

April 3 2009

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0500938**

NATHAN BIEGENZAHN
Code Enforcement Appeal

Location: 66300 (approximately) Denny Creek Road

Appellant: **Nathan Biegenzahn**
3524 Bruce Garner Road
Wake Forest, North Carolina 27587
Telephone: (919) 691-2098
Email: sbiegenzahn@louisburg.edu

King County: Department of Development and Environmental Services (DDES)
represented by **Brenda Wood**
900 Oakesdale Avenue Southwest
Renton, Washington 98055
Telephone: (206) 296-7092
Facsimile: (206) 296-6604
Email: brenda.wood@kingcounty.gov

SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny the appeal; extend time for compliance
Department's Final Recommendation:	Deny the appeal; extend time for compliance
Examiner's Decision:	Deny the appeal; extend time for compliance

ISSUES/TOPICS ADDRESSED:

Occupancy of substandard dwellings (recreational vehicles); accumulation of rubbish and debris; accumulation of inoperable vehicles; parking/storage of vehicles on unimproved surfaces; waiver of penalty for innocent owner.

SUMMARY OF DECISION:

The property owner's appeal of a Notice of Code Violation is denied, with the date to bring the property into compliance with the King County Code extended and civil penalties waived.

EXAMINER PROCEEDINGS:

Hearing opened:

March 24, 2009

Hearing closed:

March 24, 2009

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 September 25, 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 Nathan Biegenzahn. The property subject to the Notice and Order is located at approximately 66300 Denny Creek Road in unincorporated King County. Nathan Biegenzahn is the owner of the subject property.

The Notice and Order alleged violation of the King County Code for occupying substandard dwellings (recreational vehicles); accumulating rubbish, salvage and debris; accumulating inoperable vehicles and vehicle parts; and parking/storage of vehicles on unimproved surfaces.

2. A timely appeal of the Notice and Order was filed by Nathan Biegenzahn on October 12, 2007. The Statement of Appeal asserts that the property is unoccupied, that the appellant inherited this property and was not aware of the code violations. The appellant requests additional time to correct all violations.
3. The violations alleged by the Notice and Order all existed on the subject property. The property has now been vacated. Vehicles have been removed, but the dilapidated recreational vehicles and other junk and debris remain on the site.
4. The appellant inherited the subject property, and was not aware that the violations existed. He has subsequently made good faith efforts to have the property cleaned up. Dumping occurs on the site by third parties, unknown to the appellant and without his knowledge or consent.
5. The property has been posted several times by DDES to prohibit occupancy. Persons have nevertheless occupied the site without approved services (water, sewage and waste disposal, or electricity). Occupancy of the dilapidated recreational vehicles has occurred on the site intermittently during the time since the receipt by DDES of the original complaint in 2005, through 2008.
6. The subject property is covered by snow during much of the year, generally from November through late spring. During that time, access to complete the clean up of the site is difficult and presents a hazard to persons endeavoring to accomplish the clean up. A reasonable period of time to accomplish clean up of the site is 45 days of reasonably dry, snow-free conditions. DDES has recommended that the appellant clean up the site to accomplish compliance with the King County Code not later than June 15, 2009.

CONCLUSIONS:

1. The violations of the King County Code alleged by the September 25, 2007 Notice and Order all existed upon the site at the time the Notice and Order was issued. Subsequently, occupancy of

the site has terminated. Progress has been made in removing inoperable vehicles, but the site is still occupied by dilapidated recreational vehicles and substantial amounts of rubbish, junk and debris. The site in its present condition is a hazard to the public health and safety and constitutes a public nuisance.

2. The appeal of the subject Notice and Order should be denied, and the appellant should be allowed a reasonable period of time to complete the clean up of the subject property to bring it into compliance with the King County Code. Forty-five days of reasonably dry, snow-free conditions would provide the appellant with a reasonable period of time to bring the property into compliance with the King County Code.
3. The property owner has demonstrated that the code violations that are the subject of this proceeding were caused by other persons who were not the agents of the property owner, and who acted without the current property owner's knowledge or consent. The current property owner was not aware of the condition of the subject property, and the violations existing on the property, until they were brought to the appellant's attention by DDES. Therefore, the property owner is responsible only for abatement of the violations, and no civil penalty should be assessed against the property owner.
4. If the current property owner (appellant) fails to complete the demolition and removal of the recreational vehicles, rubbish and debris that remain on the site, King County should abate the violation in the manner provided by King County Code, and the costs of abatement should be charged as a lien upon the property.

DECISION:

The appeal of Nathan Biegenzahn should be denied, provided that:

The civil penalties assessed by the September 25, 2007 Notice and Order against the appellant are waived, pursuant to KCC 23.36.030.b. The property owner shall be allowed through July 31, 2009 to bring the subject property into compliance with the King County Code by removing the recreational vehicles, rubbish and debris and any remaining inoperable vehicles and vehicle parts from the subject property. This clean up of the property shall include the removal of any buried waste and other debris known to be on the subject property and any pipes, lines or other unpermitted service connections, outhouses or temporary toilets. (The date of July 31, 2009, is established by this decision as a date by which 45 or more days of reasonably dry snow-free conditions are likely to have existed at the site. DDES may extend this date at its discretion.)

If the property owner fails to accomplish the required clean up of the subject property by July 31, 2009, or such extended date as DDES may authorize, DDES may proceed to abate the violations on the subject property and accomplish the necessary clean up to bring the property into compliance with the King County Code, pursuant to KCC Chapter 23.

ORDERED this 3rd day of April, 2009.

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 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 MARCH 24, 2009, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0500938

James N. O'Connor was the Hearing Examiner in this matter. Participating in the hearing were Brenda Wood representing the Department and Nathan Biegenzahn the appellant.

The following Exhibits were offered and entered into the record:

Exhibit No. 1	Department of Development and Environmental Services (DDES) staff report to the Hearing Examiner for E0500938
Exhibit No. 2	Copy of the Notice & Order issued September 25, 2007
Exhibit No. 3	Copy of the Notice and Statement of Appeal received October 12, 2007
Exhibit No. 4	Copies of codes cited in the Notice & Order
Exhibit No. 5a	Photographs of the subject property in August 2007
Exhibit No. 5b	Photographs of the subject property in October 2007
Exhibit No. 5c	Photographs of the subject property in October 2008
Exhibit No. 5d	Photographs of the subject property in November 2005
Exhibit No. 6	Notice of Violation issued August 22, 2006
Exhibit No. 7	Copies of the "Do Not Occupy" signs posted on the subject property on August 22, 2006
Exhibit No. 8	Junk vehicle certifications for numerous vehicles on the subject property
Exhibit No. 9	Email from Mike Cotton to Brenda Wood on October 11, 2007 regarding vehicle removal
Exhibit No. 10	Email from Brenda Wood to Nathan Biegenzahn on November 3, 2008 regarding difficulties with trailer removal

JNOC:vsm
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