

July 20, 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. **E0300257**

BRUCE AND YUBING MAYTON
Code Enforcement Appeal

Location: 12029 Renton Avenue S

Appellants: **Bruce and Yubing Mayton**
PO Box 58079
Tukwila, Washington 98138
Telephone: (206) 405-0313
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King County: Department of Development and Environmental Services (DDES)
represented by Sheryl Lux
900 Oakesdale Avenue SW
Renton, Washington 98055
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SUMMARY OF RECOMMENDATIONS/DECISION:

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

EXAMINER PROCEEDINGS:

Hearing opened:	July 8, 2010
Hearing closed:	July 8, 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. On April 26, 2010, the Department of Development and Environmental Services (DDES) issued a code enforcement Notice and Order to Yubing Liang-Mayton and Bruce P. Mayton that found a code violation on R-6-P-zoned property located at 12029 Renton Avenue S in the unincorporated Skyway area south of Seattle. The Notice and Order cited the named parties and the property with the following violation of county code:
 - A. Construction of an accessory structure (garage with second story storage) without the required permits, inspection and approvals.

The Notice and Order required compliance by obtainment of the required permits, inspections and approvals (by adhering to a sequence of steps) or, alternatively, demolition and removal of the non-permitted construction.
2. The Maytons filed an appeal of the Notice and Order, stating that the structure in question was constructed prior to their purchase of the property on April 2, 2008 and they are therefore not responsible for any violations associated with it. They request that the structure be considered “grandfathered in.” The Maytons note that no adverse information regarding permit status was noted in the title search made prior to their purchase. They assert that the county’s laggard approach to its enforcement actions resulted in a lack of due notice that would arise in a title search, and therefore any enforcement burden placed on them after their purchase is unfair.
3. DDES acknowledges that it commenced a code enforcement investigation of the property in 2003 and that no formal enforcement action was taken until the Notice and Order was issued in 2010.
4. The preponderance of the evidence in the record demonstrates that the subject construction work was conducted without required permits, inspections and approvals.
5. The preponderance of the evidence also demonstrates that the Maytons are innocent purchasers of the violating aspects of the property and are not the perpetrators of the violation. However, they are still “persons responsible for code compliance” as they are the current owners of the property. [KCC 23.02.010.K] Essentially, as owners they have inherited the violating status of the construction work.

CONCLUSIONS:

1. There is no provision for “grandfathering” of code-violating land use and construction work; each day that such a violation continues without compliance presents the violation anew.
2. The violation found in the Notice and Order is demonstrated by a preponderance of the evidence to be correct. The Notice and Order shall accordingly be sustained, with the compliance schedule revised, generally as recommended by DDES with some revisions, to account for the time taken up by the appeal proceeding.

3. Since they are found to be innocent purchasers, the Maytons are not subject to penalties for the violation. As the current property owners, however, they are required to correct the matter or it is liable to abatement proceedings initiated by the county, with abatement costs chargeable to the property. [KCC 23.02.130.B]
4. To the extent that the Maytons' contention of unfairly timed enforcement might constitute a claim under law of equity, the Examiner is without jurisdiction to entertain such a claim. The Examiner is generally limited to applying enacted law, *i.e.*, that duly established by statute, ordinance and rule, or set forth in case law governing the same, and has no authority to adjudicate common law issues such as claims in equity. Equity claims would instead have to be brought in a court of general jurisdiction, the Superior Court. [*Chaussee v. Snohomish County*, 38 Wn. App 630, 689 P.2d 1084 (1984)]

DECISION:

The appeal of the Notice and Order is DENIED, except that the compliance schedule is revised as stated in the following order.

ORDER:

1. A building permit pre-application meeting shall be scheduled with DDES for *no later than August 23, 2010*.
2. **Within 60 days** after the building permit pre-application meeting, a complete building permit application shall be filed with DDES. Thereafter, all pertinent timeframes and stated deadlines for additional information, response comments, supplementary submittals, etc., if any, shall be diligently observed by the Appellants through to permit issuance and obtainment and final inspection.
3. If the Appellants decide not to pursue a building permit and any other necessary permits for the subject construction work, and/or have not filed the required complete building permit application by the above deadline, all pertinent non-permitted structural work and appurtenances shall be removed/demolished and the demolition debris/materials removed from the property to an approved disposal facility **within 120 days** after the pre-application meeting, or if the Appellants have not made an appointment for a pre-application meeting and/or have not attended a scheduled pre-application meeting as required above, **within 150 days** from the date of this decision. (A demolition permit may be required; the Appellants should consult with DDES regarding any such requirement.)
4. In the event that a complete building permit application is filed and the permit is pursued but is ultimately denied, the pertinent non-permitted structural work shall be demolished/removed and the demolition debris/materials removed to an approved disposal facility *by no later than 60 days* after such denial.
5. DDES is authorized to grant deadline extensions for any of the above requirements if warranted, in DDES's sole judgment, by circumstances beyond the Appellants' diligence and control.

6. No fines or penalties shall be assessed by DDES against the Maytons and/or the property for the subject violation, as they are exempt from such imposition by their innocent purchaser status under KCC 23.02.130.B. However, if the above compliance requirements and deadlines are not complied with in full, the county may initiate abatement proceedings and charge abatement costs as provided by county code.

ORDERED July 20, 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 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 JULY 8, 2010, PUBLIC HEARING ON THE CODE ENFORCEMENT APPEAL OF BRUCE AND YUBING MAYTON, DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0300257.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Sheryl Lux representing the department, and Bruce and Yubing Mayton the Appellants.

The following Exhibits were offered and entered into the record:

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| Exhibit No. 1 | Department of Development and Environmental Services (DDES) staff report to the Hearing Examiner for E0300257 |
| Exhibit No. 2 | Copy of the Notice and Order issued April 26, 2010 |
| Exhibit No. 3 | Copy of the Notice and Statement of Appeal received May 11, 2010 |
| Exhibit No. 4 | Copies of codes cited in the Notice & Order |
| Exhibit No. 5 | King County Assessor records for subject parcel |
| Exhibit No. 6 | Aerial photograph taken in 1970, annotated |
| Exhibit No. 7 | Aerial photograph taken in 1985, annotated |
| Exhibit No. 8 | Aerial photograph taken in 2009, annotated |
| Exhibit No. 9 | Photographs of subject property taken in 2005 |
| Exhibit No. 10 | Photographs of subject property taken in 2010 |

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