisions to the code enforcement regulations enacted in 2008 which adopted a new penalty structure, PDS requested that the Examiner use the newer penalty schedule authorized in Chapter 30.85 SCC. It establishes a maximum violation for cases such as this at \$75,000 (\$25,000 for the commercial violation and triple penalties due to the violation being within a critical area)¹. PDS requested a penalty in the amount of \$30,000. Under the former version of the code, the monetary penalties accrued to date for the violations here would amount to \$24,750 (99 days at \$250 per day for commercial violations).

CONCLUSIONS OF LAW

Based on the Findings of Fact entered above, the following Conclusions of Law are entered:

1. The Hearing Examiner is authorized to hear and decide this matter pursuant to Title 2 SCC and Chapter 30.85 SCC.
2. The imposition of monetary penalties is governed by the version of Chapter 30.85 SCC in effect when the Voluntary Correction Agreement was signed.
3. The monetary penalty for the violation was set by former SCC 30.85.260 at \$250 per day for each commercial violation until the required permit is obtained.
4. The Respondents have presented nothing to justify a reduction of the monetary penalty under the provisions of former SCC 30.85.215(3).

¹ The PDS staff report erroneously used the non-commercial penalty rate in its calculations.

DECISION AND ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Examiner hereby issues the following Decision and Order:

Penalties are imposed against Respondents Robert and Saira Coronado for failure to comply with the terms of the Voluntary Correction Agreement dated September 8, 2008 in the amount of \$24,750.00.

Decision issued this 6st day of September, 2013.



Gordon Sivley, Hearing Examiner

Note: Penalties are payable to the Department of Planning and Development Services and submitted to Code Enforcement at 3000 Rockefeller Avenue, M/S 604, Everett, WA 98201.

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

The decision of the Hearing Examiner is final and conclusive with a right of appeal to Superior Court. However, reconsideration by the Examiner may also be sought by one or more parties of record. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 30.85 SCC, the Snohomish County Hearing Examiner Rules and Superior Court Civil Rules.

Reconsideration

Any party of record may request reconsideration by the Hearing Examiner **within 10 calendar days** from the date of this decision. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, Robert J. Drewel Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S No. 405, 3000 Rockefeller Avenue, Everett WA 98201) **on or before September 16, 2013**. There is no fee for filing a petition for reconsideration. "The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to *all parties of record* on the date of filing." [SCC 30.85.210]

A petition for reconsideration shall meet the requirements of SCC 30.85.210(3). The grounds for seeking reconsideration are limited to the following:

- (a) The Hearing Examiner exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner's decision;
- (c) The Hearing Examiner committed an error of law;

- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by the record; and/or
- (e) New evidence which could not reasonably have been discovered prior to the hearing and which is material to the decision has been discovered;

Petitions for reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.85.210.

Appeal

The following paragraphs summarize the appeal process. For more information about appeals to Superior Court, please see Chapter 36.70C RCW, RCW 43.21C.075, WAC 197-11-680, Chapter 30.85 SCC and applicable court rules.

Pursuant to Chapter 30.85 SCC and Chapter 36.70C RCW, any person having standing under RCW 36.70C.060 may file a Land Use Petition in Superior Court. Service on parties must be as required by RCW 36.70C.040.

The cost of transcribing the record of proceedings, of copying photographs, video tapes, and oversized documents, and of staff time spent in copying and assembling the record and preparing the return for filing with the court shall be borne by the petitioner. [RCW 36.70C.110] Please include the county file number in any correspondence regarding this case.

Staff Distribution:

Department of Planning and Development Services:
Stephanie Lyon, Code Enforcement Officer

PARTY OF RECORDS REGISTER
ROBERT & SAIRA CORONADO
MONETARY PENALTIES08 107088 CT
HEARING: AUG 28, 2013

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