July 9, 2008

OFFICE OF THE HEARING EXAMINER
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STIPULATED ORDER AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0001062**

PAMELA ARNOLD & JEFF CLARK
Code Enforcement Appeal

Location: 38036 – 46th Avenue South

Appellant: **Pamela Arnold & Jeff Clark**
P.O. Box 98342
Des Moines, Washington 98198
Telephone: (253) 838-5941

King County: Department of Development and Environmental Services (DDES)
represented by **DenoBi Olegba**
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
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SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Deny appeal with revised compliance schedule
Department's Final Recommendation:	Deny appeal with further revised compliance schedule
Examiner's Decision:	Deny appeal with further revised compliance schedule

EXAMINER PROCEEDINGS:

Hearing opened:	December 13, 2007
Hearing closed:	December 13, 2007

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.

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

FINDINGS OF FACT:

1. On September 19, 2007, the King County Department of Development and Environmental Services (DDES) issued a Notice and Order to Appellant Pamela Arnold that found a code violation on an R-4 zoned property located at 38036 – 46th Avenue South in the unincorporated Jovita area. The Notice and Order cited Ms. Arnold and the property with the following violation of county code:

   A. Construction of a second story addition to a residence without required permits, inspections and approvals.

   The Notice and Order required compliance by obtainment of the required permits, inspections and approvals with a complete application to be submitted by November 26, 2007 or, alternatively, demolition of the non-permitted construction and debris removal by November 8, 2007, with obtainment of a demolition permit. If the building permit option was selected, and the permit application denied, then demolition and removal was required to be accomplished within 45 days of permit denial.

2. Ms. Arnold and fellow property owner Jeff Clark filed a timely appeal of the Notice and Order, making the following claims:

   A. The Appellants are innocent purchasers, having purchased the property in September of 1999 in its present condition. They further assert that no addition has been constructed by either of the Appellants.

   B. The Appellants request waiver of penalties and fees, the granting of a Certificate of Occupancy, and assistance from the county to bring the property into compliance.

3. DDES asserts that work on the addition had continued after the Appellant's purchase of the property, relying on permit data system notation entries from October 2002. Evidence of the entries is not provided, however, so their accuracy, particularly regarding the date of the work noted, rather than of the entries, cannot be ascertained. Contrary to a statement in the department written report, the Appellants' assertion of lack of culpability for the addition construction is therefore not persuasively refuted by the record. The record simply lacks any evidence of work conducted since the Appellants' purchase. Accordingly, the Appellants are found to be innocent purchasers in this case, and pursuant to KCC 23.02.130.B and 23.36.030.B are not liable to penalties. However, they as the property owners are still responsible for bringing the addition into compliance, and if they do not, the County may assign to them the reasonable costs of any abatement the County initiates and/or performs on its own.

4. At hearing, DDES stated that the parties had reached agreement for obtainment of the necessary permits, noting that the Appellants had applied for permit approval and were "steps away" from obtaining a permit. (However, the Appellants noted that pending necessary Health Department approval may cause a delay in building permit issuance.) The parties agreed on a June 1, 2008 compliance date, with DDES given authority to extend the date of compliance if, despite diligent efforts on the part of the Appellants, problems beyond their control may be encountered which warrant an extension.

CONCLUSIONS:

1. The Appellants have agreed to a stipulated order requiring compliance.

2. The agreed-upon June 1, 2008 date of compliance has lapsed in the interim, and permit review and approval are concluded to still be under way given the absence of a compliance certificate having been issued. Accordingly, the Examiner shall impose a new compliance date requiring permit obtainment by August 29, 2008, with DDES granted authority to extend such date under the circumstances noted above.

DECISION:

Under the stipulated agreement, the appeal is DENIED and the Notice and Order is sustained, except that the compliance schedule is revised as stated in the following Order.

ORDER:

1. The necessary building permits for the subject violating construction shall be obtained *by no later than* **August 29, 2008**. If circumstances beyond the Appellants' control warrant, and Appellants are making diligent effort to achieve compliance, DDES is authorized to grant an extension of such deadline in its sole discretion.

2. No penalties shall be assessed by DDES against Ms. Arnold or the property pursuant to KCC 23.02.130.B. However, if the above compliance requirements and deadlines are not complied within in full, reasonable costs associated with abatement are assignable to the property owners as set forth in KCC 23.02.130.B and 23.36.030.B.

ORDERED July 9, 2008.

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Peter T. Donahue
King County Hearing Examiner

NOTICE OF RIGHT TO APPEAL

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 DECEMBER 13, 2007, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0001062.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were DenoBi Olegba representing the Department and Jeff Clark the Appellant.

The following Exhibits were offered and entered into the record:

Exhibit No. 1	DDES staff report to the Hearing Examiner for E0001062
Exhibit No. 2	Copy of the Notice & Order issued September 19, 2007
Exhibit No. 3	Copy of the Notice and Statement of Appeal received October 8, 2007
Exhibit No. 4	Copies of codes cited in the Notice & Order
Exhibit No. 5	Photographs of the subject property

PTD:gao
E0001062 RPT