June 6, 2012

OFFICE OF THE HEARING EXAMINER
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REPORT AND DECISION

SUBJECT: Development and Environmental Services File No. **E1000846**

MICHAEL FLOYD KITCHEN
Code Enforcement Appeal

Location: 14306 Batten Road NE

Appellant: **Michael Kitchen**
53 Mariah Ridge Road
Goldendale, WA 98620
Telephone: (253) 906-5649
Email: mariahenergy@gmail.com

King County: Dept 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, 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: November 14, 2011
Hearing Closed: November 14, 2011

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 September 1, 2011 to Appellant Michael Floyd Kitchen for property located at 14306 Batten Road NE near the City of Duvall. The situation resulting in the subject September 1, 2011 Notice and Order is one of a long code enforcement effort first beginning in 1992. The subject situation arises from building permit B07M0410 issued September 12, 2007 (the issuance of which closed prior code enforcement case proceedings). The building permit issued in 2007 led to certain inspections resulting in a correction notice and extension of the permit. The structure has never had final inspection approval even though it has been occupied residentially.

2. The Notice and Order found a violation of county code on the subject property by the use and occupancy of a residential structure without final inspections and approvals relating to the above-referenced building permit. The Notice and Order required correction by extension of the permit (which extension was later granted with the permit fee paid by a check returned for insufficient funds; that matter must be corrected by proper payment). In addition, compliance requires correction of certain building code insufficiencies presented by two aspects of construction (see below), with final inspection approval obtained by November 1, 2011. If final inspection approval was not obtained, occupancy of the structure was to be ceased and the structure secured from unauthorized entry by such date. As an alternative to achieving building code compliance, the construction work at issue could be demolished under a demolition permit and the demolition debris removed from the premises, also by the November 1, 2011 deadline.

3. Mr. Kitchen filed an appeal of the Notice and Order, citing severe time constraints due to his financial circumstances, which require double time work out of the area, and a request that additional time be granted for performance of the necessary corrective measures and waiver of "further fees."

4. In a letter sent by email to Mr. Kitchen on April 6, 2011, the DDES Construction Services Section noted the remaining tasks to be performed for compliance with building code and electrical requirements, and the resultant ability to gain final building permit approval and legitimate final occupancy. They consisted of: foundation anchoring on perimeter footing pads per Mr. Kitchen's submitted plans; installation of intermediate rails to a guardrail system; and documentation of electrical installation approval from the Washington State Department of Labor and Industries (L&I).

5. DDES offered evidence supporting its findings of violation in the Notice and Order and revised its recommendation to require the structural components to be performed within 30 days and the electrical approval documentation to be submitted within 60 days.

6. The preponderance of the evidence in the record supports the findings of violation in the Notice and Order.

7. Mr. Kitchen's request for additional time to achieve compliance has been largely met in the interval between the date of hearing and issuance of this decision. The Examiner shall accordingly allow for a reasonable further amount of time for performing the necessary corrections.

8. Mr. Kitchen's request for fee relief is one which must be taken up with DDES as the permitting agency. As the Examiner understands it, there is a process for fee waivers and relaxations in certain circumstances. Mr. Kitchen should explore any fee estimate/fee waiver possibilities by first seeking information from DDES on the process for pursuing any such relief.

CONCLUSIONS:

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

2. In the revised compliance schedule, a reasonable time period shall be imposed to allow Mr. Kitchen to gain documentation of electrical approval by L&I (or in the alternative, reinspection and reapproval if necessary if such documentation is not obtainable), and to perform the foundation anchoring and addition of intermediate railing to the guardrail system. A total period of a little over two months is reasonable for achieving such compliance. The Examiner shall also build in an allowance of extension 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 and the Notice and Order is otherwise SUSTAINED, with the COMPLIANCE SCHEDULE for correction REVISED as set forth in the order below.

ORDER:

1. *By no later than* **July 9, 2012**, the permit extension fee for the October 12, 2011 extension of building permit B07M0410 shall have been paid with sufficient funds.

2. *By no later than* **July 16, 2012**, the structural work necessary to comply with the Notice and Order's building code structural corrections, consisting of the performance of the foundation anchoring and installation of intermediate rails as specified in the April 6, 2011 email communication from DDES to Appellant Kitchen, shall have been performed.

3. *By no later than* **July 17, 2012**, Appellant Kitchen shall request a field inspection by DDES of the subject corrective work.

4. *By no later than* **August 6, 2012**, Appellant Kitchen shall perform any necessary further corrections of the above-required structural work as may be necessary to gain final inspection approval by DDES.

5. *Also by no later than* **August 6, 2012**, Appellant Kitchen shall have obtained suitable documentation of approval by the Washington State Department of Labor and Industries (L&I) of the electrical components of the work addressed by building permit B07M0410, or shall have had such work reinspected and approved by L&I if such documentation of prior approval is not forthcoming.

6. *By no later than* **August 17, 2012**, final inspection approval shall have been obtained for building permit B07M0410.

7. 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 seasonal, adverse weather and/or environmental impact reasons found to be in the public interest.

8. No civil fines or penalties shall be assessed by DDES against Mr. Kitchen/or the property if the above compliance requirements and deadlines are complied with in full (noting the possibility of deadline extensions pursuant to the above allowances). However, if the 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 6, 2012.

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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 NOVEMBER 14, 2011, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E1000846.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were

The following Exhibits were offered and entered into the record:

Exhibit no. 1	DDES staff report to the Hearing Examiner for file no. E1000846.
Exhibit no. 2	Copy of the Notice and Order issued September 1, 2011
Exhibit no. 3	Copy of the Notice and Statement of Appeal received September 21, 2011
Exhibit no. 4	Copies of codes cited in the Notice and Order
Exhibit no. 5	Photographs of the subject structure taken March 28, 2005, July 28, 2004 and August 11, 2011
Exhibit no. 6	Copy of email from Bernard Moore, DDES Building and Fire Services Construction Services Section Assistant Supervisor

PTD/gao

June 6, 2012

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CERTIFICATE OF SERVICE

SUBJECT: Development and Environmental Services File No. **E1000846**

MICHAEL FLOYD KITCHEN
Code Enforcement Appeal

I, Ginger Ohrmundt, certify under penalty of perjury under the laws of the State of Washington that on June 6, 2012, I transmitted the **REPORT AND DECISION** to the following parties of record and interested persons:

Jeri Breazeal
900 Oakesdale Avenue SW
Renton, WA 98057

Elizabeth Deraitus
900 Oakesdale Avenue SW
Renton, WA 98057

Michael Kitchen
53 Mariah Ridge Road
Goldendale, WA 98620

Sheryl Lux
900 Oakesdale Avenue SW
Renton, WA 98057

Toya Williams
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 6, 2012.

_____
Ginger Ohrmundt
Legislative Secretary

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