July 11, 2008

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0401126**

ERIC C. AND SARA WICKS
Code Enforcement Appeal

Location: 10932 Southeast 284th Street

Appellants: **Eric C. and Sara Wicks**
10932 Southeast 284th Street
Auburn, Washington 98030
Telephone: (206) 619-5648

King County: Department of Development and Environmental Services
represented by **DenoBi Olegba**
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 205-1528
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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:	November 1, 2007
Hearing closed:	November 1, 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 July 31, 2007, the King County Department of Development and Environmental Services (DDES) issued a Notice and Order to Appellants Eric and Sara Wicks that found a code violation on an R-4 zoned property located at 10932 Southeast 284th Street in the unincorporated area south of Kent and east of Auburn. The Notice and Order cited the Wickses and the property with the following violation of County Code:

   A. Construction of an 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, commencing with submittal of a complete application or, alternatively, demolition of the non-permitted construction and debris removal, with obtainment of a demolition permit. Either alternative was required to be performed by September 4, 2007. If the building permit option was selected and the permit application denied, then demolition and removal was required to be accomplished within 30 days from the date of permit denial.

2. The Wickses filed a timely appeal of the Notice and Order, making the following claims:

   A. The Appellants are innocent purchasers, having purchased the property with the subject shed/carport addition already in place. The Appellants contend that the addition should therefore be granted "grandfather" status. In support of their contention, the Appellants state that the existence of the shed/carport was mentioned in a pre-purchase inspection report and that the purchase and sale agreement stated that nothing had been added to the building without permits or inspections.

   B. The Appellants request that a "permit" be granted for the structure, but without having to go through the formal Already Built Construction (ABC) permit process.

   C. The Appellants request a refund of pertinent property taxes, as the assessed value has been based on the presence of the shed/carport.

3. DDES stipulates to the innocent purchaser status of the Appellants, acknowledging that the addition in question was constructed prior to their purchase. DDES however notes that a building permit is still required for the construction, and an ABC permit is the required type of permit. DDES notes that code concerns regarding the compliance of the structure with the building code appear "minor and correctable under direction of the assigned building inspector once the permit is applied for."

4. DDES recommends a period of 60 days for the Appellants to obtain a building permit, and that if the Appellants choose the demolition option that the non-permitted structural portion be demolished and the debris removed within 90 days.

5. DDES notes that the Appellants may desire to seek a waiver of the normal double-fee charge for an ABC building permit (in which case they should emphasize that DDES has stipulated in this enforcement proceeding that the work was performed prior to their purchase).

6. The Appellants stipulate that they do not dispute that the work was done without required permits and state that enforcement is "unfair" as the seller's representations in the sales contract were incorrect.

CONCLUSIONS:

1. The Examiner has no authority to grant any equitable relief based on the assertion of misrepresentation in the sales contract.[1] The Appellants may have some legal recourse in that regard, but that is a matter that cannot be addressed in this proceeding. (And it should be clearly noted that the Examiner is not offering any legal advice.) A succeeding property owner is responsible for resolving code violations perpetrated by prior owners, by bringing the property into compliance. [KCC 23.02.130.B and 23.36.030.B]

2. The preponderance of the evidence in the record shows that the subject shed/carport structural addition was constructed without the required permits, inspections and approvals. The Appellants have stipulated to that fact. As the structural work was required by county code to be done under a building permit, and the required permit was not obtained, and the necessary inspections and approvals also not obtained pursuant to building permit review, the charge of violation stated in the Notice and Order is correct and is therefore sustained. A new compliance schedule shall be established in the following Order.

3. The Examiner has no authority over the Appellant's property tax refund claim. That matter would have to be addressed to the County Assessor.

DECISION:

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. If the Appellants choose to seek a building permit for the subject structural work (the shed/carport addition), a complete building permit application shall be submitted to DDES *by no later than* **August 15, 2008**. Thereafter all pertinent timeframes and stated deadlines for additional information, response comments, supplementary submittals, etc., if any, shall be diligently observed by the Appellants through to permit issuance and final inspection.

2. In the event that the requested building permit is denied, the pertinent structural work shall be demolished and the demolition debris removed from the property *by no later than* **60 days** after such denial, or **October 10, 2008**, whichever is later. (A demolition permit may be required; the Appellants should consult with DDES as to any such requirement.)

3. If the Appellants decide not to pursue a building permit, the non-permitted structural work shall be demolished and the demolition debris removed from the property *by no later than* **October 10, 2008**.

[1] The Examiner is generally limited to applying the law as duly enacted by statute and ordinance, and established by case law precedent, and has no authority to adjudicate common law issues such as claims in equity. Those would instead have to be brought in a court of general jurisdiction, the Superior Court. [*Chaussee v. Snohomish County*, 38 Wn. App. 630; 689 P.2d 1084 (1984)]

4. DDES is authorized to grant deadline extensions for any of the above requirements if warranted (in its sole judgment) by circumstances beyond the Appellants' diligent effort and control.

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

ORDERED July 11, 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 NOVEMBER 1, 2007, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0401126.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Jeri Breazeal, representing the Department, and Eric Wicks, the Appellants.

The following Exhibits were offered and entered into the record:

Exhibit No. 1	DDES staff report to the Hearing Examiner for November 1, 2007
Exhibit No. 2	Copy of the Notice & Order issued July 31, 2007
Exhibit No. 3	Copy of the Notice and Statement of Appeal received August 16, 2007
Exhibit No. 4	Copies of codes cited in the Notice & Order
Exhibit No. 5	Photographs of the subject property
Exhibit No. 6	Letter to Eric & Sara Wicks from Officer Olegba dated July 21, 2006; letter to Eric & Sara Wicks from Officer Olegba dated December 16, 2006; copy of the Notice of Violation

PTD:vsm
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