April 14, 2008

OFFICE OF THE HEARING EXAMINER
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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0700540**

PETER & DARLENE ZILLER
Code Enforcement Appeal

Location: 17907 Southeast 224th Street

Appellant: **Peter & Darlene Ziller**
17907 Southeast 224th Street
Telephone: (253) 631-1189

King County: Department of Development and Environmental Services (DDES)
represented by **Holly Sawin**
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 296-6772

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:	January 31, 2008
Hearing closed:	January 31, 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 OF FACT:

1. On November 1, 2007, the King County Department of Development and Environmental Services (DDES) issued a Notice and Order to Appellant Peter Ziller that found four code violations on a Rural Area-5 (RA-5) property located at 17907 Southeast 224th Street, near Shadow Lake in the unincorporated area north of Covington. The Notice and Order cited Mr. Ziller and the property with the following violations of county code:

   A. Placement of a mobile home without the required permits, inspections and approvals.
   B. Accumulation of inoperable vehicles and vehicle parts on the external premises and parking/storage of vehicles on non-impervious (unimproved) surfaces.
   C. Accumulation of assorted rubbish, salvage and debris.
   D. Operation of a hydro-seeding business from a residential site in violation of home occupation regulations.

   Compliance by correction of the violations was required by the Notice and Order to be performed by January 28, 2008.

2. Appellants Peter and Darlene Ziller filed a timely appeal of the Notice and Order, making the following claims:

   A. The Appellants assumed they could replace a destroyed mobile home onsite with a new one, unaware that sanitation and potable water supply review would be required by the Department of Health, and a permit for the mobile home by DDES. Now aware of requirements for a new septic system and well, and permitting, they are facing financial difficulties in making the necessary improvements. The Appellants request additional time to be able to accomplish the improvements and permitting necessary for legally siting the mobile home on the property.

   B. The inoperable vehicles have been removed from the property, and the necessary impervious surface improvements will be installed.

   C. Cleaning up the rubbish, salvage and debris has been commenced.

   D. The Appellants have operated the hydro-seeding business on the property since 1990 and there is sufficient screening to bar view of it from neighbors. The Appellants protest enforcement on this issue because of the presence of numerous other small businesses on private properties in the surrounding area, and the Appellants would find it a financial hardship to have to accommodate the business equipment on another property. Lastly, the Appellants state that they are willing to provide additional screening if necessary.

3. DDES notes that the mobile home placement at issue is being undertaken on a temporary medical hardship permissibility, which requires annual renewal and removal of the mobile home within 90 days once daily care is no longer required. DDES notes that the infrastructure and permit requirements required for the placement of the mobile home seem rather investment-intensive for a temporary placement. That is a private matter for the Appellants to consider. DDES notes that there are already two residences on the subject 9.74 acre parcel and that a *permanent* third

residence is not permissible. DDES indicated that it could examine the feasibility of additional placement based on a short subdivision of the property, but that it is only a speculative notion at this point. DDES also notes that a previously-initiated mobile home permit needs to be reactivated, since it has lapsed due to inaction, but further states that a critical area designation (CAD) is required prior to application to the Health Department for further review of a drainfield design and water source, and all of those approvals are required before the mobile home permit can be reviewed for approval by DDES.

4. As of the date of hearing, two inoperable vehicles remained onsite that are required to be removed, a bus and a Nissan passenger vehicle. (A Ford is temporarily inoperative, and must be repaired or removed for compliance.) Also, two vehicle accessory units had been disassembled from their vehicles and constitute salvage: a dump truck bed and an inoperable hydro-seeder. Additionally, with respect to the hydro-seeding business operation onsite, two of the vehicles utilized in such business are inoperable "cannibal" trucks (inoperable vehicles utilized for parts), which constitute salvage and cannot be retained onsite in exterior storage as part of the home occupation business (nor as part of the residential occupancy).[1]

5. DDES also noted that as of its site inspection shortly before hearing, a significant amount of rubbish, salvage and debris remained to be removed from the property.

6. The Appellants acknowledged that inoperable vehicles needed to be removed, as well as rubbish, debris and salvage (including the aforementioned salvage-status vehicles and vehicle accessories, the cannibals, the truck bed and the hydro-seeder). The Appellants agreed to an interim site inspection(s) by DDES to assist in maintaining progress on compliance.

7. DDES also noted that at the time of its site inspection, inoperable vehicles were being brought onto the property.

8. The preponderance of the evidence in the record demonstrates that the violations found by the Notice and Order occurred as charged.

CONCLUSIONS:

1. The Appellants' argument that the subject code enforcement action is unfair and selective constitutes a claim of *equitable estoppel*, essentially that the County should be barred from code enforcement in this case because similar violations in the area 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 law 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 charges of violation in the Notice and Order are shown by a preponderance of the evidence to be correct and are therefore sustained. The appeal shall accordingly be denied, except that the compliance schedule needs to be revised to account for the time taken up by the appeal and to add additional specificity regarding the tasks necessary for compliance with respect to the mobile home issue.

[1] The other vehicles utilized in the hydro-seeding operation, one operational truck; one general trailer, which can be utilized as a platform for a hydro-seeder and a straw blower; and two utility trailers, can apparently be stored in exterior storage onsite as long as the storage area conforms to home occupation footprint maximums and screening requirements.

3. Additionally, the Examiner is concerned about DDES's report that additional inoperable vehicles have been brought *onto* the property since the time the Notice and Order was issued. If that is indeed the case, it demonstrates a willful disregard of the applicable law prohibiting exterior storage of inoperable vehicles, an issue specifically cited in the Notice and Order issued to Mr. Ziller. Any such actions in the future which are properly documented by DDES should therefore be a cause for immediate imposition of penalties with respect to the inoperable vehicle violation until full compliance is achieved.

DECISION:

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

ORDER:

1. *By no later than* **May 15, 2008**, the Appellants shall submit a written statement to DDES that they intend to pursue placement of the subject mobile home on the property and shall concurrently file with DDES the necessary application for a critical area designation (CAD), a prerequisite to reapplication to the Health Department for drainfield design approval. Alternatively, if the Appellants decide not to pursue placement of the mobile home on the property, and/or fail to submit the above-noted statement of intent to DDES by **May 15, 2008**, and/or fail to submit the above-noted application for a CAD to DDES by **May 15, 2008**, said mobile home which has already been placed on the subject property without required permits shall be removed from the subject property *by no later than* **July 18, 2008**.

2. If the Appellants file the statement of intent and CAD application by the above-noted deadline of **May 15, 2008**, then a complete drainfield design and necessary supplementary application materials shall be submitted to the Health Department for drainfield/septic system approval *by no later than* **60 days after the anticipated CAD is issued by DDES**. In addition, a complete application for feasible supply of potable water meeting Health Department regulations shall be submitted concurrently with submittal of the drainfield design and application materials noted previously. Thereafter, all pertinent timeframes and stated deadlines for additional information, response comments, supplementary submittals, etc., shall be diligently observed by the Appellants through to permit issuance and final inspections and approvals. If said approvals are not granted and/or the mobile home permit is denied or cancelled for inactivity, the mobile home shall then be removed from the subject property **within 60 days** of the written issuance of such denial or cancellation.

3. All remaining inoperable vehicles and vehicle parts in exterior storage on the property shall be removed from the property and/or placed in interior storage *by no later than* **June 16, 2008**.

4. Impervious parking surfaces shall be provided for all vehicles parked on the property *by no later than* **June 16, 2008**.

5. All remaining junk, debris and salvage materials in exterior storage on the subject property shall be removed *by no later than* **June 16, 2008**, including the dump truck bed, inoperable hydro-seeder and the two "cannibal" business trucks.

6. The hydro-seeding commercial business conducted onsite as a home occupation shall be brought into compliance with applicable home occupation regulations *by no later than* **June 16, 2008**, including but not limited to observing regulations regarding the number of business-related vehicles stored on the subject property; the land area of the "footprint" of outdoor storage, and the placement and setback of such footprint; and site-obscuring screening.

7. DDES shall conduct an interim site inspection (agreed to by the Appellants) on or around **May 15, 2008**, and shall thereafter send an inspection report to the Appellants with its inspection findings and a statement of further actions necessary for full compliance with the Notice and Order.

8. No penalties shall be assessed by DDES against Mr. Ziller and/or the property if the above compliance requirements and deadlines are complied with in full. If they are not, DDES may assess penalties against Mr. Ziller and/or the property retroactive to the date of this order as provided by county code. **In addition, if DDES possesses solid evidence that one or more inoperable vehicles have been brought onto the subject property after the date of this order, DDES may then assess penalties against Mr. Ziller and/or the property commencing the date one day after such evidence documents such importation, to the extent applicable to the pertinent category of violation, and continuing until the offending inoperable vehicle(s) is removed from the property.**

ORDERED April 14, 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 JANUARY 31, 2008, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0700540.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Holly Sawin, representing the Department; Eileen McClusky, representing the Appellant, and Darlene Ziller and Peter McClusky.

The following Exhibits were offered and entered into the record:

Exhibit No. 1	DDES staff report to the Hearing Examiner for January 31, 2008
Exhibit No. 2	Copy of the Supplemental Notice & Order issued November 21, 2007 and copy of the original Notice & Order issued November 16, 2007
Exhibit No. 3	Copy of the Notice and Statement of Appeal received December 11, 2007

Exhibit No. 4	Copies of codes cited in the Notice & Order
Exhibit No. 5A	Photographs of the subject property
Exhibit No. 5B	King County GIS 2005 aerial of the subject property
Exhibit No. 6	Seattle and King County letter dated January 2, 2007 disapproving building permit B06L1429
Exhibit No. 7	Notice of fire sprinkler requirement after the first year, permit B06L1429
Exhibit No. 8	Permit and Code Enforcement record for the subject property from the King County web site

PTD:gao
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