



**DECISION AND ORDER
of the SNOHOMISH COUNTY
HEARING EXAMINER**

Millie Judge
Hearing Examiner

M/S 405
3000 Rockefeller Ave.
Everett, WA 98201

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DATE OF DECISION: March 17, 2011
APPELLANT: **PARK RIDGE CHURCH**
FILE NO.: 10-107597 CT
TYPE OF REQUEST: Appeal of Notice of Violation
DECISION (SUMMARY): **Appeal Denied**
New Compliance Date: March 29, 2011
LOCATION: 3805 Maltby Road, Bothell, WA 98012-7309
TAX ACCOUNT NO: 270521-002-038-00

This matter having come before the Hearing Examiner on March 9, 2011, and the testimony of witnesses having been heard and all exhibits admitted into evidence having been considered, the Hearing Examiner enters the following Order based on a preponderance of the evidence:

FINDINGS OF FACT

Based on a preponderance of the evidence of record, the following Findings of Fact are entered:

1. Park Ridge Church, Appellant, is the owner of certain real property known as tax parcel 270521-002-038-00, located at 3805 Maltby Road, Bothell, WA 98012-7309, (hereinafter, the "subject property"). Park Ridge Church ("Park Ridge"), was represented by Brad Sebranke, P.E., Lead Pastor, who acted on its behalf in this matter. (Exhibits 1, 7)
2. On November 3, 2010, the Snohomish County Planning and Development Services Department (PDS) issued a Notice of Violation (NOV) to Park Ridge for:

"Allowing the construction of a 90 foot pole with a cross attached to the pole on the above described property without first obtaining the required permit(s) in accordance with Snohomish County Code, Section 30.52A.101 which adopts the International Building Code, [IBC] 2006 Edition, and Section 30.52A.146. The suggested corrective action is to obtain the necessary permit(s) or remove the structure from the property." (Exhibit 1)

The compliance date established by the NOV was January 3, 2011. (Exhibit 1) On November 3, 2010, PDS issued an Amended NOV changing the name of the property owner from Park Ridge Chapel to Park Ridge Church. All other information from the original NOV remained the same in the Amended NOV. (Exhibits 15, 20) The original NOV was superseded. (Exhibit 10)

3. On November 17, 2010, Park Ridge filed an appeal of the NOV based on three grounds: (a) The County Code does not require permits for a flag pole; (b) The owner/responsible person named in the violation, Park Ridge Chapel, is incorrect. The proper owner is Park Ridge Church; and (c) Park Ridge is being improperly penalized in the amount of \$1,500 for a previous NOV related to the same matter, which was rescinded by PDS.
4. PDS had issued an earlier NOV in 2009 relating to this same violation, which was also rescinded because it was learned that the NOV cited to the wrong tax parcel number. The 2009 NOV is not before the Hearing Examiner in this appeal.
5. An open record hearing on the appeal was held March 9, 2011. Notice of the public hearing was sent to all parties of record. (Exhibit 17) At the hearing, Park Ridge was represented by its attorney, Rebecca Thorley, Stafne Law Firm, and Gene Miller, consultant. PDS was represented by Craig Odegaard and Alan Husby. Mr. Bill Miller, the original complainant in this matter, also appeared and testified. All witnesses testified under oath.
6. At the public hearing, Alan Husby testified that the wooden pole had been originally installed as a temporary cell tower. This is undisputed by Park Ridge. (Exhibit 22) The record shows that the wooden pole has been used by Park Ridge to display various crosses and a small string of lights suspended from it. The 90-foot tall wooden pole is located on the Park Ridge property adjacent to their ball fields to the north and SR 524 (Maltby Road) to the south. It stands in a parking lot next to two small storage buildings. (Exhibits 5 and 6)
7. In September, 2009, PDS received a citizen complaint that the large wooden pole had been erected on the subject property without permits. After performing its investigation, PDS determined the pole to be approximately 90 feet tall. (Exhibits 1, 2, 3, 5, 6, 7, 21) PDS issued the Amended NOV based on the fact that the wooden pole is a "structure" within the meaning of the IBC and, absent an express exemption in the IBC, a structure requires a building permit prior to being placed or erected on the subject property.
8. Alan Husby, the PDS lead for building inspections and Building Code interpretations, testified at the public hearing. He stated that the purpose of obtaining a permit is to protect people who are invited onto the property for the activities conducted there, as well as for the safety of the traveling public or any neighboring properties. He stated that the pole is a possible danger if it is not installed properly.
9. The provisions of the building code apply to the "construction, alteration, movement, enlargement, replacement, repair, use and occupancy, location, maintenance, removal and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures." (SCC 30.52A.040)
10. A "structure" is defined to mean "any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks and overhead transmission lines. (SCC 30.91S.660)
11. Appellants argue that the wooden pole is a "flag pole" for which no regulations can be found in the Snohomish County Code. Gene Miller argued that the County has rarely, if ever, regulated flag poles. His research shows that most other jurisdictions have specific regulations relating to flag poles, or place similar regulations in their zoning codes. He found no similar regulations in the Snohomish County Code and argues that the ICC did not contemplate the regulation of flag poles through the IBC. (Exhibits 13, 22) Mr. Miller and Ms. Thorley argue that Park Ridge is

being singled out and that no other property owners are being required to obtain building permits for flag poles.

12. In rebuttal, Bill Miller testified that at no time has he ever seen a flag flying from the wooden pole. Additionally, Mr. Husby testified at the hearing that there are no flag pole regulations in the County Code. However, regardless of whether the wooden pole is a flag pole or to be used for other purposes, Mr. Husby asserts that the pole is a "structure" within the meaning of the IBC and, therefore, a permit is required prior to its installation and use.
13. The Hearing Examiner finds that PDS corrected the name in the notice of violation when it issued its Amended NOV on November 3, 2010. As such, Park Ridge's second basis for appeal should be dismissed.
14. Park Ridge also alleged as its third basis for appeal that it is being improperly penalized in the amount of \$1,500 for a previous NOV related to the same matter, which was rescinded by PDS. The 2009 NOV is not on appeal before the Examiner and the Examiner finds that she has no jurisdiction to address this matter. The Examiner notes, however, that where a NOV has been rescinded, monetary penalties or fines associated with such a NOV are also rescinded as a matter of law. As such, the Examiner shall only consider monetary penalties associated with the Amended NOV in this matter.
15. The imposition of monetary penalties is governed by Chapter 30.85 SCC. The penalty for the violation is set by Table 30.85.170 at \$1,500 for days 1-14 for a commercial violation. The maximum penalty that may be imposed for violations existing up to 75 days is \$25,000. The Amended NOV was filed on November 3, 2010, with a 60-day compliance date of January 3, 2011. The appeal was filed on November 17, 2010. Penalties would have accrued on January 3, 2011, however, they were stayed pending the completion of this appeal. The public hearing was delayed by a scheduling error made by the Hearing Examiner's Office. Due to the delay, the Appellants have had an additional two months of time beyond the compliance date where the violation has remained unabated.
16. The Hearing Examiner is authorized to establish a new compliance date pursuant to SCC 30.85.220. The Examiner finds that a new date should be established, granting Park Ridge an additional 15 calendar days to achieve compliance.

CONCLUSIONS OF LAW

Based on the Findings of Fact entered above, the following Conclusions of Law are entered:

1. The Hearing Examiner is authorized to hear and decide this matter pursuant to SCC Title 2 and SCC 30.85.
2. Park Ridge Church does not deny the existence of the 90-foot pole on its property. However, they claim that no permit is required for the pole under the County's regulations. Having examined the evidence in the record, and after reviewing the IBC and the arguments of the parties, the Examiner concludes that the 90-foot tall wooden pole is "an object constructed or installed by man" and, therefore, a "structure" within the meaning of the IBC. As such, finding no exemption for such a structure, the Hearing Examiner concludes that Park Ridge is required to obtain a building permit for it. The Examiner further concludes that the Appellants' argument

as to whether the wooden pole is to be used for a flag pole is irrelevant to the determination here. The wooden pole is a "structure" and a permit is required.

4. The Appellant's arguments as to how other jurisdictions may regulate structures is irrelevant to the manner in which structures are regulated by the Snohomish County Code. The County Code governs the subject property and the Hearing Examiner finds that the Amended NOV was properly issued in this case.
5. Appellant's attempt to argue that they are being unfairly targeted or singled out for regulation was defeated by the evidence they produced for the record. Mr. Miller introduced evidence through his cross-examination of Mr. Husby that the County has regulated the placement of flag poles on other properties within the County. Additionally, it is not a defense to the Amended NOV to show that a violation similar to the one that exists on their property has never been prosecuted before now. The violation still exists and must be cured. The Hearing Examiner concludes that the Appellant failed to prove its first basis for the appeal by a preponderance of the evidence. PDS did prove by a preponderance of the evidence that a permit is required for the wooden pole.
6. The Hearing Examiner concludes that the Amended NOV bears the name of the correct owner of the subject property and the second basis for appeal should be dismissed.
7. The Hearing Examiner concludes that the 2009 NOV is not on appeal before the Examiner and that she has no jurisdiction to address penalties which may have been imposed pursuant to another case. As such, the Appellant's third basis for appeal should be dismissed.
8. The Appellants have failed to meet their burden of proof and their appeal should be dismissed in its entirety.
9. The Examiner concludes that a new compliance date of March 29, 2011 should be established. Penalties in the amount of \$1,500 shall be imposed if compliance is not achieved by that date.

DECISION AND ORDER

Based on the Findings of Fact and Conclusions of Law entered above, the Decision and Order of the Hearing Examiner on the request for imposition of a monetary penalty is as follows:

1. The appeal is denied in its entirety.
2. Park Ridge Church is granted until March 29, 2011 at 4:00 p.m. to achieve compliance to the satisfaction of PDS Code Enforcement in this code enforcement matter. If compliance is achieved the case before the Hearing Examiner shall be dismissed. Monetary penalties shall begin to accrue as of the date of this decision pursuant to SCC 30.85.170(4). If compliance is not achieved by the specified deadline, a commercial penalty in the amount of \$1,500.00 is hereby imposed without further hearing.
3. If imposed, penalties shall continue to accrue automatically according to Table 30.85.170 SCC up to a maximum of \$25,000.00. (SCC 30.85.170(5))

4. A lien for any civil penalty imposed or the cost of abatement, or both, may be claimed by Snohomish County in accordance with SCC 30.85.300.

Note: Penalties are payable to the Department of Planning and Development Services and submitted to Code Enforcement at 3000 Rockefeller Avenue, M/S 604, Everett, WA 98201.

Decision issued this 17th day of March, 2011.

for: Maury Kuzke, Admin. Asst.
Millie Judge, Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

The decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. However, reconsideration by the Examiner may also be sought by one or more parties of record. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 30.85 SCC and Ch. 36.70C RCW, and the Superior Court Civil Rules and Rules of Civil Procedure.

Reconsideration

Any party of record may request reconsideration by the Examiner **within 10 days** from the date of this decision. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, Robert J. Drewel Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S No. 405, 3000 Rockefeller Avenue, Everett WA 98201) **MARCH 28, 2011**. There is no fee for filing a petition for reconsideration. "The party seeking reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties to the appeal as of the date of filing." [SCC 30.85.210]

A petition for reconsideration does not have to be in a special form but must: contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner's attorney, if any; identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested; state the relief requested; and, where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the Applicant.

The grounds for seeking reconsideration are limited to the following:

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

Petitions for reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.85.210. A matter that has been subjected to reconsideration once, shall not again be subject to reconsideration.

NOTE: Please include the County file number in any correspondence regarding this case.

Appeal

The decision of the hearing examiner in this matter constitutes a final land use decision within the meaning of Chapter 36.70C RCW. Accordingly, any person with standing may file an appeal of this decision in Superior Court **within 21 days from the date of this decision** pursuant to the Land Use Petition Act (LUPA). (See, RCW 36.70C.040(4) for guidance on how to calculate the appeal period). In addition to meeting other requirements, appeals must comply with the specific requirements of Sections 36.70C.040, 36.70C.060 and 36.70C.070 RCW. Service on Snohomish County must be made by delivery of a copy of the petition to the County Auditor or the person identified by or pursuant to RCW 4.28.080 to receive service of process. (RCW 36.70C.060) Service on other parties must be made according to SCC 36.70C.040. The Office of the Hearing Examiner may not provide legal advice. If you have questions about filing a LUPA appeal, please consult with your attorney.

Staff Distribution:

Department of Planning and Development Services: Craig Odegaard, Alan Husby

PARTIES OF RECORD REGISTER
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