

December 23, 2022

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

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REPORT AND DECISION

SUBJECT: Department of Local Services file no. **ENFR210765**

TENHULZEN, ET AL.
Code Enforcement Appeal

Location: [REDACTED] Woodinville

Appellants: Tenhulzen Construction, LLC; Tenhulzen Design, LLC;
Tenhulzen Remodeling, and Tenhulzen Residential LLC
represented by Michael and Traci Tenhulzen
[REDACTED]
Woodinville, WA 98072
Telephone: [REDACTED]
Email: [REDACTED]

Appellant: TM Squared LLC
represented by Michael and Traci Tenhulzen
[REDACTED]
Woodinville, WA 98072
Telephone: [REDACTED]
Email: [REDACTED]

King County: Department of Local Services
represented by Jeri Breazeal
Department of Local Services
919 SW Grady Way Suite 300
Renton, WA 98057
Telephone: (206) 477-0294
Email: jeri.breazeal@kingcounty.gov

Intervenor: **Serena Glover**
 Friends of Sammamish Valley
 [REDACTED]
 Woodinville, WA 98072
 Telephone: [REDACTED]
 Email: [REDACTED]

Intervenor: **Michael Tanksley**
 Hollywood Hill Association
 [REDACTED]
 Woodinville, WA 98072
 Telephone: [REDACTED]
 Email: [REDACTED]

Department’s Preliminary Recommendation:	Violations 1 – 3 in compliance; Deny Appeal as to Violations 4 – 6
Department’s Final Recommendation:	Violations 1 – 3 in compliance; Deny Appeal as to Violations 4 – 6
Examiner’s Decision:	Violations 1 – 3 in compliance; Deny Appeal as to Violations 4 – 6

EXAMINER PROCEEDINGS:

Hearing Opened:	December 15, 2022
Hearing Closed:	December 15, 2022

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Hearing Examiner’s Office.

After hearing the witnesses’ testimony and observing their demeanor, studying the exhibits admitted into evidence, arguments and the relevant law, the examiner hereby makes the following findings, conclusions, and decision.

FINDINGS AND CONCLUSIONS:

1. TM Squared LLC is the record owner of property located in unincorporated King County at 14701 148th Avenue NE Woodinville, Washington (“Property”). TM Squared LLC’s governing members are Michael and Traci Tenhulzen. *Ex. D3 – 005, – 006; testimony of Michael Tenhulzen.*
2. The 1.48-acre Property is located in the RA-5 zone. TM Squared LLC states that it purchased the Property in September 2019 with the intent to build a primary residence in

place of or in addition to the existing primary structure, which it refers to as Building A. *Exs. D1 – 01, D3 – 005, – 006, D8; testimony of Michael Tenhulzen.*

3. At the time TM Squared LLC purchased the property in September 2019, code enforcement case ENFR 15-0287 was pending against the prior owner of the Property, Larone Holdings, for construction without permits and the operation of illegal businesses. Hearing Examiner Spohr dismissed the 2015 Notice and Order based on a settlement agreement, which, in turn, was based on the moratorium on the new adult beverage code. *Exs. D1 – 01, D10, D11.*
4. Good Brewing announced the opening of a new tap room on the Property in January 2020. It has since vacated the Property and has been dismissed as a party to this matter. *Exs. D1 – 01, D12, I4 – 001; testimony of Ofc. Breazeal.*
5. Mr. Tenhulzen is an experienced remodeling contractor who examines relevant King County Code provisions before commencing a project. At the time TM Squared purchased the Property, he was aware that operating a contracting business from the Property would require that a residence on the property be occupied by the operator of the business and that the business fall within the limitations and permit requirements of either a home occupation or home industry. *KCC 21A.08.020 (home occupation a permitted accessory use in the RA zone; home industry requires a conditional use permit (“CUP”)), 21A.30.085 (standards for home occupations in RA zones) and 21A.30.090 (standards for home industries in RA zones; testimony of Michael Tenhulzen.*
6. TM Squared applied for and obtained a building permit for a remodel of and addition to the existing residence, ADDC20 – 0619, in December 2020 and August 2022, respectively. Together with the existing residence, the addition would result in an approximately 6000 ft.² residence. Mr. Tenhulzen estimates that construction of the expanded residence will take approximately 18 months. Thus, it may not be complete until January or February 2024. *Exs. D1 – 01, D3 – 005, – 006, D8; testimony of Michael Tenhulzen and Ofc. Breazeal.*
7. Despite knowing that operating a contracting business from the Property would require that a residence on the Property be occupied by the operator of the business and qualify as either a home occupation or home industry, the Tenhulzens moved Tenhulzen Construction, LLC, Tenhulzen Remodeling, and Tenhulzen Residential LLC (collectively the Tenhulzen Entities) onto the Property on August 1, 2021, a full year before issuance of ADDC20 – 0619 and 30 months before estimated completion of the expanded residence. In doing so they converted Buildings D and C (vested as a barn and tractor repair business and garage, respectively) into offices for the Tenhulzen Entities.¹ They did not at that time and have not since occupied a residence on the Property. *Exs. D1 – 01, D7, D8, A1-010; testimony of Michael Tenhulzen and Ofc Breazeal.*
8. On November 18, 2021, the Department of Local Services, Permitting Division (“Department”) established a compliance schedule requiring TM Squared to cease

¹ The garage structure has since been demolished under permit ADDC20 – 0619. *Exs. D3 – 005 and D8; testimony of Michael Tenhulzen.*

operation of Good Brewing (as found in Finding 4, this has occurred) and the contracting business by December 31, 2021. It advised that failure to adhere to the compliance schedule could result in a legal notice being issued. *Ex. 15-001*.

9. TM Squared and the Tenhulzens have taken steps to bring the Property into compliance, including removal of a winery, food truck, and Good Brewing, reducing impervious surfaces, and obtaining permit ADDC20 – 0619. However, they continue to operate the Tenhulzen Entities on the Property. *Exs. D1, D8, D12; November 18, 2022, PreHearing Order and Notice of Remote Hearing; testimony of Michael Tenhulzen and Ofc. Breazzeal.*
10. On April 28, 2022, the Department issued a Notice and Order for the Property to the Tenhulzen Entities, TM Squared LLC, and Good Brewing² alleging:
 - (1) Operation of an Adult Beverage Business (Good Brewing tap room) without a King County Business License in violation of enumerated provisions of the King County Code;
 - (2) Operation of and Eating and Drinking Place (permanent food truck) without a King County Business License in violation of KCC 21A.08.070;
 - (3) Conversion of a residence into an Adult Beverage Business without the required permits, and inspections, and approvals in violation of enumerated provisions of the King County Code and International Building Code;
 - (4) Operation of a contracting business from a residential site that does not meet the requirements for a home occupation and is not otherwise allowed in the zone in violation of enumerated provisions of the King County Code;
 - (5) Of an accessory building into commercial office and storage without required permits, inspections, and approvals in violation of enumerated provisions of the King County Code and International Building Code; and
 - (6) Placement of a sign attached to a structure in violation of enumerated provisions of the King County Code. *Ex. D2.*
11. TM Squared and the Tenhulzen Entities (collectively “Appellants”) filed timely appeals of the alleged violations. *Ex. D3.*
12. Alleged Violations 1 – 3 have since been brought into compliance and are not before the examiner. *November 18, 2022, Prehearing Order and Notice of Remote Hearing; Ex. D1 – 002; testimony of Ofc. Breazzeal.*
13. Examiner Spohr allowed Friends of Sammamish Valley (FoSV) and Hollywood Hill Association (HHA) to intervene. Their primary concerns are the negative precedent allowing the contracting businesses to continue to operate while the residence is being

² Good Brewing has since dismissed from this matter.

constructed and the potential erosion of the Urban Growth Area boundary. *November 18, 2022, Prehearing Order and Notice of Remote Hearing; Ex. I1; testimony of Serena Glover.*

14. The Department has the burden to prove the remaining allegations (alleged Violations 4 – 6 in the Notice & Order) by a preponderance of the evidence. *KCC 20.22.080.G; Hearing Examiner Rules of Procedure and Mediation XV.E and XV.F.*

Operation of a contracting business from a residential site - Alleged Violation 4

15. Since August 2021 Appellants have operated 3 related contracting businesses, the Tenhulzen Entities, from Building D.³ As described in detail above, a contracting business is not allowed as a primary use in the RA zone. It is allowed only as a home occupation or home industry with a CUP. *KCC 21A.08.030 and KCC 21A.30.085 (home occupation), KCC 21A.30.090 (home industry), KCC 21A.08.060 (Gov't/business services land uses); Exs. D1 – 002, D8; A1 – 010; testimony of Ofc. Breazael and Michael Tenhulzen.*
16. A home occupation must be operated by the occupant of a residence on site and be accessory to the residence. Among other requirements, a home occupation is limited to 3 on-site employees and 3 that report to the site but primarily provide services off site. Currently 5 employees of the Tenhulzen Entities work on site with an additional 10 – 11 working from their homes to the job sites and coming into the office only occasionally. Thus, even if there were (and there is not) an occupied residence on the Property, the businesses would not qualify as a home occupation.⁴ However, Mr. Tenhulzen testified that he could reduce the number of on-site employees to 3, if necessary, by having some of the employees work remotely. *KCC 21A.030.085.E; Ex. D1 – 002; testimony of Ofc. Breazael and Michael Tenhulzen.*
17. Appellants contend that “the businesses comply with King County Code 21A.30.090 Home Industry, with the exception of maintaining a primary residence on the property.” This is a fatal exception as is the fact that a home industry requires a CUP. *KCC 21A.08.030 and KCC 21A.30.090; Ex. D3 – 003; testimony of Ofc. Breazael and Michael Tenhulzen.*
18. Appellants essentially ask that they be allowed to continue operating the contracting businesses until the 6000 ft.² home is constructed and occupied by the Tenhulzens.

Conversion accessory building into commercial office space- Alleged Violation 5

19. Appellants converted two structures to office use without permits. These structures were historically a barn and tractor repair business (Building D) and a garage (Building C). As noted in footnotes 1 and 3, Appellants have since demolished the garage. However, the barn/tractor repair business is being used for the contracting business without the

³ They also operated for a time from Building C, which has been demolished.

⁴ Finding 16 should not be read to suggest that occupancy of a residence and the number of on – site employees are the only ways in which the contracting businesses fail to meet the home occupation requirements. The examiner makes no findings on these other requirements as a record on them was not developed.

required use permit. *Exs. D1 – 002, D5 – 001, D7, D8; testimony of Ofc. Breazeal and Michael Tenhulzen.*

Sign attached to a structure - Alleged Violation 6

20. The sign is related to the operation on the Property of the Tenhulzen Entities. Even if the other prerequisites of a home occupation were met, the sign does not satisfy the requirements for a home occupation sign. Nor does it have a sign permit. *KCC 21A.20.080.B.3; Exs. D1 – 002, D5; testimony of Ofc. Breazeal.*
21. Any Finding of Fact which is more properly considered a Conclusion of Law is hereby adopted as a Conclusion of Law.

CONCLUSIONS OF LAW

1. Any Conclusion of Law which is more properly considered a Finding of Fact is hereby adopted as a Finding of Fact.
2. The Department has borne its burden of proving alleged violations 4 – 6 in violation of enumerated provisions of the King County Code and International Property Maintenance Code.
3. Appellants knew when they acquired the Property in 2019 that operation of their contracting businesses on site could be permitted only as a home occupation or home industry. Despite this knowledge, they moved the contracting businesses to the Property in August 2021 and have operated them on the Property since that time. It is not reasonable to extend compliance dates to allow completion of construction of the remodel and addition to the residence and, potentially, the obtaining of a CUP.

DECISION:

1. Violations 1-3 are in compliance. The appeals of Violations 4 – 6 are **DENIED**.
2. No penalties shall be assessed against Tenhulzen Construction, LLC, Tenhulzen Remodeling, and Tenhulzen Residential LLC or TM Squared LLC or the subject property if the following above actions are completed by **February 28, 2023**.
 - A. Cease use of the Property as a contracting business;
 - B. Close the structures to entry; and
 - C. Remove the sign from Building B.
2. If Appellants wish to operate a contracting business or businesses from the Property in the future, they may apply for a change of use of the structure(s) to an office for home occupation or home industry. If a home industry is proposed, it will require a Conditional Use Permit. Permits will not be issued until the requirements of home occupation or home industry are met. At the point the home occupation or home

industry requirements are met, Appellant may apply for a sign permit for a sign satisfying the sign requirements for a home occupation or home industry;

OR

By **February 28, 2023**, permanently cease operation of the contracting businesses and apply for and obtain the required permits, inspections and approvals to return Building B to its original use as a barn and tractor repair business.

3. If Appellants do not complete the above actions by the established deadline, or by any reasonable deadline extension the Department provides, the Department may issue penalties retroactive to today.

ORDERED December 23, 2022.

Alison Moss
King County Hearing Examiner *pro tem*

NOTICE OF RIGHT TO APPEAL

King County Code 20.22.040 directs the Examiner to make the County's final decision for this type of case. This decision shall be final and conclusive unless proceedings for review of the decision are timely and properly commenced in superior court. Appeals are governed by the Land Use Petition Act, Chapter 36.70C RCW.

MINUTES OF THE DECEMBER 15, 2022, HEARING IN THE APPEAL OF TENHULZEN, ET AL., GOOD BREWING, DEPARTMENT OF LOCAL SERVICES FILE NO. ENFR210765

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Jeri Breazeal, Serena Glover, and Michael Tenhulzen. A verbatim recording of the hearing is available in the Hearing Examiner's Office.

The following exhibits were offered and entered into the record by the Department:

Exhibit no. D1	Department of Local Services staff report to the Hearing Examiner
Exhibit no. D2	Notice and order, issued April 28, 2022
Exhibit no. D3	Appeal, received May 16, 2022
Exhibit no. D4	Codes cited in the notice and order
Exhibit no. D5	Photographs of subject property, dated July 23, 2021
Exhibit no. D6	Aerial photographs, historical

Exhibit no. D7	Assessor Records, historical
Exhibit no. D8	Site plan, from permit no. ADDC20-0169
Exhibit no. D9	Business information
Exhibit no. D10	Notice and order, from case no. ENFR15-0287, issued October 5, 2015
Exhibit no. D11	Release of prior notice and order, from case no. ENFR15-0287, dated July 31, 2019
Exhibit no. D12	Aerial photographs of subject property, from November 17, 2022

The following exhibits were offered and entered into the record by the Appellants:

Exhibit no. A1	Notes from Department of Local Services' documents
Exhibit no. A2	Notes from Intervenors' documents
Exhibit no. A3	Notes from Intervenors' documents, excluded from the record

The following exhibits were offered and entered into the record by the Intervenors:

Exhibit no. I1	Intervenors' prehearing statement and letter from Eglick and Whited PLLC, dated July 26, 2019
Exhibit no. I2	KC letter to appellants for ENFR19-0989, dated November 6, 2019
Exhibit no. I3	Appellant's email to KC requesting commercial zoning, with attachment
Exhibit no. I4	Social media post, showing Opening Date for Good Brewing, dated January 16, 2020
Exhibit no. I5	KC compliance schedule for ENFR21-0765, dated November 18, 2021
Exhibit no. I6	Screen Shot of permit description for Appellants' home construction
Exhibit no. I7	Photograph of Appellants' construction business parking lot, hours from Google listing, and employees photograph from Appellants' website
Exhibit no. I8	Map of Sammamish Valley with zoning and location of Appellants' property
Exhibit no. I9	Photograph of boardwalk connecting Appellants' businesses to adjacent City of Woodinville property
Exhibit no. I10	Intervenors' rebuttal exhibits to Appellants' appeal letters to KC
Exhibit no. I11	Settlement Agreement between KC and Mr. Larone for Fish Brewing, dated January 11, 2016

December 23, 2022

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CERTIFICATE OF SERVICE

SUBJECT: Department of Local Services file no. **ENFR210765**

TENHULZEN, ET AL.
Code Enforcement Appeal

I, Jessica Oscoy, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **REPORT AND DECISION** to those listed on the attached page as follows:

EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.

placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED December 23, 2022.



Jessica Oscoy
Office Manager

Breazeal, Jeri

Department of Local Services

Calderwood, Amy

Ombudsman's Office

Glover, Serena

Friends of Sammamish Valley

Hardcopy

Good Brewing Co.

King, Kevin

Good Brewing Co.

Hardcopy

Kirk, Greg

Department of Local Services

Lux, Sheryl

Department of Local Services

Tanksley, Michael

Hollywood Hill Association

Tenhulzen LLC

Tenhulzen, Michael/Traci

Tenhulzen Construction, LLC; Tenhulzen Design, LLC

Hardcopy

TM Squared LLC

Hardcopy

Whalen, LaDonna

Department of Local Services