June 12, 2008

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E05G0023**

MICHAEL SADKOWSKI
Code Enforcement Appeal

Location: 18001 Renton-Maple Valley Road Southeast

Appellant: Michael Sadkowski
represented by **C. Travis Bass**
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and

represented by **Bill Williamson**
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King County: Department of Development and Environmental Services
represented by **Holly Sawin**
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SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny the appeal; require application for a grading permit within 30 days.
Department's Final Recommendation:	Deny the appeal; require application for a grading permit within 30 days.
Examiner's Decision:	Grant the appeal, without prejudice

ISSUES AND TOPICS ADDRESSED:

Grading without a permit, grading in a sensitive area

SUMMARY OF DECISION:

The property owner's appeal is granted based upon his good faith efforts to comply with DDES' requirements and requests.

EXAMINER PROCEEDINGS:

Hearing on Motion to Dismiss opened:	April 8, 2008
Hearing on Motion to Dismiss closed:	April 8, 2008
Hearing opened:	May 20, 2008
Hearing closed:	May 20, 2008

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:

1. On August 27, 2007, the King County Department of Development and Environmental Services (DDES) issued a notice of King County code violation, civil penalty order, abatement order, notice of lien, duty to notify ("Notice and Order") to Michael W. Sadkowski. The property subject to the Notice and Order is located at 18001 Renton-Maple Valley Road Southeast (Maple Valley) in unincorporated King County. Michael W. Sadkowski is the owner of the subject property.

   The Notice and Order alleged violation of the King County Code for clearing and grading within a critical area (wetland and stream) in violation of specified sections of the King County Code. The clearing and grading was undertaken without a permit.

2. A timely appeal of the Notice and Order was filed by Michael W. Sadkowski on September 12, 2007. The Statement of Appeal asserts that the Appellant had obtained prior approval from DDES for the activity in issue, and that when DDES subsequently advised the Appellant that his improvements to the property violated the King County Code, he endeavored to comply with all DDES requests and requirements to correct the alleged violation.

3. The sole alleged violation in issue in this proceeding is the construction of an ornamental pond within a sensitive area. The pond has a surface area of approximately 750 square feet, and is less than two feet in depth. It is fed and drained by a small creek that existed on the site when the pond was created by the Appellant in September 2004.

4. In August, 2004, Mr. Sadkowski went to DDES to inquire about the need for a permit to construct the pond in issue. He then spoke with several DDES employees in the appropriate permitting and sensitive areas divisions. Although those employees may not have intended to assure Mr. Sadkowski that a permit was not needed for a small pond on the area of the property where he proposed to place it, Mr. Sadkowski left DDES with the definite understanding that his

proposed pond, if involving less than 100 cubic yards of earth work, did not require a permit. The pond constructed by Mr. Sadkowski the following month appears to have involved less than 30 cubic yards of earth work.

5. In January, 2005, a State Department of Fish and Wildlife biologist, Larry Fisher, saw this pond while inspecting the area. He obtained Mr. Sadkowski's permission to look at it closely, and they then discussed its construction. Mr. Fisher believed the pond impacted a code protected stream and contacted DDES. Later that month, DDES Site Development Specialist Greg Sutton, Mr. Fisher and Mr. Sadkowski met on the property to discuss the pond and stream that it affected. The meeting was held in a spirit of cooperation, and Mr. Sadkowski was told he was required to apply for a permit. He was also told that he must put erosion and sediment control protections in place. The meeting was followed up by a letter on January 26, 2005, from Mr. Sutton to Mr. Sadkowski, emphasizing the need to schedule a pre-application meeting.

6. The January 26, 2005 DDES letter to Mr. Sadkowski stated , *inter alia*, that a grading permit was required for the alteration of a critical area on the subject property. The DDES position was then, and is now, that Appellant needed to refill the pond, restore the original stream flows on the property and restore the disturbed critical areas. Immediate erosion and sedimentation controls were also required, and were promptly implemented by Mr. Sadkowski. The January 26, 2005 letter concluded that a pre-application meeting shall be scheduled within 60 days of the date of the letter to avoid issuance of a Notice and Order.

   On March 9, 2005, Mr. Sadkowski applied for a pre-application meeting, as required by DDES. (A pre-application meeting is required by King County Code prior to the submission of grading permit application that involves a sensitive area.) Mr. Sadkowski paid DDES $392.44 as the initial fee for the pre-application meeting. He was told, at the time of submitting the application and paying the fee, that a date could not be scheduled at that time, but that DDES would contact Mr. Sadkowski with a meeting date and time. Mr. Sadkowski was told by DDES to do nothing further until he heard from the Department.

7. For the next 20 months, the Appellant heard nothing from DDES in response to his application for a pre-application meeting.

   In October, 2006, Mr. Sadkowski was contacted by DDES Code Enforcement Officer Holly Sawin. Another meeting was held on the subject property on November 2, 2006. Present were Raymond Locsin, DDES Site Development Specialist, Larry Fisher, Washington Department of Fish and Wildlife, Holly Sawin, the Appellant and the Appellant's Attorney, Jane Voget. At this meeting, the Appellant was requested to do additional immediate restoration work, which he did on November 4, 2006.

   The November 2, 2006 meeting was documented by a letter dated November 16, 2006 from Mr. Locsin to Mr. Sadkowski, similar to Mr. Sutton's January 26, 2005 letter. Mr. Locsin also stated that violations to critical areas and buffers have occurred on the property in violation of King County Codes 16.82 and 21A.24; that a clearing/grading permit needs to be applied for to correct the violations; and "a pre-application will be required prior to permit application submittal to streamline the permitting process." (Exhibit A12).

   The November 2, 2006 letter requested Mr. Sadkowski to schedule the pre-application within 45 days from the date of the letter to avoid Code Enforcement action. Mr. Sadkowski was also informed that a wetland delineation report, along with restoration and mitigation plans would be required. A list of DDES preferred consultants was supplied to Mr. Sadkowski with the

November 2, 2006 letter. In January 2007, due to a family health issue, Mr. Sadkowski's attorney requested an extension of time to schedule the required pre-application meeting. On February 16, 2007 Mr. Locsin replied, stating that the request for extension was granted, and "the required pre-application meeting will need to be scheduled within 60 days from the date of this letter." (Exhibit A15).

8. Meanwhile, January 31, 2007, Code Enforcement Officer Sawin also responded to Mr. Sadkowski's request for an extension. She suggested to Mr. Sadkowski's attorney that a wetland consultant be selected and scheduled as soon as possible, as "they often are booked out one to two months…" (Exhibit A14). Sewell Wetland Consulting, Inc. (a DDES approved wetland consultant) was employed by Mr. Sadkowski shortly thereafter, and a wetland specialist from Sewell conducted a field investigation in April, 2007. Sewell has been waiting since that time for King County to schedule a pre-application meeting, at which the consultant anticipated he would receive some direction from the County concerning the kind of restoration and mitigation the County would like to see on the site. That meeting has still not occurred.

9. At the hearing on this appeal, DDES took the position that the required pre-application meeting had already occurred, and was no longer necessary. The factual support offered for that position was a log note entered by Mr. Locsin in February, 2007 that the November 2, 2006 site meeting with Mr. Sadkowski had constituted a pre-application meeting. This note is directly contrary to Mr. Locsin's contemporary and subsequent correspondence requiring that Mr. Sadkowski schedule a prehearing application meeting.[1]

10. On May 18, 2007, Mr. Sadkowski submitted another request for a pre-application meeting (file no. A07PM185), with which he submitted another payment of $392.44. Mr. Sadkowski was then told again to wait to hear from DDES. In late August 2007, not having heard anything from DDES with respect to scheduling the pre-application meeting, Mr. Sadkowski again went to DDES and spoke to Holly Sawin, seeking to schedule the meeting. At that time Ms. Sawin handed Mr. Sadkowski a letter stating that a Notice and Order had been prepared for this proceeding. Ms. Sawin had not known that Mr. Sadkowski had already paid again for a pre-application meeting; she told him that he could appeal the Notice and Order.

11. KCC 23.01.020 provides the statement of goals for the King County Code Compliance Chapter. That Section states, in part, "While warnings and voluntary compliance are desirable as a first step, enforcement and civil penalties should be used for remedial purposes as needed to assure and effect code compliance…" The Appellant in this proceeding has demonstrated his good faith in trying to accomplish voluntary compliance with the King County Code. DDES' failure to

[1] Entries made in the DDES internal record system for application A05PM089 (Mr. Sadkowski's March 9, 2005 application for a pre-application meeting) include:

> "LOCSINR 02/16/2007: LOCSINR changed status to MTG-HELD on 2/16/2007 (added by script)…
>
> LOCSINR 02/16/2007: Pre-app meeting held onsite on 11/2/06 with property owner, his attorney Jane Voget, Larry Fisher from WDFM, myself and Holly Sawin. Discussed issues required for correction. Pre-application meeting required prior to submittal of permit…
>
> LOCSINR 09/20/2007: LOCSINR Changed status to COMPLETE on 9/20/2007 (added by script)…
>
> LOCSINR 09/20/2007: LOCSINR This pre-app file closed. New number opened up under A07PM185." (Exhibit 11).

schedule and hold a pre-application meeting in response to his applications has made it impossible for the Appellant to apply for the grading permit that is necessary to restore the property and achieve compliance with the code.

CONCLUSIONS:

1. The Appellant in this proceeding has endeavored from August 2004 (prior to installing the pond which constitutes the violation in issue) to avoid violating the King County Code, and has made substantial effort in good faith to correct the violation since it was determined by DDES that a violation had occurred. DDES has made numerous requests of the Appellant and suggestions to accomplish compliance with the King County Code. The Appellant has complied with all the DDES requests, and has acted in accordance with all DDES suggestions. The Appellant was precluded from accomplishing compliance with the King County Code, once the violation was determined, solely due to the failure by DDES to schedule and hold the pre-application meetings for which the Appellant applied and paid on March 2, 2005 and May 18, 2007. A pre-application meeting is a precondition to applying for the grading permit that was and is necessary to bring this property into compliance with the King County Code. [2]

2. The subsequent DDES log entry that purported to convert a November 2, 2006 site visit by DDES to a "pre-application meeting" had no basis in fact and has no legal effect.

3. A violation of the King County Code exists on the subject property, for which the Appellant is responsible. The Appellant has accepted the responsibility to correct the violation, and has endeavored to do all that King County required. The Appellant's attempts to correct the violation have been thwarted by King County DDES' failure to schedule pre-application meetings for a grading permit, as sought by the Appellant.

4. The Notice and Order issued on August 27, 2007 should be dismissed, without prejudice to King County's right to commence a new enforcement proceeding if the property owner fails to proceed in good faith to bring the property into compliance with the King County Code.

5. King County DDES should promptly schedule a pre-application meeting for the Appellant and his consultants and advisors to provide appropriate direction for the submission of a grading permit to address the King County Code violation on the subject property resulting from the construction of the pond that is the subject of the August 27, 2007 Notice and Order.

6. King County DDES should provide a credit to the Appellant for the duplicate pre-application meeting fees that he was required to pay for pre-application meetings that were never scheduled by DDES.

[2] KCC 20.20.030.A. "Prior to filing a permit application for a Type 1 Decision, the Applicant shall contact the Department to schedule a pre-application conference which shall be held prior to filing the application, if…the property is in a critical drainage basin, or the property has a wetland,…onsite." (underlining added).

DECISION:

The Notice and Order issued to Michael W. Sadkowski on August 27, 2007 is dismissed without prejudice.

ORDERED this 12th day of June, 2008.

_____

James N. O'Connor
King County Hearing Examiner *pro tem*

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 MAY 20, 2008, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES (DDES) FILE NO. E05G0023.

James N. O'Connor was the Hearing Examiner in this matter. Participating in the hearing were Holly Sawin and Steve Bottheim representing DDES; Travis Bass and Bill Williamson representing the Appellants; Michael Sadkowski; and

The following Exhibits were offered and entered into the record:

Exhibit No. 1	Copy of the Notice & Order issued August 27, 2007
Exhibit No. 2	Copy of the Notice and Statement of Appeal received September 12, 2007
Exhibit No. 3	Copies of codes cited in the Notice & Order
Exhibit No. 4	Complaint about construction of a pond on subject property, filed online by Larry Fisher on January 11, 2005
Exhibit No. 5	Violation letter from Greg Sutton, DDES to Michael Sadkowski, dated January 26, 2005
Exhibit No. 6	Letter regarding November 2, 2006 site visit from Ramon Locsin, DDES to Michael Sadkowski, dated November 16, 2006
Exhibit No. 7	Photographs of subject property taken on November 2, 2006 by Holly Sawin
Exhibit No. 8	Aerial photographs of subject property
Exhibit No. 9	Letter detailing estimates for DDES requirements for restoration on subject property, from Bill Kerschke to Michael Sadkowski, dated February 19, 2008
Exhibit No. 10	DDES staff report to the Hearing Examiner for E05G0023
Exhibit No. 11	Log Notes for Application A05PM089

Exhibit No. 12	Log Notes for Application A07PM185
Exhibit No. A1	Appellant's notes from contact with DDES in 2004
Exhibit No. A2	Diagrams and photographs of pond on subject property
Exhibit No. A3	Complaint about construction of a pond on subject property, filed online by Larry Fisher on January 11, 2005
**Exhibit No. A4	Letter of notification from Code Enforcement to Appellant, dated January 21, 2005
Exhibit No. A5	Letter from Greg Sutton to Appellant regarding violation, dated January 26, 2005
Exhibit No. A6	Log Notes for Application A05PM089
Exhibit No. A7	DDES Summary of Charges and Payments for A05PM089, dated May 8, 2007
Exhibit No. A8	DDES Summary of Charges and Payments for A05PM089, dated May 22, 2007
Exhibit No. A9	Receipts of Appellant's payments for March 2, 2005 and May 18, 2007
Exhibit No. A10	Email from Ramon Locsin to Larry Fisher, dated October 25, 2006
Exhibit No. A11	Letter from Appellant
Exhibit No. A12	Letter from Ramon Locsin to Appellant, dated November 16, 2006
Exhibit No. A13	Letter from Jane Voget to Ramon Locsin, dated January 23, 2007
Exhibit No. A14	Email correspondence between Holly Sawin and Jane Voget, dated January 23, 2007
Exhibit No. A15	Letter from Ramon Locsin to Jane Voget, dated February 16, 2007
Exhibit No. A16	Email from Holly Sawin to Jane Voget, dated April 2, 2007
Exhibit No. A17	Email from Holly Sawin to Jane Voget, dated may 8, 2007
Exhibit No. A18	Land Use Pre-Application Meeting Request Form, dated may 18, 2007
Exhibit No. A19	DDES Summary of Charges and Payments A05PM089, dated August 28, 2007
Exhibit No. A20	Fee Receipt, issued May 22, 2007
Exhibit No. A21	King County Parcel Report
Exhibit No. A22	Letter from Appellant to Holly Sawin, dated August 15, 2007
Exhibit No. A23	Copy of Notice and Order, issued August 27, 2007
Exhibit No. A24	Email from Holly Sawin to Ramon Locsin, dated August 29, 2007
Exhibit No. A25	Copy of Appeal received, dated September 12, 2007
Exhibit No. A26	DDES status report for E05G0023, printed October 9, 2007
Exhibit No. A27	DDES status report for E05G0023, printed May 22, 2007
Exhibit No. A28	Email correspondence between David Spohr and Steve Bottheim, dated October
Exhibit No. A29	Case Summary Report with exhibits to the Hearing Examiner prepared by Holly Sawin for the October 30, 2007 hearing
Exhibit No. A30	Email correspondence between David Spohr and Steve Bottheim, dated December 21, 2007
Exhibit No. A31	Letter from Appellant to Steve Bottheim with receipt for payment attached, dated December 30, 2007
Exhibit No. A32	Chicago title documents for subject property, dated February 11, 2008
Exhibit No. A33	Letter from Sewall Wetland Consulting to Appellant, dated February 19, 2008
Exhibit No. A34	Letter from Bill Kerschke to Appellant, dated February 19, 2008
Exhibit No. A35	Amended version of Ordinance 1488 reflecting both the 2004 and 2005 CAO
Exhibit No. A36	Statements of Kenneth W. Wilson, dated February 26, 2008 and March 3, 2008
Exhibit No. A37	DDES' Permit Activity Page, printed November 27, 2007