



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

**Millie Judge**  
Hearing Examiner

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

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**Decision Date:** December 7, 2011  
**Subject:** **Appeal from a Notice of Violation (Regarding Doors for Buildings**  
**at Everett I-5 Mini Storage)**  
**File No:** 11-103544-CT  
**Appellant:** Hill & Roats Company, LLC  
**Respondent:** Ken Nejbauer - Code Enforcement Officer, Snohomish County

**DECISION  
SUMMARY:**

The appeal is granted as to Building H. In respect to all other buildings, the appeal is denied and the Notice of Violation is affirmed.

This matter came before the Hearing Examiner Pro Tempore on October 6, 2011, in an open record hearing. Ken Nejbauer, Code Enforcement Officer, represented the County. Kris J. Sundberg, Attorney at Law, represented Appellant Hill & Roats Co.

Testimony for the County was given by Ken Nejbauer, Victor McKinstry, County Senior Plans Examiner, and Ron Tangen, County Senior Fire Inspector. Testimony for Appellant was presented by Gary Roats, Hill and Roats Owner and Manager; Byron Backstrom, retired County Plans Review Supervisor; and Thomas Kinsman, Building Code Consultant.

Thirty-two exhibits were admitted. Exhibit 22 was excluded (lack of opportunity to confront and cross-examine expert)

The hearing was held on October 6, 2011, and thereafter on October 21, 2011. The Examiner issued an Order referring the matter to the Building Official for reconsideration and redetermination of the appropriate occupant load. The Building Official's response was received by the Examiner's office on November 14, 2011. The Appellant provided a reply dated November 18, 2011.

The testimony of the witnesses having been heard, all exhibits entered into evidence having been reviewed, and the arguments of the parties having been considered, the Examiner makes the following findings based on a preponderance of the evidence.

## FINDINGS OF FACT

1. Exhibits 1 through 33 (excluding Exhibit 22) have been entered into the record as evidence along with the testimony of witnesses presented at the open record hearing and the Tape Log.
2. The Examiner finds that proper public notice of the open record hearing on the appeal was provided by the Hearing Examiner's Office as required by County Code.
3. Findings 3 through 20 in the Examiner's Order of October 21, 2011, referring this matter to the Building Official, are adopted and by this reference are incorporated into this decision.
4. As previously noted, the general requirement for using side-hinged swinging doors does not apply to storage areas with an occupant load of 10 or less. See first exception to IBC/IFC Sec. 1008.1.2.
5. The occupant load here was determined to exceed 10 by using the floor area per occupant factor from IBC/IFC Table 1004.1.1. Since the intended use (self-service mini storage facility) is not listed, the factor selected depended on the use identified as most nearly resembling the intended use.
6. In response to the Hearing Examiner's request, the Building Official issued a decision on November 14, 2011. That decision is quoted in pertinent part below:

IBC/IFC Table 1004.1.1 does not list a function of space specific to self serve mini storage facilities. Snohomish County PDS past and present practice has been to consistently use 300 square feet per person when determining the occupant load for self serve mini storage facilities. . . .

I have reviewed the function of space listed in Table 1004.1.1 and believe self serve storage facilities most nearly resemble mercantile storage, stock, and shipping areas. In my opinion, the floor area allowance of 300 square feet per occupant is appropriate for the self serve mini storage facility.

The Everett I-5 Mini Storage buildings include storage units that exit directly to the exterior and do not have access to the interior means of egress system. I agree it is appropriate to exclude the floor areas of these units when computing the occupant load for determining the means of egress requirements for the rest of the building.

7. Excluding the area of the units that exit directly to the exterior, a 300 square foot occupant load factor still yields a calculated occupant load above 10 for the interior units now served by roll-up doors in all buildings at the facility, except in Building H.
8. In Building H, the area served by rollup doors is 1,420 square feet. Using 300 square feet as the load factor, the calculated load is 4.7. This is within the exception (10 or less) to the requirement for side-hinged swinging doors.
9. In this case, the Building Official did not approve using the actual number of occupants for whom the occupied floor space is designed in determining the design occupant load. (See IBC/IFC 1004.1.1 (Exception))
10. The County has declined to issue a Certificate of Occupancy until the door situation is corrected.
11. Any conclusion herein which may be deemed a finding is hereby adopted as such.

### **CONCLUSIONS OF LAW**

1. Conclusions 1 through 3 in the Examiner's Order of October 21, 2011 are adopted and by this reference are incorporated into this decision.
2. Deriving occupant load by using the actual number of occupants for whom the occupied floor space is designed is discretionary. The Building Official was under no obligation to take this approach.
3. The use of "mercantile storage, stock and shipping areas" as the listed use most nearly resembling the intended use was also a matter of discretion. The selection of this category was not shown to be a willful and unreasoning act in disregard of the facts and circumstances. It was not an abuse discretion and therefore must be sustained.
4. Accordingly, none of the buildings at the facility, except Building H, were shown to be within the exception to the rule that side-hinged swinging doors are to be used. (IBC/IFC 1008.1.2)
5. Therefore, except as to Building H, the Notice of Violation must be sustained.
6. Having correctly determined that the roll-up doors are in violation of Code, the County had the authority in pursuit of public health, safety and welfare to require correction, notwithstanding its prior action in giving permission for such doors on Building G (now H) in 1986.

7. Any constitutional issues raised by the County's actions here are beyond the jurisdiction of the Hearing Examiner.
8. Any finding herein which may be deemed a conclusion is hereby adopted as such.

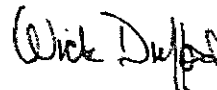
## DECISION

The appeal is granted insofar as the Notice of Violation requires side-hinged swinging doors on Building H. The violation as to Building H is dismissed. The roll-up doors on that building may remain.

In all other respects, the appeal is denied. The Notice of Violation is sustained as to the roll-up doors in Building D upper level, both ends, Building F upper level, both ends, Building I upper level, both ends, and Building K upper level, both ends.

No Certificate of Occupancy need be issued until the violations are corrected. The Appellant herein shall correct the violations and obtain a Certificate of Occupancy or cease occupying the structures.

Decision issued this 7<sup>th</sup> day of December, 2011.



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Wick Dufford, Hearing Examiner Pro Tempore

<b>EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES</b>
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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 30.72 SCC and the Examiner rules of procedure.

## Reconsideration

Any Party of Record may request reconsideration by the Examiner. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2802 Wetmore Avenue, 2<sup>nd</sup> Floor, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **DECEMBER 19, 2011**. There is no fee for filing a petition for reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” (SCC 30.72.065)**

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 Examiner exceeded his jurisdiction;
- (b) the Examiner failed to follow the applicable procedure in reaching his decision;
- (c) the Examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of Snohomish County Code, or other county or state law or regulation;
- (d) the Examiner’s findings, conclusions and/or conditions are not supported by the record;
- (e) newly discovered evidence alleged to be material to the Examiner’s decision which could not reasonably have been produced at the Examiner’s hearing; and/or
- (f) changes to the application proposed by the applicant in response to deficiencies identified in the decision.

Petitions for reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.72.065. Please include the county file number in any correspondence regarding this case.

## **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. Service on parties must be as required by RCW 36.70C.040.

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.

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Staff Distribution:

Department of Planning and Development Services: Ken Nejbauer

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.

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