

September 11, 2000

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

850 Union Bank of California Building  
900 Fourth Avenue  
Seattle, Washington 98164  
Telephone (206) 296-4660  
Facsimile (206) 296-1654

**REPORT AND DECISION**

SUBJECT: Department of Development and Environmental Services  
File Nos. **E9901092** and **E90C0994**

**VILLIANI VEETUTU**  
Code Enforcement Appeal

Location: 16816 Southeast Renton-Issaquah Road

Appellants: **Villiani Veetutu**  
16816 SE Renton-Issaquah Road  
Renton, WA 98059

*Represented by* **Jullianne Bruce**  
17023 SE May Valley Road  
Renton, WA 98059

Department: Department of Development and Environmental Services  
Building Services Division, Code Enforcement Section  
*Represented by* **Jeri Breazeal**  
900 Oakesdale Avenue Southwest  
Renton, Washington 98055-1219  
Telephone: (206) 296-7264  
Facsimile: (206) 296-6604

**SUMMARY OF DECISION:**

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

**EXAMINER PROCEEDINGS:**

Statement of appeal received by Examiner:	June 6, 2000
Hearing Opened:	August 24, 2000
Hearing Closed:	August 24, 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:

- Filling
- Junk and debris
- Sensitive areas (wetland)
- Solid waste
- Inoperative vehicles
- Mobile home
- Sensitive areas (flood hazard area)
- Unacceptable fill material

SUMMARY:

Denies appeal from Notice and Order (code enforcement action) regarding placement of mobile home, junk and debris, and solid waste in excess of permitted amounts and within protected sensitive areas.

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

FINDINGS:

1. **Notice and Order Served.** On April 27, 2000 the Department of Development and Environmental Services (“Department” or “DDES”) served upon Villiani Veetutu (the “Appellant”) a notice of King County Code violation: civil penalty order: abatement order: notice of lien: duty to notify (“Notice and Order”). Citing KCC Title 10; KCC 16.04, 16.82.060, 16.82.100; KCC 21A.32.230, 21A.24; KCC 23.10; and Uniform Housing Code (“UHC”), Section 1001.11 as its authority, the Department ordered the Appellant to correct the following Code violations:
  - Placement of a mobile home without the required approvals, permits and inspections.
  - Accumulation of junk and debris in a wetland buffer.
  - Accumulation of inoperable vehicles.
  - Use of unacceptable fill material (wood chips, plastics, wood debris, metal, household garbage and other wastes).
  - Dumping of solid waste on the ground without the required permits and/or approvals. (King County Board of Health regulations, Title 10.)
  - Filling in excess of 100 cubic yards and/or three feet in depth.
  - Filling in a sensitive area (wetland, flood hazard area) without a valid grading permit.

2. **Compliance Ordered.** In order to comply with the Code violations described above, the April 27, 2000 Notice and Order requires the Appellant to complete the following actions in order to bring the subject property<sup>1</sup> into compliance.
  - A. Remove the mobile home or obtain the required approvals, permits and inspections.
  - B. Remove all junk, debris and solid waste from the property including, but not limited to, car parts, tires and piles of scrap. Remove all inoperable vehicles from the property. Park all remaining vehicles outside the required setbacks to the sensitive areas and on improved surfaces.
  - C. Immediately stop all filling on the site, apply for and obtain a valid grading permit. The application shall include at a minimum a fill removal and sensitive area restoration plan and must be completed in accordance with the guidelines outlined in King County Land Use Bulletin No. 28.

The Notice and Order provides a completed application deadline, which has been stayed as a result of the instant appeal. The Notice and Order also provides a schedule of civil penalties ranging from \$900 to \$1100 for failure to accomplish each of the three actions described in this finding.

3. **Appeal Filed.** On May 22, 2000 the Appellant filed his notice and statement of appeal contesting the Notice and Order on all counts. The relevant facts raised are noted in the findings that follow.
4. **Mobile Home Placement.** The Appellant argues that the mobile home “remnant” has gone through a permit process (through Washington State Labor and Industries) to be used as a storage container. The Appellant contends further that the mobile home was sold to another party “a couple of years ago,” who cannot be located and who has not come to claim the mobile home since. The hearing record contains no evidence of this sale. Faced with an enforcement order from the Department and lacking permission from the unnamed party to move the mobile home, the Appellant began to “gut” the structure in order to convert it to a presumably permissible storage container—assumed to be regulated less onerously than a dwelling unit. The Department sympathizes with the Appellant’s plight—the probable difficulty of removing a mobile home they no longer own—but insists upon compliance with the Code. Such compliance requires either a building permit or removal of the mobile structure from the premises. The mobile home is not located on that portion of the fill that the Department is demanding to be remediated. From photographs in evidence the mobile home appears to be badly weathered and seriously deteriorated. Apparently, a representative of the Washington State Department of Labor and Industries (which enforces State mobile home occupancy/construction standards) has authorized use of the mobile home structure for “storage only.” However, no building permit has been issued. Testimony from the Department’s representative suggests that a previous mobile home application was either rejected or denied because the mobile home was located in a wetland buffer. It was also

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<sup>1</sup> Lot A, May Valley Division #1, west 306 feet of portion south of May Creek and 40-foot-wide strip adjacent; account #5229300005, within northwest quarter of Section 12-Range 23-Township 05, at 16816 SE Renton-Issaquah Road.

- denied by the Seattle-King County Department of Public Health because it would need another septic tank which would necessarily be located within or entirely too close to a Class 1 wetland.
5. **Accumulation of Junk and Debris in a Wetland Buffer.** Since issuance of the April 27, 2000 Notice and Order, the Appellant has endeavored to remove accumulated junk, debris and solid waste from the property, achieving substantial compliance with the Notice and Order. Nonetheless, the Appellant argues that he is in the landscaping business and therefore accumulates landscape product and debris from time-to-time. These materials are moved onto the property, stored for a period, then removed. See also Finding Nos. 7, 8 and 9 regarding landfill issues. Photographs in evidence confirm substantial compliance with the Notice and Order regarding the Department's demand to remove junk and debris.
  6. **Accumulation of Inoperable Vehicles.** The hearing record indicates that all inoperable vehicles have been removed from the premises except one.
  7. **Unacceptable Fill Material; Dumping of Solid Waste.** Since issuance of the Notice and Order, much of the stockpiled debris, waste and landscape materials have been removed. Some of the materials, particularly related to landscaping, remain on the premises—such as piled broken concrete. The Appellant argues that these materials are ordinary and necessary elements of a landscape business which the Appellant has operated for thirty years. Unfortunately, a landscaping business is not permitted in a residential zone. KCC 21A.32.230. The subject property is classified R-A (rural residential). See photographic Exhibits 6c and 12.
  8. **Filling in Excess of 100 Cubic Yards and/or 3 Feet in Depth.** The Department does not challenge most of the historically placed landfill upon which the property developments (permanent structures, drive, parking area) are placed. More recently placed fill (within what appears to be the last two years) is cited as both a) exceeding the amount required for a permit and b) being deposited in a Class 1 wetland and floodplain. That particular portion of the fill along the most northern and eastern perimeters of the historic fill extends 3-to-6-feet horizontally and at least that same amount vertically. See Exhibit No. 15 and photographs in Exhibit No. 6d. No valid grading permit has been obtained by any party for the fill described here.
  9. **Filling in Protected/Regulated Sensitive Area.** The fill at issue as described in Finding No. 8, preceding, is also cited by the Notice and Order for having occurred within a regulated designated sensitive area. In this case, two sensitive area designations come to bear: Class 1 wetland and flood hazard area. KCC 16.82.060 states:

*Except as exempted in KCC 16.82.050, no person shall do any clearing or grading without first obtaining a clearing and grading permit from the director. (Emphasis added.)*

In turn, KCC 16.82.050 establishes exceptions to this requirement. Of particular interest, KCC 16.82.050.A.11 exempts fill that is “less than 3 feet in vertical depth not involving more than 100 cubic yards of earth,” but with an important proviso:

*. . . the exception does not apply if the clearing or grading is within a sensitive area as regulated in KCC Chapter 21A.24.*

In turn, KCC 21A.24 establishes King County Sensitive Areas Regulations. KCC 21A.24.080 adopts Sensitive Areas maps and inventories. Those adopted and therefore regulated sensitive areas include wetlands inventoried by King County and flood hazard areas mapped by the Federal Insurance Administration and those environmentally sensitive areas displayed in the adopted Sensitive Areas Map Folio. Mapped excerpts from these sensitive areas inventory are included in this hearing record as Exhibit Nos. 9, 10 and 11 (wetlands) and Exhibit No. 9 (floodplain area). KCC 16.82 and KCC 21A.24, taken together, prohibit any filling/grading<sup>2</sup> in a sensitive area or protective buffer surrounding a sensitive area. The wetland at issue here is designated a “Class 1” wetland due to its size, unique and outstanding characteristics. Therefore, pursuant to KCC 21A.24.320.A this wetland is required to have a 100-foot-wide surrounding buffer. Unfortunately, that buffer encompasses the home, garage, contested mobile home and parking area, and yard area of the Veetutu residence. The permanent structures and landfill upon which these structures are placed apparently predate King County Sensitive Areas Regulations. Thus they constitute a non-conforming use and non-conforming structures.<sup>3</sup> However, the King County system for establishing sensitive areas and sensitive area buffers provides no means of acknowledging existing structures, uses, yard areas and parking areas. This leads to the improbable but legitimate prohibition of tree cutting or topsoiling one’s own front yard if it is located within a protected sensitive area or buffer area.

The Appellant insists that no wetlands or floodplains have been affected and offers a letter from a real estate agent and cites photographs of willows as evidence. The evidence weighs heavily against the Appellant in this regard. First, Exhibit No. 9 shows that the entire Veetutu property is located within KCC 21A.24 protected floodplain. Second, willow is a wetland tolerant species. Importantly, even if the Department had wrongfully cited activity within a wetland or wetland buffer, the floodplain designation still controls use and development of the property.

10. **Landscape Business.** As noted in Finding No. 7, above, the Appellant argues that the stockpiled broken concrete or topsoil is not “fill” but is, instead, a normal business practice. Unfortunately, the R-A classification does not permit landscaping businesses. Further, the hearing record contains no evidence that the landscaping business conducted by the Appellant, regardless of however long that activity may have endured, constitutes a (legal) “non-conforming use.”
11. **Conclusions Adopted as Findings.** Any portion of any of the following conclusions that may be construed as a finding are hereby adopted as such.

#### CONCLUSIONS:

1. The evidence supporting the Department’s case regarding the mobile home on the premises is overwhelming. It is still there. No building permit has been issued. No application is pending. It fails to meet minimum housing habitation standards contained in the Uniform Housing Code, Section 1001.11 (a citation that remains

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<sup>2</sup> KCC 16.82.020.N defines “grading” as any excavating, filling, removing of the duff layer or combination thereof. KCC 16.82.020.L defines “fill” as a deposit of earth material placed by mechanical means.

<sup>3</sup> KCC 21A.06.800 defines “non-conformance:”

Any use, improvement or structure established in conformance with King County rules and regulations in effect at the time of establishment that no longer conforms to the range of uses permitted in the site’s current zone or to the current development standards of the Code due to changes in the Code or its application to the subject property.

- uncontested by the Appellant). No approved septic system exists to serve the mobile home. No application is pending. The mobile home is located within the KCC 21A.24 protected floodplain (Exhibit No. 9). It must go.
2. The Appellant has substantially complied with the Department's order regarding removal of junk, debris and solid waste. However, the Appellant continues to maintain piles of landscape materials—all within the KCC 21A.24 protected floodplain area. The hearing record contains no evidence that the landscape business, or storage related to a landscape business, is maintained legally on the property. It is not permitted by current Code. Further, there is no evidence that it was ever permitted by Code during Veetutu ownership of the property and, therefore, may not be considered “grandfathered” as a legal (nonconforming) use. It must go.
  3. The preponderance of evidence supports the Department's position that the Appellant has placed fill within a KCC 21A.24 protected floodplain within the past two years. A grading permit addressing remediation of the impacts resulting from this fill, generally as described by Exhibit No. 16, must be required. See Finding No. 9. Whether the fill occurred in a “wetland” or whether the fill exceeded 100 cubic yards or 3 feet in depth are relevant but not necessary issues because *any fill whatever* within a floodplain must be addressed. It must conform to applicable floodplain management regulation and, pursuant to KCC 16.82.050 and -.060, a grading permit must be obtained.
  4. While acknowledging the primacy of floodplain regulations and KCC 21A.24 regulations related to floodplains, a larger question of reasonable use of the Veetutu property must be addressed. Because Appellant Veetutu is not seeking major redevelopment of the property, it is not reasonable to impose the burden of obtaining reasonable use exception upon him. To the extent that the sensitive areas regulations grant him no reasonable use of his property (when he has made no change in the development or use of the property) arguably constitutes an unconstitutional taking. It is simply unreasonable to prohibit cutting trees, to prohibit applying topsoil to one's lawn, or to prohibit gravelling one's driveway within an area long recognized as legitimate yard area or outdoor use area of a domicile.<sup>4</sup> These specific activities are not at issue in this case. However, Mr. Veetutu has a right to know what he may do legally within the yard area of his home. Authorization of a non-conforming residential structure or accessory structure pursuant to KCC 21A.32 must necessarily include a reasonable yard area sufficient to assure use and enjoyment of that (those) structure(s).

At a minimum, therefore, Appellant Veetutu and the Department should agree upon a “reasonable use area” upon the Veetutu property. That reasonable use area should contain, to the extent feasible, the minimum dimensions of an R-A classified lot. See KCC 21A.12.030.A. That is, for instance, the use area should be at least 135 feet wide and include a front yard of thirty feet, as well as side and rear yards of ten feet if feasible. The reasonable use area could be as large as a R-A minimum lot if circumstances permit, but smaller if not already established as yard area. In this review, we are regarding the yard area and the historic fill area to be generally coterminous. However, the hearing record is unclear as to the actual dimensions of the historic fill area and structures located upon that historic fill area.

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<sup>4</sup> This analysis pertains only to wetland and wetland buffer areas. Obviously, when a structure or improvement or activity is permitted within a floodplain, it must meet floodplain protection standards.

Within the minimum “reasonable use area,” which should be recorded on title, Appellant Veetutu should be permitted to conduct the same activities and install the same improvements that any other homeowner within the R-A-5 zoning classification would be allowed—understanding, of course, that even within the “reasonable use area” flood-proofing and other minimum standards of floodplain regulation would continue to apply.

Drawing reasonable use boundaries would not constitute an expansion of a non-conforming use because the reasonable use area (essentially, legal yard area) is inherent and integral to the (non-conforming) use of the lot and structures thereon. Establishing a reasonable use area will be consistent with the purposes of KCC 21A.32.010, particularly KCC 21A.32.010.A, to establish the legal status of a non-conformance. KCC 21A.12.010 refers to the dimensional standards of each zone as “basic,” and indeed they are. Establishing reasonable use area boundaries will implement KCC 21A.24.010.I, an adopted purpose of the sensitive areas regulations, by alerting members of the public, including but not limited to, appraisers, owners, potential buyers and lessees regarding the development limitations on the property due to sensitive areas.

**DECISION:**

1. Regarding placement of a mobile home without required approvals, the appeal is DENIED.
2. Regarding accumulation of junk and debris (excluding landscape materials), the notice and order is DISMISSED due to compliance.
3. Regarding accumulation of inoperable vehicles, the appeal is DENIED.
4. Regarding unacceptable fill material (within the area described as having occurred within the past two years [Exhibit No. 15]), the appeal is DENIED.
5. Regarding dumping of solid waste (within the area described as having occurred within the past two years [Exhibit No. 15]), the appeal is DENIED.
6. Regarding filling in excess of 100 cubic yards and/or three feet in depth, the appeal is DENIED.
7. Regarding filling in a sensitive area (wetland, floodplain, buffer area), the appeal is DENIED. See, however, the Order which follows below.
8. Regarding stockpiling of landscape material and debris, the appeal is DENIED.

**ORDER:**

- A. The Department’s April 27, 2000 Notice and Order is Reinstated, except as modified by Decision 2, above.
- B. The schedule contained in the reinstated notice and order shall be counted as the same number of days for each deadline, beginning three days from the date of this Order.

- C. As part of the grading permit review process, the Department in cooperation with Appellant Veetutu, shall establish a *reasonable use area* as described in Conclusion No. 4, above, to include the permanent structures, reasonable yard areas, and historic driveway and parking area(s). Appellant Veetutu will file that DDES approved *reasonable use area* for record on title. Disagreement among the parties regarding the establishment of a reasonable use area may be appealed to the Examiner in the same manner as an administrative appeal. In this matter alone, this office retains jurisdiction.

ORDERED this 11<sup>th</sup> day of September, 2000.

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R. S. Titus, Deputy  
King County Hearing Examiner

TRANSMITTED this 11<sup>th</sup> day of September, 2000, to the following parties and interested persons:

Jullianne Bruce 17023 SE May Valley Rd Renton WA 98059	David Dahlin Upper May Valley HOA 16726 SE Renton/Issaquah Rd Renton WA 98059	Villiani Veetutu 16816 SE Renton-Issaquah Rd Renton WA 98059
Jeri Breazeal DDES/BSD Code Enforcement Section MS OAK-DE-0100	Roger Bruckshen DDES/BSD Code Enforcement Section MS OAK-DE-0100	Elizabeth Deraitus DDES/BSD Code Enforcement Section MS OAK-DE-0100
Randy Sandin DDES/LUSD Site Development Services OAK-DE-0100	Chris Tiffany DDES/LUSD Site Development Services OAK-DE-0100	

MINUTES OF THE AUGUST 24, 2000 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E9901092 – VILLIANI VEETUTU:

R. S. Titus was the Hearing Examiner in this matter. Participating in the hearing were Jeri Breazeal, Chris Tiffany, Villiani Veetutu, and Julie Ann Bruce.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 DDES staff report to the Hearing Examiner, dated August 24, 2000
- Exhibit No. 2 Notice & Order, issued April 27, 2000

- Exhibit No. 3 Appeal statement, received May 21, 2000
- Exhibit No. 4 Letters sent to owner of property
- Exhibit No. 5 Applicable codes
- Exhibit No. 6a.-d. Photographs with map, taken by Jeri Breazeal
- Exhibit No. 7 Photographs with map, taken by Chris Tiffany
- Exhibit No. 8 1996 aerial photography with the property outlined in yellow
- Exhibit No. 9 GIS maps showing the subject property with sensitive areas overlays.
- Exhibit No. 10 1991 King County Wetland Inventory map showing wetland #3705 and the subject property
- Exhibit No. 11 1983 King County Wetland Inventory map showing wetland #3705 and the subject property
- Exhibit No. 12 Nine photographs of subject property, taken by Ms. Bruce on August 22, 2000
- Exhibit No. 13 Letter from Marilyn Zevart dated August 23, 2000
- Exhibit No. 14 Ms. Bruce's photographs of her own nearby property located northeast of subject property
- Exhibit No. 15 Conceptual site plan drawn by Ms. Tiffany