



**DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER**

Hearing Examiner's Office

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

Subject: Contested Citation

Millie Judge
Hearing Examiner

File No.: 11-109063 CT

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

Appellant: Tom Heide

Respondent: Snohomish County Planning and Development Services Department (PDS) (425) 388-3538
FAX (425) 388-3201

Decision: **Citation Affirmed**

INTRODUCTION

This matter having come before the Hearing Examiner on April 18, 2012, the witnesses having been duly sworn, the testimony of witnesses having been heard, and all exhibits admitted into evidence having been considered, the Examiner enters the following Findings of Fact, Conclusions of Law and Decision based on a preponderance of the evidence:

FINDINGS OF FACT

1. Tom Heide is the occupant of property located at 4303 Serene Way, Lynnwood, Washington 98037-5210 (hereinafter referred to as "the subject property"). PDS issued a Citation to Mr. Heide on March 2, 2012, alleging a violation of SCC 30.22.100 and 30.65.285, for allowing junkyard conditions to exist on the property in an urban zone.
2. Mr. Heide filed a request to contest the Citation on March 14, 2012. A public hearing was held on the Citation on April 18, 2012 before the Hearing Examiner. At the public hearing, Mr. Heide appeared and Craig Odegaard appeared on behalf of PDS.
3. Exhibits 1 through 5 were admitted into evidence and considered by the Hearing Examiner in this matter.
4. Code Enforcement Officer Odegaard testified that the junkyard conditions are clearly shown in the photographs in the record. (Exhibits 2 and 3) He stated that his investigation revealed that Mr. Heide is a "responsible party" with regard to the junkyard conditions, and occupies the property. He stated that PDS has had neighborhood complaints about the property and that he has been unable to reach the owner.
5. Mr. Heide testified that the recent photographs (Exhibits 5A-5D) demonstrate that the property has been cleaned up and is in compliance. He asserts that the photos show the state of the property as of March 1, 2012. Prior to that date, he stated that he was not sure what he could do to clean up the property, since much of the junk on the site is the property of the owner. He testified that he has made every effort to come into compliance.

6. The Hearing Examiner finds that the photographs set forth in Exhibits 2 and 3 demonstrate prima facie evidence of junkyard conditions on the subject property as asserted in the Citation.
7. The issue on appeal is whether junkyard conditions existed on the subject property on March 2, 2012, as alleged in the Citation.

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 Chapter 2.02 SCC and Chapter 30.85 SCC.
2. According to the Citation, the Appellant is accused of violating SCC 30.22.100 and 30.65.285.
3. PDS proved by a preponderance of the evidence that (1) the property is within the Urban Zone, and (2) that junkyard conditions existed on the date that the Citation was issued. The Appellant has taken steps to come into compliance; however, the Hearing Examiner finds that the Citation was properly issued.
4. Any Conclusion in this Decision, which should be deemed 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 Hearing Examiner hereby affirms the Citation and \$150.00 fine imposed by PDS.

DECISION issued May 8, 2012.



Millie Judge, Hearing Examiner

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 30.72 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, 3000 Rockefeller Ave, 2nd Floor, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **MAY 25, 2012**. 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.

Staff Distribution:

Department of Planning and Development Services: Craig Odegaard, Code Enforcement Officer

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.

PARTIES OF RECORD REGISTER
HEIDE 11 109063 CT
CONTESTED CITATION

TOM HEIDE
4303 SERENE WAY
LYNNWOOD WA 98037

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