

April 9, 2010

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

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**REPORT AND DECISION**

SUBJECT: Department of Development and Environmental Services File No. **E0001759**

**NINA SEREBRYAKOV-MOREHODOFF**

Code Enforcement Appeal

Location: 19229 Robinwood Beach Road Southwest (aka 137th Avenue SW),  
Vashon Island

Appellant: Nina Serebryakov-Morehodoff  
*represented by* **Michael Bradley**  
Sound Design and Consulting  
13321 Southwest Camp Sealth Road  
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King County: Department of Development and Environmental Services (DDES)  
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**SUMMARY OF RECOMMENDATIONS/DECISION:**

Department's Preliminary Recommendation:	Deny appeal with a revised compliance schedule
Department's Final Recommendation:	Deny appeal with further revised compliance schedule
Examiner's Decision:	Deny appeal with further revised compliance schedule

## EXAMINER PROCEEDINGS:

Pre-hearing conference opened:	November 27, 2007
Pre-hearing conference reconvened:	January 22, 2009
Pre-hearing conference reconvened:	June 18, 2009
Hearing opened:	January 14, 2010
Hearing closed:	January 14, 2010

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 office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

## FINDINGS OF FACT:

1. The subject property, a waterfront lot on Colvos Passage<sup>1</sup> on the west side of Vashon, is a rectangular parcel with a long east-west dimension of approximately 570 feet and a width of 235 feet corresponding roughly to the amount of water frontage on the west end. The property drops steeply to the west to the waterfront. Robinson Creek, a Type F stream, descends the length of the parcel from east to west down to the Sound. Robinwood Beach Road runs north-south in a curving fashion through the east central portion of the site.
2. A residential cabin was built in the northwesterly portion of the site (toward the waterfront) in approximately 1936. It was destroyed by fire in October 1977. A replacement structure was built sometime after that but before 1990, and significant residential additions, including enclosure of a porch and deck and covering the aggregate floor area with a new roof, occurred in approximately the Spring of 2004. Building permits were required for all of the replacement and additional structural work, but no permits were obtained.
3. The Health Department denied an application for building permit approval in 2006 because of the lack of a domestic water source and an approvable sewage disposal method.
4. On September 25, 2007, the King County Department of Development and Environmental Services (DDES) issued a Notice and Order to Appellant Serebryakov-Morehodoff that found code violations on the RA-2.5-zone site. The Notice and Order cited Ms. Serebryakov-Morehodoff and the property with the following violation of county code:
  - A. Construction/remodel of a residence and additions to the residence without the required permits, inspections and approvals *and* within environmentally critical areas (conservancy shoreline, landslide hazard, erosion, steep slope, flood plain, aquatic and critical aquifer recharge areas) and/or their buffers. (Emphasis added)

The Notice and Order required compliance by vacancy of the structure until county approval, and application for and obtainment of the required permits, inspections and approvals. Alternatively, the Notice and Order required demolition of the non-permitted work and removal of the debris from the premises.

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<sup>1</sup> An arm of Puget Sound.

5. Ms. Serebryakov-Morehodoff filed an appeal of the Notice and Order. Although not contesting the fundamental finding of violation in the Notice and Order, the appeal asserts a “grandfathered nature” of the structure and the water supply and sewage situation on the property, and therefore contends the order of compliance is unjust. The appeal goes on to state a willingness to resolve the issues at hand, but states a need for assistance in doing so.
6. With respect to the regulatory permissibility of the structure onsite, DDES has stipulated to allowance of the original structural footprint. (The practical effect of such allowance is to permit landward additions to an original structure under certain circumstances even though new structural placement normally may not be permitted due to shoreline and/or critical area regulations.)
7. Extensive continuances of the pre-hearing conference and postponement of hearing were granted to allow the Appellant opportunities to seek practical solutions to what had appeared to be daunting limitations to gaining an approved water source and onsite sewage disposal approval for development. Although the parties had not been optimistic that solutions could be found to such dilemmas, through further research and examination it now appears that such prerequisites to building permit approval are feasible after all.
8. At hearing the Appellant stipulated to the violations, by acknowledging a lack of intent to challenge them, and instead offered persuasive demonstration of diligent effort and intent to achieve permit approval, particularly by the following:
  - A. The Appellant has received DDES approval of a Critical Area Designation of the property, which by mapping and narrative has disclosed the presence of significant critical areas onsite consisting of critical aquifer recharge area, landslide hazard area, steep slope hazard area and aquatic areas. The aquatic areas consist of Puget Sound (Colvos Passage), a Type S aquatic area which is also a Shoreline of the State, and the aforementioned Robinson Creek, which is a Type F fish-bearing stream. Some of the lower gradients of the stream have associated wetland areas. The Puget Sound waterfront of the property is also designated a FEMA floodway. Development permitting of the site for the residential development at issue requires approval of a critical area alteration exception by DDES.
  - B. After great doubt of feasibility of obtaining a domestic water supply for the property, it now appears that sinking a domestic well onsite is practically feasible, both from the standpoint of drill rig accessibility and a regulatorily compliant location (including buffer diameter).
  - C. An onsite sewage disposal system is likely to be able to receive Public Health approval (though it may necessitate some allowance of nonconformity by setback variance and/or reserve area allowances). A preliminary onsite sewage disposal design has been completed by a licensed consultant, with the final design having been intended to be forwarded to Public Health within two weeks of the hearing in this case. (DDES’s signoff of the Critical Area Designation allows for submittal of the application to Public Health.)
9. No health or safety hazards are observed by DDES on the property or apparent to the parties; it appears that no imminent public health hazard would be presented by allowing the residence to be occupied as currently pending permit obtainment.

## CONCLUSIONS:

1. The Appellant has not substantially contested the charge of violation, which is shown by the preponderance of the evidence to have occurred. The Notice and Order therefore is correct in such regard and shall be sustained.
2. The Appellant is diligently working toward resolution of the compliance issues in this matter. The Examiner accordingly shall impose a revised compliance schedule which allows reasonable amounts of time for diligent and good faith efforts toward obtaining the necessary formal approvals and permits to resolve the compliance issues. Given the lack of evident actual health hazard or its imminence, the Examiner shall not require vacancy of the structure pending permit obtainment in this order. However, should an actual hazard arise in substantial form, health regulations may require the structure to be vacated pending finalization of the permit process through to final building permit approval.
3. There is no legal authority found to uphold the Appellant's claim of "grandfathering" of the structures at issue or their current water and sewage provisions. The uncontested facts of the case are that the required building permits were not obtained, and issuance of building permits requires prior domestic water supply and sanitation approvals by Public Health.

## DECISION:

The appeal of the Notice and Order is DENIED with respect to the finding of violation, provided that the compliance schedule is revised as set forth in the following Order.

## ORDER:

1. If not already accomplished, the final onsite sewage disposal design shall be submitted to Public Health *by no later than May 10, 2010*. (However, if such submittal requires actual well construction and sufficient water flow documentation prior to Public Health submittal, such well drilling shall be accomplished *by no later than August 31, 2010*, with documentation submitted to the Public Health *by no later than September 30, 2010*.)
2. **Within 60 days** of Public Health approval of water and sanitation treatment for the residential development onsite, a complete building permit application (also including application for a critical areas alteration exception as may be required by DDES) shall be submitted to DDES. (Note that a pre-application meeting may be required before complete application submittal is accepted. The scheduling of a pre-application meeting is incumbent upon the Applicant to arrange.)
3. **Within 90 days** of any final denial by a pertinent decision making agency of water and sanitation approval, critical area alteration exception approval and/or building permit approval, or of the Appellant's decision no longer to pursue such approvals/permits, whichever occurs first, the unpermitted construction on the property shall be demolished and the demolition debris removed from the property to an approved disposal facility. (A demolition permit may be required; DDES should be consulted as to any such requirements.)
4. DDES is authorized to grant deadline extensions for any of the above requirements if warranted (in DDES's sole judgment) by circumstances beyond the Appellant's diligent effort and control.

5. No penalties shall be assessed by DDES against Ms. Serebryakov-Morehodoff and/or the property if the above compliance requirements and deadlines (as may be extended by DDES) are met in full. If they are not, DDES may impose penalties as authorized by county code retroactive to the date of this decision.

ORDERED April 9, 2010.



Peter T. Donahue  
King County Hearing Examiner

### NOTICE OF RIGHT TO APPEAL

The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

#### MINUTES OF THE JANUARY 14, 2010, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0001759

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing on the Code Enforcement appeal of Nina Serebryakov-Morehodoff, DDES file no. E0001759, were Sheryl Lux representing the Department and Michael Bradley representing the Appellant.

The following Exhibits were offered and entered into the record:

Exhibit No. 1	DDES staff report to the Hearing Examiner for E0001759
Exhibit No. 2	Copy of the Notice & Order issued September 25, 2007
Exhibit No. 3	Copy of the Notice and Statement of Appeal received October 8, 2007
Exhibit No. 4	Copies of codes cited in the Notice & Order
Exhibit No. 5	Notice on title of Sensitive Areas executed April 16, 2001
Exhibit No. 6	King County Department of Assessments records for subject parcel
Exhibit No. 7	King County Assessor worksheets
Exhibit No. 8	2005 aerial photographs of subject property
Exhibit No. 9	Seattle-King County Health Department letter of April 3, 2006 denying building application for subject property
Exhibit No. 10	1980 aerial photograph
Exhibit No. 11	1990 aerial photograph
Exhibit No. 12	Local live aerial map of subject property, annotated
Exhibit No. 13	Photographs of the subject property and structure taken by Erroll Garnett in 2000
Exhibit No. 14	Photographs of the subject property and structure taken by Lamar Reed in 2002
Exhibit No. 15	Photographs of the subject property and structure taken by Sheryl Lux in 2006
Exhibit No. 16	January 11, 2010 email from Michael Bradley to Sheryl Lux relaying proposed septic design and well location
Exhibit No. 17	Critical areas designation, file no. L09SA170, issued December 17, 2009
Exhibit No. 18	October 1977 article, including photograph, depicting fire that destroyed original cabin