August 10, 2012

OFFICE OF THE HEARING EXAMINER
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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E1000457**

RICHARD SUNDANCE OWEN
Code Enforcement Civil Penalty Appeal

Location: 10235 206th Avenue NE
Redmond, WA 98053

Appellant: **Richard Sundance Owen**
10507 E Zayante Road
Felton, CA 95018
Email: rich@gyrecleanup.org

King County: Department of Development and Environmental Services (DDES)
represented by **Jeri Breazeal**
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Renton, WA 98057
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SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Deny Appeal
Department's Final Recommendation:	Deny Appeal
Examiner's Decision:	Grant Appeal in Part, Deny in Part

EXAMINER PROCEEDINGS

Hearing Opened:	July 31, 2012
Hearing Closed:	July 31, 2012

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. Richard Owen is an owner of the subject property at 10235 - 206th Avenue NE, Redmond, WA 98053. The parcel has three dwellings, more than would be allowed by the current zoning, but legally grandfathered. However, at some point, a previous owner illegally converted the attached garage of one of these units into a fourth dwelling unit.

2. It was this fourth dwelling unit, along with some inoperable vehicles, that became the subject of a July 2010 code enforcement action. DDES explained that the converted garage could, with proper upgrades and permits, be converted again into a room for the legally non-conforming dwelling unit to which it was attached. Mr. Owen took some permitting steps in 2011, but in early 2012, DDES was dissatisfied with his progress, and moved to the notice and order stage.

3. The February 8, 2012, notice and order alleged, (1) inoperable vehicles and parking/storage of vehicles on non-impervious surfaces and (2) conversion of the garage into habitable space. Mr. Owen had until March 9 to both correct the vehicle violation and submit a complete building application, or face certain, specified fines. Mr. Owen did not appeal the notice and order.

4. DDES determined via a March 20 site visit that the vehicle-related violations had been cured. However, having not received a completed application by May 9, two months after the deadline, Code Enforcement requested billing for the construction violation. DDES's finance department sent out the penalty invoice, which Mr. Owen timely appealed.

5. The case came for hearing on July 31, 2012. There was not tremendous amount of disputed testimony. Mr. Owen did not claim to have met the March deadline, but he presented a plausible rationale for why. And, after the May penalty invoice, but just prior to the hearing, Mr. Owen submitted what appears to DDES to be a completed building application (though thorough DDES review may show a need for additional information).

CONCLUSIONS:

1. Mr. Owen had made some progress (such as obtaining Health Department approval for the garage's plumbing) as of the March 9 deadline for compliance and more progress after the penalty invoice was issued (having recently submitted an ostensibly complete building application). Yet we cannot ignore that he did not fully comply with the notice and order's deadlines related to the construction, and that Code Enforcement has had to expend some (though in the officer's words "not a lot" of) hours since the notice and order, attempting to bring Mr. Owen into compliance.

2. In the words of our Court's controlling standard for reviewing code enforcement penalties, the $2,250 penalty is not "erroneous" but, given all the circumstances (including the quantum of public funds Code Enforcement had to expend to achieve the current level of compliance), is slightly "excessive." *Post v. City of Tacoma*, 167 Wn.2d 300, 313, 217 P.3d 1179 (2009). We conclude that a $1,000 penalty more adequately addresses the current situation.

3. But that is, of course, not the final word. Mr. Owen has now, if belatedly, submitted a complete building application. So the ball is currently in DDES's court. But the notice and order (which was not appealed and thus has become final) had more requirements, namely to:

> Meet all deadlines for requested information associated with the permits and pick up the permits(s) within the required deadlines. Request a building permit inspection within 15 days of building permit issuance, make any required corrections and obtain final approval for occupancy within one year of permit issuance.

If Mr. Owen fails to follow through with these deadlines, he may subject himself once again to fines.

4. Any subsequent determination by DDES that fines are warranted in the future would itself be subject to appeal. As *Post* requires, because the government's "determination to assess additional penalties is based on property conditions at the time of each determination," a citizen must be afforded an opportunity to appeal each such penalty determination. 167 Wn.2d 300 at 312, 314. But the notice and order put no fixed end date on the penalty for the violation still in play ("Violation 2" $50.00 per day for the first 30 days, then $100.00 per day thereafter"), nor does the code. (KCC 23.32.010(B) states that "Penalties may be assessed daily until the person responsible for code compliance has fully complied with the notice and order.") So additional penalties may attach if compliance is not maintained.

DECISION:

1. We grant Mr. Owen's appeal as to $1,250 of the penalty and deny it as to the remaining $1,000.

2. If Mr. Owen fails to meet the remaining terms of the February 8, 2012, notice and order, namely to: "Meet all deadlines for requested information associated with the permits and pick up the permits(s) within the required deadlines. Request a building permit inspection within 15 days of building permit issuance, make any required corrections and obtain final approval for occupancy within one year of permit issuance," DDES may again assess fines, subject to the penalty appeal provisions of KCC 23.32.100-.120.

ORDERED August 10, 2012.

David W. Spohr
Interim Deputy King County Hearing Examiner

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 property 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.)

DWS/vsm