

May 18, 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. **E07G0500**

JACK DAVIS

Code Enforcement Appeal

Location: 20825 Renton-Maple Valley Road Southeast

Appellant: **Jack Davis**
20821 Renton-Maple Valley Highway Southeast
Maple Valley, Washington 98038
Telephone: (425) 432-2066

King County: Department of Development and Environmental Services (DDES)
represented by **Holly Sawin**
900 Oakesdale Avenue Southwest
Renton, Washington 98055
Telephone: (206) 296-6772
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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 revised compliance schedule
Examiner's Decision:	Deny appeal with further revised compliance schedule

EXAMINER PROCEEDINGS:

Hearing opened:	December 11, 2008
Hearing closed:	December 11, 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 October 17, 2008, the Department of Development and Environmental Services (DDES) issued a Code Enforcement Notice and Order to Appellant Jack Davis and G.E. Gannon, President/Manager and Treasurer, respectively, of the Royal Arch Park Association of King County. The property cited is located in the unincorporated Maple Valley area just north of the city at 20825 Renton-Maple Valley Road Southeast. The Notice and Order cited Mr. Davis and Mr. Gannon with one violation of county code:

- A. Placement of fill (approximately 300 cubic yards) within the FEMA floodway and in excess of 100 cubic yards.

The Notice and Order required compliance by submittal of a complete grading permit application by December 22, 2008, after a pre-application meeting by November 20, 2008.

2. Mr. Davis filed an appeal of the subject Notice and Order. The appeal makes the following claims:
 - A. The work involved consisted of placement of only 100 cubic yards of fill performed in the maintenance of lawns and landscaping.
 - B. The charge of placing 300 cubic yards of material is false.
 - C. As Mr. Davis understands it, county code allows placement of up to 100 cubic yards of material. The work was needed to facilitate lawn care with power mowing equipment, in order to control vegetation growth.
3. All of the subject property lies within the regulatory 100-year floodplain of the Cedar River. Most of the property, approximately three-quarters, lies within the regulatory floodway. The entirety of the property is thus a flood hazard area, and a critical area as defined by county code. [KCC 21A.06.254.E] Most if not all of the work was conducted within the floodway; a small portion may be in the non-floodway areas of the floodplain. All of the work was conducted within the flood hazard critical area.
4. There are no grading permit exceptions in flood hazard critical areas. Therefore, any amount of fill placed on the property is subject to the requirement of a grading permit. [KCC 16.82.050 and .051]
5. In addition, zero rise (by earthwork in this case) in ground elevation (“displace[ment of] any effective flood storage volume” and “increase [in] the base flood elevation”) is permitted within the FEMA floodway. [KCC 21A.24.240, .250 and .260]
6. DDES calculates the property’s surface area having been filled as approximately 24,000 square feet, or slightly over one-half acre. DDES notes its observation that the depth of fill is over three feet in places and that a conservative estimate of fill in the area (utilizing an average depth of 6 inches or one-half foot) is approximately 500 cubic yards of material. As noted, the Appellant disputes such amount, stipulating that he placed only 100 cubic yards of fill. (According to testimony, some of the earthfill placed in the subject action may be offsite of the actual subject property, accounting for some or all of the discrepancy.)

7. Regardless of the actual amount of fill, the preponderance of the evidence in the record demonstrates that a substantial amount of fill was imported onto the site and placed in numerous areas of the property and then worked extensively, resulting in a substantial area of significantly filled and graded area. The work conducted constitutes much more than mere topdressing of soil for cultivation or landscaping purposes, and much more earthwork than mere maintenance.
8. The substantial fill and earthwork in question constitutes grading as defined in county code. [KCC 16.82.020.O] As noted, there is no permit exemption for grading conducted within flood hazard areas. [KCC 16.82.051.B]
9. As no grading permit was obtained for the subject fill and grading work, the violation of county code found by the Notice and Order is correct.
10. The property is contended to possess shallow soils and exposed tree roots. Appellant Davis asserts that the earthwork was necessary in order to provide root cover and dry ground for maintenance purposes so that mowers and weedeaters could access the grounds of the subject property, which is utilized in many respects by elderly persons who have limitations on their ability to maintain the property. (In addition, it was noted that the importation of fill was also for utilization of the grounds for vehicle parking.) Although to augment root stability and to provide for greater ease of maintenance are laudable motivations in and of themselves, those motivations do not preempt permit requirements.
11. The Appellant also argues that the zero rise restriction against grading in the floodway is only applicable to grading associated with building construction. This is an erroneous interpretation of the code, which expressly addresses a restriction on any grading (such as the importation and working of fill in this case) or any other physical alteration which “displaces any effective flood storage volume” and “increase[s] the base flood elevation” (in this case, by raising the ground elevation within the floodway). [KCC 21A.24.240, .250 and .260] Grading permits are required in part for review of the hydraulic effect of fill within the floodway.

CONCLUSIONS:

1. As found above, the charge of violation in the Notice and Order is shown to be correct and is therefore sustained. The fill and earthwork that were performed are required to be conducted under a grading permit, and no grading permit was obtained. The compliance schedule below shall require the obtainment of the necessary permit. (The Notice and Order compliance schedule is adjusted to reflect the time taken up by the appeal process.)

DECISION:

The appeal is **DENIED** and the Notice and Order is sustained, provided that the compliance schedule is revised as stated in the following order.

ORDER:

1. Schedule a grading permit pre-application meeting with the DDES *by no later than **June 18, 2009***.
2. Submit a complete grading application to DDES *by no later than **July 21, 2009***. After submittal, all pertinent time frames and stated deadlines for the submittal of additional information,

response comments, supplementary submittals, etc., if any, shall be diligently observed by the Appellant through to permit issuance and obtainment and final inspection approval.

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. DDES is also authorized to grant extensions of finalization of the grading work for seasonal and/or weather reasons (potential for erosion, other environmental damage considerations, etc.).
4. No fines or penalties shall be assessed by DDES against Mr. Davis, Mr. Gannon and/or the property if the above compliance requirements deadlines are complied with in full (noting the possibility of deadline extension pursuant to the above allowances). However, if the above compliance requirements and deadlines are not complied with in full, DDES may impose penalties as authorized by county code retroactive to the date of this decision.

ORDERED May 18, 2009.

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 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 DECEMBER 11, 2008, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E07G0500

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Holly Sawin representing the Department and Jack and Lilynee Davis, the Appellants.

The following Exhibits were offered and entered into the record:

Exhibit No. 1	DDES staff report to the Hearing Examiner for E07G0500
Exhibit No. 2	Copy of the Notice & Order issued October 17, 2008
Exhibit No. 3	Copy of the Notice and Statement of Appeal received October 21, 2008
Exhibit No. 4	Copies of codes cited in the Notice & Order
Exhibit No. 5a	Photographs of subject property taken by Holly Sawin on December 20, 2007
Exhibit No. 5b	2007 King County GIS aerial photograph of subject parcel with approximate area of fill depicted by polygon
Exhibit No. 5c	2005 King County GIS aerial photograph of subject parcel
Exhibit No. 6a	King County GIS map of subject parcel for FEMA Floodway and Hydrologic Sensitive Areas (Map 12)
Exhibit No. 6b	King County GIS map of subject property (Map 18)

Exhibit No. 7	Violation letter from Ms. Sawin to Mr. Davis and Mr. Gannon dated January 8, 2008
Exhibit No. 8	Photographs of subject property taken by Mr. Davis
Exhibit No. 9	Photographic aerial of subject property

PTD:vsm
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