

July 30, 2012

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**  
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**REPORT AND DECISION**

**SUBJECT:** Department of Development and Environmental Services File Nos. **E0900525, L10CI001 and L10CI003**

**SANDRA FORMAN, DAVE FORMAN ESTATE, PACIFIC TOPSOILS**  
Code Enforcement Appeal  
Code Interpretation Appeal (L10CI001)  
Code Interpretation Appeal (L10CI003)

**Location:** 20871 NE Redmond-Fall City Road

**Appellants:** Dave and Sandra Forman  
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**SUMMARY OF RECOMMENDATIONS/DECISION:**

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Grant in party; deny in part

**EXAMINER PROCEEDINGS**

Hearing Opened:	December 8, 2011
Hearing Closed:	December 8, 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 Hearing Examiner's Office.

FINDINGS, CONCLUSIONS AND DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. In 2004 Dave and Sandra Forman, doing business as Pacific Topsoils Inc., purchased the Gray Barn Nursery and Garden Center located at 20871 NE Redmond-Fall City Road, Redmond 98053, an established retail nursery business.
2. In 2010 Pacific Topsoils, through its attorney Jane Ryan Koler, requested two code interpretations from the Director of the King County Department of Development and Environmental Services (DDES). The first, file no. L10CI001, inquired whether the collection of yard waste in closed containers on the Gray Barn property is a permitted use within the RA zone. The Department's final code interpretation dated June 28, 2010 concluded that Pacific Topsoils' proposed yard waste collection activity would constitute the operation of an interim recycling facility permitted in the RA zone "only as an accessory use to a public community use, such as a school, fire station or community center." In addition, a second final code interpretation, file no. L10CI003, was issued on October 28, 2010 in response to questions raised by Pacific Topsoils concerning the meaning of the term "covered sales areas" as used within KCC 21A.08.070 and applied to retail nursery operations. KCC 2.100.050 provides that any administrative appeal of a code interpretation relating to a code enforcement case shall be consolidated with the appeal of the underlying code enforcement action. DDES determined that both code interpretations requested by Pacific Topsoils related to code enforcement case E0900525.
3. On April 19, 2011 the DDES Code Enforcement Section issued a notice and order to Dave and Sandra Forman, the Estate of Dave Forman and Pacific Topsoils, alleging code violations at the Gray Barn Nursery property. The notice and order contains seven citations generally as follows:
  1. Operation of a retail nursery with a sales area exceeding 2,000 square feet without a conditional use permit;
  2. Conversion of a barn to a retail use without required permits;
  3. Conversion of a garage into an office without required permits;
  4. Construction of accessory nursery structures (mainly pole buildings) without required permits;
  5. Grading without a permit;
  6. Signs improperly placed and without permits; and
  7. Operation of an interim recycling facility in violation of zoning regulations.

The notice and order specified that the Gray Barn needed to obtain a conditional use permit for item no. 1, building and grading permits and associated approvals for item nos. 2-6, and terminate the interim recycling business cited in item no. 7.

4. Attorney Jamie Jensen filed a timely appeal of the notice and order on behalf of the cited parties and concurrently appealed the 2010 final code interpretations issued by DDES. A pre-hearing conference was held by Hearing Examiner Peter Donahue on September 20, 2011, and a pre-hearing order issued on October 3, 2011. This process was unusual in a couple of respects. First, it appears that all the participants ignored the associated existence of the final code interpretation appeals, focusing exclusively on the code enforcement appeal. Second, there seems to have been some sort of informal agreement among participants that adjudication of items 2, 3 and 5 within

the notice and order would be deferred to some unspecified later date, an arrangement not documented within the pre-hearing order.

5. Somehow the code interpretation issues seemed to have been slipped informally back into the appeal package, and on December 8, 2011 a public hearing was held on the consolidated code enforcement and code interpretation appeals. As noted, item nos. 2, 3 and 5 under the notice and order were deferred for later adjudication, which seems to imply that Appellants will explore a building permit application process with the hope that the underlying issues will be resolved. If this process breaks down, then presumably the Appellants have the option to reopen the hearing on any unresolved questions. The order attached to this decision will provide a 90 day window for this regulatory maneuvering to take place, after which the permitting requirements for item nos. 2, 3 and 5 will become final. It appears that DDES and the Appellants have also substantially agreed on how to comply with signage requirements specified in notice and order item no. 6. The parties further stipulated with respect to the various building and grading permit requirements that only a single building permit application would be necessitated.
6. Regarding item no. 1 of the notice and order, a conditional use permit is required if the covered sales area at the Gray Barn site exceeds 2,000 square feet. If the covered sales area totals less than 2,000 square feet, the use is permitted outright. The final code interpretation issued under file no. L10CI003 opined that the outdoor areas located under the barn's eaves are part of the covered sales area, but the covered outdoor areas used for plant propagation and display are not. The Appellants appear to have accepted those interpretations and removed sales activity from beneath the building eaves. Based on this adjustment the Appellants assert that the covered sales activities as defined in the code interpretation now constitute less than 2,000 square feet in total area. DDES staff has neither verified this assertion nor contested it. Therefore, the Appellants uncontradicted assertions on this issue stand, demonstrating compliance with respect to item no. 1 of the notice and order.
7. This leaves only item nos. 4 and 7 contested in the notice and order and, as well, the final code interpretation affecting resolution of item no. 7. At the public hearing the parties appeared to be so engrossed in finding pathways through the county's regulatory maze that they largely neglected to create an evidential record as a framework for their philosophical discussions. Fortunately, the facts do not seem to be in serious dispute, and most of the critical information can be gleaned from the documentary record. Regarding item no. 4, Appellant Sandra Forman described the three or four accessory structures as consisting of permanent frameworks covered by a membrane of plastic roofing to protect the plants underneath. She described the plastic roofing as typically having a useful life of approximately 18 months, being largely incapable of surviving a significant snowstorm. According to her description, the sides of these pole frame structures are mostly open. Ms. Forman's testimony appears to be generally consistent with page nos. 2 and 3 of exhibit 10, which are a set of site photographs taken by Code Enforcement Officer Jeri Breazeal on August 31, 2010. Further documentation is provided in the appeal statement submitted by the Appellants (exhibit no. 3), which describes "three open air structures that are used for protection of young plants, as well as display areas for the sale of plants." Public occupancy of these structures is further described at page no. 4 of exhibit no. 3, which states that "since our structures are used "to grow and display plants for sale" it is clear that the structures can be entered for sales purposes without offending the zoning rules. We could not display the plants for sale and exclude persons from getting to them."
8. As for the yard waste recycling activity cited within item no. 7 of the notice and order, Sandra Forman testified that some 30-40 commercial customers per day plus an unspecified number of residential property owners bring in organic landscaping refuse for deposit at the site. This material is then removed on a daily basis to a Pacific Topsoils facility in Woodinville where it is composted. On the Gray Barn site these yard waste materials are deposited into what is essentially a large open-ended box.

## CONCLUSIONS:

1. In either a code enforcement appeal or an appeal of a code interpretation the ultimate burden of proof rests with the appellant, subject to a condition precedent in a code enforcement action that the agency present a prima facie case that the legal standard for imposing a penalty has been met (Hearing Examiner Procedural Rule XI.B.8). With respect to both item nos. 4 and 7 of the notice and order, the Department's prima facie evidential burden has been met. The accessory pole building structures both exist and were constructed without permits, and the Gray Barn nursery engages in the collection of recyclable yard waste materials. The questions raised on appeal are matters of legal interpretation, not factual evidence.
2. It is uncontested that the accessory pole buildings cited in item no. 4 of the notice and order require a building permit for their construction unless they are subject to some specific exemption from permitting requirements. As shown in the exhibit 10 photographs, the wooden pole structural frame is permanent and the areal coverage of the structures rather large.
3. The Appellants contend that the pole building structures are exempt from building permit requirements under authority of KCC 16.02.240(11). This section replaces section 105.2 of the International Building Code (IBC) and provides a permit exemption for "shade cloth structures constructed for nursery or agricultural purposes and not including service systems." Beyond dropping a comma after "purposes" and substituting "and", the county code provision is identical with IBC section 105.2(10). There is thus no basis for contending that the county exemption requires an interpretation different from that applicable to the substantially identical IBC provision.
4. The parties agree that the membrane coverings on the pole buildings at the Gray Barn site qualify them to be considered as shade cloth structures and that such structures do not include service system facilities. The essential question is therefore whether the pole buildings were "constructed for nursery or agricultural purposes" within the meaning of the regulatory framework. DDES staff contends that the fact that these pole structures are used both to grow plants and to display them for sale to nursery customers removes the structures from the permit exemption. Staff also argues that certain state law provisions that might otherwise support the exclusion do not apply because the structures are not temporary in nature.
5. The IBC itself does not define any of the specific terms used in section 105.2(10). But while the exact term "agricultural purpose" is not defined, "agricultural building" is provided the following meaning within section 202:

**AGRICULTURAL BUILDING.** A structure designed and constructed to house farm implements, hay, grain, poultry, livestock or other horticultural products. This structure shall not be a place of human habitation or a place of employment where agricultural products are processed, treated or packaged, nor shall it be a place used by the public.
6. IBC section 201.4 provides that terms not defined within the code itself "shall have ordinarily accepted meanings such as the context implies." The dictionary definition of "horticulture" encompasses the cultivation of fruits, vegetables, plants and flowers. Since these are items that a nursery grows, the section 202 definition of an agricultural building is broad enough to include structures where nursery products are housed. A nursery is a place where plants are grown, so a nursery building would simply be a certain type of agricultural building. This conclusion is supported by section C101 within appendix C dealing with Group U agricultural buildings. Section C101.1(5) states that agricultural buildings include as a use "horticultural structures, including detached production greenhouses and crop protection shelters."

7. IBC section 3102 deals with membrane structures generally and is broad enough in its scope to include the kinds of pole buildings existing at the Gray Barn site. Section 3102.1 indicates that membrane covered greenhouses should be held to a less demanding standard if they are “not used for human occupancy.” In addition, much of section 3102 is concerned with problems arising out of the potential combustibility of membrane materials, a safety concern. Finally, the IBC section 3103 immediately following deals with the question of temporary structures, which it characterizes as “tents and other membrane structures erected for a period of less than 180 days.”
8. RCW Chapter 19.27 contains the State Building Code Act, which among other things requires local jurisdictions to adopt the IBC and sets out a process for creating local exceptions to its provisions. It also modifies IBC requirements in certain respects. Section 19.27.015 provides a handful of definitions “as used in this chapter.” Subsection (1) defines “agricultural structure” and supplies precisely the same definition as the IBC offers for “agricultural building” in section 202. RCW 19.27.015(4) then offers a definition of a “temporary growing structure” that specifies it to be “a structure that has the sides and roof covered with polyethylene, polyvinyl, or similar flexible synthetic material and is used to provide plants with either frost protection or increased heat retention.” Further on, RCW 19.27.065 creates the following exemption:

The provisions of this chapter do not apply to temporary growing structures used solely for the commercial production of horticultural plants including ornamental plants, flowers, vegetables and fruits. A temporary growing structure is not considered a building for purposes of this chapter.
9. Appellants contend that the state law exemption for temporary growing structures applies to the pole buildings at the Gray Barn site. It seems clear that the pole buildings meet the elementary construction requirement stated at RCW 19.27.015(4) that the structure’s sides and roof be covered with plastic membrane “or similar flexible synthetic material.” Moreover, these structures “provide plants with either frost protection or increased heat retention.”
10. But this weather-protective horticultural function is not the only use of the Gray Barn structures, and that is where the Appellants have a problem. RCW 19.27.065 provides an exemption for growing structures “used solely for the commercial production of horticultural plants.” It is uncontested that the pole buildings on the Gray Barn site cited within item no. 4 of the notice and order also operate as outdoor display and sales areas. Customers enter these structures to shop for plants. This obviously goes beyond sole use for commercial production.
11. If the state law exemption for temporary growing structures does not apply to the Gray Barn pole buildings due to their public use, we are then brought back to our initial discussion of whether the basic IBC exemption for shade cloth structures has been met. Consistent with the discussion above in conclusion no. 6, our reading is that within the context of the section 202 agricultural building definition a nursery purpose merely comprises a subset of a broader agricultural purpose. Therefore any restrictions placed by the IBC on agricultural uses would apply by extension to nursery uses as well. Since the section 202 definition is explicit in stating that agricultural buildings are not to be used by the public, this restriction would also apply to the subcategory of nursery buildings. And this distinction based on public use makes perfect sense. As emphasized by DDES staff, protection of the public health and safety is a paramount building code concern. Loosening customary building code requirements designed to assure public safety can only be justified in places where the general public is effectively excluded. The pole buildings on the Gray Barn property cited within item no. 4 of the notice and order also serve as customer display areas and are thus required to obtain a building permit.
12. Resolution of the issues pertaining to item no. 7 within the notice and order and the related final code interpretation file no. L10C1001 is a more complicated process because it leads us directly into the regulatory thicket that is the KCC Chapter 21.08 matrix of use tables and its associated

- welter of regulatory notes. As item no. 7 of the notice and order suggests, an interim recycling facility and its component elements are defined within KCC Chapter 21A.06 and regulated within Chapter 21A.08. As a general matter one can say that the definitions set forth in Chapter 21A.06 are relatively rational and internally consistent while the various matrices and notes assembled together in Chapter 21A.08 are much less so.
13. Starting with the definitions chapter and focusing on the most basic land use regulatory concepts, KCC 21A.06.1345 defines a “use” as an “activity or function carried out on an area of land, or in a building or structure located thereon.” The second sentence of KCC 21A.06.1345 proceeds to set out a fundamental subsidiary concept: “any use subordinate or incidental to the primary use on a site is considered an accessory use.” KCC sections 21A.06.015, .020 and .025 further break down the accessory use concept into commercial/industrial, residential and resource subcategories. In each case the definition reiterates that the accessory use is “subordinate and incidental” to the primary use. But as we shall see below, one of the main obstacles encountered in trying to make sense out of KCC Chapter 21A.08 is that whoever patched it together indiscriminately scrambled the fundamental distinction between primary and accessory uses.
  14. KCC 21A.06.640 defines an “interim recycling facility” as “a site or establishment engaged in collection or treatment of recyclable materials, which is not the final disposal site.” The definitional examples provided are “drop boxes” and “collection, separation and shipment of glass, metal, paper or other recyclables.” Section 21A.06.335 defines a “drop box facility” as one that is “used for receiving solid waste and recyclable from offsite resources into detachable solid waste containers” and observes that drop box facilities “normally service the general public with loose loads and may also include containers for separated recyclable.” According to KCC 21A.06.970 a “recyclable material” is a “nontoxic, recoverable substance that can be reprocessed”, and KCC 21A.06.908 tells us that within the waste materials context processing includes “crushing, grinding, pulverizing or otherwise preparing...vegetation, organic waste...or recycled and source separated nonhazardous waste materials.” So despite the occasionally tortured syntax, it seems clear that what the Gray Barn provides is an interim recycling facility as such term and its component elements are defined within KCC Chapter 21A.06. Recyclable materials consisting primarily of yard waste and landscaping trimmings are collected at the site, placed in some sort of drop box and daily carted off to another site for final processing.
  15. Final code interpretation L10CI001 also concluded that the yard waste collection process at the Gray Barn site met the definition of an interim recycling facility but then went on to say, based on its reading of KCC 21A.08.050, that “interim recycling facilities are allowed in the RA-zone only as an accessory use to a public or community use, such as a school, fire station or community center.” DDES concluded that the Gray Barn nursery does not qualify under 21A.08.050 because it is not accessory to a public or community use. The Appellants don’t disagree, however, that their yard waste collection activity fits within the definition of an interim recycling facility. Rather they contend that it also fits into other use categories that are permitted in the RA-zone and offer a better regulatory fit.
  16. There are three sections of KCC Chapter 21A.08 that arguably relate to the business activities conducted on the Gray Barn nursery site. First, as documented by item no. 1 of the notice and order, the Gray Barn site houses a retail nursery. KCC 21A.08.070 lists “retail nursery, garden center and farm supply stores” as permitted primary uses in the RA-zone if certain dimensional standards are met; they are subject to approval as conditional uses if the permitted use criteria are exceeded. With a recently reconfigured covered sales area, DDES concedes that the Gray Barn now qualifies as a retail nursery permitted outright in the RA-zone. Second, as just described above, the yard waste collection function on the site meets the definition for an interim recycling facility which is permitted as a primary use under KCC 21A.08.050 as a personal service business if “limited to drop box facilities accessory to a public or community use such as a school, fire station or community center.” Finally, the Appellants contend that their yard waste collection

- facility qualifies under KCC 21A.08.060 as a construction and trade business service primary use permitted subject to note 34, which limits it to “landscape and horticultural services (SIC 078) that are accessory to a retail nursery, garden center and farm supply store.”
17. Exhibit no. 41 is a printout listing the various subcategories within the SIC 078 landscape and horticultural services category. Activities listed include garden maintenance, lawn care and lawn mowing services and bush and tree pruning, trimming and removal. The Gray Barn nursery business performs none of these activities directly, so it cannot claim any such activities as a primary use on the site. But it provides plants, trees, seeds, bulbs, mulches, fertilizers, tools and supplies at the front end of the process and receives yard and vegetative waste at the back end of the process. KCC 21A.08.060 not only authorizes construction and trade business services as a primary use, but it also specifically allows “commercial/industrial accessory uses.” So, providing a yard waste disposal service to landscapers could be seen as qualifying as a use subordinate or incidental to the nursery business.
  18. To summarize, the regulatory situation that we encounter under KCC Chapter 21A.08 regarding the Gray Barn site is, first, a nursery that everyone concedes is a primary permitted use of the property under KCC 21A.08.070 and which is in fact the dominant use. Then we have DDES contending that the site is also being used as an interim recycling facility, which is listed as a primary use under KCC 21A.08.050. And finally the Appellants argue that the site qualifies as a construction and trades business listed as a primary use under KCC 21A.08.060. DDES argues that KCC 21A.08.050 is controlling because it prohibits the interim recycling use, while the Appellants argue that 21A.08.060 permits it and provides a better descriptive fit.
  19. Before attempting to evaluate these competing claims it is perhaps useful to provide some overall context regarding generally similar uses and their treatment under Chapter 21A.08. In this regard we note that KCC 21A.08.080 permits in the RA zone a “materials processing facility”, which allows vegetative materials such as are gathered on the Gray Barn site to be crushed, ground and pulverized. A materials processing facility is permitted outright in the RA-zone on a 10-acre parcel that has direct arterial access and otherwise alternatively as a conditional use. KCC 21A.08.100 dealing with regional land uses allows siting of soil recycling facilities, landfills and transfer stations in the Rural Area with the issuance of a special use permit. The point here is that all these other disposal oriented uses are permitted to occur in the RA-zone subject to either siting limitations or a permit review process, even though they each entail far greater potential environmental and community impacts that does an interim recycling facility. According to the DDES analysis an interim recycling facility is prohibited under all circumstances in the RA zone except when conjoined to a public or community use such as a school or fire station.
  20. KCC 21A.02.060.A supplies a short but critical provision because it provides us guidance in cases of regulatory inconsistencies or conflict. It says that regulations and requirements “that are specific to an individual land use shall supersede regulations, conditions or procedural requirements of general application.” KCC 21A.02.060.C informs us that if there is a difference of meaning or implication between the text of permitted use tables in KCC 21A.08 and any related headings, the text and use tables shall control. Finally, 21A.02.060.D specifies that words that are not defined within the zoning code shall have their customary meanings. While these terse provisions are not hugely useful, they at least allow us to dispose of the Appellants’ argument that the text of KCC Chapter 21A.08 should be reinterpreted based on division headings.
  21. In addition to the code’s mandate to prefer specific land use description to general classifications, recent case law also provides further tools for our interpretative task. Readers may not be entirely surprised to learn that this case is not the first instance where the garbled provisions of KCC Chapter 21A have generated serious and prolonged conflict. In *Spencer/Shear* (file no. E05G0099) a Hearing Examiner granted a code enforcement appeal on the basis that the

regulation cited for the violation did not provide “a clear and intelligible standard.” DDES had cited a property owner for a flood hazard violation based on a code provision that merely enumerated possible sources of authority without specifying which should actually apply in any given circumstance. Within this framework the Hearing Examiner held that:

Without such a formal regulatory designation, there is no easily ascertainable adopted county flood hazard area standard applicable to the Spencer property, and the portion of the county’s notice and order that cites the Appellants for conducting materials processing operations and clearing, grading and filling within a flood hazard area becomes a gesture without legal effect.

The Examiner’s rulings in this code enforcement case were challenged by DDES and eventually ruled upon by Division I of the Washington Court of Appeals in *King County, Spencer and Shear vs. King County DDES*, 273 P.3d 490 (2012). The Court of Appeals opinion reads in pertinent part as follows:

The hearing examiner concluded the county council and DDES had not adopted standards for determining flood hazard areas. The hearing examiner explains ‘DDES is required to sift through and compare the multiple sources of flood hazard data and evaluate their accuracy in formulating a relevant standard...without such a formal regulatory designation, there is no easily ascertainable adopted county flood hazard area standard applicable to the Spencer property.’

....The hearing examiner’s interpretation of the county code was correct, and we reverse the superior court on this issue. (273 P.3d at 495, 496.)

22. Returning again to basics, the term “primary” connotes singularity, and the definition of “use” provided at KCC 21A.06.1345 follows this conventional usage. It speaks of “the primary use on the site,” i.e., the one primary use of the property. Within this framework all other uses on the property are necessarily subordinate or incidental to the primary use and therefore accessory. There are many grievous problems with KCC Chapter 21A.08 but perhaps the most egregious among them is that the chapter utterly confounds the distinction between primary and accessory uses. In theory, a particular use may be primary in one location in one zone and accessory at another location in a different zone. But it can never be both primary and accessory at the same time in the same place. It must be one or the other. To describe a use as simultaneously both primary and accessory on a single property is hopeless nonsense.
23. The instant case provides us not just one but two instances of this profound regulatory confusion. KCC 21A.08.050 lists an interim recycling facility as a primary permitted use in the land use table. But note 21 appended to the table specifies that this primary permitted use is limited to “drop box facilities accessory to a public or community use.” Then in like manner KCC 21A.08.060 lists construction and trade business services as a primary permitted use in the RA zone, but the attached note limits it to landscape and horticultural services “accessory to a retail nursery.” Both of these provisions are logical absurdities: a primary use is by definition never accessory to another use.
24. Since we now have been reduced to comparing absurdities, a further observation is in order. Saying that landscape and horticultural services are accessory to a nursery is somewhat more defensible than saying that a yard waste drop box is accessory to a school. There is at least a generic relationship between landscape and horticultural services and a nursery or garden center. Thus one can at least imagine how one could be accessory to the other. But there is no relationship at all between a yard waste drop box and a school or a fire station. There is no meaningful sense in which a yard waste collection facility is functionally related to the operation

- of a school or fire station. What this language must be attempting to suggest is not really that the relationship is accessory but that the uses are somehow compatible.
25. Removing ourselves for a moment from the Alice in Wonderland maze that is KCC Chapter 21A.08, a common sense description of what happens on the Gray Barn property is that the owners operate a retail nursery which provides horticultural materials and supplies to the landscaping trade. Supplying a yard waste deposit facility is a legitimate accessory use subordinate and incidental to the nursery business. If Chapter 21A.08 were rewritten to make some sort of sense, that is probably what it would end up saying.
  26. In terms of the appeals immediately at issue, the notice and order citation for operation of an interim recycling facility in violation of KCC 21A.08.050 must be vacated and the appeal granted because the absurdity of describing a primary use as accessory to a totally unrelated institutional activity fails to provide a clear and intelligible standard sufficient to sustain a finding of violation. The analysis within final code interpretation L10CI001 that the yard waste disposal activity on the Gray Barn site meets the definition of an interim recycling facility is technically correct, but the interpretation goes one step too far. It must be reversed as to its ultimate conclusion that the activity on the Gray Barn site must be accessory to a public or community use in order to be lawful.
  27. The stipulated deferral of adjudication regarding item nos. 2, 3 and 5 within the notice and order appears to be unwarranted insofar as these items were not appealed by the Appellants and they involve rather uncomplicated building code compliance issues. The conditions attached to this report will provide the Appellants 90 days to file a bill of particulars with respect to these items, failing which the notice and order will be sustained as to these matters.

#### DECISION:

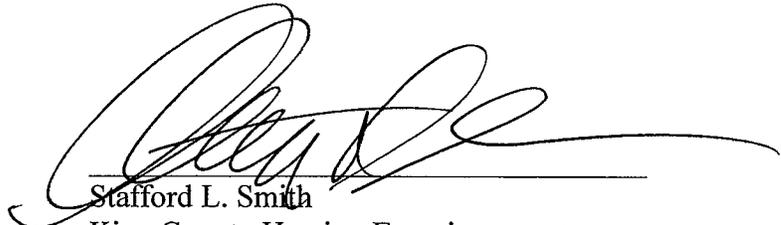
The appeals are GRANTED in part and DENIED in part. The parties have stipulated that the Appellants are in compliance with item nos. 1 and 6 cited within the notice and order and that the appeal of final code interpretation L10CI003 is moot. These items are therefore dismissed from the proceeding. The code enforcement appeal is DENIED with respect to item no. 4 of the notice and order and GRANTED with respect to item no. 7. The appeal will be DENIED with respect to item nos. 2, 3 and 5 of the notice and order unless the Appellants file a bill of particulars within 90 days as specified within the conditions below.

#### ORDER:

1. No penalties shall be assessed against the Appellants or their property if within **60 days** of the date of this order either a complete building permit application is submitted for the pole-framed accessory structures cited within item no. 4 of the notice and order or the currently pending building permit application is revised to include review of such structures. Alternatively, a permit for their demolition may be obtained within the 60 day time period. Compliance with this condition assumes timely completion of all required elements of the permitting process post-application.
2. Regarding item nos. 2, 3 and 5 in the notice and order, within **90 days** of the date of this order the Appellants shall either file a written bill of particulars specifying the appeal issues to be adjudicated with respect to each item or submit a building permit application for their correction in the manner set forth in condition no. 1 above. The Hearing Examiner retains jurisdiction over this proceeding for the limited purpose of adjudicating a bill of particulars as described herein. If after 90 days no such bill has been filed by the Appellants, the notice and order will be deemed sustained with respect to item nos. 2, 3 and 5 and the Examiner's jurisdiction will terminate.

3. If the application processing deadlines stated above are not met by the Appellants, DDES may assess penalties against the Appellants and their property retroactive to the date of this order.

ORDERED July 30, 2012.



Stafford L. Smith  
King County Hearing Examiner *pro tem*

### NOTICE OF APPEAL

Pursuant to King County Code Chapter 20.24, the King County Council has directed that the Examiner make the final decision on behalf of the county regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in King County 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 DECEMBER 8, 2011, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NOS. E0900525, L10CI001 AND L10CI003.

Peter T. Donahue conducted the public hearing in this matter. Participating in the hearing were Jeri Breazeal and Harry Reinert representing DDES, Jamie Jensen representing Appellants, Chris Ricketts and Sandra Forman.

The following exhibits were offered and entered into the record:

- |                |   |
|----------------|---|
| Exhibit no. 1  | DDES staff report to the Hearing Examiner for file no. E0900525.  |
| Exhibit no. 2  | Notice and Order issued April 19, 2011  |
| Exhibit no. 3  | Notice and Statement of Appeal received May 5, 2011   |
| Exhibit no. 4  | Codes cited in the Notice and Order   |
| Exhibit no. 5  | Final Code Interpretation for L10CI001 from DDES  |
| Exhibit no. 6  | Final Code Interpretation for L10CI003 from DDES  |
| Exhibit no. 7  | Print screens from the Gray Barn website  |
| Exhibit no. 8  | Assessors photographs of structures   |
| Exhibit no. 9  | Photographs taken by Jeri Breazeal on March 23, 2007  |
| Exhibit no. 10 | Photographs taken by Jeri Breazeal on August 31, 2001   |
| Exhibit no. 11 | Photographs taken by Jeri Breazeal on July 28, 2011   |
| Exhibit no. 12 | 2009 aerial of property   |
| Exhibit no. 13 | Letter to Dave Forman from Jill Trohimovich of Seattle-King County Department of Public Health dated October 2, 1995  |
| Exhibit no. 14 | Letter to Councilmember Louise Miller from Dave and Sandy Forman dated December 14, 1995  |
| Exhibit no. 15 | Letter to all Appellants from Gary Locke dated December 27, 1995; letter Rodney G. Hanson of KC Solid Waste from Councilman Pete von Reichbauer received January 23, 1996 |
| Exhibit no. 16 | Letter to Appellants from Maggi Fimia of the King County Council dated February 2, 1996   |

- Exhibit no. 17 Letter to Pacific Topsoils from Jill Trohimovich of Seattle-King County Department of Public Health dated June 22, 2004
- Exhibit no. 18 Statutory Warranty Deed
- Exhibit no. 19 21A.08.070 Retail land uses section from King County Zoning Code
- Exhibit no. 20 21A.08.070 Permitted uses section from King County Zoning Code
- Exhibit no. 21 RCW 19.27.031 State building code – adoption – conflicts – opinions on the International Building Code
- Exhibit no. 22 Excerpt from the King County Code, section 16.02.152 General – Scope
- Exhibit no. 23 Excerpt from the King County Code, section 16.02.180 Applicability – Additions, alterations or repairs
- Exhibit no. 24 Excerpt from the King County Code, section 16.02.240 Work exempt from permit (IBC 105.2)
- Exhibit no. 25 Excerpt from the King County Code, section 16.02.240 10. Shade cloth
- Exhibit no. 26 Excerpt from the King County Code, section 21A.28.020 General requirements
- Exhibit no. 27 Excerpt from the International Code Council web site, Section 105 Permits, 105.1 Required
- Exhibit no. 28 Excerpt from the International Code Council web site, Section 114 Violations, 114.1 Unlawful acts
- Exhibit no. 29 Excerpt from RCW 19.27.015 Definitions; (1) Agricultural structure and (4) Temporary growing structure
- Exhibit no. 30 Excerpt from RCW 19.27.065 Exemption – Temporary growing structures used for commercial production of horticultural plants
- Exhibit no. 31 Excerpt from WAC 51-50-007 Exceptions
- Exhibit no. 32 WAC 51-50-007 Exceptions (further definition)
- Exhibit no. 33 Excerpt from King County Code 21A.06.125, definition of a building
- Exhibit no. 34 Excerpt from King County Code 21A.08.050 General services land uses regarding interim recycling facilities
- Exhibit no. 35 Excerpt from King County Code 21A.06.640; definition of an interim recycling facility
- Exhibit no. 36 Excerpt from King County Code 21A.08.050, 21. on drop box facilities
- Exhibit no. 37 Excerpt from OSHA web site on Major Group 72: Personal Services
- Exhibit no. 38 Excerpt from King County Code 21A.08.060, SIC on business services: construction and trade
- Exhibit no. 39 Excerpt from King County Code 21A.06.247 Construction and trades
- Exhibit no. 40 Excerpt from King County Code 21A.08.060 34., SIC 078
- Exhibit no. 41 Definition of lawn and garden services
- Exhibit no. 42 Online permit applications report for Gray Barn on DDES website
- Exhibit no. 43 Letter to Jane Ryan Koler from Harry Reinert dated October 28, 2010
- Exhibit no. 44 Appellant's brief and reply to DDES report to the Hearing Examiner
- Exhibit no. 45 Response from DDES to the brief submitted by Appellants
- Exhibit no. 46 Excerpt from RCW 70.95.010 Legislative finding – Priorities – Goals
- Exhibit no. 47 Gray Barn definitions

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