January 4, 2008

OFFICE OF THE HEARING EXAMINER
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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0400426**

WILLIAM R. GRIFFIN
Code Enforcement Appeal

Location: Parcel #302309-9041

Appellant: **William R. Griffin**
P.O. Box 58
North Bend, Washington 98045
Telephone: (360) 793-0531

King County: Department of Development and Environmental Services (DDES)
represented by **Jeri Breazeal**
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 revised compliance schedule
Examiner's Decision:	Deny appeal with further revised compliance schedule

EXAMINER PROCEEDINGS:

Hearing opened:	October 30, 2007
Hearing closed:	October 30, 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 24, 2007, the King County Department of Environmental Services (DDES) issued a Code Enforcement Notice and Order to Appellant William R. Griffin and the subject property, which straddles the South Fork of the Snoqualmie River. The Notice and Order found four violations of County Code:

   A. Construction of a storage shed within an environmentally critical area and/or its required buffers and also in violation of basic zoning code use regulations.

   B. Placement of travel trailers similarly within an environmentally critical area and/or buffer and also in violation of basic zoning code use regulations.

   C. Accumulation of inoperable vehicles and vehicle parts on the exterior premises and parking/storage of vehicles on non-impervious surfaces, all also within environmentally critical areas and/or buffers.

   D. Accumulation of assorted rubbish, salvage and debris, similarly also within environmentally critical areas and/or buffers.

   The Notice and Order required correction of such violations by September 26, 2007 by removal of the storage shed, travel trailers, all vehicles and assorted rubbish, salvage and debris from the premises. DDES notes that there is no legal primary use under the zoning code and therefore accessory uses such as storage structures, storage of recreational travel trailers, and parking of vehicles cannot be conducted onsite. DDES also notes that recreational travel trailers are additionally not permitted to be stored temporarily in floodplain areas between September 30 and May 1.

2. The entirety of the subject property apparently lies within the Federal Emergency Management Agency (FEMA)-designated floodway of the South Fork Snoqualmie River, although the evidence submitted into the record of the floodway location (which shows the floodway also extending in all directions offsite) is merely an unofficial representational map of the floodway.[1]

3. Although there is no doubt that some of the property lies within the South Fork Snoqualmie River floodway, since the normal channel of the river runs directly through the property, it cannot be definitively found by the evidence submitted into the record that the entirety of the property lies within the official floodway.

4. All but the very northernmost tip of the subject property which is not an aquatic area buffer (which northern tip is not at issue in the subject code enforcement action; only areas in the southern portion on the south side of the river) is designated as an aquatic area buffer by the Critical Areas Ordinance (CAO). Normally, unless a Reasonable Use Exception (RUE) approval is granted, no development and no storage of items or materials are permitted in a critical area and/or its defined regulatory buffers.

[1] The map is stated on its face as making no representations or warranties as to accuracy. It is also noted that the map, the only evidence of floodway location submitted into the record, does not qualify as official flood hazard area mapping under the applicable county code provision, KCC 21A.24.230.B.

5. Except for the far northern tip of the property, all of the material cited by the Notice and Order which has been stored and/or accumulated on the subject property, particularly the storage shed; travel trailers; inoperable vehicles and vehicle parts; and rubbish, salvage and debris, are not permitted to be stored and/or accumulated on the subject property, from several standpoints: a) the subject area's designation as an environmentally critical area and/or regulatory buffer, and related development regulations and restrictions; b) violation of basic zoning regulations as accessory uses when there is no primary permitted or conditional use established on the property; and c) in the case of the rubbish, salvage and debris, violation of the cited aspects of King County Code and the International Property Maintenance Code regarding accumulation of such materials.

6. The violations cited by the Notice and Order are accordingly correct and sustained as found.

7. The Appellant filed an appeal of the Notice and Order, making three assertions: due to his physical/medical problems he is not sure what needs to be done to achieve compliance in response to the Notice and Order; clarification of the environmentally critical area and buffer was necessary; and an extension of time is necessary to achieve compliance.

8. The elements of violation are sufficiently identified and delineated through the Notice and Order, the exhibits offered at hearing (including photographs of the violating elements), and the testimony at hearing.

9. The encumbrance of the vast majority of the site by critical area and/or buffer regulatory designation is documented in the record.

10. The Appellant sustained serious physical injuries in an accident, which injuries have severely limited his personal physical capability of performing the labor necessary to achieve regulatory compliance in response to the Notice and Order. He also is currently of limited financial means, and has no relatives in the area who can offer him personal assistance in this regard. It was discussed during the hearing that it may be possible to enlist aid in the compliance work from area social service and/or faith-based social assistance organizations.

11. The Appellant asserted in testimony that all of the rubbish onsite had been removed from the property except for a relatively minor amount of wood scraps and material, located in a small area which the Appellant understands that DDES will accept as a limited area of salvage material storage (that matter is left to DDES's administrative discretion as the enforcement agency). In addition some vehicles have been removed, but a Volkswagen remains, as well as travel trailers and the storage shed. The Appellant notes that the storage shed is a movable structure (not an onsite stick-built construction). The Appellant also asserts that several of the inoperable vehicles were left onsite by neighbors, who are now uncooperative in assisting him to remove them and achieve compliance.

12. Lastly, the Appellant asserts that the subject code enforcement action undertaken by DDES constitutes selective, unfair and discriminatory enforcement in that there are residences and stored exterior materials "all up and down the South Fork on both banks, and there are semi-trailer vehicles all over King County."

13. DDES is concerned that rainy season flooding which may occur along the South Fork has the potential for being aggravated by loose debris and materials onsite, as well as the equipment and trailers. In addition, there are evidently some batteries onsite, which contain sulfuric acid and cause some concern for spillage during a flood event. DDES recommended that the Appellant be required to achieve compliance within a period of thirty days.

14. In summary, the preponderance of the evidence in the record demonstrates that the violations cited by the Notice and Order have in fact occurred, and that therefore the Notice and Order is correct in its finding of violations.

CONCLUSIONS:

1. The Appellant's argument that the subject code enforcement action is unfair and discriminatory in that it is improperly selective constitutes a claim of *equitable estoppel*, essentially that the County should be barred from enforcing what it is attempting to do so in this case because similar violations are present on other nearby and area properties and those are not being enforced equally. The Examiner is without jurisdiction to consider matters of equity in the law, such as the asserted *estoppel*. They must instead be taken to a court of general jurisdiction, the Superior Court. The Examiner is generally limited to applying "black letter" law as duly enacted by statute, ordinance and rule, and has no authority to adjudicate common law issues such as claims in equity. [*Chaussee v. Snohomish County*, 38 Wn.App. 630; 689 P.2d 1084 (1984)]

2. The Notice and Order is correct in its finding of violation of the cited aspects of county code and requirement of code compliance and shall be sustained with revisions to the compliance elements and schedule noted below.

3. If the Appellant desires to maintain the subject activities/storage onsite, proper land use and other regulatory permits will have to be obtained, and it seems that a legitimate primary use under the zoning code will have to be established first. Development and other land use activities within critical area and critical area buffers must be the subject of a critical area alteration exception and/or a reasonable use exception approval. None of those permits are easily or quickly obtained. Accordingly, the Examiner finds no compelling justification for permitting the subject material and equipment to remain onsite, particularly given the property's location in the floodway and/or aquatic area buffers close to the river and its adjacent corridor which are subject to flooding.

4. On the other hand, the Examiner is concerned that an unrealistically short timeframe will not be productive in this case, given the Appellant's clear physical and financial limitations inhibiting compliance efforts. This presents a dilemma in seeking the optimum approach for gaining compliance and serving the public necessity. Accordingly, the Examiner shall require a staged compliance schedule, requiring the removal of the most hazardous and easily disturbed materials first, and then the larger items. A somewhat extended time period shall also be imposed, which is only felt to be realistic given the problems with achieving compliance that the Appellant has, but it is also strongly urged that the Appellant be conscientious in seeking assistance from any and all possible sources to achieve compliance in a diligent and conclusively effective manner. The compliance schedule below seeks to support and achieve that.

DECISION:

The appeal is DENIED and the Notice and Order sustained, except that the compliance schedule shall be as stated in the following order.

ORDER:

1. Any and all batteries and other materials, containers, and/or equipment containing hazardous and/or corrosive materials shall be removed from the property *by no later than* **January 24, 2008**.

2. Any and all materials, equipment, etc., onsite which constitute rubbish, salvage and/or debris materials, whether refuse, useless material and/or usable material, which is individually of a size which can fit into the bed of a typical pickup truck shall be removed from the property *by no later than* **February 11, 2008.**

3. The storage shed, travel trailers and inoperable vehicles stored onsite, as well as any oversize rubbish, salvage and debris exempted from compliance requirement No. 2 above shall be removed from the property *by no later than* **February 25, 2008.**

4. The Appellant shall exercise all diligence in seeking physical and financial assistance from any and all possible sources (friends, acquaintances, social service agencies, governmental agencies, etc.) in support of his necessary efforts to achieve the above compliance requirements.

5. No penalty shall be assessed by DDES against Mr. Griffin and/or the property if the above deadlines are complied with. If any one of them is not, DDES may assess penalties against Mr. Griffin and/or the property retroactive to the date of this order, as provided by county code.

ORDERED January 4, 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 OCTOBER 30, 2007, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0400426.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Jeri Breazeal, representing the Department, and William R. Griffin, the Appellant.

The following Exhibits were offered and entered into the record:

Exhibit No. 1	DDES staff report to the Hearing Examiner for October 30, 2007
Exhibit No. 2	Copy of the Notice & Order issued August 24, 2007
Exhibit No. 3	Copy of the Notice and Statement of Appeal received September 10, 2007
Exhibit No. 4	Copies of codes cited in the Notice & Order
Exhibit No. 5	Color photographs of subject property
Exhibit No. 6	GIS overlay maps

PTD:vsm
E0400426 RPT
Attachment