

April 3, 2013

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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ORDER DISMISSING APPEAL

SUBJECT: Department of Permitting and Environmental Review file no. **E0001860 and E0300034**

SUSAN DAVIS
Civil Penalty Appeals

Location: 10736 28th Avenue SW, Seattle

Appellant: **Susan Davis**
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Seattle, WA 98146
Telephone: (206) 835-1342

King County: Department of Permitting and Environmental Review
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1. In April 2003 Susan Davis entered into two voluntary compliance agreements with King County Department of Permitting and Environmental Review (DPER) regarding civil code violations cited at 10736 28th Avenue SW, Seattle. File No. E0001860 cited the R6-zoned property for an accumulation of inoperable vehicles, auto parts, salvage, junk and debris. File No. E0300034 cited the same property for unlawful occupancy of a travel trailer and a sub-standard main dwelling, as well as an accumulation of combustible materials. The property was not brought into code compliance until April 2006.
2. Susan Davis has been paying monthly on the two voluntary compliance agreements at a rate generally of \$25.00 per month on each account. A December 17, 2012, code enforcement billing statement indicated that Ms. Davis had a mere \$18,000 remaining due collectively on her civil penalty violations, in which case at the current rate of payment she can hope to be free and clear of any further obligations in about 40 years.


3. It appears that the December 17, 2012, statement to Ms. Davis also included a notice to the effect that “if you believe that these civil penalties were assessed for a time period after the property was in compliance, you may file an appeal with the department”. Ms. Davis, naively believing that the Department was offering her an opportunity for redemption, filed the civil penalty appeal in this proceeding on December 27, 2012. Her appeal statement avers that the violations occurred back in 2003 during her ex-husband's reign and that the violations have now been addressed and the property upgraded.
4. On February 15, 2013 the DPER code enforcement section moved to dismiss Susan Davis’ penalty appeal. The reason cited in the motion was that the penalties were assessed in 2003 and compliance was not achieved until 2006. While this is not the true reason why the appeal must be dismissed, it is sufficient to raise the issue.
5. The real reason Ms. Davis’ civil penalty appeal must be dismissed is that the ordinance creating such appeals was not enacted until 2011 and contains no provision for its retroactive application. These ordinance amendments creating a civil penalty appeal process cannot apply to penalties assessed in 2003 under any compliance circumstances. Thus the appeal must be dismissed as not authorized by the ordinance.
6. If Ms. Davis has any hope of obtain civil penalty relief from DPER during this lifetime it will probably have to come under authority of KCC 23.32.050. Subsection B(2) of this provision authorizes the DPER director to waive civil fines and penalties if the director finds that the “code violations which form the basis of the civil penalties have been cured, and the director finds that compelling reasons justify waiver of all or part of the outstanding civil penalties”. If indeed her property continues to be in satisfactory code compliance, Ms. Davis could perhaps plead for mercy based on her steady record of partial payments on a monthly basis, the potential likelihood that her ex-husband was primarily responsible for the problems cited, and perhaps even the fact that penalties of this type fall disproportionately on people with limited economic resources who are struggling just to get by.

But Ms. Davis would need to temper any optimism with a clear understanding that granting relief falls entirely within the discretion of the Department director and that the civil penalty collection program is an important cash cow supporting maintenance of the Departmental bureaucracy. So while making a request for penalty relief is certainly worth a try, a positive outcome should not be unduly anticipated.

ORDER

The civil penalty appeal of Susan Davis is DISMISSED because the circumstances that gave rise to her penalty obligation preceded enactment of ordinance 17191 in 2011.

ORDERED April 3, 2013.


Stafford L. Smith
King County Hearing Examiner *pro tem*

SLS/gao