

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF TUKWILA**

In the Matter of a Notice and Order Issued to

FILE: RFA05-039

CLARICE J. SAVAGE

By the Code Enforcement Officer,
Department of Community Development

Decision and Order

Introduction

The Code Enforcement Officer issued a Notice and Order on September 2, 2005, for property addressed as 4430 South 160th Street in Tukwila. The Appellant, Clarice J. Savage, exercised her right under Chapter 8.45 Tukwila Municipal Code to appeal the Notice and Order.

The first appeal hearing was convened on October 18, 2005, at 11:00 a.m., before the undersigned Hearing Examiner (Examiner). The Appellant did not attend the hearing, but later on the same day submitted a one-page letter stating that she had not received notice of the time and place of the hearing on her appeal.

The City elected to re-notice the hearing, which was held on December 16, 2005. Parties represented at the hearing were: The Appellant, Clarice J. Savage, by Jeff Savage, her son; and the City, by Lacy Madke, City Attorney, and Kathryn Stetson, Code Enforcement Officer.

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

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| Exhibit 1 | Three photographs of the subject property taken on December 16, 2005 |
| Exhibit 2 | Staff Report dated November 17, 2005, with attached King County property tax information for the subject property |
| Exhibit 3 | Letter dated March 1, 2005 to Clarice Savage from Kathryn A. Stetson and 2 pages of attached pictures |
| Exhibit 4 | Letter dated April 15, 2005 to Jeff Savage from Joyce Trantina, Code Enforcement Officer |
| Exhibit 5 | Notice and Order dated September 2, 2005, to Clarice J. Savage from Kathryn A. Stetson and 2 pages of attached pictures dated 2/25/05, 8/15/05 and 9/2/05 |
| Exhibit 6 | Letter of appeal dated September 14, 2005 to the Hearing Officer of the City of Tukwila from Clarice J. Savage |
| Exhibit 7 | Chapter 8.24 TMC |
| Exhibit 8 | TMC Sections 8.28.010 and 8.28.010 A and B.1 through B.9 |

Exhibit 9	International Property Maintenance Code Section 307
Exhibit 10	International Property Maintenance Code definition of “Rubbish”
Exhibit 11	International Property Maintenance Code Section 202, “General Definitions” “A” through “L”
Exhibit 12	TMC Sections 9.28.010 through .030
Exhibit 13	Chapter 8.25 TMC
Exhibit 14	Four color photographs of the subject property taken on February 25, 2005
Exhibit 15	Six color photographs of the subject property taken on August 15, 2005
Exhibit 16	Six color photographs of the subject property taken on September 2, 2005
Exhibit 17	Two color photographs of the subject property taken on October 13, 2005
Exhibit 18	Seven color photographs of the subject property taken on October 11, 2005
Exhibit 19	Nine color photographs of the subject property taken on October 12, 2005

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

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

Findings of Fact

1. The subject property is addressed as 4430 South 160th Street in Tukwila. The King County parcel number is 8108600481. The Appellant, Clarice J. Savage, is the legal owner.
2. On February 23, 2005, City Code Enforcement staff received a complaint that junk vehicles, car batteries and debris were located at the subject property. Code Enforcement Officer Kathryn Stetson inspected the property on February 25, 2005, and took photographs. (Exhibit 14) Officer Stetson saw multiple vehicles that appeared to meet the Code’s definition of “junk vehicle”, parked in the front landscaped area, trash and debris, and a commercial vehicle parked on the property, but not on the driveway to the residence.
3. On March 1, 2005, Officer Stetson sent a “pre-citation” letter to the property owner stating that the property contained junk vehicle, debris and commercial vehicle violations and requesting compliance by March 18, 2005. (Exhibit 3)

4. On March 8, 2005, the property owner's son, Jeff Savage, requested an extension for compliance, citing illness, and stating that the vehicles would be removed within two weeks. The City granted an extension to April 15, 2005.
5. On April 15, 2005, Jeff Savage spoke by telephone with Code Enforcement Officer Joyce Trantina. He again requested an extension, stating that he and his mother were working to remove the debris and vehicles. He also requested a free dump pass to help with disposal costs. The City agreed to an extension to early June and provided the dump pass. (Exhibit 4)
6. On June 1, 2005, Jeff Savage met with Officer Stetson at City Hall. She granted him another extension to June 20, 2005, and he agreed to contact Code Enforcement at the end of June to arrange for an inspection. He did not call.
7. On July 7, 2005, Officer Stetson spoke with Jeff Savage by telephone. He stated that he was in the process of removing vehicles and tools from the property. He agreed to contact Officer Stetson on July 11 to arrange for an inspection, but did not do so.
8. On July 21, 2005, Officer Stetson telephoned Jeff Savage at his home and cellular phone numbers and reminded him of the need for an inspection.
9. On July 25, Officer Stetson called the home telephone number for Jeff Savage and spoke to Clarice Savage, who stated that she would have Jeff call Officer Stetson.
10. On August 1, Officer Stetson spoke by telephone to Jeff Savage, who agreed to call her back on August 3, for an inspection to take place on August 4 or 5, but he did not call.
11. On August 15, Officer Stetson called Jeff Savage and left him a voicemail message that a civil citation would be issued unless she heard from him that day. Mr. Savage returned the call and agreed to an inspection the following day.
12. On August 16, 2005, Officer Stetson, and Officer Murphy of the Tukwila Police Department, inspected the property with Jeff Savage present and took photographs. (Exhibit 15 [erroneously dated August 15]) Officer Stetson testified that she found at least 15 vehicles parked in the front landscaped area, multiple piles of tarp-draped materials, the commercial vehicle in the same location it was in on February 25, and a motor home parked near the house. Officer Stetson did not inspect the rear yard. Exhibit 15 shows at least 6 vehicles in the front landscaped area and undraped piles of salvaged building materials and debris. Officer Stetson told Mr. Savage that the City would conduct a final inspection by the end of August and if necessary, take further legal action.
13. On September 1, 2005, Officer Stetson inspected the property and determined that there had been no significant change at the property.

14. On September 2, Officer Stetson issued a Violation Notice and Order, with accompanying photographs, to Clarice Savage. (Exhibit 5) The Notice and Order required that by September 16, 2005, all junk vehicles be removed from the property or stored completely within a building, all debris, garbage, construction materials or other rubbish be removed from the property, the commercial box truck be parked only on the driveway, and that any remaining vehicles be parked legally on an improved surface. The Notice and Order stated in bold, capital letters that failure to comply with it could result in a monetary penalty of up to \$500 per day per violation.

15. Clarice Savage filed an appeal of the Notice and Order, which was received by the City on September 15, 2005. (Exhibit 6) The City stipulated that the appeal was timely. The appeal stated that none of the vehicles meets the City's definition of junk vehicles, there were building materials for a new deck on the property, but no rubbish or garbage, the commercial vehicle parking area will be improved with gravel "as soon as there is time and money for such action," the vehicles are being moved out of the landscaped area, and the RV is not parked in the landscaped area. The appeal requested additional time to correct the violations and stated that both she and her son had been in poor health for several years and had financial problems.

16. Officer Stetson reinspected the property on October 11, 12 and 13, 2005, and took photographs. (Exhibits 17, 18 and 19) Officer Stetson drove by the property on December 16, 2005, the morning of the hearing, and took photographs from the road. (Exhibit 1) The photographs show at least two cars and a commercial truck in the landscaped area, as well as some piles of rubbish and used building materials. The City seeks enforcement of the September 2, 2005, Notice and Order.

17. David Savage testified that he and his mother have both been in poor health, but have been trying to clean up the property. He stated that the 13 vehicles on the property are all registered, and are all operable. However, he also testified that he has a friend who parks vehicles on the Savage property, that a few of them are still there, and that he is waiting for use of another friend's 22-foot truck to be able to haul the vehicles away.

18. Mr. Savage testified that the construction materials that were stored on the property have been taken to property he owns and is developing in Belfair. He also testified that the commercial truck is operable, but that he cannot use it to haul away the cars on the property because it is full of materials he is taking to property he owns in Des Moines. He stated that the truck, and all the cars parked in the front landscaped area are parked on 6 inches of gravel over a plastic barrier on the ground.

19. Mr. Savage testified that what has been described as debris on the property is actually commercial tools that came from his shop, and amusement devices he uses in his work. He stated that they are stored on the property because he has had unfortunate experiences with other storage arrangements and has nowhere else to store them.

Applicable Law

20. TMC 8.24.020 provides that “[i]t is unlawful for any person to keep, store or park, or permit any other person to keep, store or park any junk vehicle upon any privately-owned property in the City of Tukwila.”

21. TMC 8.24.020.1 states that a “junk vehicle” is a vehicle that meets three or more of the following criteria: “a. Is three years old or older; b. Is extensively damaged, such damage including but not limited to any of the following: a broken window or windshield; or missing wheels, tires, motor, or transmission; c. Is apparently inoperable; d. Is without valid, current license plates or is unregistered; or e. Has an approximate fair market value equal only to the approximate value of the scrap in it. ‘Junk vehicle’ also includes a partially disassembled vehicle or individual parts of vehicles no longer attached to one another.”

22. IPMC 307.1, as adopted by the City in TMC 8.28.020, requires that all “exterior property and premises, and the interior of every structure, shall be free from any accumulation of rubbish” “Rubbish” is defined as “[c]ombustible and noncombustible waste materials, except garbage” and includes “combustible materials, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery and dust and other similar materials.”

23. TMC 9.28.020.B provides that “[n]o person shall park a commercial vehicle or trailer in any residential area except as allowed in the following section.” TMC 9.28.020 A.2 defines “residential area” as “any district which is zoned LDR, MRD, or HDR by the City.”

24. TMC 9.28.020.C.4 allows commercial vehicles to be parked “in the private driveway of the owner of such vehicle, provided that . . . c. [they are] maintained in a clean, well-kept state which does not detract from the appearance of the surrounding area. . . . [and] f. Commercial vehicles shall not be parked in residential areas except on the normal driveway of the vehicle operator’s house.”

25. TMC 9.28.020.A.1 defines “commercial vehicle” as “a. Any vehicle 8 feet or larger in width, 20 feet or longer in length, or 9 feet or taller in height, the principal use of which is the transportation of commodities, merchandise, produce, freight or animals”

26. TMC 8.25.020.B states that “[m]otor vehicles on property devoted to single-family residential use shall be parked on an approved durable uniform surface,” which is defined in TMC 8.25.020.A as concrete, blacktop, or two inches of 5/8 minus compacted rock. TMC 8.25.020.B states further that motor vehicles other than RVs boats or trailers are not to be parked in setbacks “except in front yard or side street setbacks when in a driveway

that provides access to an approved parking locations and is in conformance with” the zoning code.

27. TMC 8.25.020 C allows RVs, boats and trailers to be kept or stored on an “approved durable uniform surface” but not to be “parked, kept or stored in required front yard setbacks, except for a driveway.” RVs may be kept in the side or rear yard setbacks.

28. TMC 8.25.020.E provides that no more than 50% of the front yard or 800 square feet, whichever is smaller, may be approved durable uniform surface.

29. TMC 8.45.100 A.2 provides a penalty of \$500.00 per day for each Code violation, and provides that any penalty imposed may be collected by a civil action in court brought by the City Attorney. TMC 8.45.100 B allows the Code Enforcement Officer to “seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation” of the Code.

Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant to TMC 8.45.090.
2. Mr. Savage’s testimony was contradictory as to the condition of the cars on the property. He claimed that they were operable. However, he offered no proof that any of the acknowledged 13 cars in the front yard have current license plates. Further, over the ten-month period that this violation has persisted, neither he nor the Appellant has made any attempt to demonstrate to the Code Enforcement Officer that any of the cars are operable. And Mr. Savage stated that he was waiting for use of a friend’s large truck to haul some off the property, presumably because they cannot be driven away. Some of the cars may be operable, but some appear to meet the definition of “junk vehicle” in TMC 8.24.020. The property is in violation of TMC 8.24.020 as to vehicles owned by Clarice Savage..
3. The fact that some of the motor vehicles on the property are owned by “friends” is irrelevant in light of the fact that TMC 8.24.020 makes it unlawful for a person to allow others to “keep, store or park” junk vehicles on their property. The property is in violation of TMC 8.24.020 as to vehicles owned by all persons other than Clarice Savage.
4. Mr. Savage’s representation that all the vehicles parked in the front landscaped area are parked on 6 inches of crushed rock over a plastic barrier is contradicted by Ms. Savage’s appeal statement, stating that the required surface for the commercial vehicle would be installed when there was time and money to do so, and by the pictures of the property. It appears that perhaps three of the vehicles are parked on some gravel. Again, the Appellant has had ten months to demonstrate to the Code Enforcement Officer that the proper parking surface exists but has not done so. The property is in violation of TMC 8.25.020 B.

5. The large, white box truck parked on the property meets the Code's definition of "commercial vehicle". It may also meet the Code's definition of "junk vehicle". However, even if it is not a junk vehicle, it violates the parking requirements of TMC 8.25.020 C.4 because it is parked to the side of the "normal driveway of the vehicle operator's house" rather than on that driveway. The property is in violation of TMC 9.28.020.

6. Although it appears that the Appellant has removed some of the rubbish shown in earlier photographs of the property, the photographs from December 16, 2005, taken from the public road, still show salvaged wood and other rubbish piled on the property. The property is in violation of IPMC 307.1, as adopted by the City in TMC 8.28.020.

Decision and Order

1. The Notice and Order dated September 2, 2005, is **SUSTAINED**.
2. The Appellant is **ORDERED** to pay to the City a penalty in the amount of \$1,500.00. However, if the Appellant takes **all** of the following actions no later than February 1, 2006, the penalty is waived:
 - A. Schedule a final inspection to take place no later than January 30, 2006;
 - B. Remove all junk vehicles, including the commercial vehicle, from the property, or store them completely inside a permitted structure.
 - C. For any vehicle not stored or removed, demonstrate to the Code Enforcement Officer that it does not meet the definition of "junk vehicle," and that it is parked on an "improved, durable, uniform surface," as defined in TMC 8.25.020, and that the improved surface does not exceed the size allowed by TMC 8.25.020; and
 - D. Remove all accumulated rubbish from the yard, the carport and the driveway of the property.
3. If the Appellant fails to take all actions required in paragraph 2 above, on or before the February 1, 2006, deadline, the Appellant shall pay to the City the penalty of \$1,500.00 on February 2, 2005.
4. The Appellant is further **ORDERED**:
 - A. To refrain from parking the commercial vehicle on the property except on the currently established, paved driveway; and
 - B. To refrain from parking any vehicle on the property on anything but an "improved, durable, uniform surface" as defined in TMC 8.25.020.

Entered this 21st day of December, 2005

Sue A. Tanner
Hearing Examiner

Concerning Further Review

TMC 8.45.090.D states: “The decision of the Hearing Examiner shall be final and conclusive unless appealed. In order to appeal the decision of the Hearing Examiner, a person with standing to appeal must file a land use petition, as provided in RCW 36.70C, within 21 days of the issuance of the Hearing Examiner’s decision. The cost for transcription of all records ordered certified by the superior court for such review shall be borne by the appellant.”