September 22, 2008

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON
400 Yesler Way, Room 404
Seattle, Washington 98104
Telephone (206) 296-4660
Facsimile (206) 296-1654
Email: hearex@metrokc.gov

REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0700238**

AMY J. CAREY & HAMISH G. TODD
Code Enforcement Appeal

Location: 18109 – 121st Avenue Southwest

Appellant: **Amy J. Carey & Hamish G. Todd**
18107 – 121st Avenue Southwest
Vashon, WA 98070

King County: Department of Development and Environmental Services (DDES)
represented by **Sheryl Lux**
900 Oakesdale Avenue Southwest
Renton, Washington 98055
Telephone: (206) 205-1525
Facsimile: (206) 296-6604

SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny the appeal; require pre-application meeting request and critical areas designation application within 30 days
Department's Final Recommendation:	Deny the appeal; require pre-application meeting request and critical areas designation application within 45 days
Examiner's Decision:	Grant the appeal in part; require applications on revised schedule

ISSUES AND TOPICS ADDRESSED:

- Placement of mobile home without permit
- Designation of erosion hazard
- Fence height and location
- Time limits to achieve code compliance

SUMMARY OF DECISION:

The property owners' appeal of DDES allegation that property is within an erosion hazard area is granted; allegations of the construction of a mobile home without required permits, and construction of a fence over six feet in height within a required setback, are sustained; and additional time is granted to apply for and obtain required permits. The owners' appeal of separate penalties for the two violations is denied.

EXAMINER PROCEEDINGS:

Hearing opened:	September 4, 2008
Hearing continued for administrative purposes:	September 4, 2008
Hearing closed:	September 10, 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 April 4, 2008, 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 to Hamish G. Todd and Amy J. Carey. The property subject to the Notice and Order is located at 18107 – 121th Avenue Southwest on Vashon Island in unincorporated King County. Hamish G. Todd and Amy J. Carey are the owners of the subject property. On April 22, 2008, a Supplemental Notice and Order ("Notice and Order") was issued to correct a procedural defect in the original Notice and Order. The Supplemental Notice and Order is substantially the same as the original.

   The Notice and Order alleged (1) violation of the King County Code for the placement of a mobile home without the required permits and within erosion and critical aquifer recharge areas; and (2) construction of a fence over six feet in height within the required street setback without required permits.

2. A timely appeal of the Notice and Order was filed on May 9, 2008 by Amy Carey, on behalf of the property owners. The Statement of Appeal asserts that the property is not within an erosion hazard area; that the fence is not within any required right-of-way setback; and that additional time is necessary to apply for and obtain the required permits for the placement of the mobile home. In addition, the Statement of Appeal asserts that the violations, which are stated separately and for which separate penalties are assessed, are both components of a single alleged violation.

3. Building permits are required for construction work on property within King County, subject to exceptions which are set forth by King County Code. An exception is provided by KCC 16.02.240 for fences not over six feet high. The fence constructed by the Appellants on their property exceeds six feet in height.

   KCC 21A.14.220 provides that fences exceeding a height of six feet shall comply with the applicable street and interior setbacks of the zone in which the property is located. The minimum street setback in the RA zone is 30 feet. KCC 21A.12.030.A. A street is defined by KCC 21A.06.1245 as a public or recorded private thoroughfare providing pedestrian and vehicular access through neighborhoods and communities to abutting property. KCC 21A.06.1245. The subject property is served by a recorded easement located on the appellants' property and the adjacent property to the east. The fence in issue abuts the easement road as constructed.

4. A fence that is six feet or less in height is allowed to be constructed within a required setback. The fence that is the subject of this proceeding could be reduced in height to six feet or less; or, alternatively, the fence could be kept at its existing height and be relocated to a position that is outside of the setback area, subject to the issuance of a building permit.

5. KCC 16.04.960 requires a permit from DDES for the installation of a mobile home on property within King County. Appellants state that they were not aware of this requirement, and admit that they placed the mobile home on the property without a permit.

6. The allegation that the subject property is within an erosion hazard area is based upon the code enforcement officer's property records review, from which she learned that adjacent property is designated as an erosion hazard area. The preponderance of the evidence is that there is no topographic or other feature on the subject property that constitutes an erosion hazard.

7. Construction of a fence in excess of six feet in height without a permit is a distinct and separate violation from the placement of a mobile home on the subject property without required permits. Although the two violations may have occurred as part of a single plan for the improvement of the property, neither the placement of the mobile home or construction of the fence is dependent upon the other.

8. The appellants have made some effort to achieve compliance by applying for required permits, but have not acted with reasonable diligence to accomplish the required permitting and correction of the construction of the fence. A reasonable time period to allow the appellants to submit an application for a critical areas designation is 45 days from the date of this decision; and a reasonable time to apply for the required permits from the King County Department of Public Health is 60 days from the receipt of the critical areas designation. 60 days following the receipt of permits from the Department of Health is a reasonable time to allow for the submission of an application for a pre-application meeting, and 60 days from the date of the pre-application meeting is a reasonable time to allow for the submission of all required DDES permits for the placement of the mobile home.

   A reasonable time period to allow the appellants to reduce the height of the fence to not more than six feet, or to apply for a building permit for the fence, is 60 days from the date of this decision.

CONCLUSIONS:

1. The Department of Development and Environmental Services has failed to demonstrate that the subject property is within an erosion hazard area. The allegation within the Supplemental Notice and Order that the subject property is within an erosion hazard area should be stricken. This decision is without prejudice to any future determination that may be properly made that an erosion hazard area exists on the property.

2. The fence that is the subject of the Notice and Order is required to be not more than six feet in height if it is to remain in its present location. If the fence is to remain in excess of six feet in height, a building permit is required for its construction, and the location of the fence must be outside of the 30-foot front yard setback required by the zone.

3. The appellants are required to obtain a DDES permit for the placement of the mobile home, which requires sewer and water permits from the King County Department of Public Health.

4. The two violations alleged in the Supplemental Notice and Order are separate and distinct from one another, and, if not corrected, are subject to the separate penalties assessed by the Notice and Order.

5. The appellants should be allowed a reasonable period of time to reduce the height of the fence, or to apply for a building permit to relocate the fence outside of the required setback. The appellants also should be allowed a reasonable period of time to complete the permitting process for the placement of the mobile home.

DECISION:

The appellants' appeal of the allegation that the subject property is within an erosion hazard area is granted.

The appellants' appeal of the Notice and Order alleging violation of the King County Code for constructing a fence in excess of six feet in height within the required front yard setback is denied.

The appellants' appeal of the assessment of separate penalties for the two alleged violations is denied.

Additional time to bring the subject property into compliance with the King County Code is granted as follows: the appellants shall apply for a critical areas designation within 45 days of the date of this decision; and shall apply to the King County Department of Public Health for approval of the sewer and water service to the mobile home on the subject property within 60 days of the receipt of the critical areas designation. The appellants shall apply to DDES for a pre-application meeting within 60 days of the receipt of the sewer and water permits from the King County Department of Public Health; and shall apply for all required DDES permits for the placement of the mobile home within 60 days following the date of the pre-application meeting.

The appellants shall reduce the height of the fence on the subject property to not more than six feet, or shall submit a building permit application within 60 days of the date of this decision for the construction and relocation of the fence to a position that is outside of the required front yard setback area.

Unless the foregoing deadlines are extended by DDES, the appellants' failure to meet any of the foregoing requirements, or to provide additional information within reasonable deadlines set by the King County Department of Health or DDES for the processing of the permit applications, shall subject the appellants to the penalties set forth in the Notice and Order, as applicable.

ORDERED this 22nd day of September, 2008.

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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 SEPTEMBER 4, 2008, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0700238

James N. O'Connor was the Hearing Examiner in this matter. Participating in the hearing were Sheryl Lux representing the Department and Amy Carey, the Appellant.

The following Exhibits were offered and entered into the record:

Exhibit No. 1	DDES staff report to the Hearing Examiner for E0700238
Exhibit No. 2	Copy of the Notice & Order issued April 4, 2008
Exhibit No. 3	Copy of the Supplemental Notice & Order issued April 22, 2008
Exhibit No. 4	Copy of the Notice and Statement of Appeal received May 9, 2008
Exhibit No. 5	Copies of codes cited in the Notice & Order
Exhibit No. 6a-c	Copies of 2002, 2005 and 2007 aerial photographs of subject property
Exhibit No. 7a-b	Copy of aerial photograph illustrating critical areas and Sensitive Area Notice on Title for adjoining parcel
Exhibit No. 8	Copies of records of the King County Department of Assessments pertaining to the subject property
Exhibit No. 9	Copy of a portion of King County Assessor's map showing 15 foot road easement
Exhibit No. 10	Copy of annotated 2007 aerial photograph illustrating features at issue on subject property
Exhibit No. 11	Copies of photographs of subject property taken by Sheryl Lux in 2007
Exhibit No. 12	Copy of King County Code 21A.06.1235-1265

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