June 30, 2008

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0201095**

CAROL T. WILCOX
Code Enforcement Appeal

Location: 26116 Pillsbury Road Southwest

Appellant: **Carol T. Wilcox**
26116 Pillsbury Road Southwest
Vashon, Washington 98070
Telephone: (425) 463-4773

King County: Department of Development and Environmental Services (DDES)
represented by **Sheryl Lux**
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:	November 27, 2007
Hearing closed:	November 27, 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 August 31, 2007, the King County Department of Development and Environmental Services (DDES) issued a Notice and Order to Appellant Carol Wilcox that found two code violations on a Rural Area-2.5 (RA-2.5) zoned property located at 26116 Pillsbury Road Southwest on unincorporated Vashon Island. The Notice and Order cited Ms. Wilcox and the property with the following violations of county code:

   A. Construction of a residence and a residential addition without required permits, inspections and approvals, with construction also located within environmentally critical areas (landslide, erosion, and critical aquifer recharge areas) and/or critical area buffers.

   B. Construction of an accessory structure without required permits, inspections and approvals, also within a building setback area, and also within environmentally critical areas and/or their buffers.

   The Notice and Order required application for and obtainment of the required permits, inspections and approvals, with complete application to be submitted by January 3, 2008. Alternatively, the non-permitted construction could be demolished with demolition debris removed from the premises, also by January 3, 2008. If the permit option was selected and permits ultimately denied, then demolition and removal was required by the Notice and Order to be performed within 60 days from the date of permit denial.

2. Appellant Wilcox filed a timely appeal of the Notice and Order. The appeal was timely. The sole claim raised in the appeal is that the structures in question already existed upon her purchase of the property on May 6, 2003 and since then had been maintained as is. (But see Finding 4 below regarding stipulation of work after purchase.) The Appellant assumed that the property's development was conducted under permits and that nothing to the contrary was disclosed in the real estate sale.

3. Between 1976 and 1981, a currently existing residence was constructed on the property in fits and starts, replacing a 1930s-era residence and shed which were demolished during the 1960s. Continuing construction and/or additions to the new residence were performed between 1986 and 1990, and sometime after 1990 but prior to the Appellant's purchase of the property in 2003, the residence's deck was expanded and a "studio" accessory structure was constructed.

4. DDES testified that it cannot prove that the accessory structure was built initially by the Appellant. The Appellant stipulated at hearing that some structural expansion and renovation of the accessory structure was performed during her ownership. The expansion increased the floor area from between 80-132 square feet to 180 square feet. The Appellant had thought that the accessory structure expansion/renovation was exempt from permit requirements due to its limited floor area, but the exemption only applies to non-habitable space, such as a storage structure or shed. The exemption does not apply to living quarters or other habitable space. The accessory structure is heated and is used as a studio and at times as a sleeping room, and thus has comprised habitable space.

5. Building permits were required and are currently required for all of the construction work started after the 1960s, *i.e.*, the new residence, its additions and deck expansion, and the accessory structure: all of the structural work addressed by the Notice and Order.

6. Aside from the fact that the appeal only made the claim of innocent purchase of the subject structures, the evidence in the record demonstrates that none of the structural work encompassed by the Notice and Order was conducted with the benefit of required building permits.

7. The accessory structure was apparently originally placed within the structural setback from a property line, but has since been moved by the Appellant. The Appellant's sworn testimony is that the structure was moved three feet and then another two feet for additional margin. The testimony is unrefuted in the record, and there is no persuasive evidence demonstrating that the relocated accessory structure now violates zoning code setback requirements.

8. Ms. Wilcox is an innocent purchaser with respect to violation finding no. 1, the construction of the residence and a residential addition to that structure, as she purchased the property when all such work had already been performed under a prior owner. County code relieves an innocent purchaser from civil fines and penalties for code violations demonstrated to have been performed by someone other than the owner or owner's agent. However, the current owner is responsible for bringing the property into compliance. [KCC 23.02.130.B]

9. The Appellant is also an innocent purchaser with respect to the accessory structure found in violation by finding no. 2 of the Notice and Order, but only as to its original construction since the Appellant has conducted some remodeling and expansion of the accessory structure since purchase.

10. The charges of construction within critical areas and/or their buffers are not contested.

CONCLUSIONS:

1. The violation finding in the Notice and Order addressing the setback of the accessory structure has been rendered moot by the unrefuted compliance effort declared by the Appellant, and shall accordingly be dismissed.

2. As the subject structural work was required by county code to be the subject of building permits, and the required permits were not obtained, and the necessary inspections and approvals also not obtained pursuant to building permit review, the remainder of the charges of violation stated in the Notice and Order are correct and are sustained. The violations of construction within critical areas and/or required buffers will be addressed through the permit review process. (Construction is not necessarily prohibited or severely restricted, but may be permitted subject to certain mitigating conditions, etc.)

3. The Appellant has indicted a willingness to engage in the permit process to bring the property's structures into compliance. With respect to the accessory structure, the Appellant has indicated a preference, at the present time at least, to reduce the occupancy status of the accessory structure to non-habitable space. That may be an expedient option in obtaining permit approval or qualifying for a permit exemption. (The decisions as to permit approval and/or exemption are under DDES's administrative authority.)

4. The Appellant qualifies for the penalty-exemption provisions of KCC 23.02.130.B as an innocent purchaser for all of the structural work addressed by the Notice and Order except for the accessory structure expansion/remodeling conducted under her ownership. Even though exempt from penalties in such fashion, corrective work is still required pursuant to KCC 23.02.130.B, and if not performed the county may engage in abatement proceedings.

DECISION:

The setback violation finding of the Notice and Order is DISMISSED as having been met with compliance. With respect to the remaining violation matters, the appeal is DENIED and the Notice and Order sustained, except that the compliance requirements and schedules shall be revised as stated in the following Order.

ORDER:

1. If the Appellant chooses to seek a building permit for the main residence and/or the accessory structure (and/or a building permit exemption for the accessory structure), the Appellant shall submit a written statement to DDES to that effect *by no later than* **July 31, 2008**, and shall concurrently file with DDES any request for permit exemption and with the Health Department any application necessary for Health approval of the required building permit(s) for such structure(s). On an individual structure basis, once Health Department approval is granted, or is determined not to be necessary, a complete building permit application shall be submitted to DDES *no later than* **30 days after such approval/determination**. (If a building permit exemption is requested and denied, then a complete building permit application for the work subject to the exemption request shall be submitted to DDES *no later than* **30 days after such denial**.) Thereafter, all pertinent timeframes and stated deadlines for additional information, response comments, supplementary submittals, etc., shall be diligently observed by the Appellant through to permit issuance, final inspections and approvals. Alternatively, if the Appellant decides not to pursue a building permit and/or building permit exemption, and/or fails to submit the above-noted statement of intent to DDES by the above-required date, said structures which have been placed on the subject property without required permits shall be demolished and the demolition debris removed from the property *by no later* **September 30, 2008**. (A demolition permit may be required; the Appellant should consult with DDES as to any such requirements.) If any pertinent Health approval or building permit is denied, the pertinent structure shall be demolished and the demolition debris removed from the property *by no later than* **60 days** after such denial, or **September 30, 2008**, whichever is later. DDES is authorized to grant deadline extensions for such activities if warranted (in its sole judgement) by circumstances beyond the Appellant's diligent effort and control, seasonal concerns and/or potential critical area damage.

2. No penalties shall be assessed by DDES against Carol Wilcox and/or the property for any work subject to the Notice and Order except for the accessory structure expansion/renovation conducted during her ownership. If the above compliance requirements and deadlines are not complied with in full with respect to the accessory structure expansion/renovation, DDES may assess pertinent penalties (with respect to the accessory structure remodel/expansion) against Ms. Wilcox and/or the property retroactive to the date of this order as provided by County code. If the above compliance requirements and deadlines are not complied with in full with respect to any and all of the work subject to the Notice and Order, abatement proceedings may be commenced pursuant to KCC 23.02.130.B.

ORDERED June 30, 2008.

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 NOVEMBER 27, 2007, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0201095.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Sheryl Lux representing the Department; and Carol T. Wilcox and Scott Robinson representing the Appellant.

The following Exhibits were offered and entered into the record:

Exhibit No. 1	DDES staff report to the Hearing Examiner for E0201095
Exhibit No. 2	Copy of the Notice & Order issued August 31, 2007
Exhibit No. 3	Copy of the Notice and Statement of Appeal received September 18, 2007
Exhibit No. 4	Copies of codes cited in the Notice & Order
Exhibit No. 5	Assessment Records, from King County Department of Assessments, dated November 11, 2007
Exhibit No. 6	Historical/Archived King County Residential Property Record, dates ranging from 1938 through 1983
Exhibit No. 7	Aerial photograph of subject property, taken 2002
Exhibit No. 7a	Aerial photograph of subject property, geologic, taken 2002
Exhibit No. 8	Aerial photograph of subject property, taken 1976
Exhibit No. 8a	Exhibit No. 8 magnified 400%
Exhibit No. 9	Aerial photograph of subject property, taken 1977
Exhibit No. 9a	Exhibit No. 9 magnified 400%
Exhibit No. 10	Aerial photograph of subject property, taken 1995
Exhibit No. 10a	Exhibit No. 10 magnified 400%
Exhibit No. 11	Aerial photograph of subject property provided by LocalLive.com, taken 2005
Exhibit No. 12	Photos of structures on subject property, taken by Sheryl Lux in 2006

PTD:gao
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