

May 4, 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. **E0700699**

**JOAN H. BASELEON**  
Code Enforcement Appeal

**Location:** 20518 Chautauqua Beach Road Southwest, Vashon Island

**Appellant:** Joan H. Baseleon  
*represented by* **Michael Bradley**  
13321 Southwest Camp Sealth Road  
Vashon, Washington 98070  
Telephone: (206) 463-4536

**King County:** Department of Development and Environmental Services (DDES)  
*represented by* **Sheryl Lux**  
900 Oakesdale Avenue Southwest  
Renton, Washington 98055-1219  
Telephone: (206) 205-1525  
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**SUMMARY OF RECOMMENDATIONS/DECISION:**

Department's Preliminary Recommendation:	Deny appeal with 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:**

Prehearing Conference held:	May 7, 2009
Hearing opened:	March 30, 2010
Hearing closed:	March 30, 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 October 15, 2008, the King County Department of Environmental Services (DDES) issued a code enforcement Notice and Order to Appellant Joan H. Baseleon regarding property located at 20518 Chautauqua Beach Road SW on Vashon Island. The Notice and Order cited Ms. Baseleon and the property with the following violation of county code:
  - A. Construction and/or replacement of stairway and decks more than 30 inches above grade without required permits, inspections and approvals and within environmentally critical areas and/or their buffers.

The Notice and Order required that necessary permits be applied for and obtained, or, alternatively (or in the event of permit denial), demolition and removal of the non-permitted construction.

2. Ms. Baseleon filed an appeal of the Notice and Order, making the following claims:
  - A. Ms. Baseleon acknowledges that “the order is not necessarily unjust or unlawful.” She cites a communication lapse between her and DDES in efforts to resolve the matter, with DDES asserted not to have responded in a timely fashion.
  - B. The Appellant desires to obtain a shoreline exemption in order to maintain the deck and stairway in its current configuration.

In essence, the appeal does not contest the finding of violation in the Notice and Order, but states a desire to gain regulatory compliance and notes difficulties in coordinating with DDES in such efforts.

3. After the appeal was filed in November 2008, it was retained in DDES’s offices pending DDES’s filing a motion to dismiss in March of 2009. After the motion was withdrawn at a May 7, 2009 motion hearing, the hearing was converted to a prehearing conference. The matter was then continued in order that it might be resolved by permit obtainment. That was ultimately unfruitful and the matter was then set for hearing in March of 2010.
4. Ms. Baseleon has owned the property since 1996 at the latest. A building permit was applied for stairway/deck construction but was cancelled in December of 1996 because a formal shoreline exemption approval was required prior to building permit issuance. Some stairway/deck was built in the past (evidently at some time after 1993), but without a valid permit and was then damaged by storm action and rebuilt. Some deck area has been reduced since code enforcement was initiated, but that has not completely resolved the matter.
5. The preponderance of the evidence in the record demonstrates that stairway/deck construction occurred on the property without the benefit of the necessary permits, inspections and approvals and also in violation of critical area and shoreline management regulations. The finding of violation by the Notice and Order, which fundamentally was not contested, is correct.

6. Of particular concern to the Appellant is that efforts to resolve this matter, equitably in the Appellant's thinking, were dragged out by DDES to the extent that regulatory revisions in the interim<sup>1</sup> may have worked to the Appellant's detriment in gaining approval of the current deck square footage and being able to retain it onsite.
7. Another complicating factor in resolving this matter is the presence in the affected area of the Baseleon property of an undeveloped private road right-of-way (Alder Street) created in an 1898 platting of the area. Of indeterminate ownership, the right-of-way crosses the waterfront side of the property, as it does of other properties in the vicinity. Accordingly, in order for Ms. Baseleon to obtain the necessary building permit for the stairway/deck construction, a "quiet title" action must be undertaken so that the private road right-of-way on the property is extinguished. Such action requires a court decree and, as recent similar actions undertaken by other properties in the vicinity indicate, takes an estimated four to six months to complete. The Appellant has initiated the quiet title action. DDES orally revised its recommended compliance schedule to accommodate the necessary timeline for the quiet title action.
8. Another factor involved is that a Shoreline Exemption may be sought by the Appellant to allow the stairway/deck to remain in place, as has been constructed or as may be required to be modified.

#### CONCLUSIONS:

1. To the extent that the Appellant's contentions of inordinate agency delay in responding to certain issues germane to this case, and an allegedly resultant adverse regulatory outcome, might constitute a claim under law of equity, the Examiner is without jurisdiction to entertain such claims. The Examiner is generally limited to applying law duly enacted by statute, ordinance and rule, or set forth in case law, 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)] As noted at hearing, the Appellant may desire to request of DDES a "vested" treatment of her deck size issues.
2. As the Notice and Order's finding of violation is correct, the appeal shall be denied and the Notice and Order sustained, except that the compliance schedule merits revision given the continuance and the necessity of obtaining quiet title prior to permit application.

#### DECISION:

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

#### ORDER:

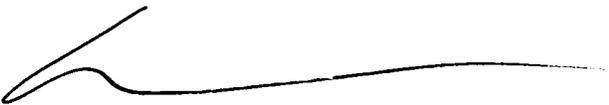
1. If not already commenced fully, a complete filing of a quiet title action shall have been commenced in the proper venue *by no later than June 4, 2010*.

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<sup>1</sup> Resolving a long-running legal disputation as to the primacy within regulated shoreline areas of the shoreline regulations established under the state Shoreline Management Act (SMA) versus the critical area regulations enacted pursuant to the Growth Management Act (GMA).

2. If the Appellant decides to apply for a formal shoreline exemption, a complete application for such exemption shall be submitted to DDES *by no later than July 7, 2010*. (A preapplication meeting is likely required by DDES and should be scheduled at the earliest opportunity.)
3. *By no later than November 4, 2010* or, if a timely application for a shoreline exemption is submitted under No. 2 above, **within 60 days** of shoreline exemption approval by DDES, **whichever occurs later**, a complete building permit application accompanied by a completed DDES geological critical areas review and proof of quiet title of the affected segment of Alder Street on the property shall be submitted to DDES. (A preapplication meeting is likely required by DDES and should be scheduled at the earliest opportunity.) After submittal, all pertinent timeframes for necessary supplementation, response comments, etc., if any, shall be diligently observed by the Appellant through permit issuance and obtainment, and final inspection approval.
4. In the event that the requested building permit(s) is pursued and is ultimately denied, the pertinent non-permitted structural work shall be demolished and the demolition debris removed from the property to an approved disposal facility *by no later than 30 days after such denial*. (A demolition permit is evidently required; the Appellant shall consult with DDES regarding such requirement.)
5. Should the Appellant fail to submit a complete building permit application by the above deadline, the work shall be demolished and the demolition debris removed from the property to an approved disposal facility *by no later than 30 days after such missed deadline*.
6. 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. DDES is also authorized to grant extensions for seasonal and /or weather reasons (potential for erosion, other environmental damage consideration, etc.). **Given the erosion sensitivity of the site, DDES may require that any construction and/or demolition and removal work be conducted during the dry season; the work shall be subject to any DDES restrictions in such regard.**
7. No fines or penalties shall be assessed by DDES against Ms. Baseleon and/or the property if the above compliance requirements and deadlines are complied with in full (noting the possibility of deadline extension pursuant to the above allowances). However, if the above compliance requirements and deadlines are not complied with in full, DDES may impose penalties as authorized by county code retroactive to the date of this decision.

ORDERED May 4, 2010.



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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 MARCH 30, 2010, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0700699

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Sheryl Lux representing the Department; Michael Bradley, representing the Appellant and Joan Baseleon.

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 E0700699      |
| Exhibit No. 2  | Copy of the Notice & Order issued October 15, 2008   |
| Exhibit No. 3  | Copy of the Notice and Statement of Appeal received October 29, 2008   |
| Exhibit No. 4  | Copies of codes cited in the Notice & Order  |
| Exhibit No. 5  | Photograph taken in 2007 showing slide damage to previous structure  |
| Exhibit No. 6  | 1993 Aerial of property  |
| Exhibit No. 7  | 2002 and 2007 aerials of property  |
| Exhibit No. 8  | 2007 aerial showing hydrologic and geologic critical areas   |
| Exhibit No. 9  | Copy of King County Assessors records on property  |
| Exhibit No. 10 | Photograph showing new stairs, covered deck and landslide area taken on July 27, 2007                              |
| Exhibit No. 11 | Letter to Joan Baseleon from Jon Sloan dated November 1, 2007 with a copy of the criteria for a shoreline variance |

PTD:gao  
E0700699 RPT