July 13, 2012

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON
King County Courthouse, Room 1200
516 Third Avenue
Seattle, Washington 98104
Telephone (206) 296-4660
Facsimile (206) 296-0198
Email hearingexaminer@kingcounty.gov

REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0700313**

RICHARD GRAY
Code Enforcement Appeal

Location: 8621 309th Place SE

Appellant: **Richard Gray**
PO Box 380
Preston, WA 98050
Telephone: (425) 864-9401

King County: Department of Development and Environmental Services
represented by **Jeri Breazeal**
900 Oakesdale Avenue SW
Renton, WA 98057
Telephone: (206) 296-7264
Email: jeri.breazeal@kingcounty.gov

SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Deny appeal

EXAMINER PROCEEDINGS

Hearing Opened:	April 12, 2012
Hearing Closed:	April 12, 2012

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 Hearing Examiner's Office.

FINDINGS, CONCLUSIONS AND DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On January 3, 2012 the King County Department of Development and Environmental Services (DDES) Code Enforcement Section issued a notice and order to Richard Gray at 8621 309th Place SE in Preston. The notice and order cited the Gray property for construction of additions to a residence and an accessory garage without required permits. Item no. 2 relating to the garage addition alleged that the structure is located within the required sideline setback and, based on photographic evidence, that there had been a change to a residential use. Mr. Gray filed a timely appeal of the notice and order, stating that the items cited in the notice and order as violations were all caused or done by the preceding owner. He contended that it would be unfair and unjust to hold him responsible for their correction.

2. The record seems clear that the basic structural work for both the house and garage additions were performed by the prior owner not long before Mr. Gray's purchase in December 2006. A pre-existing porch on the side of the house was enclosed, and a carport adjacent to the garage was both enclosed and a second story added.

3. Particularly with respect to the garage addition, it is also clear that the construction work was not completed by the prior owner before the property's sale to Mr. Gray. Moreover, according to his testimony, Mr. Gray felt that some of the work done by the prior owner had been improperly executed, and much of his later effort involved replacing construction previously executed. Thus Mr. Gray upgraded the windows and vents, replaced slat siding with solid wooden panels, upgraded what he deemed to be an unsafe floor and performed a variety of interior finish tasks. It is undisputed that none of this construction activity, either by Mr. Gray or by the prior owner, was executed pursuant to county permits and approvals.

4. Building an addition requires the issuance of a building permit because it is structural in nature. Such activity also requires Health Department approval to assure that the new structures will not encroach upon or impair the function of the existing septic system and, to the extent any new plumbing is contemplated, to determine that the additional use will not exceed the existing system's capacity. Mr. Gray attended a pre-application meeting for a building permit at DDES on August 19, 2010, at which time the garage addition was characterized as unheated storage space. It appears that the Appellant may have had informal conversations subsequently with Health Department personnel, but he never formally received Health Department approval for his additions.

5. The garage on Mr. Gray's property and an adjacent outbuilding on the neighboring property are both within the required sideline setbacks. DDES staff is prepared to view the intrusion from Mr. Gray's garage as predating county adoption of setback requirements and thus grandfathered as a legal nonconforming use. Due to the close proximity of the outbuilding on the neighboring parcel, additional firewall protection will likely be required.

6. At the public hearing held on this appeal on April 12, 2012, Mr. Gray also attempted to ascribe the residential use of the garage addition to an earlier temporary occupancy of the premises by the real estate agent who sold him the property. This story seems a bit farfetched. The photographs in exhibit no. 9B show a bed with blankets on it and a substantial quantity of hanging clothes. That a real estate agent would camp out in a home listed for sale is improbable enough, but the notion that he should vacate the premises while leaving his clothes behind lacks basic credibility.

CONCLUSIONS:

1. DDES concedes, and the record supports, a conclusion that the structural work on the two additions requiring building permit approval was done by the individual who sold the property to Mr. Gray prior to Mr. Gray's possession. While some of Mr. Gray's finish work could have

required building permit approval, most of it was clearly nonstructural and would not have triggered county permit review. While Mr. Gray believes the outcome to be unfair, King County Title 23 is explicit in placing the responsibility for curing defects in the building permit history for structures on the shoulders of the current property owner. As cited within the staff report, KCC 23.02.010K defines the "person responsible for code compliance" as including "the owner, lessor, tenant or other person entitled to control, use or occupy...property where a civil code violation occurs." Only the owner, his tenant or agent has the legal authority to obtain a building permit for construction on his property. A prior owner no longer has such a right; therefore the prior owner cannot be held responsible for correcting the violation. If a current owner believes he has been misled or deceived by his seller, that may constitute a separate matter to be pursued in a civil legal action.

2. Mr. Gray may feel that it is unfair to hold him responsible for a prior owner's failure to obtain a building permit. But that is because he does not correctly understand the purpose of the building permit process. The county is not undertaking to punish misbehavior. Rather the purpose of the building permit process is to assure that structures are safe and sound. Mr. Gray himself testified to having to replace an unsafe floor in the garage addition and upgrading an inadequate window and venting system. Staff has identified a safety need for a firewall in the portion of the garage structure adjacent to the property line where setbacks are not met on either side of the boundary. And at this point no one knows whether either of the additions encroaches onto the septic drain field. These are all health and safety concerns that the county's permit review process is designed to address. That is the reason why DDES cannot simply ignore building code violations just because they occurred under a prior ownership.

3. So the notice and order must be upheld. The current property owner is responsible for obtaining the necessary permits, thereby assuring that structural additions made by a prior owner are indeed compliant with health and safety regulations. The garage intrusion into the side yard setback appears to be grandfathered but its fire safety implications will likely require installation of a fire wall. Health Department review and approval of any structural expansion is required. There appears to have been some residential use of the garage addition by Mr. Gray, but such issue can adequately be addressed as part of the Health Department and building permit reviews.

4. No fines or penalties have been assessed against Mr. Gray or his property as a result of this notice and order. Nor will they be assessed if he undertakes to comply with the application submittal deadlines stated in this order. The current appeal process has no authority to modify or reduce the county's permit application and review fees. These fees can indeed be substantial and no doubt may feel like some sort of punishment. In fact the higher fees for an Already Built Construction (ABC) permit contain a late filing surcharge. There is a fee waiver and reduction mechanism that the Appellant should pursue with DDES as part of the application process. The fact that the structural work subject to the permit was performed by the prior owner offers a strong argument for reduction of the ABC permit surcharge. But fee questions cannot be addressed within this notice and order appeal. They in fact do not arise until a permit application is submitted. Mr. Gray needs to start the permit application process, beginning with Health Department review, so that he may access of the fee waiver and reduction provisions that DDES offers.

DECISION:

The appeal is DENIED.

ORDER:

No penalties shall be assessed against the Appellant or his property if the deadlines stated in the following conditions are met:

1. As the first step in the permit review process, a complete application shall be submitted to the Health Department for approval of the two additions no later than **August 10, 2012**.

2. After Health Department approval has been received, the Appellant shall have **30 days** to submit a complete building permit application to DDES. A fee waiver request or payment plan may be pursued by the Appellant at the time of building permit application. The Appellant shall make timely responses to any requests for further information made by DDES pursuant to its building permit review.

3. If the Appellant fails to comply with the deadlines stated above, DDES may assess penalties against him or his property as of the date that deadline noncompliance is established.

ORDERED July 13, 2012.

Stafford L. Smith
King County Hearing Examiner pro tem

NOTICE OF APPEAL

Pursuant to King County Code Chapter 20.24, 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 property commenced in King County 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 APRIL 12, 2012, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0700313.

Peter T. Donahue conducted the public hearing on this matter. Participating in the hearing were Jeri Breazeal representing the department and Appellant Richard Gray.

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 file no. E0700313.
Exhibit no. 2	Copy of the Notice and Order issued January 3, 2012
Exhibit no. 3	Copy of the Notice and Statement of Appeal received January 19, 2012
Exhibit no. 4	Copies of codes cited in the Notice and Order
Exhibit no. 5	Printout of DDES electronic case log notes
Exhibit no. 6	Permit pre-application meeting materials
Exhibit no. 7	Aerial photographs from 2002, 2005, 2007 and 2010
Exhibit no. 8	King County Assessor records
Exhibit no. 9	Photographs of the subject property A. Photographs taken April 11, 2007 B. Photographs taken April 20, 2007 C. Photographs taken June 8, 2010 D. Photographs taken November 18, 2011

SLS/vsm