

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. **E0900150**

**ANTHONY SCHMITT**  
Code Enforcement Appeal

**Location:** 15317 Tiger Mountain Road SE

**Appellant:** **Anthony Schmitt**  
447 Farallone Avenue  
Fircrest, Washington 98466  
Telephone: (206) 920-3025

**King County:** Department of Development and Environmental Services (DDES)  
*represented by* **Holly Sawin**  
900 Oakesdale Avenue SW  
Renton, Washington 98055  
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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 revised compliance schedule         |
| Examiner's Decision:                     | Deny appeal, with further revised compliance schedule |

**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 May 3, 2010, the Department of Development and Environmental Services (DDES) issued a code enforcement Notice and Order to Anthony Lee and Lucinda Ann Schmitt that found a code violation on a Rural Area-5 (RA-5)-zoned property located at 15317 Tiger Mountain Road SE in the unincorporated Mirrormont area west of Tiger Mountain, between Issaquah and Maple Valley. The Notice and Order cited the named parties and the property with the following violation of county code:
  - A. Conversion of the loft storage area of a pole building (built with permit B04M0357) into an Accessory Dwelling Unit (ADU) (living room, bedroom, kitchen, bathroom and wood stove) on an RA-5 zoned parcel that is less than the minimum required lot size for a detached ADU without the required permits, inspections and approvals.

The Notice and Order required compliance by conversion of the space to an Accessory Living Quarters (ALQ) (which is not permitted a kitchen and may not be used as a rental dwelling unit), and obtainment of the required permits, inspections and approvals (by adhering to a sequence of steps) or, alternatively, return of the subject building space to loft storage, which may require a demolition permit for additional construction alteration.

2. Mr. Schmitt filed an appeal of the Notice and Order, claiming that it was his understanding that the loft conversion was permitted by the county, but acknowledging the requirement for compliance and requesting additional time to undergo the permit process to use the loft space as an “office/security dwelling.”
3. At hearing, Mr. Schmitt acknowledged that the loft space would have to be converted to a permitted use. Mr. Schmitt stated that the conversion of the space to an ADU was performed by a building contractor who had assured him of its acceptability.
4. In order to have a detached ADU on the subject property, the property must be a minimum of 3.75 acres in area. It is also required that one of the units on the property be inhabited by the owner, and that the ADU floor area be 1,000 square feet or less. [KCC 21A.08.030.B.7 and 21A.12.030]<sup>1</sup> None of those requirements is met in the instant case: The property is only 1.62 acres in size, the Schmitts do not reside on the property, and the converted ADU loft space is 1,280 square feet in floor area.
5. The preponderance of the evidence in the record demonstrates that the conversion of the loft storage space to a detached ADU is not in conformance with county zoning regulations and was performed without required permits, inspections and approvals.

CONCLUSIONS:

1. The violation found in the Notice and Order is demonstrated by a preponderance of the evidence to be correct. The Notice and Order shall be sustained, with the compliance schedule revised generally as recommended by DDES with some revisions.

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<sup>1</sup> In cases where a Transfer of Development Rights (TDR) unit is purchased, the minimum acreage is reduced to 2.5 acres and the maximum ADU floor area is increased to 1,500 square feet. In all cases, if the ADU is wholly in a basement or attic, the floor area restriction is waived.

## 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 complete application shall be filed with Public Health for use of the loft space as Accessory Living Quarters (ALQ) or other permitted usage *by no later than September 9, 2010*.
2. An Already Built Construction (ABC) building permit pre-application meeting for conversion of the loft space to ALQ or other permitted usage shall be scheduled for *no later than September 9, 2010*.
3. A complete building permit application shall be filed with DDES *by no later than 60 days* from the date of the pre-application meeting.
4. As an alternative to seeking lawful conversion of the loft storage space to an ALQ or other permitted usage, the subject floor area may be returned to the original loft storage use approved under building permit B04M0357. (A demolition permit may be required by DDES, and all demolition debris shall be removed from the premises to an approved disposal facility.) Failure to meet either or both of the requirements of nos. 1 and 2 above shall deem such alternative to have been selected. In any case of alternative selection, reconversion back to the loft storage usage shall be achieved *by no later than November 9, 2010*.
5. If Public Health approval is sought and a building permit is sought for conversion of the loft area to an ALQ or other lawful use through the building permit process, and either Public Health and/or building permit approval is not granted, the loft space shall be reconverted to loft storage **within 60 days of the first final denial of any of the permits or approvals**.
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 diligence and control.
7. No penalties shall be assessed by DDES against the Schmitts and/or the property if the above compliance requirements and deadlines are complied with in full. If they are not, DDES may assess penalties against the Schmitts and/or the property retroactive to the date of this order as provided by county code.

ORDERED July 20, 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 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 DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0900150**

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Holly Sawin representing the department and Anthony Schmitt 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 E0900150 |
| Exhibit No. 2 | Copy of the Notice and Order issued May 3, 2010   |
| Exhibit No. 3 | Copy of the Notice and Statement of Appeal received May 12, 2010  |
| Exhibit No. 4 | Copies of codes cited in the Notice and Order   |
| Exhibit No. 5 | Copy of records relating to construction permit no. B04M0357  |
| Exhibit No. 6 | Photographs of the subject property taken in 2010   |
| Exhibit No. 7 | King County Assessor records, including photographs of the subject property taken in 2006                     |

PTD:vsm  
E0900150 RPT