



**DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER**

Hearing Examiner's Office
Email: Hearing.Examiner@co.snohomish.wa.us

Subject: Contested Citation
File No.: 13-106580 CT
Appellant: Hien Pham
Respondent: Snohomish County Planning and Development Services Department (PDS)
Decision: **Citation Reversed**

Gordon Sivley
Hearing Examiner

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A. BACKGROUND INFORMATION

1. The Record. The official record for this proceeding consists of the Exhibits entered into evidence (Exhibits 1 through 7.E) and the testimony presented at the hearing. The entire record was admitted into evidence and considered by the Examiner in reaching the decision herein.

NOTE: For a complete record, an electronic recording of the hearing in this case is available in the Office of the Hearing Examiner.

2. Parties of Record. The Parties of Record are set forth in the Parties of Record Register.

3. Public Hearing. The Hearing Examiner held a public hearing on November 13, 2013 at 11:00 AM. Witnesses were sworn, testimony was presented, and exhibits were entered into the record at the hearing. Notice of the appeal hearing was provided as required by Chapter 2.02 SCC. (Exhibit 6) Code Enforcement Officer Craig Odegaard appeared on behalf of PDS. The Appellant appeared *pro se*.

B. FINDINGS OF FACT

The following Findings of Fact are supported by a preponderance of the evidence presented in the record pertaining to this matter:

1. All of the Exhibits shown on the master list of exhibits were entered into the record as evidence, along with the Hearing Log. The entire record was considered by the Examiner in reaching this decision.
2. The Examiner finds that proper public notice of the public hearing on the Citation was provided by the Hearing Examiner's Office as required by the County Code. (Exhibits 6)
3. Hien Pham is the owner of certain real property located at 10909 21st Drive SE, Everett, Washington (hereinafter referred to as "the subject property"). PDS issued a Citation to Mr.

Pham on October 3, 2013, alleging a violation of SCC 30.22.100 and 30.65.285 by allowing junkyard conditions in an urban zone. (Exhibit 2) Under SCC 30.22.100, junkyards are only allowed in Light Industrial and Heavy Industrial zones.

4. Mr. Pham timely filed a request to contest the Citation on October 21, 2013.
5. A public hearing was held on the Citation at 11:00 AM on November 13, 2013 before the Hearing Examiner. Mr. Pham appeared at the hearing and Craig Odegaard appeared for PDS.
6. The evidence submitted by Code Enforcement Officer Odegaard consisted primarily of photos taken on October 1, 2013 (Exhibits 5.A through 5.E) which show tools and equipment, flower pots, lumber and other construction materials and a small amount of other unidentifiable items in the side yard of the subject property behind a board fence.
7. Officer Odegaard described the items depicted in the photographs as salvaged or discarded materials.
8. Officer Odegaard noted that SCC 30.91J.020 defines "junkyard" as 50 cubic feet of junk when located in an Urban Growth Area, which he likened to the size of a refrigerator. However, he also testified that he did not take any measurements of the material at the subject site.
9. In both his written appeal statement and his oral testimony at the hearing, Mr. Pham indicated that the material on the subject property is "material or equipment" used in his tenant's landscaping business and is only temporarily stored on the property. Mr. Pham also submitted additional photographs, taken on November 1, 2013 (Exhibits 7.A through 7.E) which shows that some of the items previously on site have been removed.

C. 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 issued on October 3, 2013, Mr. Pham is accused of violating SCC 30.22.100 and 30.65.285 for allowing junkyard conditions in an urban zone. (Exhibit 2)
3. SCC 30.91J.010 defines "junk," as that term is used in SCC 30.91J.020, as "any solid, nonorganic, nonputrescible **solid waste** including, but not limited to waste, discarded or salvaged materials, and inoperable vehicles." (Emphasis added).
4. The Examiner concludes that PDS did not demonstrated by a preponderance of the evidence that the violation occurred as alleged. The photos submitted by PDS are ambiguous as to the nature of most of the material shown. Particularly in light of Mr. Pham's uncontested testimony about the use of the material in a landscaping business, PDS has not proved that the material is solid waste or discarded or salvaged materials. Moreover, there is insufficient evidence to

support a conclusion that, to the extent some of the material was discarded or salvaged, the amount of such material comprised 50 cubic feet or more in volume.

5. The Examiner concludes that the Citation was not properly issued and should be reversed and dismissed.
6. Any Conclusion in this Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

D. DECISION and ORDER

Based on the Findings of Fact and Conclusions of Law entered above, the Hearing Examiner hereby reverses and dismisses the Citation and \$150.00 fine assessed by PDS. No fine shall be imposed.

DECISION issued November 15, 2013.


Gordon Sivley, Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

The decision of the Hearing Examiner is final and conclusive with a right of appeal to Superior Court. 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, the Snohomish County Hearing Examiner Rules and Superior Court Civil Rules.

Reconsideration

Any party of record may request reconsideration by the Hearing 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 November 25, 2013**. 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 30.85.210]

A petition for reconsideration shall meet the requirements of SCC 30.85.210(2). 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 conditions are not supported by the record; and/or
- (e) New evidence has been discovered which could not reasonably have been discovered prior to the hearing and which is material to the decision.

Petitions for reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.85.210.

Appeal

An appeal to Superior Court may be filed by any aggrieved party of record **within 21 days from the date of this decision** pursuant to Chapter 36.70C RCW, the Land Use Petition Act. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the Superior Court.

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

Staff Distribution:

Craig Odegaard, PDS

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