

April 27, 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. **E0900231**

**DARRIN AND TAMMY LEWIS**

Code Enforcement Appeal

Location: 30875 Cumberland Kanaskat Road SE

Appellant: **Darrin and Tammy Lewis**  
30875 Cumberland Kanaskat Road SE  
Ravensdale, Washington 98051  
Telephone: (206) 373-1453

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:	Dismiss violation no. 3; deny appeal, with further revised compliance schedule
Examiner's Decision:	Dismiss violation no. 3; deny appeal, with further revised compliance schedule

**EXAMINER PROCEEDINGS:**

Hearing opened:	April 6, 2010
Hearing closed:	April 6, 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 January 4, 2010, the King County Department of Development and Environmental Services (DDES) issued a code enforcement Notice and Order to Darrin Adam Lewis that found code violations on a Rural Area-5 (RA-5)-zoned property located at 30875 Cumberland Kanaskat Road Southeast, in the unincorporated Kanaskat area east of Black Diamond and northeast of Enumclaw. The Notice and Order cited Mr. Lewis and the property with the following violations of county code:

- A. Occupancy of substandard dwellings (recreational vehicles; RVs) and storage of belongings without an established primary use.
- B. Placement of a 400 square foot cargo container without permits and without an established primary use.
- C. Accumulation of rubbish, salvage and debris.

The Notice and Order required compliance by March 1, 2010 by the removal of the recreational vehicles and belongings pending establishment of a primary use; relocation of the cargo container to an approved location; and removal of all rubbish, salvage and debris from the property.

2. Darrin and Tammy Lewis and the Citizens' Alliance for Property Rights (CAPR) filed an appeal of the Notice and Order, making the following claims:

- A. The occupancy of the RVs has been necessitated by a delayed mobile home permit issuance resulting from delays in obtaining lot status certification and Public Health sanitation approval.
- B. The placement of the recreational vehicles on piers and installation of skirting would elevate the recreational vehicles to lawful "mobile home" status.
- C. DDES has refused to engage in mediation regarding the subject enforcement activity.
- D. The current occupancy of the RVs is the Lewises' only alternative to homelessness.
- E. A reasonable accommodation should be granted under the Americans with Disabilities Act (ADA) and Fair Housing regulations.
- F. Additional delay in obtaining conforming housing through proper permits has been caused by Mr. Lewis's temporary disability from an injury and subsequent surgery. Ms. Lewis is permanently disabled.
- G. The county's enforcement action constitutes an unconstitutional taking of the Lewises' property.
- H. Additional delay was caused by extended deep snowcover on the property during the winter of 2008-2009.

- I. Aggravating factors in the delay were financial limitations experienced by the Lewises, at least in part resulting from the general economic difficulties and resultant squeeze on credit.
  - J. The Lewises request a one-year allowance for code compliance, which they intend to achieve and assert their good faith efforts toward achieving.
3. At hearing, the Lewises orally challenged the Notice and Order's finding that the recreational vehicles constitute substandard dwellings, but they failed to raise such issue as a timely claim in their written appeal. It is therefore not addressed here.
  4. As noted, as well as by the Lewises the appeal is signed by CAPR, which did not appear at hearing. CAPR is not shown by the evidence in the record to have standing to bring an appeal of the Notice and Order, as it is not a party "named in [the] notice and order"; is not an "owner of the land where the violation occurred for which [the] notice and order . . . is issued"; and is not a "complainant who is an aggrieved person" in this matter. [KCC 23.36.010.A]
  5. At hearing, DDES stipulated to the resolution of violation no. 3 in the Notice and Order, that regarding the presence of rubbish, salvage and debris on the exterior of the site.
  6. The size of the cargo container at issue was disputed by the Lewises, who stated that it is 240 square feet in size rather than the 400 square feet cited in the Notice and Order. Such size still exceeds the floor area threshold whereby a structure requires a building permit.
  7. The preponderance of the evidence in the record demonstrates that violations 1 and 2 found by the Notice and Order have in fact been committed on the property.
  8. The Lewises testified that they now have electrical power service to the property.<sup>1</sup> They also testified that they have hot and cold running potable water service in their recreational vehicles, with service by the Mariani Water Systems, a private water system in the area. Sewage treatment is performed by the use of a portable sewage tank, which is emptied at a nearby park dump station. The RVs are equipped with smoke alarms, carbon monoxide alarms and fire extinguishers.

#### CONCLUSIONS:

1. CAPR is found above not to have standing to qualify as a formal party to this appeal. CAPR shall accordingly be dismissed as an appellant party.
2. As violation no. 3 is stipulated by DDES to have been resolved by compliance, it shall be dismissed from the Notice and Order.
3. Although the Lewises assert that much of the delay in obtaining proper permit approval has been due to public agency delays in performing the necessary lot status certification (evidently the Lewises purchased a property that was not a legally established lot) and in promptly acceding to the Lewises' desire to install an alternative "composting toilet" sanitation approach (which may

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<sup>1</sup>Electrical service apparently relieves one aspect of complaint regarding 24-hour operation of an exterior electrical generator, which is not an issue directly before the Examiner in this Notice and Order appeal and would seem to be subject to noise regulations in any case.

- or may not be legally feasible on the subject site), the delays beg the larger question of the Lewises' own choices to "put the cart before the horse," as it were, and seek permit approval after having already taken premature actions to develop their property. (Such conclusion should not be taken as ruling on whether or not there were inordinate delays in pertinent agency actions, however. The Examiner makes no judgments in such regard; they are not necessary to adjudication of the appeal.)
4. The asserted possibility of achieving lawful mobile home status by placing the recreational vehicles on piers and skirting them is unpersuasive. There is no showing that such a conversion would be lawful under county and state regulations.
  5. The refusal of DDES to engage in mediation in the subject enforcement activity is not an actionable claim of error in the Notice and Order, which is the specific matter under the Examiner's jurisdiction in this case.
  6. The assertions of the obligation of the county to make a "reasonable accommodation" under the ADA and Fair Housing regulations are not supported by any persuasive citation to legal authority. (And to the extent that such contentions 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)])
  7. The Lewises did not pursue at hearing their assertion of an unconstitutional taking of their property by the subject enforcement action. Neither supportive argument nor any citation to legal authority was made, and no authority is apparent for such proposition.
  8. As noted above, the preponderance of the evidence in the record demonstrates that violations 1 and 2 found by the Notice and Order have in fact been committed, and the Notice and Order shall accordingly be sustained in such regard.
  9. Through a combination of some uncontrollable personal circumstances, difficulties in gaining the formality of the property as a legal developable lot and a few permit obtainment and development missteps, the Appellants find themselves in residential occupancy of recreational vehicles onsite and facing a fairly lengthy process to provide residential quarters on the property which are approvable under county and state standards for permanent residency.
  10. This enforcement situation presents something of a dilemma to the Examiner to adjudicate. On the one hand, DDES has legitimately raised concerns about the general life-safety aspects of recreational vehicle residential occupancy on a quasi-permanent basis (lack of multiple exits, ventilation, etc.). However, such concerns are tempered by DDES's acknowledgement that recreational vehicle occupancy is permitted in mobile home parks with approved water and sanitation, and DDES's stated willingness to grant an extended compliance period of up to 90 days so long as proper sewage disposal is documented. (The current potable water and sanitation provisions maintained by the Lewises appear to provide sufficiently safe and adequate water supply and sanitation treatment for a temporary period.) These concessions somewhat belie DDES's apparent desire for a strict life-safety approach to the subject residential occupancy of recreational vehicles.

11. The next issue to bear on determining the reasonable and proper approach to enforcement in this case is the residential presence of a school-age minor child (stated by Ms. Lewis as having “one more year of school” and therefore presumably of high school age), a significant factor in considering the serious personal and family disruption which has been persuasively represented by the Lewises as a probable result of immediate eviction from the recreational vehicles. (While life-safety concerns would be magnified somewhat by the presence of a minor child, they are tempered in this case by the evident relatively older age of the child.)
12. On balance, the Examiner finds that justice is best reached in this case by setting a reasonable but still firm schedule for compliance, allowing continued temporary occupancy of the recreational vehicles for a period somewhat exceeding the one-year request of the Lewises, to allow occupancy through and a bit past the end of the 2010-2011 school year so as not to disrupt school attendance. The Lewises must take serious note that the tasks before them for final permit obtainment are significant, and those tasks, and accordingly the compliance schedule herein, require consistent diligence on their part as well as a practical, flexible approach. As an example, they desire to pursue Public Health approval of a “composting toilet” alternate form of sewage disposal for residential development of the site, in part for apparent cost savings. Such alternative may or may not be able to be approved by Public Health, and the Lewises must research and pursue such alternative with all due haste, in case it is not approvable and they are therefore required to install a more-standard septic tank/drainfield system which will require design and permit approval time. They also apparently have some driveway legality issues which may need to be cleared up in order to obtain Public Health approval and/or DDES building permit(s).
13. If, in the final outcome, a building permit for a residence is not obtained under the compliance schedule set forth below, or another qualifying primary use not established onsite, the recreational vehicles will have to be removed from the property.
14. The cargo container shall also be permitted to remain onsite for storage of personal belongings, so long as it is also subjected to concurrent building permit obtainment along with some form of primary use onsite, such as the proposed single-family residence. If a primary use is not established on the property such as by the obtainment of a building/mobile home permit pursuant to the compliance schedule herein, and if a building permit is not obtained for the cargo container by such time, then the cargo container must be removed from the property.

#### DECISION:

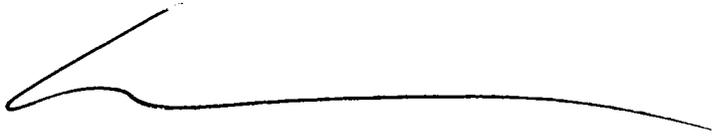
CAPR is dismissed as an Appellant in this Notice and Order appeal. Violation no. 3 of the Notice and Order regarding exterior rubbish, salvage and debris is dismissed pursuant to the stipulation of resolution. With respect to the findings of violations no. 1 and 2 by residential occupancy of recreational vehicles onsite and storage of belongings on a parcel without an established primary use, and placement of the cargo container onsite without necessary permits, inspections and approvals and without establishment of a primary use, the Notice and Order is sustained except that the compliance schedule is revised as stated in the following order.

#### ORDER:

1. *By no later than **October 27, 2010**, a complete application (i.e., including full design, etc., as required by Public Health for a complete application, as well as the CAD described below as may be required) shall be submitted to Public Health for approval of water supply and sanitation for a single family residence on the property.*

2. In the interim period until the above Public Health submittal:
  - A. *By no later than **May 18, 2010***, full preliminary inquiries shall have been made to Public Health regarding the property owner's options of sewage treatment for a single family residence onsite. By such date, the Appellant shall also make full inquiries of Public Health as to whether a DDES Critical Areas Designation (CAD) will be required for sanitation design approval.
  - B. If required by Public Health, a complete application for a DDES CAD shall be submitted to DDES *by no later than **June 15, 2010***.
3. **Within 30 days** of Public Health water and sanitation approval, the property owner(s) and/or an authorized agent(s) thereof shall schedule and attend a building/mobile home permit pre-application meeting with DDES for permits for a proposed residence and the storage container.
4. A *complete* building/mobile home permit application shall be submitted to DDES *by no later than **60 days*** from the date of the pre-application meeting. Thereafter, all pertinent timeframes and stated deadlines for supplementary submittals, response comments, etc., if any, shall be diligently observed by the Appellant through to permit issuance and final inspection. Once approved, the building/mobile home permit(s) shall be promptly obtained, *by no later than **15 days*** after notification of approval.
5. If Public Health and/or building/mobile home permit approval is not granted for a residence onsite or if the Appellants decide no longer to pursue such approvals/permits, and no other qualifying primary use of the property is lawfully established, the subject recreational vehicles shall be removed from the property *by no later than **September 30, 2011***. If a building/mobile home permit for a residence on the property is obtained, or a primary use is otherwise established on the property, the recreational vehicles may be stored on the property in compliance with accessory use allowances/requirements, but *shall not be occupied residentially onsite after **September 30, 2011***. Regardless of the residential permit or primary use status of the property, if a permit is not obtained for the storage container it shall be removed from the property *by no later than **September 30, 2011***.
6. During all time periods in which recreational vehicles remain occupied on the property, potable water supply and sanitation treatment for each occupied vehicle 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 in each occupied recreational vehicle.
7. By their residential occupancy of recreational vehicles on the property, all occupants conduct such occupancy on an acknowledged accepted-risk basis.
8. DDES is authorized to grant extensions to the above deadlines if warranted (in DDES's sole judgment) by circumstances beyond the Appellants' diligent effort and control.
9. No penalties shall be assessed by DDES against the Lewises and/or the property if the above compliance requirements and deadlines (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 April 27, 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 APRIL 6, 2010, 2010, PUBLIC HEARING ON CODE ENFORCEMENT APPEAL OF DARRIN AND TAMMY LEWIS, DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0900231

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Holly Sawin representing the Department and Tammy Lewis and Darrin Lewis 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 E0900231      |
| Exhibit No. 2 | Copy of the Notice & Order issued January 4, 2010  |
| Exhibit No. 3 | Copy of the Notice and Statement of Appeal received January 21, 2010   |
| Exhibit No. 4 | Copies of codes cited in the Notice & Order  |
| Exhibit No. 5 | Photographs of subject property taken by Code Enforcement Officer Mary Impson on July 23, 2009                     |
| Exhibit No. 6 | Aerial photograph of subject property taken in 2007  |
| Exhibit No. 7 | Letter from Ray Florent, dated June 25, 2009, regarding innocent purchaser status and granting separate lot status |
| Exhibit No. 8 | Memo from Ray Florent regarding legal description of subject property  |
| Exhibit No. 9 | Appellants' photographs of subject property  |

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