March 16, 2017

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON

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REPORT AND DECISION

SUBJECT: Department of Permitting and Environmental Review file no. **ENFR160802**

DANIEL BONNER
Code Enforcement Appeal

Location: 11831 Avondale Place NE, Redmond

Mr. Bonner: **Daniel Bonner**
18038 NE 116th Street
Redmond, WA 98052
Telephone: (206) 714-6000
Email: bbcdan@aol.com

King County: Department of Permitting and Environmental Review
represented by **LaDonna Whalen**
35030 SE Douglas Street Suite 210
Snoqualmie, WA 98065
Telephone: (206) 477-5567
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SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Deny appeal, but amend compliance deadlines

EXAMINER PROCEEDINGS:

Hearing Opened:	March 2, 2017
Hearing Closed:	March 2, 2017

FINDINGS AND CONCLUSION:

1. This is a simple case, although the consequences to Daniel Bonner are far from simple.

2. In 2006, Mr. Bonner was searching for a place to relocate his construction business. He testified that the real estate listing for the subject property (actually two abutting parcels) apparently stated the zoning as "commercial," and that his real estate agent told him that the agent had checked and that the zoning was "commercial." The subject property was surrounded by other properties with commercial uses. So he purchased it, without actually confirming the neighborhood's zoning.

3. After purchase, Mr. Bonner moved his business onto the property, making space to store his construction equipment and other materials. Exs. 5 & 6. All went without incident for about a decade. But on December 13, 2016, the Department of Permitting and Environmental Review (DPER) issued a Notice and Order to Mr. Bonner, asserting five violations. Ex. 2. Mr. Bonner timely appealed. Ex. 3.

4. Mr. Bonner has since resolved to DPER's satisfaction alleged violations (2) inoperable vehicles and vehicle parts, (3) rubbish, salvage, and debris, and (4) a substandard dwelling (RV). Those will not be discussed further. Instead the alleged violation mildly contested is (5) grading that has created more than more than 2,000 square feet of new impervious surface. And the alleged violation hotly contested is (1) operating a construction business from residential site that does not meet the requirements for a home occupation. Ex. 2.

5. Turning to the easier issue first, the code requires a permit for creating over 2,000 square feet of new impervious surface since January 1, 2005. KCC 16.82.050(B), .051(C)(2). "Impervious surface" is defined as:

> a hard surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions before development or that causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions before development. Common impervious surfaces include, but are not limited to, roofs, walkways, patios, driveways, parking lots, storage areas, areas that are paved, graveled or made of packed or oiled earthen materials or other surfaces that similarly impede the natural infiltration of surface water or stormwater. For purposes of applying the impervious surface thresholds in this chapter, permeable pavement, vegetated roofs and underdrained pervious surfaces are considered "impervious surface," while an open uncovered flow control or water quality facility is not.

KCC 9.04.020(Z), while "new impervious surface" is defined as "the creation of impervious surface or the addition of a more compacted surface such as the paving of existing dirt or gravel," KCC 9.04.020(Z).

6. As to the precise extent of impervious surfaces Mr. Bonner created after his 2007 purchase, Mr. Bonner did not agree to or deny DPER's estimate that he added 8,000

square feet. Whether packed earth impeding natural infiltration or added gravel, there is no serious dispute that Mr. Bonner has created more than the permit triggering, 2,000 square-foot threshold. Ex. 6 (comparing 2007 with later photos) and Ex. 5 (especially top photo on page 2). That is all the finding we need make for purposes of deciding alleged violation (5). He will need to apply for a permit either to legalize what is there or to restore some of it. But that is not an unsolvable problem—there are no critical areas or other obvious roadblocks.

7. Instead, the crux of the dispute involves Mr. Bonner's construction business. And here there is no palatable solution.

8. Despite what the 2006 MLS listing might have pronounced, and despite what Mr. Bonner's real estate agent may have told him, the property was and is zoned RA (Rural Area), not commercial. Construction uses are only allowed in an RA zone if "Limited to landscape and horticultural services that are accessory to retail nursery, garden center and farm supply store. Construction equipment for the accessory use shall not be stored on the premises." KCC 21A.08.060(B)(34). Not only does Mr. Bonner not operate a retail nursery, garden center or farm supply business, but the main purpose of his use is to store his construction equipment on the subject property.

9. The County does allow small-scale home occupations in the RA zone, but only if conducted by residents of a dwelling unit on the property. KCC 21A.30.085. Mr. Bonner is not currently living on the property, and thus he is not meeting the threshold requirement for a "home" occupation. DPER has proven violation (1).

10. The real problem with violation (1) is what to do about it. The residency requirement could potentially be remedied by Mr. Bonner dwelling on the site in the future. But there is a formidable hurdle to his continuing to operate his business on-site. The combined size of his parcels is about 86,562 square feet. Ex. 1 at 001. For lots that size, the total outdoor area devoted to the home occupation is limited to one percent of the lot, or, for him, 866 square feet. KCC 21A.30.085(C)(2). Even getting a little fancy with the definitions and treating the subject property as two separate lots, the largest outdoor area the subject property could host would be 1,090 square feet.[1] Anyway one looks at the photos, there are several thousand feet of outdoor storage (Exhibits 5 and 6), and it is hard to see how one could operate a viable construction business of Mr. Bonner's magnitude if he reduced it to that tiny a footprint.

11. Mr. Bonner's main defense has nothing to do with square footage or other specifics of his use on his property. Rather, he submitted an impressive mountain of photographs and maps showing other commercial activities in his neighborhood. Ex. 8. All or at least almost all of the other businesses appear to violate the zoning code (as an outright use) and to be well beyond the scope of any allowed home occupation use.

[1] KCC 21A.06.725 (definition of lot). If we treat the 20,562 square-foot parcel as one lot, a lot under an acre is allowed up to 440 square feet of outdoor area. And if we treat the larger, 65,000 square-foot parcel as a separate lot, that parcel could host 650 square feet of outdoor area. That would get us to a total of 1,090. KCC 21A.30.085(C)(1)&(2)

12. The existence of other illegal uses, however, does not give Mr. Bonner a pass. Nor does it show that DPER is singling him out. DPER was aware of some of the neighboring uses, having received complaints about a few (but by no means most) of those properties. According to DPER, one of the neighboring uses may qualify under the landscape and horticultural services exemption discussed above and one may be a continuation of a legal nonconforming use. But for the other properties DPER has received complaints on, DPER has found a violation, and DPER has several pending enforcement actions.

13. DPER has not received a complaint for the majority of the properties, and unless Mr. Bonner or someone else decides to file a complaint, DPER will not be initiating actions against those properties. Certain building departments are more aggressive; we are aware of one jurisdiction to the south that apparently searches aerial maps to try to identify new, unpermitted (and un-complained of) activities or construction to go after. Conversely, DPER's Code Enforcement section is almost entirely complaint driven.

14. In our decade handling hundreds of code enforcement cases as a neutral—first as the land-use ombudsman and now as the hearing examiner—we can recall only one enforcement case initiated in-house. That one did not even start with Code Enforcement *per se*, but instead with a DPER employee from a different section who, out in the field on another matter, noticed extensive mechanized clearing in progress at the edge of a stream and made an in-house complaint. Every other code enforcement case to come across our desk has been initiated by an outside (of DPER) complainant. So the fact that DPER is continuing to allowing such businesses is not unequal treatment or a defense for Mr. Bonner.

15. Mr. Bonner is in a tight spot. There appear few palatable options for him. Successfully petitioning to extend the urban growth boundary to capture his neighborhood seems highly unlikely. And he apparently paid a commercial price that a future buyer who would (or whose real estate agent would) perform due diligence on the zoning might be unlikely to pay. Even if Mr. Bonner began residing on the site (thus meeting the threshold for a home occupation), the outdoor area restrictions on home occupation would not seem commercially viable for an operation of his scope.

16. Yet we cannot ignore the law. The property is zoned RA, not commercial, and his business does not fit under the narrow exception for construction uses in an RA zone. KCC 21A.08.060(B)(34). Similarly, he is not meeting (and he cannot likely meet) the requirements for a home occupation. KCC 21A.30.085(C). And his decade of operating in violation of the code does not somehow legalize his continuing operation.

17. We are not without empathy for Mr. Bonner's situation. Thus, at hearing, we pushed back against DPER's request that he cease operations of his construction business and remove his commercial equipment and supplies (or comply with the home occupation restrictions) within the standard 30 days DPER sets for compliance. Ex. 2 at 002. DPER agreed to a significantly longer-than-normal time period, until the end of August. Although the deadline for starting the grading permit process was not discussed, we will also push this back to the end of August; Mr. Bonner may first want to figure out what to do with the property before he figures out exactly how to cure his grading violation.

DECISION

1. Mr. Bonner's appeal related to (1) operating a construction business from a residential site that does not meet the requirements for home occupation is DENIED, except that the January 16, 2017, deadline DPER set for ceasing to operate the construction business and for removing commercial equipment and supplies from the residential site or complying with the requirements for a home occupation is extended to **August 31, 2017**.

2. Alleged violations (2) inoperable vehicles and vehicle parts, (3) rubbish, salvage, and debris, and (4) occupancy the substandard dwelling (RV) contained in DPER's December 13, 2016, Notice and Order have been RESOLVED.

3. Mr. Bonner's appeal related to (5) grading without the required permit is DENIED, except that the January 16, 2017, deadline DPER set for submitting a prescreening meeting request to DPER is extended to **August 31, 2017**.

4. No penalties shall be assessed against the Mr. Bonner or the subject property if the deadlines set in DPER's December 13, 2016, Notice and Order, as amended above, are met. If not, penalties may be assessed, retroactive to today.

ORDERED March 16, 2017.

David Spohr
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

King County Code 20.22.040 directs the Examiner to make the County's final decision for this type of case. This decision shall be final and conclusive unless proceedings for review of the decision are timely and properly commenced in superior court. Appeals are governed by the Land Use Petition Act, Chapter 36.70C RCW.

MINUTES OF THE MARCH 2, 2017, HEARING IN THE APPEAL OF DANIEL BONNER, DEPARTMENT OF PERMITTING AND ENVIRONMENTAL REVIEW FILE NO. ENFR160802.

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were LaDonna Whalen, Daniel Bonner, and Jeri Breazeal.

The following exhibits were offered and entered into the record:

Exhibit no. 1	Department of Permitting and Environmental Review staff report to the Hearing Examiner for file no. ENFR160802

Exhibit no. 2	Notice and order, issued December 13, 2016
Exhibit no. 3	Notice and statement of appeal, received January 6, 2017
Exhibit no. 4	Codes cited in the notice and order
Exhibit no. 5	Photographs of subject property, dated October 28, 2016
Exhibit no. 6	Aerial photographs of subject property, dated 2007-2015
Exhibit no. 7	Neighborhood zoning map
Exhibit no. 8	Mr. Bonner’s photographs of neighboring properties

DS/vsm

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CERTIFICATE OF SERVICE

SUBJECT: Department of Permitting and Environmental Review file no. **ENFR160802**

DANIEL BONNER
Code Enforcement Appeal

I, Elizabeth Dang, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **REPORT AND DECISION** to those listed on the attached page as follows:

☒ EMAILED to all County staff listed as parties/interested persons and 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/interested persons to addresses on record.

DATED March 16, 2017.

Elizabeth Dop

Elizabeth Dop
Legislative Secretary

All Parties of Record

Bonner, Daniel mailed paper copy

Breazeal, Jeri
Department of Permitting and Environmental Review

Deraitus, Elizabeth
Department of Permitting and Environmental Review

Lux, Sheryl
Department of Permitting and Environmental Review

Whalen, LaDonna
Department of Permitting and Environmental Review

Williams, Toya
Department of Permitting and Environmental Review