

April 21, 2000

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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DECISION ON APPEAL OF NOTICE AND ORDER

SUBJECT: Department of Development and Environmental Services File No. **E9800018**

KATHY BOSTWICK
Code Enforcement Appeal

Location of Violation: 8528 South 121st Street

Appellant: **Kathy Bostwick (formerly Cochran)**
8528 South 121st Street
Seattle, WA 98178

Department: Department of Development and Environmental Services
Code Enforcement Section, *represented by*
William Turner
900 Oakesdale Avenue Southwest
Renton, WA 98053
Telephone: (206) 296-7084 Facsimile: (206) 296-6604

SUMMARY OF DECISION:

Department's Preliminary Recommendation:	Deny the appeal
Department's Final Recommendation:	Deny the appeal
Examiner's Decision:	Grant in part, deny in part

EXAMINER PROCEEDINGS:

Hearing Opened:	April 18, 2000
Hearing Closed:	April 18, 2000

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.

ISSUES/TOPICS ADDRESSED:

- Building code
- Civil penalties

SUMMARY:

Grants appeal from notice and order regarding unpermitted house addition; orders civil penalty waived.

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

FINDINGS:

1. On December 15, 1999, Kathy Bostwick (“Appellant”) filed her statement of appeal (Exhibit No. 3) from the November 22, 1999 Notice of King County Code Violation; Civil Penalty Order; Abatement Order; Notice of Lien (“Notice and Order”; Exhibit No. 2) served upon her by King County Department of Development and Environmental Services (“DDES” or the “Department”). The Department accepts the appeal as timely.
2. The appealed Notice and Order cites the Appellant for “construction of an addition to a residence without required permit(s) and inspections.” It requires the Appellant to apply for and obtain the required permits or demolish the new construction. In its final recommendation to the Examiner the Department stands by this position, amending it only to suggest that compliance be achieved within a “reasonable time.”
3. The Appellant does not dispute the essential facts. The walled-in carport at issue was constructed prior to the Appellant’s purchase of the property without required permits or inspections. As the property owner, the Appellant is responsible for correcting that deficiency by obtaining the required building permit and other possible required related permits. The Department correctly advises that the Appellant may have civil recourse against the seller, and (possibly) the real estate agent who sold the property to her. As property owner, Appellant Bostwick acknowledges her responsibility to comply with applicable code.
4. However, Appellant Bostwick objects to a previously assessed \$1, 095 civil penalty pursuant to this same DDES case number/file. At the time she was first served an *earlier* notice and order (dated July 23, 1998; Exhibit No. 4), she was attempting to add a bay window style addition to the front of the walled-in carport. She believed at that time that the first notice and order applied only to that bay window addition, not to the walled-in carport. She removed the bay window addition, believing that this action brought her into compliance with the first notice and order. For reasons not adequately explained in this hearing record, she did not appeal the first notice and order. The record contains no explanation other than her assertion that she “had no chance” to file that appeal.

Thus, the core of Appellant Bostwick’s appeal does not concern the present notice and order (called “Supplemental” by the Department), which she does not truly contest. Rather, her appeal

stems from her frustration and sense of injustice resulting from the \$1,095 civil penalty assessed

pursuant to the first notice and order which, she argues, was unreasonably (read “unconstitutionally”) vague. From the language contained in that notice and order (the same as cited in Finding No. 2, above) it is wholly unclear as to which portion(s) of the Bostwick residence the first notice and order applied. Only through extensive subsequent discussions related to issuance of the second or supplemental notice and order—including discussions between Code Enforcement Officer Turner and Appellant Bostwick before and during this review—did it become clear as to why abandonment of the bay window addition did not fully comply with the first notice and order.

5. The facts cited in the Department’s report to the Hearing Examiner (Exhibit No. 1) are accurate. Exhibit No. 1 is adopted and incorporated here by this reference.

CONCLUSIONS:

1. The facts of record are well established and uncontested. A walled-in carport exists upon the subject property for which appropriate permits never have been obtained. The property owner is responsible for obtaining those permits.
2. KCC 23.32.050 authorizes the waiver or reimbursement of civil fines and civil penalties under certain circumstances. Among those circumstances, KCC 23.32.050.A.4 provides as a reimbursement criterion the following:

New compelling information warranting waiver has been presented to the director since the citation, notice and order or stop work order was issued.

The new compelling information in this case is the discovery, upon review, that—at the time of its issuance—the first notice and order was unreasonably vague. There clearly was no “meeting of the minds” between the Department’s code enforcement officer and the Appellant. The code enforcement officer readily concedes this well may have been the case. Now that we understand what all the confusion (and resulting continued noncompliance) was about, the civil penalty should be rescinded and, if already paid, refunded to the Appellant.

3. The argument regarding unreasonable vagueness does not apply to the supplemental notice and order (November 22, 1999) because, by her own testimony, the Appellant understood by that time that the Department also sought compliance for the walled-in carport.
4. The first notice and order was never adjudicated. Therefore, the principal of *res judicata* does not apply. Further, it must be noted that both the first notice and order and the supplemental notice and order were issued pursuant to the *same* file and the *same* case number. Thus, reaching back in history to waive a civil penalty does not require opening a different case or file. It is this very same case, this very same matter, this very same walled-in carport. Thus, by this appeal hearing review, the Examiner has jurisdiction to order waiver of the \$1,095 civil penalty that was based upon the unreasonably vague first notice and order.

DECISION AND ORDER:

1. Appellant Bostwick shall apply for a building permit or demolish the walled-in garage structure at issue within 60 days following the date of this decision. If the \$1,095 previously assessed civil penalty has already been paid, then the 60 day compliance period shall not commence until the Department has complied with Paragraph No. 2 of this order, following. Appellant's failure to comply with this order within the 60 day period provided shall result in the remedies identified in the Department's November 22, 1999 Supplemental Notice and Order. This decision and order shall not be construed as limiting either the Department or the Prosecuting Attorney from taking any other enforcement action as may be authorized by law.
2. The \$1,095 civil penalty is waived. If the civil penalty has already been paid, the Director shall, with the concurrence of the Director of the Department of Finance, refund the \$1,095 civil penalty arising from the first notice and order in this case. Said refund shall be issued to Kathy Bostwick.

ORDERED this 21st day of April, 2000.

R. S. Titus, Deputy
King County Hearing Examiner

TRANSMITTED this 21st day of April, 2000, to the following parties and interested persons:

Kathy Bostwick
8528 S 121st St.
Seattle, WA 98178

Elizabeth Deraitus
DDES/BSD
Code Enforcement Section
MS-OAK-DE-0100

Lamar Reed
DDES/BSD
Code Enforcement Section
MS-OAK-DE-0100

Bill Turner
DDES/BSD
Code Enforcement Section
MS-OAK-DE-0100

Pursuant to Chapter 20.24, King County Code, 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 Superior Court within twenty-one (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 18, 2000 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E9800018 – KATHY BOSTWICK:

R. S. Titus was the Hearing Examiner in this matter. Participating in the hearing and representing the Department was Bill Turner. Participating in the hearing and representing the Appellant was Kathy Bostwick. There were no other participants in this hearing.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 DDES staff report to the Hearing Examiner, dated March 16, 2000
- Exhibit No. 2 Copy of Notice and Order issued (Supplemental), dated November 22, 1999
- Exhibit No. 3 Copy of Ms. Bostwick's appeal statement, dated December 15, 1999
- Exhibit No. 4 Copy of original Notice and Order, dated July 23, 1998
- Exhibit No. 5 Copy of Compliance Certificate for original Notice and Order, dated July 22, 1999
- Exhibit No. 6 Copy of computer log notes
- Exhibit No. 7 Color copies of photographs, taken February 10, 2000
- Exhibit No. 8 Copy of summary page and site sketch from appraisal of Appellant's property, dated 1997