June 28, 2011

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON
King County Courthouse, Room 1200
516 3rd Avenue
Seattle, Washington 98104
Telephone (206) 296-4660
Facsimile (206) 296-0198
Email hearingexaminer@kingcounty.gov

REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0900474**

BRYAN KELLEY
Code Enforcement Appeal

Location: 21715 Dorre Don Way SE

Appellant: **Bryan Kelley**
21715 Dorre Don Way SE
Maple Valley, Washington 98038
Telephone: (206) 799-7366
Email: brykelley@hotmail.com

King County: Department of Development and Environmental Services (DDES)
represented by **Holly Sawin**
900 Oakesdale Avenue SW
Renton, Washington 9055
Telephone: (206) 296-6772
Facsimile: (206) 296-6604
Email: holly.sawin@kingcounty.gov

SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Deny appeal/sustain Notice and Order with extended compliance schedule
Department's Final Recommendation:	Deny appeal/sustain Notice and Order with revised abbreviated compliance schedule
Examiner's Decision:	Deny appeal/sustain Notice and Order with revised abbreviated compliance schedule

EXAMINER PROCEEDINGS:

Pre-Hearing Conference:	January 13, 2011
Hearing opened:	June 7, 2011
Hearing closed:	June 7, 2011

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 issued October 7, 2010, to Bryan Kelley for property located at 21715 Dorre Don Way Southeast, north of Maple Valley. The Notice and Order found a code violation existing on the property by the construction of a second-story apartment addition on a single-story building (formerly a post office); installation of three garage doors (constructed some time after 1981) to the east end of the building; and construction of an addition (approximately 798 square feet) to the south end of the building (some time between 2002 and 2005); and change-of-use of the first level of the structure (formerly the post office) to an automotive repair business without the required building permits.

2. The Notice and Order required correction by obtainment of the necessary building permits, preceded by obtainment of Public Health approval (which may itself require a prior critical areas designation (CAD) from DDES). Alternatively, if the building permit was denied (or Public Health approval denied before building permit application), the offending new construction was required to be demolished through the obtainment of a demolition permit, with demolition to be performed within 60 days of demolition permit issuance. The Notice and Order noted that the demolition option may not be viable if the construction is of a structurally intertwined nature and the entire structure is not demolished; in such cases, a building permit is required to remove the addition and repair the structure.

3. Mr. Kelley filed an appeal of the Notice and Order. He raises the following claims:

   A. The compliance schedule is too tight in its requirement for Public Health permit review approval.

   B. Enforcement is unjust in the instant case as Mr. Kelley is an innocent purchaser of a structure which was evidently modified without required permits and without his knowledge that any such violation had occurred. Second, the structure and its automotive repair use provide his only means of financial self-support and provide employment for five employees who depend upon it for their livelihood, and the structure is also his residence. Lastly, Mr. Kelley declares that he is unable to install a complying septic system to gain Public Health approval of a building permit to correct the subject violations.[1]

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[1] Mr. Kelley testified that he has been unable to obtain adjacent land or an easement in order to provide sufficient land area for conforming sanitation facilities, and that alternative facility designs are completely cost-prohibitive to him.

C. Mr. Kelley requests a complete exemption from enforcement due to the above circumstances.

4. At hearing, Mr. Kelley related that further investigations and explorations to obtain a feasible sanitation installation appear not to be potentially fruitful and that the extended compliance schedule recommended by DDES is practically unnecessary. Mr. Kelley would prefer to receive a final disposition of his appeal so that he can go to the next step of enforcement and engage the county prosecutor legal staff in negotiations.

5. DDES has stipulated to Mr. Kelley being an innocent purchaser in this case, who is not responsible for the violations as he was not the perpetrator, and that therefore no penalties and fines pertain to Mr. Kelley.

CONCLUSIONS:

1. The Examiner has no authority to grant equitable relief based on assertedly unfair or otherwise inequitable administration of the code enforcement and permit processes. 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 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)]

2. Appellant Kelley has essentially not contested the findings of violation in the Notice and Order, but at first requested more time to engage the Public Health authorities in addition to seeking relief on an equity basis. But at this point in the proceedings, Mr. Kelley has come to the conclusion that it is fruitless for him to seek relief by attempting compliance as it is simply infeasible and that he prefers to gain closure on the county administrative appeal level and proceed to enter into the next phase of enforcement where he may engage in some negotiation with a possibility of compromise.

3. The preponderance of the evidence in the record demonstrates that the violations cited in the Notice and Order are correct. The Notice and Order shall therefore be sustained.

4. The only remaining issue is the compliance schedule. DDES had originally devised a reasonably lenient schedule given the situation Mr. Kelley finds himself in, but now that appears moot given his desire for closure on the administrative appeal level. The Examiner shall abide by Mr. Kelley's wishes to proceed to the next level of enforcement review by county legal staff and shall therefore impose an abbreviated compliance schedule which will hasten that eventuality.

DECISION:

The Notice and Order is SUSTAINED, with the exception that the Compliance Schedule is REVISED as set forth in the Order below.

ORDER:

1. *By no later than* **July 29, 2011**, Mr. Kelley shall have applied for the building permit necessary to bring the property into compliance regarding the issues of violation found by the Notice and Order. Once the permit is approved, the permit shall be promptly obtained and the building permit fees paid.

2. Alternatively, the offending work may be demolished under a demolition permit if feasible. If such demolition work damages the remainder of the structure to be retained, or leaves it in structurally unacceptable condition, then it is likely that a building permit shall be required to perform the necessary repairs. The permit requirement decision in such instance is under DDES's administrative authority.

3. DDES is authorized to grant extensions of the above deadlines, if warranted in DDES's sole judgment, by circumstances beyond the property owner's diligent effort and control. DDES is also authorized to grant extensions of work completion requirements for seasonal, adverse weather and/or environmental impact reasons.

4. No civil fines or penalties shall be assessed by DDES against the charged party, Bryan Kelley, 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 are not complied with in full, DDES may impose penalties as authorized by the county code retroactive to the date of this decision.

ORDERED June 28, 2011.

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 JUNE 7, 2011, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0900474

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Holly Sawin representing the Department; and Appellant Bryan Kelley.

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 E0900474
Exhibit No. 2	Copy of the Notice & Order issued October 7, 2010
Exhibit No. 3	Copy of the Notice and Statement of Appeal received October 19, 2010
Exhibit No. 4	Letter to Mr. Kelley from Ms. Dehkordi dated November 24, 2009
Exhibit No. 5	King County Assessor's records for the subject property
Exhibit No. 6a	2002 King County GIS aerial photo of the subject property

6b	2005 King County GIS aerial photo of the subject property
6c	2007 King County GIS aerial photo of the subject property
6d	2009 King County GIS aerial photo of the subject property
6e	1996 King County GIS aerial photo of the subject property
Exhibit No. 7	Photographs of the subject property and building taken by Holly Sawin on May 20, 2011
Exhibit No. 8	King County codes pertaining to this case

PTD:mls
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