June 8, 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. **E1000068**

PATRICIA CLARK
Code Enforcement Appeal

Location: 28818 SE 216th Way

Appellant: **Patricia Clark**
28818 SE 216th Way
Maple Valley, WA 98038
Email: patricia@serenityequinerescue.com

King County: Department of Development and Environmental Services (DDES)
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 with revised compliance schedule
Department's Final Recommendation: Deny appeal with further revised compliance schedule
Examiner's Decision: Deny appeal except for time extension request/sustain Notice and Order with revised compliance schedule

EXAMINER PROCEEDINGS:

Hearing Opened: March 8, 2012
Hearing Closed: March 8, 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. This matter involves the appeal of a code enforcement Notice and Order issued by the Department of Development and Environmental Services (DDES) on June 30, 2010 to Appellant Patricia Clark. The subject property is located at 28818 SE 216th Way in the Hobart area northeast of Maple Valley. The Notice and Order found building and zoning code violations existing on the property consisting of remodeling and conversion of a barn into habitable space without required permits, inspections and approvals; placement of eight canvas structures within required building and property line setbacks without required building permits, inspections and approvals; and placement of a manure pile within a 35-foot property line setback.

2. The Notice and Order required that the building construction and conversion be corrected by obtainment of necessary permits and approvals, commencing with a pre-application meeting and then by submittal of a complete building permit application; demolition and removal if the permit is unobtainable; relocation of the canvas structures in conformity with permit requirements; and removal of the manure pile within the property line setback.

3. Ms. Clark filed an appeal of the Notice and Order. (An equine rescue organization is listed as a co-appellant.) The appeal claims that compliance with the Notice and Order will cause undue financial hardship on the Appellants, enough to cause the equine rescue organization to fold; that the setback violations have not been proven and are disputed, and that the Notice and Order is in contravention of unspecified verbal statements made by prior county inspectors. Appellant Clark states that there are insufficient funds available for permits and construction, but stipulates that the Appellants will take the measures necessary to comply with the codes, and requests additional time to raise funds and apply for any necessary permits. The found violation of remodeling and conversion of the barn without required permits, inspections and approvals was not contested.

4. By the mutual request of the parties, the appeal was continued on call without hearing pending possible settlement. Eventually, the matter was not able to be settled and the matter was brought forth to hearing on March 8, 2012. In the meantime, Appellant Clark had attended a pre-application conference regarding the structural and building permit issues and to confer with DDES regarding permit requirements, had relocated the canvas structures approximately 25 feet to comply with setback requirements, and had similarly moved the manure pile to observe setback requirements. Appellant Clark noted that the canvas structures are not intended to be permanent structures. She also noted that the barn at issue is not served by water and sewer service and is utilized for storage.

5. DDES offered evidence supporting its findings of violation in the Notice and Order. The relocations of the canvas structures and manure pile have not been verified by DDES as providing compliance with setback requirements.

CONCLUSIONS:

1. Though she did not press the matter at hearing, Ms. Clark's citation in her appeal statement to previous statements by prior county personnel as being contrary to the subject Notice and Order seems to intimate that the County verbally approved of the subject violation(s), or at the very least turned a blind eye to them. Such assertion is tantamount to a claim of inequitable treatment. The Examiner has no authority to grant equitable relief based on asserted unfair or otherwise inequitable administration of the code enforcement and permit processes. The Examiner is generally limited to applying law duly enacted by statute, ordinance and rule, and common law precedent set in published case law, and has no authority to adjudicate claims in equity. Equity

claims would instead have to be brought in a court of general jurisdiction, Superior Court. [*Chaussee v. Snohomish County*, 38 Wn. App. 630, 689 P.2d 1084 (1984)]

2. The preponderance of the evidence in the record supports the findings of violation by the Notice and Order which, other than to grant the request for additional time, shall be sustained and the appeal denied, with a revised compliance schedule.

3. Ms. Clark's request for additional time to achieve compliance shall be granted to a reasonable degree. She has shown good faith by attending the pre-application meeting and by relocating the canvas structures and the manure pile.

4. The revised compliance schedule shall provide a reasonable amount of time to achieve compliance given the amount of work left to be done, and shall also build in the typical allowance of extensions which may be granted by DDES in its sole judgment in the event of circumstances beyond the Appellant's control and diligent effort.

DECISION:

The appeal is DENIED except with respect to the request for additional time to achieve compliance. The Notice and Order is otherwise SUSTAINED, with the COMPLIANCE SCHEDULE for correction REVISED as set forth in the order below.

ORDER:

1. Submit a complete building permit application for the barn remodeling and conversion *by no later than* **August 6, 2012**. (DDES has noted that Public Health approval is not required based on inspection of the structure.) After permit submittal, all DDES requests for further information pertaining to permit processing shall be met within indicated timeframes. Once approved, the building permit shall be obtained by the Applicant **within 15 days of approval**.

2. Final inspection approval shall be obtained within the one-year validity of the building permit.

3. *By no later than* **June 18, 2012**, the Appellant shall request a field inspection by the code enforcement officer or designee for confirmation of sufficient relocation of the canvas structures and the manure pile to conform to setback and structural separation regulations. If additional setback and/or separation correction is needed to achieve conformity with applicable regulations after such inspection, such further corrections shall be accomplished *by no later than* **30 days** from the date of inspection or written receipt of notice of correction, whichever is later.

4. DDES is authorized to grant extensions of the above deadlines if warranted, in DDES's sole judgment, by circumstances beyond the property owner's diligent effort and control. DDES is also authorized to grant extensions for seasonable, adverse weather and/or environmental impact reasons in the public interest.

5. No civil fines or penalties shall be assessed by DDES against Ms. Clark and/or the property if the above compliance requirements and deadlines are complied with in full (noting the possibility of deadline extensions pursuant deadlines allowances). However, if the above compliance requirements are not complied with in full, DDES may impose penalties as authorized by county code retroactive to the date of this decision.

ORDERED June 8, 2012.

_____

Peter T. Donahue
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.)

MINUTES OF THE MARCH 8, 2012, PUBLIC HEARING ON DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E1000068.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Holly Sawin representing the Department and Patricia Clark the Appellant.

The following Exhibits were offered and entered into the record:

Exhibit no. 1	Department of Development and Environmental Services staff report to the Hearing Examiner for file no. E1000068.
Exhibit no. 2	Copy of the Notice and Order issued June 30, 2010
Exhibit no. 3 A	Copy of the Notice and Statement of Appeal received July 20, 2010
Exhibit no. 3 B	Email string between Holly Sawin and Marianne Meeker regarding the correct appeal reference number
Exhibit no. 4	Copies of codes cited in the Notice and Order
Exhibit no. 5	Photographs of the subject property taken by Holly Sawin
Exhibit no. 6	Aerial photograph of the subject property
Exhibit no. 7	King County Assessor records

PTD/gao

June 8, 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

CERTIFICATE OF SERVICE

Error! Not a valid link.

I, Ginger Ohrmundt, certify under penalty of perjury under the laws of the State of Washington that on June 8, 2012, I transmitted the **REPORT AND DECISION** to the following parties of record and interested persons:

Patricia Clark
28818 SE 216th Way
Maple Valley, WA 98038

Elizabeth Deraitus
900 Oakesdale Avenue SW
Renton, WA 98057

Sheryl Lux
900 Oakesdale Avenue SW
Renton, WA 98057

Marianne Meeker
Blair & Meeker, LLP
P.O. Box 6079
Federal Way, WA 98003

Holly Sawin
900 Oakesdale Avenue SW
Renton, WA 98057

☒ 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 June 8, 2012.

_____
Ginger Ohrmundt
Legislative Secretary

\gao