



**DECISION OF THE SNOHOMISH COUNTY
HEARING EXAMINER PRO TEMPORE**

Hearing Examiner's Office

Email: Hearing.Examiner@co.snohomish.wa.us

Date of Decision: April 8, 2011
Respondent: Travis Vanderpool
File No: 08 108603 CT
Type of Request: Voluntary Correction Agreement (VCA) -- Monetary Penalties
Decision Summary: Establishing Compliance Date and Deferring Monetary Penalties
Location: 17220 Schuhs Lane, Stanwood, WA 98282
Tax Parcel No: 31042200302800

Millie Judge
Hearing Examiner

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Everett, WA 98201

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A hearing was convened on Wednesday, March 30, 2011, before Wick Dufford, Hearing Examiner Pro Tempore. Penny Skovold, Code Enforcement Officer, represented the Department of Planning and Development Services (PDS). Travis Vanderpool was represented by Leslie Drake, Attorney at Law. Mr. Vanderpool was in attendance.

FINDINGS OF FACT

1. This matter concerns construction of a garage on the Vanderpool property at 17220 Schuhs Lane, Stanwood, without first obtaining permits or approvals. The Respondent was notified of the violation by letter from PDS dated October 20, 2008.
2. A VCA was entered into by Respondent, setting a compliance date of December 22, 2008. After three extensions of the compliance date, a hearing on the imposition of monetary penalties was held on October 14, 2009. At the conclusion of the hearing the Examiner continued the matter until January 7, 2010 to allow additional time to achieve compliance.
3. On January 7, 2010, another hearing on penalties was held at which the Respondent did not appear. However, the imposition of penalties upon failure to appear was rescinded when it was discovered that notice had not been properly given for the hearing. A new penalty hearing was scheduled for February 18, 2010.
4. On February 18, 2010, a hearing was convened at which the parties agreed to continue the matter to June 3, 2010, for a status hearing to confirm compliance or progress toward compliance. The matter was subsequently continued again into August 2010. Respondent submitted applications on August 9, 2010 and, in light of that, was granted a three month continuance to November 18, 2010. A subsequent request for continuance was granted until January 13, 2011.

5. In January 2011, Mr. Vanderpool learned that he needed to apply for a setback variance for his garage building and asked for more time in order to address that issue. The hearing was then continued again until March 30, 2011.
6. Shortly before the instant hearing on March 30, 2011, Mr. Vanderpool retained counsel to assist him in resolving issues with the County regarding his property.
7. At the hearing Ms. Skovold explained that Respondent, through counsel, recently requested a Code Interpretation which could render the variance application for the garage unnecessary. Ms. Skovold's information was that the Code Interpretation would probably be issued in about six weeks.
8. The position taken by PDS was that a deferral of penalties is appropriate in order to allow the Code Interpretation process to run its course. There was testimony that the Respondent is committed to seeking required building permits. It appears that the Code Interpretation could result in the resolution of other enforcement issues and open the path to building permit issuance.
9. The parties agree that after the Code Interpretation becomes final, the Respondent should be given 60 days to come into compliance – either by obtaining the permits required or by tearing the building down.

CONCLUSIONS OF LAW

1. The Hearing Examiner is authorized to hear and decide this matter pursuant to Chapter 2.02 SCC and Chapter 30.85 SCC.
2. The Respondent has stipulated to the existence of the code violations alleged by signing the Voluntary Compliance Agreement.
3. There is no issue of notice with regard to the March 30, 2011 hearing.
4. At this juncture in this case, the Examiner concludes that any penalties that may accrue herein should be assessed by following the current schedule set forth SCC 30.85.170, as agreed to by both parties.
5. Considering the entire record, it appears that no final compliance date has been established. The Examiner concludes that progress towards compliance has been made.


DECISION

1. The final compliance date is established as 60 days after the Code Interpretation becomes final. The Respondent shall have until that 60-day period has elapsed to come into compliance.
2. If compliance is not achieved within the 60-day time frame, civil penalties shall commence accruing on the 61st day, following the Monetary Penalties for Notices of

Violation Table set forth in SCC 30.85.170 and shall continue to accrue until compliance is achieved.

3. The Order of Continuance issued by this Examiner on April 7, 2011 is superseded by this Decision.

ISSUED this 8th day of April, 2011



Wick Dufford, Hearing Examiner Pro Tempore

EXPLANATION OF RECONSIDERATION PROCEDURES
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This decision of the Hearing Examiner is final and conclusive with right of judicial review in Superior Court pursuant to the Land Use Petition Act, Chapter 36.70C RCW. However, reconsideration by the Examiner may also be sought by one or more parties of record. (The Examiner's action on reconsideration would be subject to appeal to Court.) The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration procedures, please see Chapter 30.85 SCC and the Examiner Rules of Procedure.

Petition for Reconsideration

Pursuant to SCC 30.85.210, any party to the appeal of a notice of violation may submit a written petition for reconsideration to the hearing examiner within **10 days from the date of this decision**. The party seeking reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties to the appeal on the date of filing. Enforcement of a hearing examiner decision and order and any penalty accruing thereunder shall be stayed during the pendency of a petition for reconsideration.

A petition for reconsideration shall:

- (a) Contain the name, mailing address and daytime telephone number of the party seeking reconsideration or their representative, together with the signature of the petitioner or of the petitioner's attorney, if any;
- (b) Identify the specific findings, conclusions, and/or other elements of the decision for which reconsideration is requested;
- (c) State the *specific grounds* upon which relief is requested; and
- (d) Describe the specific relief requested.

Note: The *grounds* for seeking reconsideration are limited to the following:

- (a) The Examiner exceeded her jurisdiction;
- (b) The Examiner failed to follow the applicable procedure in reaching her decision;
- (c) The Examiner committed an error of law;
- (d) The Examiner's findings, conclusions and/or conditions are not supported by the record;
and/or
- (e) Newly discovered evidence alleged to be material to the Examiner's decision which could not reasonably have been discovered prior to the hearing and which is material to the decision has been discovered.

A decision that has been subjected to the reconsideration process shall not again be subject to reconsideration.

EXPLANATION OF APPEAL PROCEDURES

The following paragraphs summarize the appeal process. For more information about appeals to Superior Court, please see Chapter 36.70C RCW, RCW 43.21C.075, WAC 197-11-680, Chapter 30.85 SCC and applicable court rules.

Pursuant to Chapter 30.85 SCC and Chapter 36.70C RCW, any person having standing under RCW 36.70C.060 may file a Land Use Petition in Superior Court **within 21 days of the date of this Order**. Service on parties must be as required by RCW 36.70C.040.

[PLEASE NOTE: A recent Supreme Court decision has held that even if you ask for reconsideration from the Hearing Examiner, you must still file a LUPA appeal within 21 days of the date of this order or your Superior Court appeal will be dismissed as untimely].

The cost of transcribing the record of proceedings, of copying photographs, video tapes, and oversized documents, and of staff time spent in copying and assembling the record and preparing the return for filing with the court shall be borne by the petitioner. [RCW 36.70C.110] Please include the county file number in any correspondence regarding this case.

Staff Distribution: Code Enforcement Officer Penny Skovold, PDS

<p>The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation." A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.</p>

PARTIES OF RECORD REGISTER
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