



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

Millie Judge
Hearing Examiner

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DATE OF DECISION: April 27, 2011
APPELLANT: Shoreline Sign and Awnings; Mick Richards
FILE NO.: 11 100817 CT
TYPE OF REQUEST: Appeal of Notice of Violation
DECISION (SUMMARY): **Appeal Denied;**
New Compliance Date: Wednesday, June 24, 2011
LOCATION: 12101 Huckleberry Lane, Arlington, WA 98223-8513
TAX ACCOUNT NO: 320632-002-016-00

NOTE: To obtain a complete record of the proceedings, an electronic recording of this hearing is available through the Office of the Hearing Examiner.

This matter having come before the Hearing Examiner on April 14, 2011, and the testimony of witnesses having been heard and all exhibits having been admitted into evidence and considered, the Hearing Examiner enters the following Findings of Fact, Conclusions of Law and Decision 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. Dan Thompson is the owner of certain real property known as tax parcel 320632-002-016-00, located at 12101 Huckleberry Lane, Arlington, WA 98223-8513 (hereinafter, the "subject property"). Mr. Thompson has rented the subject property to Mick Richards, dba Shoreline Sign & Awning, ("the Company"). Mr. Richards ("Appellant") resides on the subject property and is operating a commercial sign company as a home occupation on the site. (Exhibits 1, 2, and 7)
2. The operation of the commercial business has been the subject of several complaints from neighboring property owners and the Huckleberry Lane Road Association, alleging that the activities conducted by the Appellant and the Company are manufacturing or fabrication, which is not allowed in the residential zone. (Exhibits 2, 3, 4, 5, 8, 9, 10; Testimony of Tom Clinton, Stanley Carter) The subject property is zoned Residential 5-acres (R-5). The Zoning Code specifically prohibits "manufacturing" and "fabrication" within the R-5 zone; however, "home occupations" are allowed under certain conditions. (See, SCC 30.22.110)
3. A "fabrication shop" is defined to mean "an establishment for the fabrication of goods. The term shall include welding, cabinet, machine and other similar shops." (SCC 30.91F.010) "Manufacturing" (other than heavy manufacturing) means:

... a use which uses manufacturing workers, as described in the *Dictionary of Occupational Titles* published by the US Department of Labor, to produce, assemble or create products and which the director finds consistent with generally accepted practices and performance standards for the industrial zone where the use [sic] proposed, and which do not include any manufacturing use otherwise specifically listed.

(SCC 30.91M.026) By contrast, a "home occupation" is:

...an occupation conducted within a dwelling unit by a member or members of a family residing therein under the conditions outlined in SCC 30.22.130(11). A home occupation may also be conducted within a residential accessory building and/or an attached garage within certain rural and resource zones in accordance with SCC 30.22.130(64) or (84).

(SCC 30.91H.130) There are no standards found in SCC 30.22.130(64) or (84). However, home occupations are governed by a specific regulation found in Chapter 30.28 SCC.

4. The neighbors argue that the Company's activities could be characterized as "fabrication" or "manufacturing," which are prohibited activities in the R-5 zone. However, PDS has determined that the Appellants' activities can be brought within the regulations of a "home occupation." That issue is not before the Examiner in this appeal. Here, PDS asserts that no more than one commercial vehicle may be kept on the subject property in conjunction with the operation of a home occupation. They contend that storing or parking more than one commercial vehicle violates the SCC 30.22.110. Mr. Richards disagrees.
5. The Company currently has between four and six vehicles on the subject property. (Testimony of Mick Richards; Exhibit 11) These consist of a car, SUV, passenger truck and several commercial vehicles including several semi-trucks, plus a flatbed trailer and enclosed trailer. (Exhibits 11, 19) In addition, Mr. Richards has a backhoe and large forklift on the property. (Exhibits 19-1 and 19-2) Mr. Richards testified that the forklift is his own equipment, and is not used in conjunction with the commercial business. Photographs submitted during the hearing show the forklift parked near the commercial sign operations. (Exhibit 19-2) Mr. Richards has refused to remove the commercial vehicles from the subject property.
6. On February 9, 2011, PDS Code Enforcement Officers Stephanie Lyon issued a Notice of Violation ("NOV"), alleging that Mr. Richards and the Company are operating a commercial business (Shoreline Sign and Awning) on the subject property in violation of SCC 30.22.110, based on the number of commercial vehicles being kept or used on the subject property. The corrective action is to cease operating the business or comply with the home occupation guidelines found in SCC 30.28.050(3). A compliance date of March 31, 2011 was established in the NOV. (Exhibits 12 and 1) Service of the NOV was achieved by certified mail on February 11, 2011. (Exhibit 13)
7. On February 25, 2011, Mr. Richards filed a timely appeal of the NOV pursuant to SCC 30.85.190(2)(a)(ii), on the grounds that no violation has occurred. Mr. Richards argues that SCC 30.28.050(1) through (3) does not establish a limit on the number of vehicles they may keep or use on the subject property in conjunction with their commercial business. (Exhibit 1) Accordingly, Mr. Richard argues that there can be no violation.

8. A public hearing was held on the appeal of the NOV on April 14, 2011. Notice of the public hearing was sent to all parties of record. (Exhibits 17 and 17A) At the hearing, Mick Richards appeared on behalf of Appellants. PDS was represented by Code Enforcement Officers Stephanie Lyon and Craig Odegaard. Members of the public appearing and testifying included Stanley Carter, Tom Clinton, Robert Rhoads, Dennis Ingram, and Becky Balch. All witnesses were sworn and testified under oath. All Exhibits were admitted into evidence.
9. At the public hearing, Officer Stephanie Lyon testified as to the facts of the alleged violation. She noted that the Appellant does not dispute that there is more than one commercial vehicle being kept on the subject property. She explained that PDS's position is based on the Zoning Code's express language that activities or uses that are not expressly allowed are prohibited. (SCC 30.22.040) Additionally, PDS relies on the rule announced by the Snohomish County Superior Court in *Snohomish County and Epstein, et al., v. Redwood, et ux.* (Cause No. 134756, 1977). There, the County and a neighboring property owner sued to stop commercial activities and truck/vehicle storage on a rural residential property zoned RR-9,600. The Court held that a single vehicle may be used to transport a resident to and from their workplace; however, the right granted therein was limited. The Court stated:

The right granted herein is not intended to allow any continuance of commercial use of the defendant's property, but is merely intended to allow the defendant a right generally recognized in residential areas to the use of a wage-earner's normal work vehicle as transportation to and from his place of employment.

(Exhibit 15) The Hearing Examiner notes that the Court's decision is helpful in interpreting the Zoning Code, but it is not binding authority beyond the parties to that case under the doctrine of *stare decisis*.

10. Here, it is undisputed that the Appellant does not use the trucks and heavy equipment on site to travel to and from work, as the commercial operation is conducted on the subject property. The trucks are used as part of the commercial business to transport and deliver signs produced on the site to the Company's customers. (Exhibits 19 and 20; Testimony of Mick Richards; Testimony of Stanley Carter)
11. PDS further asserts that the parking of commercial trucks and equipment on the subject property is not in conformance with the home occupation regulations set forth in SCC 30.28.050(3) and, therefore, violates the zoning regulations set forth in SCC 30.22.110. (Exhibit 12) SCC 30.28.050(3) provides in relevant part:

SCC 30.28.050(3) Use of Accessory Buildings. Home occupations may be conducted in an accessory building and/or an attached garage in accordance with the following:

- (a) The provisions of SCC 30.28.050(1)(a), (c), (d), and (f) shall be met;
- (b) A minimum lot size of one acre is required;
- (c) SCC Table 30.28.050(3)(c), as outlined below, identifies the maximum allowable combined accessory building and attached garage area and the minimum required building setback for the garage and/or the accessory building from adjacent residentially zoned properties according to the home occupation lot or parcel size; . . .
- (d) The home occupation shall in no way affect the appearance of the accessory building and/or attached garage as accessory to the residential dwelling;

- (e) The home occupation shall be fully enclosed within the accessory building and/or the attached garage including no outside storage of equipment or materials;
- (f) The home occupation shall not create a level of noise vibration, smoke, dust, odors, heat, light, or glare beyond that which is acceptable in a residential area;
- (g) The following activities, including any similar activities, are prohibited as home occupations: minor or major automobile, truck or heavy equipment fueling, maintenance or repair; auto-body work or painting; parking or storage of heavy equipment; and any Group H occupancies as defined in the Uniform Building Code except for woodworking and spray finishing in conjunction with woodworking activities;
- (h) The home occupation hours of operation shall be limited to: 8:00 a.m. to 8:00 p.m., Monday through Friday; and 9:00 a.m. to 5:00 p.m., Saturday and Sunday; and
- (i) A certificate of occupancy shall be obtained from the department prior to commencing the home occupation to ensure building and fire code compliance. The certificate of occupancy shall be subject to an annual inspection and renewal pursuant to SCC 30.53A.060.

(Emphasis added) In terms of meeting the requirements of SCC 30.28.050(3)(a), the following additional requirements of SCC 30.28.050(1)(a)(c)(d) and (f) must be met:

30.28.050 Home occupation. To verify that a home occupation use is allowed in a particular zone see SCC 30.22.100, 30.22.110, and 30.22.120.

- (1) General.
 - (a) Not more than one person outside the family shall be employed.
 - (c) There shall be no external display of merchandise. No sales or fees for the use of merchandise except that produced by the inhabitants shall be made in the dwelling or on the premises.
 - (d) The maximum nameplate horsepower rating of any single piece of mechanical equipment used in the home occupation shall be five horsepower, and no equipment shall be three-phase motors. The electrical service for the home occupation shall not exceed 200 amps.
 - (f) Signs in connection with the occupation shall be unlighted, shall not exceed two square feet, and shall be attached flat to the building.

Finally, the home occupation must meet the floor area and minimum setbacks found in Table 30.28.050(3)(c). (See, SCC 30.28.050(3))

- 12. In addition to these regulations, the Hearing Examiner notes that the Rural Use Matrix set forth in SCC 30.22.110 significantly restricts activities involving commercial trucks in the rural residential zone. In particular, the regulations prohibit "commercial vehicle storage facilities" and requires a conditional use permit for "commercial vehicle home basing" operations.
- 13. PDS argues that the provisions of SCC 30.28.050(3), coupled with the Superior Court's decision banning the parking or storage of more than a single commercial vehicle on properties in rural residential zones, provide the regulatory authority prohibiting the Appellant's use, parking and storage of more than one commercial truck and/or heavy equipment identified in Paragraph 4,

above. Appellant argues that heavy equipment is not the same as commercial trucks, and there is no flat prohibition against parking his commercial trucks on the subject property as part of a home occupation.

14. The Examiner finds that the Appellant is storing, parking, maintaining and operating commercial vehicles and heavy equipment on the subject property in connection with the operation of the Appellant's commercial sign business. As part of this commercial activity, the Appellant is loading semi-trucks and trailers and hauling signs and awnings produced on the site to off-site customers.
15. Any Finding of Fact that should be deemed to be a Conclusion of Law is hereby adopted as such.

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 Title 2 SCC and Chapter 30.85 SCC.
2. The Examiner concludes that the County's zoning regulations are unambiguous with regard to their application in this case. Unless a use is clearly authorized in one of the zoning matrices found in SCC 30.22.110, it is generally prohibited. (SCC 30.22.040) On rural lands, the County has chosen to restrict most commercial activities to rural business and rural industrial zones and requires them to be of limited scale and impact to the surrounding uses and natural environment. The regulations expressly prohibit manufacturing and fabricating operations in the R-5 zone. (SCC 30.22.110) This is consistent with the County's Comprehensive Plan (see, e.g., Policy LU 6.E.1 through 6E.8), and the Growth Management Act (RCW 36.70A.011). It is within this regulatory framework that the Appellant has moved his existing commercial sign business into an accessory building on a R-5 parcel, in an established rural residential neighborhood. Although the Appellant is attempting to meet the County's "home occupation" regulations, the Appellant objects to the restriction of the business' attendant truck use or operations (which currently includes operating, parking, loading, unloading, repairing or maintaining, and storing between four and six commercial vehicles on the subject property) to a single commercial vehicle.
3. The Examiner concludes that PDS has proven by a preponderance of the evidence that the County's zoning regulations prohibit Appellant's use of commercial trucks on the subject property as part of a "home occupation." Absent a specific authorization to operate commercial trucks within the R-5 zone as part of a "home occupation" (which is not present), such use is *prohibited* pursuant to SCC 30.22.040. This conclusion is further supported by the fact that commercial vehicle storage facilities are prohibited in the R-5 zone (SCC 30.22.110 - rural use matrix), and commercial vehicle home basing requires a conditional use permit. *Id.* The Appellant would have the Examiner ignore the specific zoning matrix interpretation instructions set forth in SCC 30.22.040. The Appellant seems to believe that absent a specific prohibition in the zoning regulations, any and all uses are allowed in the R-5 zone. In fact, the exact opposite is true.
4. Although PDS would grant the Appellant the right to store up to one commercial vehicle on the subject property based on *Snohomish County and Epstein, et al., v. Redwood, et ux.* the

Hearing Examiner concludes no commercial trucks are authorized to be used as part of a "home occupation." (Additionally, the Examiner concludes that the Superior Court's decision is not applicable to the present, because the facts are entirely different here. It is undisputed in this case that the commercial trucks are not driven to and from an off-site workplace, but are used to deliver products produced by the Company on-site to customers located off-site). The Examiner's conclusion that no commercial trucking operations are allowed as part of a "home occupation" is based on the fact that such uses are not specifically authorized in the zoning matrix. Such conclusion is further based on SCC 30.28.050(3)(e), (f) and (g) which state:

- (e) The home occupation shall be fully enclosed within the accessory building and/or the attached garage including no outside storage of equipment or materials;
- (f) The home occupation shall not create a level of noise vibration, smoke, dust, odors, heat, light, or glare beyond that which is acceptable in a residential area;
- (g) The following activities, including any similar activities, are prohibited as home occupations: minor or major automobile, truck or heavy equipment fueling, maintenance or repair; auto-body work or painting; parking or storage of heavy equipment; and any Group H occupancies as defined in the Uniform Building Code except for woodworking and spray finishing in conjunction with woodworking activities;

These regulations make it clear that there is to be no increase in the intensity of use caused by the home occupation (and specifically restricts activities associate with trucks or heavy equipment) beyond those normally found in a rural residential neighborhood. While it may be common and acceptable to have horse trailers, RVs and mail delivery vans travelling to and from the rural residences along Huckleberry Lane, the use of commercial trucks, including 18-wheel semi-trucks and flat bed trailers, in this area is not acceptable within the meaning of the "home occupation" regulations.

5. The trucking operations described in this case far exceed the carefully drawn restrictions on "home occupations" in the rural residential zone. The semi-trucks and flat bed trailers take access to the property along a private rural road, Huckleberry Lane. The road is chip-sealed and it appears from the photos in the record that portions of it have been reduced to mud and large ruts. The Huckleberry Lane Road Association has stated that the road is being damaged by the Appellant's semi-trucks. Additionally, from a public health, safety and welfare standpoint, the truck use in this case poses a genuine risk to the public. There is no shoulder or area onto which passing cars or pedestrians can take refuge from passing semi-trucks and trailers. In any other setting, the Appellant's commercial sign business would be required to meet the regulations set forth in Chapter 30.66B SCC and EDDS, to ensure that the road was adequately upgraded for public safety and traffic circulation, among other things. These conflicts and safety concerns are not addressed in the county's "home occupation" regulations because the regulations do not allow the home occupation to use, operate, park, repair or maintain semi-trucks and flat-bed trailers on the property or other heavy equipment as part of the home occupation use.
6. In light of the entire record, the Appellant has failed to meet his burden of proof to show that a violation has not occurred. The violation should be sustained and the appeal should be denied.
7. Where a violation is found to exist, 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 NOV was filed on February 9, 2011, with a 60-day compliance date of March 21, 2011. The appeal was filed on February 25, 2011. Penalties would have accrued on March 21, 2011; however, they were stayed pending the completion of this appeal.

8. 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 Appellant approximately 60 additional days to achieve compliance.
9. A **new compliance date of Friday, June 24, 2011** is hereby established. Penalties in the amount of \$1,500.00 should be imposed if compliance is not achieved by that date.
10. Any Conclusion of Law that should be determined to be a Finding of Fact is hereby adopted as such.

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 Notice of Violation is sustained and the appeal is denied.**
2. Appellant is granted until **Friday, June 24, 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 27th day of April, 2011.


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) **on or before May 9, 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 Clerk of the County Council 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, Stephanie Lyon

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APPEAL – Notice of Violation APRIL 14,
2011

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