

August 25, 2020

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

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REPORT AND DECISION

SUBJECT: Department of Local Services file no. ENFR190492

PATRICK MILLER
Code Enforcement Appeal

Location: [REDACTED] Maple Valley

Appellant: **Patrick Miller (with assistance from Justin Miller)**
[REDACTED]
Maple Valley, WA 98038
Telephone: [REDACTED]
Email: [REDACTED]

King County: Department of Local Services
represented by Holly Sawin
Department of Local Services
35030 SE Douglas Street Suite 210
Snoqualmie, WA 98065
Telephone: (206) 477-0291
Email: holly.sawin@kingcounty.gov

FINDINGS AND CONCLUSIONS:

Overview

1. The Department of Local Services (Department) served a violation notice to Patrick Miller, asserting violations for occupancy of a recreational vehicle (RV), storage, and clearing. After hearing the witnesses' testimony, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we grant the appeal as to the clearing, deny the appeal as to the RV occupation the storage, and set extended periods for compliance.

Background

2. After receiving a code enforcement complaint in 2019, the Department investigated and determined there were violations. It served a notice on Mr. Miller, asserting violations for (1) occupancy of a substandard dwelling (an RV), (2) storage of vehicles structures, and debris on a vacant site, and (3) clearing, all without the necessary permits. Ex. D2. Mr. Miller timely appealed, asserting: his motor home was not substandard, the principal use of his property is residential, the property is orderly, and he has not cleared the permit-triggering threshold. Ex. D3. The Department subsequently dropped the (3) clearing allegation.
3. We went to hearing on August 11. Mr. Miller son, Justin, ably represented him.¹ Unless directed to by law—and no special directive applies to today’s case—the examiner does not grant substantial weight or otherwise accord deference to agency determinations. Exam. R. XV.F.3. Ours is a true *de novo* hearing. For those matters or issues raised in an appeal statement to an enforcement action, the Department bears the burden of proof. KCC 20.22.080.G; Exam. R. XV.E.2.

Analysis

Is Mr. Miller’s RV a Legal Dwelling Unit?

4. Mobile homes (also known as “manufactured homes”) are explicitly included as an example of a “dwelling unit.” KCC 21A.06.345; KCC 21A.06.755. RVs are not. KCC 21A.06.345.
5. Instead, an RV is “a *vehicle* designed primarily for *recreational* camping, travel or seasonal use which has its own motive power or is mounted on or towed by another vehicle.” KCC 21A.06.960 (italics added). RVs include travel trailers, folding camping trailers, park trailers, truck campers, motor homes, and multi-use vehicles. KCC 21A.06.960.
6. RVs are not included as one of the legal dwelling unit types under the residential land use category. KCC 21A.08.030. Recreational vehicle *parks* are allowed as a recreational/cultural use, but that would require its own development approval, multiple vehicle sites (including hook up facilities), and occupancy by the general public; even then it is only for “*temporary* living quarters for *recreation* or *vacation* purposes.” KCC 21A.06.965 (italics added). In King County, an RV does not qualify as a permanent, legal, dwelling unit.
7. In the paragraph in its violation notice related to the RV, in addition to violations of applicable of *zoning* codes (KCC Title 21A) the Department listed a variety of *building* codes (KCC Title 16) it asserted Mr. Miller’s RV violated. Ex. D3 at 005. That made it appear there was something about Mr. Miller’s RV itself—a needed repair, a safety issue, or having inadequate water, heating, space or windows, etc.—that made the RV a non-legal dwelling unit. Justin did a good job at hearing picking apart those building codes.

¹ Per our rules, a party can designate a representative, and that representative need not be an attorney. Exam. R. X.C.

8. However, the Department’s inclusion of those building codes was a bit of a red herring. Under the zoning codes discussed above, even the finest built, most structurally sound, best outfitted, most immaculately maintained RV is a *vehicle*, not a legal, permanent dwelling unit. It is the RV as an RV, and not anything about Mr. Miller’s specific RV, that makes it a non-legal dwelling unit.
9. The line Mr. Miller lifted from court’s 2015 order from his divorce proceedings—that he “may use the motorhome and the vacant lot, so long as he maintains it and does not disturb the petitioner’s peace”—does not change this conclusion. Ex. D3 at 001. First, the court recognized property as vacant. But even if it had not, we read the court’s decree as limited to dividing up the assets, rights, and responsibilities between (then) spouses, and not as a judicial pronouncement on the applicability of various zoning and building codes.

Is there a Legally Established, Residential Use of the Subject Property?

10. In many respects, this question folds back on the RV question. As noted above, RVs are not a dwelling unit. Mr. Miller living in an RV for several years did not legally establish a residential use.
11. However, Mr. Miller asserts that other documents establish the property’s use as residential. In 1982, the subject lot was legally created by subdivision. Ex. A1 at 1, 3. It appears Mr. Miller and his then wife purchased the property in 1985. Ex. A1 at 6. The land use has been listed in various places as “101 Res[identical], Single Family Residence” and “Principal Use: residential.” Ex. A1 at 4, 6. Mr. Miller’s argument is essentially that because the lot was legally platted for a future residence, and treated as residential (and not for example, agricultural, commercial, industrial) when sold and taxed, the primary use has been established as residential.
12. That is not how we read those documents or the law. To be sure, the highest and best use of the property is residential. But no (legal) residence has yet been established on the property. For example, the excise tax affidavit that shows “Principal Use: residential,” also clarifies that it is “Property Type: land only” and not, for example, “land with mobile home.” Ex. A1 at 6. The Assessor continues to classify the parcel (1222069184) as “Present use: Vacant (Single-family).”²
13. The property is certainly set up to be a residence. It was platted with this in mind, a developer put in water lines that would facilitate future homes, and residential use appears the highest and best use of this and the adjoining properties. However, until a residence is legally sited, or at least until a building permit to *start* the process for legally siting a residence is applied for, there is no primary, established, residential use.

Are the Cargo Containers and Other Structures a Violation?

² In some past cases, the Assessor evaluated property with a home on it as improved property, even though a more thorough inquiry later determined the home was built without the required permits. Even an Assessor’s evaluation in those scenarios was no substitute for actually establishing a legal use. However, here, the Assessor has taxed the property as land only, with zero dollars apportioned to the value of any improvements. So, there is no paper conflict. See <https://blue.kingcounty.com/Assessor/eRealProperty/Dashboard.aspx?ParcelNbr=1222069184>.

14. Temporary structures may be allowed during periods of active construction, if used for storage of tools and equipment (or for supervisory offices) and if removed within thirty days of project completion or work ceasing. KCC 21A.32.150. While cargo containers are subject to county building codes, and thus generally require either Department or State Department of Labor and Industries approval, there is an exemption for, “A container used for storage of construction materials and equipment associated with a valid building or grading permit for the property on which it is located.”³ There is no active construction or permit application.
15. Past that, there are certain permanent exemptions for structures. For example, residential accessory buildings under 200 ft.² used as tool and storage sheds are exempt from the need for a building permit. KCC 16.02.240.1. But again, accessory structures must be *accessory* to an established, primary use, such as residential. As the code phrases it, an accessory structure must be “[s]ubordinate and incidental to the principal use.” KCC 21A.06.013.C. There is no established primary use of the property which could allow for accessory structures. As Mr. Miller will not be in a position to apply for a building permit to legally site a residence on the property, these will need to be removed.

Are the Vehicles and Materials a Violation?

16. The Millers did a good job at hearing showing the storage violations would be relatively limited, if there were an established legal, residential use. However, this discussion also folds back onto the lack of an established primary use. For example, while many of the operable vehicles are not parked on the required impervious surfaces, the real problem is that private vehicle storage is allowed as an accessory use to a residential use, KCC 21A.06.020.H, but the property does not currently have a legal residential use. The bulk of items on the property are a violation because they are not being stored as accessory to a legal primary use. As Mr. Miller will not be applying to legally site a residence on the property, these will need to come off.
17. The one exception relates to the logs. So long as permit-triggering clearing thresholds are not exceeded—and the Department agreed it could not prove a clearing violation here—cutting down trees on a vacant property and stacking them (or even just leaving them felled) is not problematic, even without a primary use. At a certain scale, log storage itself becomes a land use. *See* KCC 21A.06.720 (“log storage: a facility for the open or enclosed storage of logs which may include repair facilities for equipment used on-site or operations offices); KCC 21A.08.060.B.26 & .33 (log storage limited to two acres and subject to review). That is not the case here. The logs can stay without a legally established primary use.

Remedy

18. Other than the logs, Mr. Miller will need to clear just about everything else off the property and find different lodging. The complexity relates to sequencing and ultimate timing. Justin explained that he is working on getting his father into a real home, but that

³ See also https://www.kingcounty.gov/~/media/depts/permitting_environmental_review/dper/documents/forms/Cargo-Container-Building-Permits.ashx?la=en.

is a difficult process. And much of what is on the site represents his father's decades of accumulation. Justin agreed there were too many vehicles on the property and noted that his father was attempting to sell some.

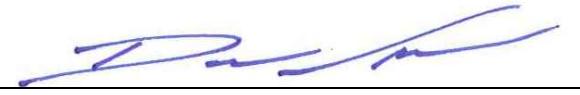
19. As far as sequencing, the two components unrelated to finding alternative living arrangements are removing the inoperable vehicles (which would not be allowed, stored in the open, even if the property had a legal residence) and then tackling the operable vehicles he is not regularly driving or that he will need to haul stuff off the property (such as a working pickup truck). The remainder would seem pegged to Mr. Miller finding a place to live, and then either taking his remaining possessions to his new residence, into storage, or otherwise legally disposing of them.
20. As to timing, the Department's violation notice set a 30-day deadline for removal of the structures, containers, vehicles, and materials. We think 60 days for removal of the inoperable vehicles, and 60 additional days for the operable vehicles he is not regularly driving or needing to haul stuff off the property, is reasonable. For purposes of this discussion, although the second RV is technically a vehicle, we are treating it as a storage unit.
21. The final stage, finding alternative living accommodations and clearing off the remainder of the property, is more complicated.
22. In determining a sequencing, we note that the Department does not dispute that Mr. Miller has a legal water source (apparently put in by the subdivision developer) and that he disposes of his RV's waste tank at a licensed RV park site. So, unlike some past enforcement cases, today's is not a scenario where an RV has no running water, is taking water from an illegal source, and/or is illegally dumping sewage. Thus, Mr. Miller's situation does not raise the same serious public health considerations that have counseled against a lengthier compliance timeline in past cases.
23. Justin explained that, especially given his father's higher risk factors, getting him moved into alternative lodgings during Covid is extremely problematic. That make sense. We will peg clearing off the remaining vehicles, RVs, structures and materials (other than logs) to 90 days after the Governor declares that King County has reached Stage 4.⁴
24. Finally, how to time and best categorized compliance efforts is far more involved here than the typical case where we close with something like, "Apply for a prescreening meeting request by [X] date." To the extent the "Remedy" or "DECISION" sections of this report are confusing or problematic, either party is invited to file a motion for reconsideration, explaining how and why we should amend this report. A motion for reconsideration, filed on or before **September 24, 2020**, stays the appeal period discussed below.

⁴ See <https://www.governor.wa.gov/news-media/chart-washingtons-phased-approach>.

DECISION:

1. We GRANT Mr. Miller's appeal as to (3) clearing and grading.
2. We DENY Mr. Miller's appeal as to (1) occupancy of an RV and (2) storage on a vacant parcel.
3. As to compliance deadlines, Mr. Miller may have until:
 - A. **October 24, 2020**, to remove the inoperable vehicles,
 - B. **December 23, 2020**, to remove the operable vehicles he is not regularly driving or needing to use to haul stuff off the property, and
 - C. **Ninety** days after the Governor declares that King County has reached Stage 4 in Covid recovery to remove the remaining items (other than logs) and cease occupancy.
4. No penalties may be assessed against the Mr. Miller or the subject property, so long as the above deadlines are met. If not, the Department may assess penalties retroactive to today.

ORDERED August 25, 2020.



David Spohr
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

King County Code 20.22.040 directs the Examiner to make the County's final decision for this type of case. This decision shall be final and conclusive unless proceedings for review of the decision are timely and properly commenced in superior court. Appeals are governed by the Land Use Petition Act, Chapter 36.70C RCW.

MINUTES OF THE AUGUST 11, 2020, HEARING IN THE APPEAL OF PATRICK MILLER, DEPARTMENT OF LOCAL SERVICES FILE NO. ENFR190492

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Justin Miller, Patrick Miller, and Holly Sawin. A verbatim recording of the hearing is available in the Hearing Examiner's Office.

The following exhibits were offered and entered into the record by the Department:

Exhibit no. D1	Department of Local Services staff report to the Hearing Examiner
Exhibit no. D2	Notice and order, issued January 21, 2020
Exhibit no. D3	Appeal, received February 12, 2020
Exhibit no. D4	Codes cited in the notice and order
Exhibit no. D5	Aerial photographs of subject property, dated May 6, 2019
Exhibit no. D6	Photographs of subject property taken by Officer Sawin, dated April 9, 2020

Exhibit A1 was offered and entered into the record by Appellant.

DS/jo

August 25, 2020

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CERTIFICATE OF SERVICE

SUBJECT: Department of Local Services file no. **ENFR190492**

PATRICK MILLER
Code Enforcement Appeal

I, Jessica Oscoy, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **REPORT AND DECISION** to those listed on the attached page as follows:

- EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.
- placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED August 25, 2020.



Jessica Oscoy
Office Manager

Breazeal, Jeri

Department of Local Services

Grimm, Hal

Hardcopy

Lux, Sheryl

Department of Local Services

Miller, Justin

Miller, Patrick

Hardcopy

Sawin, Holly

Department of Local Services

Williams, Toyia

Department of Local Services