

BEFORE THE CITY OF YELM HEARING EXAMINER

IN RE:) HEARING NO. 2022-0393.PR0014
MATT EARSLEY, d/b/a CARSTAR,)
Appellant.) DECISION DENYING APPEAL
OF NOTICE OF VIOLATION BUT
WAIVING A PORTION OF THE
PENALTIES ON CONDITIONS

As set forth more fully below, on April 14, 2022, the City of Yelm issued a civil penalty against the Appellant, Matt Earsley, d/b/a Carstar in the amount of \$250 for the continued parking of vehicles on an unimproved, undeveloped lot at 106 Yelm Avenue West. On April 19 the City issued a second Notice of Violation, notifying the Appellant that a civil penalty of \$250 would be imposed every day thereafter that the property remains in violation, commencing April 19, 2022.

By letter dated May 4, 2022, Mr. Earsley appealed the Notice of Violation with a follow-up Notice of Appeal submitted to the City on May 12, 2022. Notwithstanding the appeal, the Appellant continued to utilize the property for parking of vehicles for a total of 72 days, resulting in \$18,000 in total penalties sought by the City.

The City argues that the violation was knowing and intentional and that the Appellant should be subject to the entire \$18,000 in penalties. The Appellant argues that there was no violation and therefore no penalties or, in the alternative, that the penalties should be forgiven due to a good faith effort to resolve any land use violations and have the site approved for an expansion of his existing business on the adjoining property.

FIRST HEARING

This matter came before the Hearing Examiner on Mr. Earsley's appeal on June 21, 2022, at 2:00 p.m. in the Yelm Public Safety Building Courtroom. The City appeared through Chris

*Decision Denying Appeal of Notice of Violation but
Waiving a Portion of the Penalties
on Conditions - 1*

**CITY OF YELM HEARING EXAMINER
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1 Vaccaro, Building Official. The Appellant, Mr. Earsley, appeared in person pro se. All
2 testimony was taken under oath and a verbatim recording of the hearing was made by City Staff.

3 Mr. Earsley testified that he did not feel the way the matter has been handled has been
4 fair and, perhaps, that he has been targeted and singled out from other businesses whose use of
5 property is no different than his. Mr. Earsley noted that other businesses are using vacant lots in
6 a similar manner yet only he has been cited for this activity. Nonetheless, his ultimate goal is to
7 work with the City to expand his adjoining business onto this site but the process of achieving
8 City approval has been slow and, to date, unsuccessful. Mr. Earsley testified that he tried to
9 comply with the Notice of Violation by moving his vehicles off the property but found this to be
10 problematic/hazardous and, as a result, continued parking vehicles on the property for several
11 months after the Notice of Violation. The parties appear to be in agreement that the total length
12 of continued parking after the Notice was 72 days.

13 Mr. Earsley concluded his testimony by explaining that he is trying to have the property
14 approved for use and that the first step in this process is to undergo a boundary line adjustment
15 but, unfortunately, this is taking longer than expected.

16 Following Mr. Earsley's testimony, Mr. Vaccaro testified on behalf of the City. Mr.
17 Vaccaro's testimony followed closely with his Staff Report. He explained that Mr. Earsley
18 purchased the subject property at 106/108 Yelm Avenue West in 2017 along with the adjoining
19 commercial building at 103 First Street South. At the time of its purchase the subject property
20 contained an old house and second dwelling unit. The second dwelling unit was demolished in
21 about 2017 and the primary residence was later demolished in about 2019. In March 2019, Mr.
22 Earsley submitted his first land use proposal to establish a car rental facility at the site. In a
23 subsequent meeting with Staff he was reminded as to the project's requirements for parking. The
24 car rental project did not go forward.

1 In 2021, Mr. Earsley was reminded that broken tank lids on site would need to be
2 repaired. In a follow-up site visit with City Staff he was reminded that he could not park his
3 vehicles on the graveled surface placed on the site after the demolition of the residences. He was
4 told that his intended use was not a preexisting nonconforming use and that under the City's then
5 land use regulations no vehicle parking would be allowed unless the site was upgraded to meet
6 current stormwater requirements. Mr. Earsley was reminded that the City's current land use
7 regulations had been in effect since prior to his purchase of the property in 2017 and that his
8 proposal to utilize the site as a parking area would not be a valid preexisting nonconforming use.

9 In January 2022, the City noticed that Mr. Earsley was utilizing the subject property for
10 parking vehicles related to his car repair facility on adjoining property. On January 24, 2022, the
11 City issued a Notice of Violation to Mr. Earsley informing him that the parking of vehicles on
12 the site was in violation of the Yelm Municipal Code as well as the City's Design Guidelines.
13 The Notice informed Mr. Earsley of all of the requirements that he would need to meet should he
14 wish to use the site for parking and instructed him to not use the area for parking unless all of
15 these conditions were met. A second copy of this letter was sent to Mr. Earsley as a courtesy on
16 January 26 with the additional notice that all parking on the property would need to cease by
17 February 28, 2022.

18 On February 23, 2022, City Staff met with Mr. Earsley regarding his submission of a new
19 site plan. During this meeting he was again reminded that all parking areas must be surfaced
20 with asphalt, concrete or similar surface and he was also reminded that his proposed use was not
21 a preexisting nonconforming use. As such, the only means of utilizing the site for parking would
22 be to establish an approved asphalt, concrete or similar surface.

23 The City noticed that there had been no corrective action as of February 28, 2022, and
24 therefore issued a third letter to Mr. Earsley on March 1 informing him that "all parking of
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1 vehicles on the properties identified as 106 Yelm Avenue and 108 Yelm Avenue shall cease no
2 later than March 4, 2022, or a \$250 civil penalty will be issued." Following this notice Mr.
3 Earsley undertook corrective actions and removed all vehicles from unimproved lots for the next
4 several weeks.

5 On April 12, 2022, the City observed that Mr. Earsley had resumed storing vehicles on
6 the property without having undertaken any other required site improvements. As a result, on
7 April 14, 2022, the City issued a Notice of Civil Penalty in the amount of \$250 for continued
8 parking on the unimproved, undeveloped lots. This Notice advised Mr. Earsley that "it is
9 ordered that Matt Earsley shall cause the removal of said vehicles no later than April 18, 2022,
10 by 5:00 p.m. or an additional fine of \$250 will be imposed, and imposed every day or fraction of
11 a day that the property remains in violation. Any time of violation of this order takes place, a
12 \$250 fine will be issued with no further warning."

13 On April 19, 2022, the City noticed that there had been no corrective action. It sent a
14 follow-up Notice of Violation declaring: "Notice is hereby given pursuant to Design Standards
15 2.60.080, Parking Lots D. that your property located at 103 First S. remains in violation of the
16 Yelm Design Standards and a civil penalty of \$250 shall be imposed every day or a fraction of a
17 day that the property remains in violation starting today on this 19th day of April, 2022."

18 Mr. Earsley appealed this Notice of Violation by letter sent to the City on May 4, 2022,
19 with a follow-up copy sent on May 12.

20 Mr. Vaccaro completed his testimony by again noting that the City's Design Guidelines
21 currently in place have been in effect since at least 2017, perhaps 2012, and that they were in
22 effect long before Mr. Earsley demolished the buildings on these properties and sought to
23 convert it to a parking area. Parking on the site is therefore not a preexisting nonconforming use.
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1 Following Mr. Vaccaro's testimony there was a general discussion as to whether the
2 matter might be resolved through the pursuit of a site plan application by Mr. Earsley. All
3 parties agreed to continue the matter to a later date to see if there might be some resolution
4 through an approved land use.

5 SECOND HEARING

6 The matter returned before the Hearing Examiner for continued hearing on August 25,
7 2022, at 9:00 a.m., in the Yelm City Council Chambers. The City again appeared through Mr.
8 Vaccaro and the Appellant, Mr. Earsley, appeared in person pro se, along with a proposed
9 witness, Bill Turner, his project engineer.

10 The hearing resumed with the testimony of Mr. Vaccaro who explained that since the last
11 hearing Mr. Earsley had submitted a boundary line application, the first of two steps needed in
12 order to allow use of the property (a site plan application being the second step). Unfortunately,
13 Mr. Earsley's boundary line application was deemed incomplete and he was advised as to the
14 steps necessary to complete the application. These steps have not yet been completed and the
15 City therefore does not have a complete boundary line application before it but hopes to receive
16 one from Mr. Earsley soon. Assuming that a boundary line adjustment is approved, Mr. Earsley
17 will then need to submit a site plan application which could take several months to review and
18 approve. Mr. Vaccaro concluded his testimony by noting that the City's position remains the
19 same and that it asks that the penalties be imposed.

20 Before Mr. Earsley began his testimony he was reminded that the hearing on the violation
21 notice is a "closed hearing" pursuant to Chapter 18.10 Yelm Municipal Code (YMC) and that his
22 witness, Mr. Turner, would not be allowed to testify as to whether a violation occurred. If the
23 Hearing Examiner determined that a violation had occurred, however, Mr. Turner would then be
24 allowed to testify as to why all or a portion of the penalty should be mitigated.

1 Mr. Earsley commenced his testimony by noting that he has gotten underway with the
2 boundary line application, has hired an engineer and architect, and has undertaken initial design.
3 He has also received a letter from the City approving his proposed use in concept.

4 Mr. Earsley then switched his testimony to the Notice of Violation and argued that he
5 never fully understood that he could not park on the property, only the graveled areas. He
6 attempted to comply with the City's directives until it became too difficult with his business, a
7 problem that continues today. He does not believe that he has violated the City standards and
8 that he had been allowed to engage in similar parking until the City received an anonymous tip
9 which led to its investigation and the Notice of Violation. He concluded his testimony by asking
10 the Hearing Examiner to dismiss the violations.

11 Mr. Vaccaro responded to Mr. Earsley's testimony by reiterating his earlier testimony as
12 to the number of times Mr. Earsley was notified that his parking was in violation of City Design
13 Guidelines and given multiple opportunities to remedy the problem before violation notices were
14 issued. Even then, Mr. Earsley could have limited his penalties by simply complying but instead
15 chose to continue parking in knowing violation of the Notices for a total of 72 days. As this
16 continued parking was with full knowledge of it being in violation of City standards, Mr.
17 Vaccaro asked that the full penalties be imposed. As each day constitutes a \$250 penalty, and
18 the violation occurred over 72 days, this would result in \$18,000 in total penalties. Mr. Vaccaro
19 asked that this penalty be fully imposed.

20 MITIGATION HEARING

21 Following Mr. Vaccaro's responsive testimony the Hearing Examiner announced that he
22 concluded that the violations had occurred as Mr. Earsley had not presented any testimony
23 challenging the fact that the City's Design Regulations in effect at the time parking got underway
24 precluded such use without significant site improvements, and that these improvements had
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1 not occurred. Further, the City's Design Regulations predated Mr. Earsley's purchase of the
2 property and subsequent demolition of the buildings, resulting in his proposed use not being a
3 preexisting nonconforming use. Rather, the proposed use was fully subject to these Design
4 Regulations and was not in compliance. The Notices of Violation and the resulting penalties
5 were therefore appropriately issued. Mr. Earsley's appeal of the Notice of Violation was
6 therefore **denied**.

7 Having reached this initial decision, the Hearing Examiner then explained that under
8 Chapter 18.10 YMC Mr. Earsley is allowed the opportunity to request remission or mitigation of
9 the penalty, and that the penalty may be remitted or mitigated for good cause upon whatever
10 terms the Hearing Examiner finds acceptable.

11 In response, Mr. Earsley asked that his project engineer, Bill Turner, be allowed to speak.
12 Mr. Turner began by questioning the City's Design Regulations but was reminded that such
13 testimony would not be helpful in determining whether the penalties should be mitigated. He
14 therefore altered his testimony to explain how Mr. Earsley is moving forward as fast as possible
15 with applications to have the site approved for his desired use. Mr. Turner anticipates that a site
16 plan application will be submitted as soon as possible and that it is only waiting on some final
17 work by the surveyor and the Geotech firm. He asked the Hearing Examiner to take these efforts
18 into consideration and to forgive the penalties in light of Mr. Earsley's attempts to comply.

19 Following Mr. Turner's testimony the City responded through Mr. Vaccaro who again
20 noted the many times Mr. Earsley was notified that his conduct was in violation of the Design
21 Code and yet he knowingly continued to park on the property. At all times the City followed its
22 required processes, giving ample notice to Mr. Earsley of the consequences, yet he chose to
23 ignore these consequences. Mr. Vaccaro concluded his comments by noting that to rescind the
24 fine would effectively treat the violation as never having occurred.

1 Mr. Earsley was given one final opportunity for rebuttal and explained that the last few
2 years have been difficult ones due to COVID and other reasons, with many hardships
3 encountered by his business. He asked that, in light of these many hardships, his fines be
4 forgiven.

5 **DECISION**

6 As noted earlier, Mr. Earsley has failed to meet his burden of proving that the Notices of
7 Violation were wrongfully issued. The City has amply demonstrated that its Design Guidelines
8 do not allow the site to be used for parking of vehicles without upgrading its surface to either
9 concrete, asphalt or similar surface. None of these site improvements have been made. Mr.
10 Earsley does not deny that he received Notices of Violation nor does he deny having continued
11 the improper use long after the Notices were received, or a total of 72 days. Mr. Earsley argues
12 that his use should be "grandfathered", that is, found to be a preexisting nonconforming use to
13 which he is entitled to continue using, but he has presented no evidence to support this claim. To
14 the contrary, the City has demonstrated that the existing land use regulations regulating this issue
15 have been in existence since before Mr. Earsley demolished the buildings and began using the
16 lots for parking.

17 Pursuant to YMC 18.18.060, any person violating or failing to comply with the City's
18 codes may be subject to a cumulative civil penalty of up to \$250 per day for each active
19 occurrence of violation. The violating party may, however, ask the Hearing Examiner to remit or
20 mitigate these penalties. The penalty may be remitted or mitigated for good cause, upon
21 whatever terms the Hearing Examiner finds acceptable. YMC 18.18.060(C).

22 Subsequent to filing his appeal Mr. Earsley submitted a boundary line application, this
23 being the first of two steps needed to have the property approved for Mr. Earsley's intended use.
24 The second required step will be to submit a complete site plan application. To date the
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1 boundary line application has not yet been deemed complete and the site plan application has not
2 yet been submitted, although Mr. Turner expects to do so as soon as a few final matters are
3 addressed, hopefully within the next few weeks.

4 Mr. Earsley clearly disagrees with the City's issuance of these violations and feels that he
5 has been singled out. This likely explains his unwillingness to abide by the Notices until long
6 after they were issued. To his credit, he ultimately did abide by the Notices and has since
7 worked to establish a lawful use of the site.

8 Taking all of this into consideration, pursuant to YMC 18.18.060(C), I conclude that
9 there is good cause to remit a portion of the \$18,000 in total penalties subject to various
10 conditions to ensure that Mr. Earsley follows through on his present efforts to obtain site use
11 approval. To that end, I order that the \$18,000 in fines shall be reduced to \$5,000 on the
12 following conditions:

13 1. The remaining \$5,000 fine shall be paid in full on or before October 15, 2022.

14 2. Mr. Earsley shall have submitted a boundary line application deemed complete by
15 City Staff by October 15, 2022. If he fails to do so \$6,500 of additional fines shall be imposed.


16 3. Mr. Earsley shall submit a site plan application deemed complete by City Staff,
17 on or before November 15, 2022. Failure to do so shall cause an additional \$6,500 of the fine to
18 be imposed.

19 4. Notwithstanding the above conditions, if Mr. Earsley violates the Notices of
20 Violation by improper parking of vehicles on the property the entire balance of the penalty shall
21 be imposed.

22 To summarize the above, Mr. Earsley's fine is reduced to \$5,000, payable by October 15,
23 2022, but the remaining balance of his penalties remains suspended subject to submitting
24 complete applications for boundary line adjustment and site plan approval. If these conditions
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1 are met, and if Mr. Earsley hereafter does not violate the restrictions on the site's use, the
2 remaining balance of \$13,000 in fines shall be remitted. If these conditions are not met the
3 balance shall become due in full.

4 DATED this 30 day of August, 2022.

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Mark C. Scheibmeir
City of Yelm Hearing Examiner
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