

May 3, 2010

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

400 Yesler Way, Room 404  
Seattle, Washington 98104  
Telephone (206) 296-4660  
Facsimile (206) 296-1654  
Email [hearingexaminer@kingcounty.gov](mailto:hearingexaminer@kingcounty.gov)

**REPORT AND DECISION**

SUBJECT: Department of Development and Environmental Services File No. **E08G0270**

**KENNETH W. WILSON**  
Code Enforcement Appeal

Location: 18001 Renton-Maple Valley Road

Appellant: Kenneth W. Wilson  
*represented by* **Michael Bradley**  
Sound Consulting  
13321 SW Camp Sealth Road  
Vashon, Washington 98070  
Telephone: (206) 463-2055  
Facsimile: (206) 463-1504  
Email: [michaelvsh@aol.com](mailto:michaelvsh@aol.com)

King County: Department of Development and Environmental Services (DDES)  
*represented by* **Holly Sawin**  
900 Oakesdale Avenue SW  
Renton, Washington 98055  
Telephone: (206) 296-6772  
Facsimile: (206) 296-6604  
Email: [holly.sawin@kingcounty.gov](mailto:holly.sawin@kingcounty.gov)

**SUMMARY OF RECOMMENDATIONS/DECISION:**

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

**EXAMINER PROCEEDINGS:**

Hearing opened:	March 25, 2010
Hearing closed:	March 25, 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 September 30, 2009, the King County Department of Development and Environmental Services (DDES) issued a code enforcement Notice and Order to Appellant Kenneth Wilson that found code violations on property located at 18001 Renton-Maple Valley Road SE, in the unincorporated Cedar Mountain area between Renton and Maple Valley. The Notice and Order cited Mr. Wilson and the property with the following violation of county code:
  - A. Clearing, grading and excavation to construct a pond and construction of a gravel roadway and gravel pad within environmentally critical areas (wetlands and aquatic areas) and/or their buffers.

The Notice and Order required compliance by submittal of a complete grading application with a restoration plan to DDES by November 2, 2009.
2. Mr. Wilson filed an appeal of the Notice and Order, making the following claims:
  - A. Mr. Wilson did not commit the subject violation, which was performed prior to his purchase of the property, and he had “neither enhanced or increased the alleged violation.”
  - B. The costs of mitigation and restoration fees for the required restorative work and grading plan are excessive, particularly since Mr. Wilson is not the perpetrator.
  - C. The code enforcement issue should be allowed to be addressed by a DDES code enforcement Cooperative Agreement Program (CAP), which has not been allowed by DDES in this case.
3. A prior DDES Notice and Order was issued August 27, 2007 for the subject property, under DDES file no. E05G0023.
  - A. The prior Notice and Order was addressed to the previous property owner, Michael Sadkowski. It found a violation of clearing and grading within a critical area (wetland and stream), which was addressed to the subject pond. The prior Notice and Order did not find any violation with respect to the second component of the found violation in the subject (E08G0270) Notice and Order by “construction of a gravel roadway and gravel pad.”
  - B. The E0G0023 Notice and Order to Mr. Sadkowski was appealed, which appeal was heard by a different examiner, who issued a formal report and decision on the appeal on June 12, 2008. The examiner decision concluded that the E05G0023 Notice and Order finding of violation was correct, stating “a violation of the King County Code exists on the subject property, for which the Appellant (Michael Sadkowski) is responsible. The

Appellant has accepted the responsibility to correct the violation....” For reasons not related to sustaining the finding of violation by the E05G0023 Notice and Order, the Notice and Order was dismissed without prejudice.

4. The instant appeal, that of the 2009 E08G0270 Notice and Order, does not contest the Notice and Order’s finding of violation: The finding of violation by “clearing, grading, excavation to construct a pond” is not contested, and neither is the finding of violation by “construction of a gravel roadway and gravel pad within environmentally critical areas....”
5. At hearing, DDES stipulated that Mr. Wilson, as a succeeding owner rather than the violation perpetrator, is exempted from civil penalties by KCC 23.02.130.B.<sup>1</sup> DDES notes, however, that said section obligates the current property owner (who is a successor in ownership of the violation just as in other aspects of the property) to bring the property into compliance. The county may otherwise engage in abatement proceedings.
6. Pursuant to KCC 23.02.130.B and 23.36.030.B, since Mr. Wilson is not directly responsible for the violation, DDES has engaged in a process of minimizing, to the degree it finds reasonable, the elements of compliance and has reduced permit and inspection fees for the necessary grading/restoration permit from approximately \$5,500 to \$1,944, while noting that a bond may still be required for the restoration efforts.<sup>2</sup> DDES is not certain that a bond will be required, but notes that it is a possibility. DDES’s other compliance requirements have been structured to allow the pond to remain in place, and not to require environmental review under the State Environmental Policy Act (SEPA) for the grading/restoration permit, and DDES has also noted that the State of Washington is not requiring a Hydraulic Project Approval (HPA).
7. The Appellant disputes the need for restoration, contending that vegetation of the disturbed area has regrown already and that no further plantings are required. DDES responded by stating that the necessity of additional plantings will be determined upon review of the necessary grading/restoration permit. DDES also noted that the extensive gravel placement within critical areas/buffers will be reviewed to weigh the environmental cost/benefit of gravel removal in such areas; it may be that removing the gravel, through which vegetation has grown and could continue to grow, may be more harmful than beneficial, and such issue will be reviewed as well in the required grading/restoration plan.
8. The preponderance of the evidence in the record supports the finding of violation in the subject Notice and Order of “construction of a gravel roadway and gravel pad in environmentally critical areas and/or their buffers.”
9. As ruled in the Prehearing Order, the violation of clearing, grading and excavation to create the pond was set forth in the prior Notice and Order under E05G0023 and the appeal on such issue was decided by the examiner in that case. Not only was the issue not directly appealed in this action, since it has already been cited in the prior case, relitigation is barred by *collateral estoppel*.
10. Accordingly, the finding of violation in the subject Notice and Order is correct.

---

<sup>1</sup> It is noted that the Notice and Order does not impose any civil penalties on Mr. Wilson, given his non-perpetrator status as a successive owner.

<sup>2</sup> At hearing, the Appellant disputed the estimate of \$1,944 permit costs, but acknowledged that the Appellant’s calculations had overlooked the related inspection fees.

## CONCLUSIONS:

1. As the Notice and Order's finding of violation has been demonstrated to be correct, it is sustained on appeal.
2. The clearing, grading and excavation work to construct the pond and that engaged in the construction of the gravel roadway and pad were required to be conducted under the auspices of an approved clearing/grading permit. (It is of particular note that there are no area or volume exemptions from the permit requirement in critical areas.)
3. As the work must now be reviewed under a proper permit after the fact, the permit must also encompass the issues of any necessary critical area/buffer restoration. It may be, as the Appellant contends, that much of the restoration has occurred naturally by the vegetation re-growth which has occurred since disturbance and no replantings are necessary. It may be that full replanting is needed to provide sufficient restoration of the critical area functions and values which were disturbed. It may also be that the final outcome is somewhere in the middle. Regardless, the level of restoration that may still be necessary is a matter under DDES's authority in the administration of the critical areas regulations and the grading permit review process. There are certainly avenues for review of DDES's administrative decisions in such regard, whether by requesting further consideration up the chain of command and/or by formal appeal; the Examiner does not consider it appropriate in this case to engage in much preemption of DDES's administrative discretion and the possibility of subsequent review. The only exception to that general principle in this case is that the Examiner shall make an advisory note that, as discussed at hearing, the issue of environmental cost/benefit should be taken into consideration in whether or not to require the dispersed gravel to be removed from the critical areas/buffers. But the Examiner acknowledges that the final call in such regard is DDES's to make, in its exercise of its authorities and responsibilities in administering the building code's grading provisions and the critical areas ordinance.
4. DDES has appropriately minimized the permit application and fee burdens in this case to a reasonable level, as provided by KCC 23.02.130.B and 23.36.030.B for cases where a property owner is not a perpetrator of a violation either directly or indirectly (by action and/or by presumptive authorization through an agent, respectively).
5. Whether or not a mitigation bond for restoration activities is ultimately required in the review of the grading/restoration permit review is fully DDES's call to make. Not only is the issue premature to be addressed, but the matter is fully within DDES's administrative purview and shall not be disturbed. It should also be noted that the purpose of a bond is not to serve as a penalty, but merely an assurance that the work addressed by the bond is performed properly and in a viable manner. Should that occur, then the bond proceeds will be refunded. The requirement of a bond fully comports with the ultimate compliance/abatement objective of the county's code enforcement program.
6. The allowance of compliance efforts via a CAP approach is exclusively under DDES's prerogative.
7. In summary, as the Notice and Order is sustained with respect to its finding of violation and DDES's compliance requirements are reasonable as amplified in the DDES report and presentation in this matter (which shall be reflected in the compliance schedule below), the appeal shall be denied and the Notice and Order sustained, except that the compliance schedule shall be revised as stated in the following order.

8. Mr. Wilson, found not to be the actual perpetrator of the violations at hand, is not subject to fines and penalties for these violations, as noted above; however, as the current owner of the property, he is ultimately liable for correction of the violations on his property and, absent correction, liable to abatement by the county.

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. A complete grading/restoration permit application for correcting the clearing, grading, excavation and construction work addressed by the September 30, 2009 Notice and Order shall be submitted to DDES *by no later than June 3, 2010*. After submittal, all pertinent timeframes and stated deadlines for submittal of additional information, response comments, etc., if any, shall be diligently observed by the applicant/property owner through to permit issuance and obtainment and final inspection approval.
2. The Examiner notes and reiterates that DDES has revised its permit and inspection fees in the instant matter from approximately \$5,500 to \$1,944, has declined to subject the grading/permit to SEPA environmental review, and acknowledges that an HPA will not be required by the State of Washington. A restoration bond may be required and is under DDES's administrative discretion to set and require. DDES has also acknowledged that it will review the subject grading/restoration permit to assess the environmental cost/benefit of requiring the removal of the subject gravel placed in roadway and gravel pad construction within critical areas/buffers onsite, or the alternative of leaving it in place undisturbed. All of the above stipulations are made in furtherance of the reasonable requirements provisions of KCC 23.02.130.B and 23.36.030.B in cases of non-property owner perpetration of violation.
3. 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 of finalization of grading/restoration work for seasonal and/or weather reasons (potential for erosion, wildlife protection, other environmental damage considerations, etc.).
4. No fines or penalties shall be assessed by DDES against Mr. Wilson for the subject code violations. However, if the above compliance requirements and deadlines are not complied with in full, DDES may resort to abatement proceedings on its own initiative, with costs charged to the property.

ORDERED May 3, 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 MARCH 25, 2010, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E08G0270

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Holly Sawin and Bill Kerschke representing the Department; Michael Bradley representing the Appellant and Kenneth W. Wilson, the Appellant.

The following Exhibits were offered and entered into the record:

- |                |  |
|----------------|--|
| Exhibit No. 1  | Department of Development and Environmental Services (DDES) staff report to the Hearing Examiner for E08G0270  |
| Exhibit No. 2  | Copy of the Notice & Order issued September 30, 2009   |
| Exhibit No. 3  | Copy of the Notice and Statement of Appeal received October 13, 2009   |
| Exhibit No. 4  | Copies of codes cited in the Notice & Order  |
| Exhibit No. 5  | Report and Decision for Code Enforcement E05G0023  |
| Exhibit No. 6  | Pre-Hearing Order and Notice of Hearing dated January 8, 2010  |
| Exhibit No. 7  | 2002, 2005, 2007 aerials of property showing what has occurred on the site   |
| Exhibit No. 8  | Photographs of the pond taken March 9, 2010  |
| Exhibit No. 9  | Letter to the Hearing Examiner from Michael Bradley dated February 10, 2010; John J. Altmann Resume; letter to Kenneth Wilson from John Altmann dated December 11, 2009; letter to Kenneth Wilson from John Altmann dated December 4, 2009 |
| Exhibit No. 10 | Letter to the Hearing Examiner from Michael Bradley dated February 16, 2010 with email string documents  |
| Exhibit No. 11 | Email from Ramon Locsin to Michael Bradley dated February 10, 2010   |
| Exhibit No. 12 | Photograph of road   |

PTD:vsm  
E08G0270 RPT