August 8, 2008

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0800074**

RICHARD & TANA SANDERS
Code Enforcement Appeal

Location: 22012 SE – 207th Street

Appellant: Richard & Tana Sanders
represented by **Gerald F. Robison**, attorney
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King County: Department of Development and Environmental Services (DDES)
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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 further revised compliance schedule
Examiner's Decision:	Deny appeal with further revised compliance schedule

EXAMINER PROCEEDINGS:

Hearing opened:	May 22, 2008
Hearing closed:	May 22, 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 February 28, 2008, the King County Department of Development and Environmental Services (DDES) issued a Notice and Order to Richard and Tana Sanders that found code violations on an RA-5 zoned property located at 22012 Southeast 207th Street, near the Cedar River in the unincorporated area north of Maple Valley. The Notice and Order cited the Sanders and the property with the following violations of county code:

   A. Operation of a self-service storage business (vehicles, travel trailers, boats) and storage of commercial equipment, both uses not permitted in the RA-5 zone.

   B. Accumulation of inoperable vehicles and vehicle parts and parking/storage of vehicles on non-impervious (i.e. gravel, pavement) surfaces.

   C. Accumulation of rubbish, salvage and debris.

   D. Placement of fill within the floodplain without required permits.

   The Notice and Order required compliance by May 2, 2008 by cessation of the operation of the self-service storage yard and removal of commercial equipment to an appropriately zoned property; removal of inoperable vehicles from the property in a lawful manner, leaving only operable vehicles belonging to the residents parked on an improved surface; removal of junk, debris and salvage and disposal in a lawful manner; and application for a grading permit (with a pre-application meeting held thirty days prior).

2. Richard Sanders filed a timely appeal of the Notice and Order. The appeal disputes all of the Notice and Order's findings of violation:

   A. No self-service storage business is being operated on the property; parking and storage of motor vehicles is a lawful residential accessory use, and not limited to parking by residents of a property; and there is no parking or storage being undertaken for financial gain.

   B. There is no accumulation of inoperable vehicles or vehicle parts as defined in the code.

   C. All vehicle parking is placed on an impervious surface, or would be by the May 2, 2008 deadline established in the Notice and Order, with the Appellant noting that existing gravel drives and parking areas on the property provide sufficient impervious surface for parking vehicles on the property.

   D. There is no accumulation of rubbish, salvage and debris on the property.

   E. The Appellant had engaged in filling holes in the ground left by stump pulling, but was not aware that a permit was required. The Appellant stipulated that he was willing to obtain any permit necessary for such work.

F. The Appellant also claims unequal enforcement, asserting that similar land use activities are being conducted on an adjacent property without any obvious violation enforcement by DDES.

3. The Appellant additionally requests that Tana Sanders be dismissed as a liable party to this matter (as the second Noticee of the Notice and Order).

4. The record demonstrates that Richard and Tana Sanders were divorced in May of 2007, which predates the subject code enforcement action and issuance of the Notice and Order. There is no evidence presented that Tana Sanders was an actor or perpetrator in the subject violations.

5. At hearing, DDES stipulated that no rubbish, debris or salvage was on the property in violation of county code. Such charge of the Notice and Order shall accordingly be dismissed.

6. The Appellant testified that he allows non-resident friends and relatives to store vehicles and boats on his property. A number of passenger vehicles, RVs, boat trailers, etc. are stored on the property that are not owned by property residents and/or the property owner, but by non-resident persons. The Appellant testified that he does not charge fee payments for such storage, but testified that he does receive bartered compensation of value for storage of some of the vehicles, such as the use of a boat trailer and the granting of hunting rights on other property.

7. The preponderance of the evidence demonstrates that the property is partly in use as a storage facility for vehicles, boats and trailers owned by non-residents. That use constitutes a "self-service storage facility" as the term is defined in county code. [KCC 21A.06.1050] Even though the definition of "self-service storage facility" addresses storage space as "leased or rented," the Appellant is receiving compensation for the storage of at least some of the stored vehicles, etc., by barter or trade for valuable considerations.

8. In those cases where no compensation is made, the use is still a stand-alone land use which is not a residential accessory (except as may be conducted as a home occupation; see next finding). Vehicles which are not owned or otherwise under active usage control (such as through a legitimate loan, lease, rental, etc.) by an actual resident and/or owner of a property present no direct *nexus* (connection) to a residential use of a property to qualify as residential-accessory, and therefore are being stored under some other auspices.[1] Those auspices must be expressly permitted in some fashion by the zoning code in order to be conducted lawfully, and in the RA-5 zone, they are in general not permitted (but, again, see next finding regarding allowance as home occupation). So, in the final analysis, even though some of the vehicles being stored onsite may not be components of a defined "self-service storage facility" because their storage is not the subject of actual compensation to Mr. Sanders,[2] their storage is still not permitted by the zoning code (again, except perhaps as a home occupation).

[1] The Appellant's argument that the code does not limit parking to residents of the property is unpersuasive; it is not supported by the law.

[2] The Examiner does not concur with the portion of the pertinent DDES formal interpretation in 2004 that holds that a self-service storage use conducted without compensation constitutes a defined "self-service storage facility" as classified by the zoning code. The zoning code definition expressly cites compensation as an aspect of such classified use. [KCC 21A.06.1050] See exh. no. 9.

9. However, the Appellant's vehicle storage operation (storage of non-resident vehicles, etc.) could be permitted by the zoning code to be conducted as a home occupation. [KCC 21A.030 and 21A.30.085] As a home occupation in the RA zones such as the RA-5 zone in the instant case, such storage is limited on any lot of five acres or less (such as the 2.4 acre subject property) to two vehicles. [KCC 21A.30.085.J] In addition, the parking area used for such vehicle storage is subject to locational and screening requirements. [KCC 21A.30.085.C]

10. The Notice and Order's finding of the operation of a vehicle storage operation onsite as a "self-service storage facility" is sustained.

11. One of the residents of the property has been storing a construction steamroller onsite. The resident is an employee of a construction company which utilizes the steamroller in construction projects. Such use constitutes a "construction and trade" land use, which is not permitted in the RA zones except for landscape and horticulture services that are accessory to an onsite retail nursery, garden center and farm supply store, and in those instances, "Construction equipment for the accessory use shall not be stored on the premises." [KCC 21A.08.060.A and B.34] Alternatively, the use could conceivably constitute a "commercial/industrial accessory use," but that is only permitted in the RA zones as "storage limited to accessory storage of commodities sold at retail on the premises or materials used in the fabrication of commodities sold on the premises." [KCC 21A.08.060.A and B.22]

12. The steamroller could be stored onsite as part of a home occupation, if the equipment was used in direct association with a lawful home occupation business which was conducted on the premises. In this case, however, the contractor business with which the steamroller is associated is not conducted on the subject property and therefore cannot constitute a lawful home occupation on the premises under which the steamroller could be stored.

13. The record is hazy as to whether other construction equipment asserted as present onsite, such as an undocumented but cited backhoe,[3] is being stored on the property or is/was in active use in a grading project on the property (see later findings). A cited trackloader (and its various accessory parts such as additional buckets; see exh. no. 7b) was testified to by the Appellant as having been utilized in onsite grading and as having since been removed.

14. The cited semi-trailer is asserted by the Appellant in sworn testimony to be used as a residential accessory "garage" and is not simply in storage on the property. Such testimony is undisputed in the record. Accordingly, the semi-trailer does not constitute either a component of a self-service storage facility or storage of commercial equipment. Whether or not it is lawfully able to be conducted as a residential accessory "garage" is an issue not open to adjudication in this matter, since that is not the basis of the violation finding in the Notice and Order.

15. There is but a single assertion of an inoperable vehicle being accommodated on the property, and the evidence in the record is at best sketchy regarding its inoperable status. There is no substantial persuasion of the presence of an inoperable vehicle. The Notice and Order cannot be sustained in such regard. (This finding should not be construed as concluding that there are no inoperable vehicles on the property, just that presence has not been proven in the record.)

[3] Cited in the department report.

16. DDES requested that the Examiner authorize it to inspect vehicles onsite to determine operability and ownership. The Examiner declines to engage in direct enforcement operations, as that is generally not under the Examiner's jurisdiction. The Examiner acts as an appellate decisionmaker to consider appeals of DDES's code enforcement actions. DDES possesses operational authorities to engage in investigations, inspections and enforcement actions, and must resort to those to gather evidence. Requesting inspection authorization in an appeal proceeding to gather evidence places the cart before the horse, as it were.

17. There has been no evidence presented of vehicle parts being stored on the property. With respect to parking/storage of vehicles on non-impervious surfaces, the Appellant asserted in his appeal that that would be accomplished by the deadline set forth in Notice and Order, May 2, 2008. The Appellant also made a persuasive case that sufficient impervious surfaces are in existence on the property to accommodate any parking and storage of vehicles which may be conducted. That case by the Appellant has not been refuted.

18. The preponderance of the evidence does not support violation finding no. 2 of the Notice and Order.

19. The entirety of the property lies within the defined and regulated FEMA 100 year floodplain, with a very small portion in the northwest edge also within the FEMA floodway.[4]

20. The Appellant has stipulated that there has been backfilling of stump holes, utilizing an importation of 60 cubic yards of fill, and that there had been some regrading ("knocking off the high spots," *i.e.*, leveling). It is evident from the record that a significant amount of material has been worked on the property that constitutes grading. (See exh. no. 7b; also testimony)

21. The preponderance of the evidence in the record supports the Notice and Order's violation finding that grading has been conducted over an extensive area, and that the grading has been performed without the necessary permit. There are no volume or area coverage permit exemptions for grading within the regulated floodplain/floodway.

CONCLUSIONS:

1. As there is no evidence that Tana Sanders was an actor or perpetrator in the subject violations, she shall be dismissed as a Noticee and responsible party.

2. The operation of a "self-service storage facility" onsite is a violation of the zoning code and the Notice and Order's finding to that effect is sustained. (As noted above, such operation may be able to be revised to qualify as a lawful home occupation, however.)

3. The steamroller is being stored onsite in violation of the zoning code.

4. In summary, the Notice and Order finding of violation no. 1 by the operation of a self-service storage facility and storage of commercial equipment is proven by the preponderance of the evidence and shall be sustained.

[4] The pertinent waterway is not stated in the record, but a review of the property address shows that it is the Cedar River.

5. Found violation no. 2 charging accumulation of inoperable vehicles and vehicle parts and parking/storage of vehicles on non-impervious surfaces is not supported by the preponderance of the evidence in the record. The appeal is sustained in such regard the violation shall be dismissed.

6. Found violation no. 3 of the Notice and Order regarding accumulation of rubbish, salvage and debris has been stipulated by DDES to have been essentially withdrawn and it too shall be dismissed.

7. Grading has been conducted on the property in violation of county code. Found violation no. 4 of the Notice and Order is sustained.

8. The Examiner has no authority to grant equitable relief based on the assertion of unequal enforcement. 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. They 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)]

9. In summary, the appeal shall be denied with respect to violations no. 1 and 4, except that the compliance schedule shall be revised to account for the time taken for consideration of the appeal.

DECISION:

The appeal of the Notice and Order is SUSTAINED with respect to violation findings 2 and 3, and those charges are DISMISSED. The appeal is DENIED and the Notice and Order sustained with respect to found violations 1 and 4, except that the compliance schedule is revised as stated in the following Order.

ORDER:

1. Any and all vehicles, boats, trailers and other stored equipment onsite not owned by or otherwise under the active usage control (via loan or lease, etc.) of a resident of the subject property shall be removed from the property *by no later than* **October 8, 2008**. The only exceptions to such removal shall be storage of two (2) vehicles under the auspices of a lawful home occupation established pursuant to KCC 21A.30.085.C and J (and subject to any other applicable regulations).

2. A grading permit pre-application meeting with DDES shall be scheduled to be held *no later than* **September 19, 2008**. A complete grading permit application for the subject grading work on the subject property shall be submitted to DDES **within 30 days** after the pre-application meeting.

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

4. Tana Sanders is dismissed as a responsible party from this Notice and Order enforcement action.

5. No penalties shall be assessed by DDES against Richard Sanders or the property if the above compliance requirements and deadlines are met in full. If they are not met in full, DDES may impose penalties as authorized by county code retroactive to the date of this decision.

ORDERED August 8, 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 MAY 22, 2008, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0800074

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Holly Sawin representing the Department; Gerald Robison representing the Appellants and Richard Sanders the Appellant.

The following Exhibits were offered and entered into the record:

Exhibit No. 1	DDES staff report to the Hearing Examiner for E0800074
Exhibit No. 2a	*Not admitted*
Exhibit No. 2b	Printout out of Whitpages.com reverse lookup web search, printed May 8, 2008
Exhibit No. 2c	Printout of DDES log notes for E0800074, entries from September, 2006 through April 12, 2007
Exhibit No. 3	Copy of the Notice & Order issued February 28, 2008
Exhibit No. 4	Copy of the Notice and Statement of Appeal received March 12, 2008
Exhibit No. 5	Copies of codes cited in the Notice & Order
Exhibit No. 6a & b	Aerial photographs of subject property
Exhibit No. 7a	Photographs depicting vehicles stored on subject property taken by Holly Sawin on February 26, 2008
Exhibit No. 7b	Photographs depicting grading work on subject property taken by Holly Sawin on February 26, 2008
Exhibit No. 8	Printouts of vehicle/vessel inquiries on Washington State Department of Licensing's website, executed February 26, 2008
Exhibit No. 9	Meeting Minutes of January 28, 2004 DDES Regulatory Review Committee Meeting
Exhibit No. 10	Duplicate of Exhibit 6a, with stumps circled

PTD:gao
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