

**CITY OF KIRKLAND HEARING EXAMINER  
FINDINGS CONCLUSIONS AND DECISION**

In the Matter of the Appeals of

**MARTIN MORGAN and  
SHARON MORGAN**

File Number:  
**MIS07-00024**

From a Notice of Violation and Order to  
Correct Issued By the Building Official for  
the City of Kirkland

**Introduction**

The City issued a Third Amended Notice of Violation and Order to Correct to Martin and Sharon Morgan for erecting two structures on their property, which the Morgans appealed.

The appeal was heard by the undersigned Hearing Examiner on August 21, 2008 in City Council Chambers, City Hall, 123 Fifth Avenue, Kirkland. Parties represented at the hearing were the Appellants, by Jack A. Borland, attorney-at-law; and the City, by Oskar Rey, Assistant City Attorney.

For the purposes of this decision, all section numbers refer to the Kirkland Municipal Code (KMC or Code) unless otherwise indicated.

The following exhibits were entered into the record in this matter:

- Exhibit 1      City's Memorandum to Hearing Examiner dated August 14, 2008 regarding the Morgan Building Code Enforcement Appeal, and the following attached exhibits:
- A. GIS photograph of the Morgan properties and vicinity;
  - B. Photos of two structures erected at 8249 122<sup>nd</sup> Avenue NE;
  - C. Amended Notice of Violation and Order to Correct dated July 10, 2007;
  - D. Appeal Letter (dated August 3, 2007) from Amended Notice of Violation and Order to Correct;
  - E. Hearing Examiner Decision dated October 28, 2007;
  - F. Second Amended Notice of Violation and Order to Correct dated April 16, 2008;
  - G. Settlement Agreement between the City and the Morgans dated April 22, 2008;
  - H. Photographs of the two structures taken on or about June 25, 2008;
  - I. Third Amended Notice of Violation and Order to Correct dated June 25, 2008;
  - J. Appeal of Third Amended Notice dated July 8, 2008; and

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K. Notice of Hearing dated July 24, 2008.

Having considered the evidence in the record, and viewed the subject property, the Hearing Examiner enters the following findings of fact, conclusions and decision on this appeal:

### **Findings of Fact**

1. The property that is the subject of this appeal is addressed as 8249 – 122<sup>nd</sup> Avenue NE in Kirkland (8249 Property). The Morgans live in a residence of an adjacent property at 8251 – 122<sup>nd</sup> Avenue NE in Kirkland. Sharon Morgan is shown as the owner of the 8249 property. Martin Morgan is shown as the owner of the 8251 property (8251 Property).

2. At some point before July 1, 2007, two structures were erected on the 8249 property. Each structure is over 120 square feet in size and rectangular in shape. The two structures were originally constructed from 2x4s. There was no permanent roofing and no siding on the structures. Instead, the roofs were covered with polypropylene tarps, which, with time, have become damaged by weather.

3. On July 10, 2007, the City building official issued an Amended Notice of Violation and Order to Correct to the Morgans regarding the structures. On August 3, 2007 the Morgans filed an appeal of the Amended Notice. Their letter of appeal stated the reasons for their appeal.

4. The appeal was heard on September 20, 2007. On October 28, 2007, the Hearing Examiner issued a decision. The Hearing Examiner concluded that although the structures are required to comply with Code, the Amended Notice of Violation did not sufficiently describe the nature of the violations or the corrective action required.

5. On April 16, 2008 the City issued a Second Amended Notice of Violation and Order to Correct to the Morgans with respect to the two structures. The City and the Morgans attempted to resolve the enforcement issues relating to the structures through a mediation session they had scheduled with respect to a different matter.

6. On April 22, 2008, the City and the Morgans participated in a mediation session which resulted in a settlement agreement. With respect to the structures, the settlement agreement required the Morgans to either remove structures within 30 days or bring them into compliance with applicable codes within 60 days. The settlement agreement stated that a building permit may be required to work on the structures, but that no building permit is required for structures under 120 square feet.

7. After the 60 day period referred to in the Settlement Agreement elapsed, the Morgans had not removed the structures, nor had they brought them into compliance with applicable codes. The Morgans had done some work to the walls and roof of one of the

structures without a permit. The City issued a stop work order on June 25, 2008 because the structures currently exceed 120 square feet and no building permit had been applied for or issued.

8. The City Building Official also issued a Third Amended Notice of Violation and Order to Correct (“Third Amended Notice”) on June 25, 2008. The Third Amended Notice describes the nature of the violations and the corrective action required. The violations described in the notice include (1) failure to provide adequate roof load, (2) failure to provide adequate wall bracing, (3) failure to use approved siding materials, and (4) failure to use approved roofing materials.

9. On July 8, 2008, the Morgans, through their attorney, appealed the issuance of the Third Amended Notice. The appeal letter does not contain a statement of the specific elements of the building official’s order, decision or determination disputed by the Morgans. The Morgans did not attempt to state or clarify the basis of their appeal prior to the August 21, 2008 hearing of this matter.

10. At the Hearing, counsel for the City argued that the Morgans’ appeal letter did not meet the requirements of KMC 21.06.576 because it did not describe the specific elements of the building official’s order disputed by the Morgans.

11. The Hearing Examiner allowed limited testimony by Mr. Morgan with respect to his contention that the structures are less than 120 square feet in size. The Hearing Examiner did not hear testimony with respect to other matters.

12. KMC Section 21.06.576 sets forth the requirements for appeals of an order of the Building Official. It provides that: “The appeal shall contain a clear reference to the matter being appealed and a statement of the specific elements of the building official’s order, decision or determination disputed by the appellant.”

### **Conclusions**

1. The Hearing Examiner has jurisdiction over this appeal pursuant to KMC 21.06.570. KMC 21.06.572 provides that an appeal shall be based on a claim “that this code or the technical codes have been incorrectly interpreted, that the provisions of this code or the technical codes do not apply or that an equally good or better form of construction, method of protection or safety is proposed.”

2. The July 8, 2008 appeal filed by the Morgans does not state the basis on which the Morgans appealed the issuance of the Third Amended Notice. As a result, the appeal fails to comply with KMC Section 21.06.576 and is therefore deficient.

3. In light of the deficiencies of the July 8, 2008 appeal, the Third Amended Notice should be affirmed.

**Decision and Order**

The Third Amended Notice of Violation and Order to Correct dated June 25, 2008 is **AFFIRMED**.

Entered this 17<sup>th</sup> day of September, 2008.

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Anne Watanabe  
Hearing Examiner

**Concerning Further Review**

KMC 21.06.588 states that “Any judicial appeal of the hearing examiner’s decision shall be reviewed in King County superior court pursuant to Chapter 36.70C RCW, the Land Use Petition Act (“LUPA”). The land use petition must be filed within twenty-one calendar days of the issuance of the hearing examiner’s decision.