

June 2, 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. **E0600711**

DAVE AND KERRY BOOTH
Code Enforcement Appeal

Location: 38105 – 272nd Avenue SE

Appellant: **Dave and Kerry Booth**
38105 – 272nd Avenue SE
Enumclaw, Washington 98022
Telephone: (360) 625-8288

King County: Department of Development and Environmental Services (DDES)
represented by **Mary Impson**
900 Oakesdale Avenue SW
Renton, Washington 98055
Telephone: (206) 296-7226
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SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Deny appeal with revised compliance schedule
Department's Final Recommendation:	Dismiss violations 3-5, deny appeal with revised schedule
Examiner's Decision:	Dismiss violations 3-5, deny appeal with revised schedule

EXAMINER PROCEEDINGS:

Hearing opened:	May 18, 2010
Hearing closed:	May 18, 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. This matter involves the appeal of a code enforcement Notice and Order. DDES has stipulated to violations three, four and five being dismissed as resolved.
2. On August 12, 2008, the King County Department of Development and Environmental Services (DDES) issued a code enforcement Supplemental Notice and Order to Dave and Kerry Booth, which Supplemental Notice and Order superseded an August 5, 2008 Notice and Order that had omitted compliance requirements. The Supplemental Notice and Order found code violations on the subject RA-2.5-zoned property at 38105 – 272nd Avenue Southeast in the unincorporated area north of Enumclaw. At hearing, DDES testified that the last three of five found violations in the Notice and Order had been resolved by compliance and it was agreed that they would be dismissed. The remaining two violations are the following:
 - A. Occupancy of a substandard dwelling (recreational vehicle).
 - B. Construction of a residence and/or an addition to a residence (roof and addition to RV) without required permits, inspections and approvals.
3. The Booths filed an appeal of the Notice and Order. The appeal claims that a significant amount of time has passed since the two remaining violating actions were first undertaken (implying, it seems, that there should be some grace akin to a statute of limitations, which is not evident in the law in this regard), that there are financial limitations to relocating out of the improved RV, and that dismissal of the violations (the two remaining violations) was desired. At hearing, however, Mr. Booth stated an inclination to correct the situation properly and that he was exploring several options, including a mobile home accessory dwelling or hardship dwelling permit as alternatives to the current RV setup, and requested a period of one and a half years to achieve such compliance.
4. Other than noting the passing of time, the appeal does not substantially dispute violations 1-2 of the Notice and Order. The preponderance of the evidence in the record supports those charges of the Notice and Order.
5. Hot and cold domestic water service and a sanitary hookup to an existing septic system that appears to be functioning properly serve the RV in question. The RV is also equipped with smoke and carbon monoxide detectors and fire extinguishers. Accordingly, continued occupancy for a reasonable amount of time on a further temporary basis seems to be able to be conducted in a reasonably safe manner. DDES acknowledged that there are no known safety or public health hazards evident in the RV setup.
6. DDES stipulated to allowing an additional year and a half for the Booths to achieve compliance.

CONCLUSION:

1. The Notice and Order is correct in its finding of violations 1-2, violations 3-5 having been stipulated for dismissal. The parties have essentially stipulated to an extended compliance schedule for correction of the remaining two violations. An accordingly revised compliance schedule is set forth below.

DECISION:

Violations 3-5 of the instant Supplemental Notice and Order are DISMISSED as stipulated. Otherwise, the instant appeal is DENIED, except that the COMPLIANCE SCHEDULE for correction is REVISED as set forth in the order below.

ORDER:

1. The residentially occupied recreational vehicle (RV) on the property *shall not be occupied residentially onsite after January 31, 2012*, except that if for whatever reason the RV is removed or relocated from its location onsite, or is otherwise destroyed or damaged as a total loss in the interim period, it may not be replaced for occupancy. Residential RV occupancy shall be terminated immediately as of such removal, relocation or loss.
2. The Appellants are advised that replacement of the RV as a residential occupancy by a lawful structure such as an accessory dwelling, hardship permit, etc., is a regulatory permit matter involving significant review time and diligent applicant effort and attention. Multiple agency approvals are required, including those of Public Health and DDES, and permit and review fees are assessed. Due advance information, coordination and preparatory work, as well as timely applications far enough in advance to comply with the above deadline, are strongly advised.
3. During all time periods in which the RV remains occupied on the property, potable water supply, sanitation treatment and space heating shall be maintained scrupulously; grid-provided electrical service shall be maintained (with a generator employed only during electrical grid power outages); and a smoke alarm, a carbon monoxide detector and a fire extinguisher shall be maintained in operable condition within the RV.
4. By the residential occupancy of the RV on the property, all occupants and owners conduct such occupancy on an acknowledged accepted-risk basis.
5. DDES is authorized to grant extensions to the above deadline if warranted (in DDES's sole judgment) by circumstances beyond the Appellants' diligent effort and control.
6. No penalties shall be assessed by DDES against the Booths and/or the property if the above compliance requirements and deadline (noting the possibility of extension) are complied with in full. If they are not, DDES may impose penalties as authorized by county code retroactive to the date of this order.

ORDERED June 2, 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 MAY 18, 2010, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0600711

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Mary Impson representing the Department and Dave Booth, the Appellant.

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 E0600711 |
| Exhibit No. 2 | Copy of the Notice & Order issued August 5, 2008 and signed receipt |
| Exhibit No. 3 | Copy of Supplemental Notice & Order issued August 12, 2008 and signed receipt |
| Exhibit No. 4 | Copy of the Notice and Statement of Appeal received August 25, 2008 |
| Exhibit No. 5 | Copy of Party of Record List |
| Exhibit No. 6 | Copies of codes cited in the Notice & Order |
| Exhibit No. 7 | Copy of letters and correspondence |
| Exhibit No. 8 | Copy of case documentation notes |
| Exhibit No. 9 | Copy of King County Assessor information |
| Exhibit No. 10 | Copy of 2007 aerial photograph of the property |
| Exhibit No. 11 | Copies of photographs taken at the property |
| Exhibit No. 12 | Washington State Labor and Industry and King County definitions |

PTD:gao
E0600711 RPT