September 10, 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 Development and Environmental Services File No. **E0900974**

SCOTTY AND JERRILEE DOUGLASS
Code Enforcement Appeal

Location: 24817 204th Avenue SE, Maple Valley

Appellants: **Scotty and JerriLee Douglass**
24817 204th Avenue SE
Maple Valley, WA 98038
Telephone: (425) 432-3458

King County: Department of Development and Environmental Services
represented by **Holly Sawin**
900 Oakesdale Avenue SW
Renton, WA 98057
Telephone: (206) 296-6772
Email: holly.sawin@kingcounty.gov

SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Deny appeal, but establish new dates
Department's Final Recommendation:	Deny appeal, with dates and options for compliance
Examiner's Decision:	Deny appeal in part, grant in part

EXAMINER PROCEEDINGS

Hearing Opened:	September 6, 2012
Hearing Closed:	September 6, 2012

The attached minutes list the participants at the public hearing and the exhibits offered and entered. 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, we now make and enter the following:

FINDINGS:

1. In 1994, Lee Douglass received a permit for a medical hardship mobile home, B94R0993. The permit expired in 1995, apparently without anyone taking much notice.

2. In 2002, Mr. Douglass's son and daughter-in-law, Scotty and JeriLee Douglass ("the Douglasses") purchased the property from the elder Mr. Douglass.

3. In 2009, DDES, as part of its Building Inspection's file review, discovered the long-expired permit and referred the case to Code Enforcement, which opened E0900974. In 2011, DDES issued a notice and order citing the Douglasses for failing to either renew the medical hardship permit or remove the mobile home. DDES served a supplemental notice and order on July 31, 2012, adding a requirement to resolve parcel title issues, a requirement the Douglasses have accomplished. The Douglasses timely appealed.

4. The facts are not in dispute. The permit that allowed the mobile home has long-since expired. The Douglasses state that they have not used the mobile home as a dwelling unit, and there is no hint here of the contrary. The Douglasses have affirmatively demonstrated that the violation was caused by another person (the elder Mr. Douglass) without their knowledge or consent (discussed below).

CONCLUSIONS:

1. The code and its application are not in dispute. The code requires a permit for a dwelling unit, and permit B94R099 that authorized the mobile home's placement on the subject property expired in 1995. And as both the person who caused the violation *and* the owner of the property where a code violation occurs are responsible, KCC 23.02.010(K), the Douglasses are a responsible party.

2. Instead, the dispute is an equitable one. The Douglasses' argue that DDES should have resolved the issue with the elder Mr. Douglass and that they should not be held accountable. That states a defense of "laches," an equitable doctrine consisting (as applied here) of two elements, inexcusable delay by DDES and prejudice to the Douglasses from that delay. *Cf. State ex rel. Citizens Against Tolls v. Murphy*, 151 Wn.2d 226, 241, 88 P.2d 375 (2004). We cannot entertain that defense; we have no jurisdiction to consider equitable arguments. *Chaussee v. Snohomish Co. Council*, 38 Wn. App. 630, 640, 689 P.2d 1084 (1984). Similarly, we have no discretion to exempt a landowner from code requirements based on such equitable doctrines. *Id.* at 638.

3. The code distinguishes between classes of violators: those who carry out violations and property owners who demonstrate that the action which resulted in the violation was taken without their knowledge or consent ("innocent owners"). These innocent owners are still responsible parties, KCC 23.02.010(K), and as discussed below, are responsible for bringing the property into compliance, but, "No civil fines or penalties shall be assessed against such an owner or his or her property interest," KCC 23.02.130(B).

4. The Douglasses may have been aware of the presence of the mobile home prior to purchasing the subject property, but they were not aware of the "action which resulted in the violation," KCC 23.02.130(B), the elder Mr. Douglass's decision not to renew the permit in 1995. And in 1995 they were not persons "entitled to control" the property. KCC 23.02.010(K). They have affirmatively demonstrated their innocent owner status.

5. As such, unless the Douglasses take their own violative action, such as having people dwell in the mobile home, they are not liable for fines. But if the Douglasses fail to correct the violation, DDES may abate, and may assess the costs to the Douglasses. KCC 23.02.130(B). Costs to abate a violation, such as personnel costs, attorney's fees, and interest, may be substantial. KCC 23.24.090.

6. DDES has offered four options for correcting the violation. The first two would entail re-permitting the home as a dwelling unit, either through the medical hardship avenue or as a standard accessory dwelling until (ADU). The Douglasses stated at the hearing that they had explored the dwelling unit permitting requirements and have elected not to go that route. That leaves either removing the home from the property or decertifying it as a home but keeping it as something like a storage shed. Removal would entail costs of disposal, but not require a permit.

7. Decertification and re-use as a legal storage shed would require two permits. First, because of the state's jurisdiction over mobile homes, Labor and Industries (L&I) must decertify the unit. Second, DDES would thereafter have to grant a standard building permit. L&I's decertification permit process may not be prohibitively expensive, but it requires a number of corrective actions, such as removing all electrical wires running, lights, and switches; removing all plumbing fixtures and cutting off the water, wastewater, and sewer lines; and removing all mechanical components including water heaters, heating sources, and kitchen appliances). *See* http://www.lni.wa.gov/Forms/pdf/622063a0.pdf.

8. If the Douglasses apply to DDES for a building permit, DDES will face the question of how to apply the somewhat relaxed standard for corrective action required of an innocent owner, phrased variously as bringing the property into "compliance to the extent reasonably feasible under the circumstances," KCC 23.02.130(B), restoring the property to a "condition that does not pose a probable threat to the environment or public health, safety or welfare," KCC 23.02.010(M), or waiving "[s]trict compliance with permit requirements … in order to avoid doing substantial injustice to a non-culpable property owner," KCC 23.36.030(B).

9. For example, if the Douglasses elect to retain the structure as something other than livable space (like a storage shed), what the Douglasses need to alter would seem less than an owner who caused or actively perpetuated a violation. The code distinction makes sense. If, for example, a property owner had illegally converted a shed into livable space and was only required to take minimal, easy to reverse, steps to make the structure non-livable again, there might be a "probable threat" that, once DDES exited the scene, the owner would repeat the violation. A more complete gutting might be reasonable. Here, however, given the Douglasses' innocent owner status, and L&I's fairly rigorous required alterations, L&I's approval should be a sufficient decommissioning, making for a more streamlined DDES permit process.

10. Finally, if the Douglasses apply for a building permit for this already-built-construction (ABC), they would typically be charged double the standard fee. Charging more for an ABC permit typically creates a wise incentive structure, encouraging would-be-violators to apply for a permit before undertaking a project, instead of doing the work and waiting to see if they are caught and forced to obtain a permit. But it makes little sense here, where the Douglasses purchased the property with the violation already in place. It would be difficult to envision how, if the Douglasses timely requested a waiver of the double fee, DDES denied the waiver, and the Douglasses timely appealed to us, they would not meet their burden of showing that the double fee portion was "unreasonable," the relevant criteria for our appellate review. KCC 27.50.080.

DECISION:

1. We DENY the Douglasses' appeal as to mobile home violation listed in the July 31, 2012, Notice and Order.

2. We GRANT the Douglasses' appeal as to the penalties attached to that violation. If the Douglasses fail to meet the benchmarks below, DDES may follow its abatement procedures and may assess those costs – but not penalties – to the Douglasses.

3. If the Douglasses decide to retain the home as living space, submit a complete application to Public Health, including the information requested in Public Health's January 23, 2012, letter, by **November 9, 2012**. Within **30 days** of Public Health's approval, request from DDES an ABC pre-application meeting. Submit a complete building application within **45 days** of that pre-application meeting. If DDES issues a permit, pick that permit up within **60 days** of issuance. Obtain all final permit approvals within **one year** of permit issuance.

4. If the Douglasses decide to retain the home as non-living space, apply for a decertification permit from L&I by **October 12, 2012** (or within **30 days** of Public Health's disapproval, if the Douglasses had first, unsuccessfully, attempted to get Public Health's approval for living space). Obtain L&I's final approval within **60 days** of the decertification permit's issuance. Within **60 days** of L&I's final approval, apply to DDES for a building permit.

5. If and when the Douglasses apply for a DDES permit, DDES should review the permit mindful of the innocent-owner principles of KCC 23.02.010(M), .130(B), and 23.36.030(B), as well as the rationale behind the double-fees-for-ABC distinction.

6. If the Douglasses decide to remove the mobile home, do so by **March 8, 2012** (or if the Douglasses had first, unsuccessfully, attempted to obtain one of the above permits, within **60 days** of permit disapproval).

ORDERED September 10, 2012.

David W. Spohr

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Interim Deputy King County Hearing Examiner

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.)

DWS/vsm

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CERTIFICATE OF SERVICE

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I, Ginger Ohrmundt, certify under penalty of perjury under the laws of the State of Washington that on September 10, 2012, I transmitted the **REPORT AND DECISION** to the parties of record and interested persons listed on the attached document:

☒ EMAILED to all County staff listed as parties of record/interested persons and primary parties with e-mail addresses on record.

☒ caused to be placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties of record/interested persons at the addresses indicated on the list attached to the original Certificate of Service.

☒ caused to be placed with the United States Postal Service, with sufficient postage, as CERTIFIED MAIL with a return receipt requested in an envelope addressed to the primary parties.

DATED September 10, 2012.

_____
Ginger Ohrmundt
Legislative Secretary

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