

June 11, 1999

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

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DECISION ON APPEAL OF NOTICE OF KING COUNTY CODE VIOLATION

**SUBJECT:** Department of Development and Environmental Services File No. **E9801119**

**EMPIRE WAY ASSOCIATES II**  
Code Enforcement Appeal

Location: 5515 South 129<sup>th</sup> Street

Property **Empire Way Associates II**  
Owner & 12501 Bel-Red Road, Suite 106  
Appellant: Bellevue, Washington 98005

SUMMARY OF RECOMMENDATIONS AND DECISION:

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

PRELIMINARY MATTERS:

Notice of appeal received by Examiner: April 23, 1999  
Statement of appeal received by Examiner: April 23, 1999

EXAMINER PROCEEDINGS:

Hearing Opened: June 7, 1999  
Hearing Closed: June 7, 1999

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:

- Notice of Appeal (timeliness)
- Penalties

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

FINDINGS:

1. On February 18, 1999, the King County Department of Development and Environmental Services issued a Notice of King County Code Violation: Civil Penalty Order: Abatement Order: Notice of Lien: Duty to Notify ("Notice and Order") to Empire Way Associates II. The Notice and Order alleged violations of the King County Building Code, King County Zoning Code, Uniform Housing Code and Uniform Code for the Abatement of Dangerous Buildings with respect to real property commonly known as 5515 South 129<sup>th</sup> Street, located in King County, Washington. The specific code sections in issue, and the legal description of the subject property, are set forth in the Notice and Order, which is Exhibit No. 2 of the hearing record.
2. An appeal of the Notice and Order, dated March 11, 1999, was submitted by Empire Way Associates to King County DDES, and was received by DDES on March 16, 1999. The date of service of the Notice and Order is presumed to be three business days following the date it is mailed, which was February 18, 1999. The third business day following February 18 was February 23. A notice of appeal is required to be filed within 21 days from the date the Notice and Order was served. The 21<sup>st</sup> date following February 23 was March 16, 1999. DDES' receipt of the Notice of Appeal on March 16, 1999, was timely.
3. The facts set forth in the Department of Development and Environmental Services report to the Hearing Examiner for the June 7, 1999 appeal hearing are found to be correct and are incorporated herein as if fully set forth. The said report is Exhibit No. 1 in the hearing record.
4. As of June 7, 1999, the Appellant had taken no substantial action to correct the violations alleged in the Notice and Order.
5. The initial civil penalty assessed by the Notice and Order, in the amount of \$900, was due within 30 days of February 18, 1999. Additional penalties were stated to become due on March 20, 1999 and April 3, 1999, if the alleged violations were not corrected by the said dates. The dates of March 20, 1999 and April 3, 1999 are 30 days and 14 days, respectively, from the date of the Notice and Order.

The basic initial penalty of \$900 is consistent with the provisions of KCC 23.32.010 (“Assessment Schedule”), which provides for a basic initial penalty of \$500 and additional amounts for public health risk, history of similar violations (less than three), and other aggravating considerations. Additional penalties of 150% for the next 15 day period and 200% for the following 15 day period are provided by code “if a voluntary compliance agreement is not entered into within that time period (30 day period following the issuance of the Order), and no appeal is filed...” KCC 23.32.010.B.

Enforcement of the Notice and Order is required to be stayed during the pendency of an appeal to the Hearing Examiner, except when the violation poses a significant threat of immediate or irreparable harm and that threat is stated in the Notice and Order. KCC 23.36.020.B. No such threat is stated in this Notice and Order.

#### CONCLUSIONS:

1. The February 18, 1999 Notice and Order was properly issued by King County DDES, and was timely appealed by Empire Way Associates II.
2. Empire Way Associates II is in violation of the King County Code, Uniform Housing Code, and Uniform Code for the Abatement of Dangerous Buildings in all respects as alleged in the Notice and Order. The appeal of Empire Way Associates II should be denied.
3. Empire Way Associates II is liable for the payment of the penalty initially assessed in the Notice and Order, payment of which is due within 9 days of the issuance of this decision. The said 9 days has been calculated by subtracting from 30 days (the time period within which the payment was initially due) the period of time that this appeal has been pending.
4. Additional penalties, as established by KCC 23.32.010.B, should be due and payable if the Appellant fails to correct all violations by 15 days and 30 days, respectively, following the date on which the initial penalty is due. The Appellant and DDES may enter into a voluntary compliance agreement, as provided by KCC 23.02.090, which may have the effect of stopping the accrual of additional penalties subsequent to the date of the agreement.
5. At the discretion of DDES, penalties accrued may be offset by credits authorized pursuant to KCC 23.32.010.

DECISION:

The appeal of Empire Way Associates II from the Notice and Order issued February 18, 1999 is DENIED.

The initial civil penalty assessed in the amount of \$900 is due and payable to DDES on the 21st day of June, 1999.

Additional civil penalties in the amounts of \$1,350 and \$1,800 shall be due and payable to DDES June 28, 1999, and July 13, 1999, respectively, unless the violations of the King County Code are corrected or a voluntary compliance agreement is entered into by the Appellant and DDES prior to the date on which an additional penalty becomes due. Credits against the initial penalty and additional penalties may be allowed by DDES, consistent with the provisions of KCC 23.32.010.

Failure by the Appellant to correct the violations set forth in the Notice and Order, or to enter into and perform a voluntary compliance agreement, may result in DDES taking the further actions to remediate and penalize the violations of the King County Code authorized by Title 23 King County Code and set forth in the February 18, 1999 Notice and Order.

ORDERED this 11<sup>th</sup> day of June, 1999.

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James N. O'Connor  
King County Hearing Examiner

TRANSMITTED this 10th day of June, 1999, to the parties and interested persons shown below:

Thomas E. Armstrong  
Empire Way Associates II  
12501 Bel-Red Road #106  
Bellevue, WA 98005-2509

Jeri Breazeal  
DDES Building Services  
Code Enforcement  
MS 1B Renton

Elizabeth Deraitus  
DDES Building Services  
Code Enforcement  
MS 1B Renton

Bill Turner  
DDES Building Services  
Code Enforcement  
MS 1B Renton

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 JUNE 7, 1999, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES' FILE NO. E9801119 – EMPIRE WAY ASSOCIATES II CODE ENFORCEMENT APPEAL.

James N. O'Connor was the Hearing Examiner in this proceeding. Participating at the hearing were: Appellant Representative Tom Armstrong, and Department of Development and Environmental Services Representatives Jeri Breazeal and Bill Turner.

The following exhibits were offered and entered into the hearing record:

- Exhibit No. 1 DDES Staff Report, dated June 7, 1999
- Exhibit No. 2 Notice and Order, dated February 18, 1999
- Exhibit No. 3 Notice of Appeal, dated March 11, 1999
- Exhibit No. 4 Code violation letter to Applicant from Bill Turner of DDES, dated November 13, 1998
- Exhibit No. 5 Photographs showing damaged house, fence and debris, dated January 26, 1999
- Exhibit No. 6 Motion to Dismiss appeal, dated April 23, 1999
- Exhibit No. 7 Copies of King County Building Codes 16.04.050104 to 16.04.050109
- Exhibit No. 8 8 ½ x 11 inch GIS map of subject property
- Exhibit No. 9 Photographs showing damaged house and debris, dated May 25, 1999







