

July 2, 2012

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KING COUNTY, WASHINGTON**
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REPORT AND DECISION

SUBJECT: Development and Environmental Services File No. **E1100618**

JENNIFER JOHNSON AND SCOTT WILKE
Code Enforcement Appeal

Location: 20139 SE 248th Street

Appellants: **Jennifer Johnson**
12543 NE 23rd Place D1
Bellevue, WA 98005
Telephone: (425) 881-8549

Scott Wilke
20139 SE 248th Street
Maple Valley, WA 98038
Telephone: (206) 992-1242

King County: Department of Development and Environmental Services (DDES)
represented by **Holly Sawin**
900 Oakesdale Avenue SW
Renton, WA 98057
Telephone: (206) 296-6772
Email: holly.sawin@kingcounty.gov

SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Deny appeal

EXAMINER PROCEEDINGS

Hearing Opened:	May 24, 2012
Hearing Closed:	May 24, 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. On December 6, 2011, the King County Department of Development and Environmental Services (DDES) Code Enforcement Section issued a notice and order to Jennifer Johnson and Scott Wilke asserting code violations on a property comprising slightly less than 10 acres located in the RA-5 zone at 20139 SE 248th Street, Maple Valley. The notice and order cited the property for occupancy of a substandard dwelling, specifically a recreational vehicle (RV), and an accumulation of inoperable vehicles and vehicle parts parked on unimproved surfaces as well as assorted rubbish, salvage and debris. The notice and order further asserts that the various illegal accumulations have occurred "without an established primary use," an allegation that suggests that at least some of the accumulation of vehicles and materials might be acceptable if associated with a primary use.
2. Jennifer Johnson and Scott Wilke filed a timely appeal of the notice and order. The appeal statement contends that the property achieved code compliance when it was abated in October 2010 under a previous notice and order and that the Appellants seek to establish the existence of a primary use on the property. DDES staff noted at the hearing that no specific primary use was alleged in the appeal statement, but staff undertook to respond to the issue. This review will assume that the Appellants are entitled to the legal benefits of any primary use supported by the evidence of record.
3. As noted by the staff report, this property was earlier abated pursuant to a notice and order issued in file no. E0300675 and a compliance certificate issued in April 2011. DDES contends that the current notice and order is based on new violations that have occurred on the property since the time of the abatement and the compliance certificate issuance.
4. The seven photographs taken by Code Enforcement Officer Holly Sawin on November 16, 2011, which appear in the record as exhibit no. 5, adequately demonstrate an evidential basis for upholding the notice and order citations generally with respect to accumulations of inoperable vehicles, junk and debris. Photograph no. 3 within exhibit no. 5 shows a non-operative Ford pickup truck parked on a grassy area next to a greasy tarp surrounded by an array of containers. Unsorted piles of materials and garbage also appear in photograph nos. 6 and 7, and what appear to be non-operational vehicles parked on unimproved surfaces are shown in photograph nos. 4, 5, 6 and 7. These accumulations are not especially egregious, but in light of an abatement having occurred in late 2010, they evince a disturbing trend in the wrong direction. And while the Appellants may have suffered some economic hardship during recent years, they would be foolish not to be attentive to the fact that their neighbors are carefully watching their behavior and are prepared to report conditions that indicate regression toward the previous unacceptable status. Since a primary purpose of the abatement was precisely to clean up these kinds of accumulations, it is not likely that the conditions shown in exhibit no. 5 are of ancient vintage.
5. Much hearing time was expended debating the status of the park model RV depicted in photograph no. 1 of exhibit no. 5. This is the unit that DDES alleges is currently occupied. The storage of a bicycle and household items next to the unit as shown in the photograph suggest that this is a correct assessment. Mr. Wilke's contentds that the park model unit depicted in the November 16, 2011 photograph within this proceeding is the same unit shown in two August 12,

2003 photographs submitted with respect to the hearing on file no. E0300675, appearing in the instant record as exhibit no. 7. Mr. Wilke argues that since the photographs establish that the same unit has been on the property since 2003, its presence on the property must have been accepted by the Department in its abatement process and compliance certificate. Therefore it is improper for DDES to cite this same unit in the current notice and order.

6. There seems to be no serious doubt that the 2003 and 2011 photographs depict the same park model unit. The distinctive gray and blue band around the unit, as shown in both sets of photographs, is sufficient to identify it as the same RV in both the 2003 and 2011 photographs. The main visual difference between the 2003 and 2011 photographs is that a set of wooden exterior doors has been installed to replace the original RV-style doors. But as explained by Code Enforcement Officer Elizabeth Deraitus, the reason why this park model RV is being cited in the current notice and order is for illegal occupancy. No one was living in the unit in 2003, but now someone is. We agree, however, with Mr. Wilke that if the unit were to cease to be occupied, its mere presence on the property as an empty unit was deemed acceptable by DDES within the April 2001 compliance certificate.
7. Since permanent occupancy of an RV is not a permitted use, the current unlawful residential occupancy is not sufficient to establish the primary use of the property. In addition, however, the uncontradicted testimony of Appellant Wilke was that for a number of years he has operated a firewood business from the site and uses some of the vehicles on the property in his business activity. This presumably would include at least some of the vehicles cited within the notice and order. A firewood business would not of course include the second RV on the site shown within exhibit no. 5, photograph no. 6.

CONCLUSIONS:

1. The notice and order must be upheld with respect to the junk and debris on the site and most of the vehicles and salvage materials. Even if one were to conclude that Mr. Wilke had established a business on the property that qualifies as a primary use of the parcel, these accumulations would nonetheless exceed the scope of any legitimate accessory use. At the public hearing DDES staff argued that Mr. Wilke's firewood business should be regarded as a construction and trade business service under KCC 21A.08.060. As such it would be permitted only if it complied with development condition no. 34, which states that within the Rural Area the scope of the permitted use is "limited to landscape and horticultural services (SIC 078) that are accessory to a retail nursery, garden center and farm supply store." Since there is no retail nursery or garden center on the property, the firewood business would not be permitted as an accessory use under this category. In staff's view, the firewood business thus can only be authorized as a home occupation or home industry accessory to a residential land use under KCC 21A.08.030.
2. But there are a couple further use categories that should be considered. KCC 21A.08.060 also includes under permitted business services log storage, subject to two development conditions. Condition no. 26 limits log storage areas to two acres maximum and condition no. 33 requires compliance with trail corridor requirements, if applicable. KCC 21A.06.720 defines "log storage" as "a facility for the open or enclosed storage of logs which may include repair facilities for equipment used onsite or operations offices."
3. Within the retail land use category stated at KCC 21A.08.070, one encounters a permitted use entry for forest products sales. The definition of "forest products sales" is stated at KCC 21A.06.525 contains "fuelwood" as a qualifying activity. The development conditions attached to the forest product sales permitted use under KCC 21A.08.070 state that the use is "limited to products grown onsite" and cannot include permanent structures or signs.

4. As between the categories denominated forest products sales and log storage, the forest products sales pigeon-hole is probably the better fit, although the fact that log storage contemplates onsite equipment use suggests that the activity need not be totally passive. Mr. Wilke has a 10-acre site that contains a significant number of trees, but the record is unclear as to how much of his fuelwood is cut onsite and whether any is imported from offsite. But a 10-acre wooded lot could support a fuelwood business of modest ambition for at least a couple of years.
5. What the King County Code designates as a Rural Area zone in fact operates under regulations more appropriate to the promotion of suburban gentrification than to the maintenance of traditional rural lifestyles. Even so, one of the stated purposes of the Rural Area zone under KCC 21A.04.060.A is to allow "small scale farming and forestry activities...that can be supported by rural service levels and that are compatible with rural character." In addition, the KCC Title 23 regulatory regime governing code enforcement is not a system entirely devoid of administrative discretion, allowing tolerance to be accorded *de minimus* violations (KCC 23.02.040.A.8) and encouraging voluntary compliance agreements (KCC 23.02.090). These flexible regulatory provisions, combined with the fact that a small fuelwood operation could easily qualify as a home occupation with implementation of a primary residential use, the fact that a small fuelwood operation using onsite resources is a possibility at the site, the fact that DDES in the past has shown a willingness to tolerate the presence of the park model unit on the property and finally the absence of egregious health and safety concerns, generally all argue in favor of treating Mr. Wilke's situation with an element of flexibility.
6. Based on the evidential record established in this hearing, it is not possible to conclude with any certainty whether Mr. Wilke's fuelwood business qualifies as a stand-alone primary use. However, if he complies with the necessity to promptly remove accumulations of clearly excessive and unlawful vehicles, parts, junk and debris, he should be given an opportunity to create an acceptable primary use on his property. To that end, the conditions attached to this report will impose a flexible schedule for bringing the property into overall compliance

DECISION:

The appeal is DENIED. The Appellants and their property will not be assessed penalties or fees under this notice and order if the following conditions are met by the deadlines stated in the order below.

ORDER:

1. No later than **August 15, 2012** Appellant Scott Wilke shall meet onsite with DDES Code Enforcement officers to determine in writing which vehicles, equipment and materials may be retained onsite for use within a fuelwood and/or tree service business consistent with code requirements for a home occupation. The Hearing Examiner's Office shall retain jurisdiction over this proceeding through September 15, 2012 for the limited purpose of resolving any disputes arising out of this condition, if so requested in writing by either DDES or the Appellant.
2. No later than **September 30, 2012** all vehicles, parts, materials, junk and debris not specified in the August 15, 2012 agreement for retention onsite shall be removed from the property.
3. If the September 30, 2012 cleanup deadline is met, Appellant Wilke may continue his current fuelwood business until **August 31, 2013**.
4. For continuance of the fuelwood business after August 31, 2013, Appellant Wilke shall have established by such date either a primary residential use of the property meeting applicable code requirements or demonstrated that the fuelwood business qualifies as a stand-alone primary use

(e.g., forest products sales). If a primary use of the property is not established by **August 31, 2013**, business use of the property shall cease and the vehicles and equipment shall be removed.

5. The park model trailer unit shall be removed from the site no later than **August 31, 2013**, unless such unit has been brought into compliance with regulatory requirements for permanent occupancy or a separate primary residence has been established.
6. DDES may impose fees and penalties upon the Appellants and their property retroactive to the date of this order if the **September 30, 2012** cleanup deadline is not met.

ORDERED July 2, 2012.



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

APPEAL INFORMATION

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.)

MINUTES OF THE MAY 24, 2012, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E1100618.

Peter T Donahue conducted the public hearing in this matter. Participating in the hearing were Holly Sawin and Elizabeth Deraitus for DDES; Jennifer Johnson and John Wilke the Appellants.

The following Exhibits were offered and entered into the record:

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| Exhibit no. 1 | Development and Environmental Services staff report to the Hearing Examiner for file no. E1100618. |
| Exhibit no. 2 | Copy of the Notice and Order issued December 6, 2011 |
| Exhibit no. 3 | Copy of the Notice and Statement of Appeal received December 23, 2011 |
| Exhibit no. 4 | Copies of codes cited in the Notice and Order |
| Exhibit no. 5 | Photos taken of the subject property by Holly Sawin on November 16, 2011 |
| Exhibit no. 6 | Permits Plus comments for case E0300675 |
| Exhibit no. 7 | Photographs of property dated August 12, 2003 |
| Exhibit no. 8 | Satisfaction of Lien dated January 11, 2012 and Claim of Lien dated January 31, 2011 |

SLS/vsm