

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

In the Matter of the Appeal of

**KEVIN and RENEE PETERSON**

Appeal number:  
**APL06-00005**

From a Notice of Civil Infraction issued by  
the City of Kirkland, Department of Planning  
and Community Development

**Introduction**

The City issued a Notice of Civil Infraction to appellants Kevin and Renee Peterson for maintaining junk accumulation and/or a junk yard, in violation of the Kirkland Zoning Code. The appellants appealed the citation.

The appeal hearing was held before the undersigned Hearing Examiner Pro Tem on June 15, 2006, in City Council Chambers, City Hall, 123 Fifth Avenue, Kirkland, Washington. Shortly after 9 a.m. on that date, a memorandum was received by fax at City Hall. The appellants did not appear at the hearing, although a memorandum which was signed by Mr. Peterson and addressed to the Hearing Examiner, was received at City Hall shortly after 9 a.m. on that date. The Department was represented at the hearing by Judd Tuberg, Code Enforcement Officer, and Nancy Cox, Development Review Manager.

For purposes of this decision, all section numbers refer to the Kirkland Zoning Code (KZC or Code) unless otherwise indicated. After due consideration of the evidence elicited during the appeal hearing, the following shall constitute the findings of fact, conclusions, and decision of the Hearing Examiner on this appeal.

The following Exhibits were entered into the record on this matter:

- Exhibit 1: Memo dated June 14, 2006, to Hearing Examiner
- Exhibit 2: Complaint investigation request form and aerial photo of site
- Exhibit 3: Aerial photo of site
- Exhibit 4: Excerpts from KZC
- Exhibit 5: Page 622 from Webster's dictionary
- Exhibit 6: Page 1013 from Webster's dictionary
- Exhibit 7: December 8, 2005 Notice of Violation and Order
- Exhibit 8: Letter to J. Tuberg, dated December 3, 2005, from Kevin Peterson
- Exhibit 9: Letter dated January 20, 2006, from J. Tuberg to the Petersons
- Exhibit 10: Letter dated January 26 2006, from Renee Peterson to J. Tuberg
- Exhibit 11: March 10, 2006 Notice of Civil Infraction

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- Exhibit 12: Affidavit of Service/Notice of Civil Infraction
- Exhibit 13: Letter from Kevin Peterson appealing the Notice of Civil Infraction
- Exhibit 14a: Email from Sandy Green to J. Tuberg
- Exhibit 14b: Email from Sandy Green to J. Tuberg
- Exhibit 15: Call for Service Report
- Exhibit 16: Notice of May 18, 2006 appeal hearing
- Exhibit 17: Case Activity Listing ENF 05-208
- Exhibit 18: Certified mail receipt and affidavit of mailing
- Exhibit 19: USPS track and confirm info
- Exhibit 20: USPS track and confirm info and certified mail receipt
- Exhibit 21: May 11, 2006 memo to Hearing Examiner from J. Tuberg
- Exhibit 22: May 15, 2006, letter from the Petersons requesting new hearing date
- Exhibit 23: Photo of site from 1999
- Exhibit 24: Case Activity Listing describing 1999 visit to site
- Exhibit 25: State Dept. of Licensing info on four vehicles at site

### Findings of Fact

1. The subject property is addressed as 8700 126<sup>th</sup> Avenue NE, Kirkland. The property is owned by Renee and Kevin Peterson, who reside at the property.
2. On September 23, 2005, the Department of Planning and Community Development received a complaint regarding the presence of apparently disabled vehicles at the subject property. Code Enforcement Officer Judd Tuberg viewed the property and determined that the conditions at the site constituted accumulation of junk and/or the maintenance of a junk yard, which are prohibited by the Code. Mr. Tuberg contacted Mr. Peterson after this investigation, and provided him with a copy of Section 115.70 of the Code, and the Code's definitions of "junk accumulation" and "junk yard." Mr. Tuberg requested that Mr. Peterson remove the junk, but no corrective action was taken.
3. On December 8, 2005, Mr. Tuberg served a Notice of Violation and Order to Correct on Mr. Peterson, and posted a copy of the notice on the site. The Notice was sent to the Petersons by certified mail, return receipt requested.
4. The Notice and Order specified a correction date of December 16, 2005. On that date, the Department received a letter from Mr. Peterson which requested that the deadline be extended "at least 30 days for the cleanup and an additional 30 days for the vehicles."
5. As of January 20, 2006, the Department had viewed the site and determined that it was still not in compliance. Mr. Tuberg sent a letter to the Petersons stating that the junk accumulation and items described in the Notice had not been removed, and gave

them until January 27, 2006, to provide a written response identifying the items that would be removed and the date by which they would be removed.

6. On January 30, 2006, the Department received a letter from Renee Peterson which stated that her husband was out of town, but that when he returned, they would provide a written response as requested in the Department's letter. However, no letter was ever received by the Department.

7. Mr. Tuberg viewed the site in January and February 2006, at which times the junk items had not been removed.

8. On March 10, 2006, the Department issued a Notice of Civil Infraction to the Petersons (Exhibit 11) for violation of KZC 115.70. The Notice lists the items which were being stored on the property, including several vehicles that were damaged and/or possibly inoperable, salvaged bricks and building materials, various auto parts, and other materials, including a number of items stored inside some of the vehicles.

9. The Notice of Civil Infraction was delivered to the Petersons on March 11, 2006, and the notice was also posted at the site. The Petersons submitted a letter appealing the Notice on March 17, 2006.

10. The appeal hearing was set for 9 a.m. May 18, 2006. The Department sent the notice of the hearing to the Petersons on April 28, 2006 by certified mail. On April 29, 2006, the Post Office attempted to deliver the item at the Petersons' address and left a notice of attempted delivery.

11. On May 16, 2006, the Department received a letter from the Petersons requesting a continuance of the hearing. The letter stated that they did not receive the notice of the hearing, and that they had advised Mr. Tuberg of this fact when he spoke to them on May 12, 2006. The hearing was continued to 9 a.m. on June 15, 2006, by order of the Hearing Examiner.

12. Mr. Tuberg's case notes for the property (Exhibit 17) describe the items that were observed at the property during days in May and June, including June 13, 2006.

13. On June 12, 2006, Renee Peterson called the Department and said that her husband would not attend the hearing, but that she would appear.

14. The hearing commenced as noticed on June 15, 2006. The Petersons did not appear. Shortly after 9 a.m., a letter apparently from the Petersons addressed to the Hearing Examiner was received by fax at the Department. The letter references staff's May 11, 2006 memorandum, and states: "Yes, 'junk' accumulation has occurred at the residence, there is clearly no disputing that fact." The letter also notes that the "junk" was not cleaned up prior to the March 10, 2006, but was now clean due to the efforts of

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friends, family and other volunteers, since the Petersons themselves were not capable physically or financially of removing the items.

### Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant to KZC 170.40. The City must show by a preponderance of the evidence that a violation has occurred. The Hearing Examiner may impose a daily monetary penalty from the date of service of the notice of civil infraction if the appeal is deemed to be frivolous or intended solely to delay compliance. KZC 170.40.9.c provides that in the event of failure to appear at a hearing, the Hearing Examiner shall assess the monetary penalty prescribed and a penalty of \$25.00.

2. At the time of the issuance of the Notice of Civil Infraction, the Petersons had accumulated a substantial amount of junk (including the vehicles identified in the Notice) on their property, in violation of KZC 115.70. Although the evidence shows that some items had been removed as of the date of the hearing, the property was still not in compliance with the Code, with many items of junk still stored on the property.

3. The Department at hearing requested that certain vehicles be declared as “junk vehicles,” presumably under the state definition of junk vehicle. The Department noted that it is concerned that the appellants will move the offending vehicles into a garage and then move them outside again. It is not clear that the Code grants the Hearing Examiner authority to declare a vehicle as a “junk vehicle” under state law, so a declaration will not be issued as part of this order. However, as noted above, the subject vehicles do meet the Code’s definition of junk, and are subject to KCZ 115.70’s prohibition on the accumulation of junk.

4. The Department requested a penalty of \$100.00 for each day from the date of the issuance of the Notice of Civil Infraction, March 10, 2006, through March 17, 2006, the date of the filing of the appeal, for a total of \$800.00. The Department asserts that the appeal was frivolous and brought to delay compliance, so that setting the penalty from the date of the service of the Notice is warranted. The Department’s assertion is supported by the record. The appellants have since December 2005 requested and received several extensions of deadlines related to the enforcement action, including continuance of their hearing, which they did not attend. Penalties starting from the date of issuance of the Notice are appropriate. The Department also requested penalties of \$100 per day for each day that the violation remains uncorrected; that penalty will be assessed but will be suspended if the appellants correct all violations (as certified by the Department) within seven days of the issuance of this decision.

5. Because the appellants did not appear at the hearing, KZC 170.40.9.c, requires that an additional penalty of \$25.00 be assessed.

6. The City has shown by a preponderance of the evidence that the violations listed in the Notice of Civil Infraction occurred.

### Decision and Order

Notice of Civil Infraction ENF05-208, issued to the appellants, Kevin and Renee Peterson, is hereby affirmed. The monetary penalty is set at \$825.00. This penalty shall be paid to the City Clerk by \_\_\_\_\_, seven (7) calendar days following the date of the issuance of this decision.

An additional penalty of \$100.00 per day, beginning on the date of issuance of this decision, is hereby assessed for each day until the violations are corrected, as certified by DCPD. If the violations are certified by DCPD as having been corrected within seven (7) calendar days of the issuance of this decision, this continuing penalty of \$100.00 per day shall be suspended.

Entered this 23<sup>rd</sup> day of June, 2006.

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Anne Watanabe  
Hearing Examiner Pro Tem

### Concerning Further Review

KZC 170.40.8 states: "The decision of the Hearing Examiner may be reviewed pursuant to the standards set forth in RCW 36.70C.130 in King County Superior Court using the standards set forth in RCW 36.70.130. The land use petition must be filed within 21 calendar days of the issuance of the final land use decision by the Hearing Examiner. For more information on the judicial review process for land use decision, see Chapter 36.70C RCW."