

WHATCOM COUNTY HEARING EXAMINER

RE: Administrative Appeal) APL2010-0018
Application for)
) FINDINGS OF FACT,
Richard and Sita Millar) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPEAL AND DECISION

Appeal: This matter is an Appeal of a Notice of Violation, issued by Whatcom County Planning and Development Services, alleging that the Appellants, Richard and Sita Millar, are in violation of the Zoning Code and the International Residential Code by failing to obtain Administrative Approval for a mobile home/trailer, sited on their property. The County’s position is that this is a second dwelling unit and therefore needs an Administrative Approval Use Permit to remain on the property.

Decision: The Whatcom County Hearing Examiner upholds the determination of Whatcom County Planning and Development Services in reference to the alleged violation of the Whatcom County Zoning Ordinance, WCC Title 20. The structure onsite is a mobile home and the Appellants must either obtain Administrative Approval for an Accessory Dwelling Unit; remove the structure from the site; or legally establish the structure as a nonresidential accessory structure allowed on the site and incidental to the single-family residential use by showing compliance with the decertification process administered by the Washington State Department of Labor and Industry.

FINDINGS OF FACT

I.

Background Information

Appellant: Richard and Sita Millar

Site Location/Address: 3904 Bay Road
Ferndale, Washington

Assessor’s Parcel Number(s): 400133 340167

Zoning: Rural (R10A)

Total Acreage: 10.00 acres

Authorizing Codes, Policies, Plans, and Programs:

Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance

Legal Notices: Certificate of Posting: Notice of Open Record Hearing, September 29, 2010
Legal Notice of Open Record Hearing, September 30, 2010

Hearing Date: October 13, 2010. At the Hearing Examiner's request, the record was re-opened for additional information on October 26, 2010.

Exhibits:

- 1 Administrative Appeal Application
 - 1-1 Statement of Appeal to the Hearing Examiner
 - 1-2 Notice of Violation, dated June 18, 2010
 - 1-3 Letter dated March 23, 2007 from Erin Osborn, PDS, to Richard and Sita Millar
 - 1-4 Letter dated March 10, 2010 from Suzanne Bosman, PDS, to Peter Dworkin

- 2 Staff Report, dated October 4, 2010 with attachments
 - 2-1 Site Photos, February 09, 2006
 - 2-2 Site Photo, December 22, 2006
 - 2-3 Order to Correct, dated March 20, 2007
 - 2-4 Return Receipt, March 23, 2007
 - 2-5 Letter dated March 23, 2007 from Erin Osborn to Millar [same as Exh 1-3]
 - 2-6 PDS Case Activities Record
 - 2-7 Change of Address Form
 - 2-8 Fax from Larry Collier, PDS, to Richard Millar, dated September 9, 2009, with Dept of Licensing Vehicle Title Application / Registration Certificate attached
 - 2-9 Email DATED Sept 9, 2009, from Richard Millar to JRyan, PDS
 - 2-10 Handwritten Letter, dated November 16, 2009 to Collier from Millar with corrected Title attached
 - 2-11 Notice of Penalty, dated Feb 26, 2010
 - 2-12 Email from Suzanne Bosman to WA State DOL, dated March 10, 2010
 - 2-13 Letter dated March 10, 2010, Bosman to Dworkin [same as Exh 1-4]
 - 2-14 Letter dated March 11, 2010 from Dworkin to Bosman
 - 2-15 Email dated March 11, 2010 from Sam Ryan to Mylissa Bode
 - 2-16 Letter dated March 10, 2010 from Bosman to Dworkin re: Rescission
 - 2-17 Letter dated March 11, 2010 from Dworkin re: Agreed Terms
 - 2-18 Email from Building Official, dated March 10, 2010 re: Agreeing to Terms
 - 2-19 Email to DOL, April 16, 2010 re: Travel Trailer or Mobile Home
 - 2-20 Notice of Violation, dated June 18, 2010
 - 2-21 Letter, dated July 8, 2010 from Dworkin re: Extension Request
 - 2-22 Whatcom County Assessor's Records: Property Taxes for Mobile

- 2-23 WCC 10.32 Movement of Oversize Vehicles
- 2-24 Email and Copy of Approved OSS for 3-Bedrooms
- 2-25 Aerial Site Photo, taken May 12, 2008

- 3 Letter dated July 22, 2010, from Suzanne Bosman to Hearing Examiner's Office

- 4 Certificate of Posting: Notice of Open Record Hearing, dated September 29, 2010

- 5 Legal Notice of Open Record Hearing date September 30, 2010

- 6 Whatcom County's Memorandum, submitted by Royce Buckingham, October 11, 2010

- 7 Appellant's Hearing Memorandum, submitted by Peter Dworkin, October 12, 2010
 - 7-1 WCC Definitions
 - 7-2 IRC 105.1
 - 7-3 IRC 110.1
 - 7-4 IRC 113.2
 - 7-5 Declaration of Peter R. Dworkin, October 12, 2010
 - 7-6 Citizen Inquiry Report, stamp dated PDS February 13, 2007
 - 7-7 Email from Bryan Sehmel to Maryse Sagewynd, dated March 8, 2007
 - 7-8 Email to Suzanne Bosman dated April 19, 2010 re: septic
 - 7-9 Email to Suzanne Bosman, dated January 28, 2010 re: Millar
 - 7-10 Email from Suzanne Bosman, dated January 29, 2010 re: Millar
 - 7-11 Email from Suzanne Bosman to Staff (PDS), dated March 3, 2010
 - 7-12 Email from Sam Ryan to Suzanne Bosman, dated March 10, 2010 re: Sita Millar
 - 7-13 Emails (9 pages) from/(to) Carol Guyer to/(from) Suzanne Bosman, dated April 21, 2010 re: Travel Trailer or Mobile Home
 - 7-14 WA State DOL, Certificate of Fact, dated July 16, 2010
 - 7-15 Declaration of Richard C. Millar, dated October 12, 2010
 - 7-16 GR 17 Facsimile Transfer Affidavit Regarding The Declaration of Richard C. Millar, signed by Mylissa Bode, October 12, 2010
 - 7-17 Color Site Photo
 - 7-18 Color Photo of wheels/tires on structure
 - 7-19 Site Photo of structure
 - 7-20 WA State DOL, letter dated April 16, 2010, "Cancellation of Certificate(s) of Ownership 0928538603
 - 7-21 Letter dated July 14, 2010, from Richard and Sita Millar to WA State DOL re: Revision/Correction of Vehicle Certificate of Ownership
 - 7-22 Vehicle Certificate of Ownership (Title)
 - 7-23 Declaration of Service, Mylissa Bode, October 12, 2010
 - 7-24 Letter dated September 29, 2010 from Shane Gentle

- 8 Assessor's Record: Real Property Historical Values, Years 1997, 2000, 2004, 2006

- 9 Assessor's Record: Real Property Historical Values, Years 2006, 2007
- 10 Assessor's Record: Additional History: 2003, 1998, 2005, 1998, 1987
- 11 Comment Letter, dated October 8, 2010, from neighboring property owner
- 12 Unsigned Comment Letter, stamp-date received October 8, 2010
- 13 Letter dated November 4, 2010 from Suzanne Bosman re: Decertification Process – Storage, with #13-1 WA State Dept of L&I Process to Decertify
- 14 Appellants' Response to Hearing Examiner's Request for Information re: Decertification of Mobile/Manufactured Home, submitted by Peter Dworkin, November 8, 2010, with #14-1 Declaration of Service, Mylissa Bode, November 8, 2010

Parties of Record:

Richard and Sita Millar
23160 Marshall Road
Lexington Park, MD 20653-3355

Peter Dworkin
900 Dupont Street
Bellingham, WA 98225

Royce Buckingham
Civil Deputy Prosecutor

Suzanne Bosman
Planning and Development Services

II.

The Appellants are the owners of an approximately 10-acre parcel located at 3904 Bay Road, Ferndale, Whatcom County, Washington. The site is zoned Rural (R10A).

The Appellants purchased the subject property in 2005. The Appellants' un-refuted testimony is that the subject mobile home or trailer, hereinafter referred to as "the mobile," was located on the property when it was purchased by them. The mobile is a 1963 Anderson, which was apparently moved onto the property without appropriate permits by the previous owner, Kenneth Keithcart. The mobile has a constructed metal roof, a chimney, and an attached porch. These were all in place at the time that the Millar's purchased the property.

Apparently the previous owner lived in this mobile on a temporary basis, intending to build a home on site. Instead, however, the property was sold to the Millar's who applied for and received a building permit to construct a new home on the property soon after purchase. After the building permit was granted, construction on the new home started.

In 2007, based on a citizen complaint, Whatcom County instituted enforcement action, alleging that the mobile was a single-wide mobile home that had been moved onto the site in violation of Whatcom County Zoning and Building Codes. The mobile in question was moved onto the site without required permits to move it or to place it on the site as a residence. The mobile ended up on the site in violation of Whatcom County Zoning and Building Codes. The Millar's and the County entered into an agreement under which the County allowed the mobile to be occupied as a temporary dwelling unit during new home construction, for a period not to exceed two years. The Millar's hooked the mobile up to the onsite septic system, and obtained water and electrical hook-ups.

On July 29, 2009, a County Building Inspector, on site to inspect the single-family home under construction, prepared a checklist which included notice to the owners that the mobile home had to be removed, or an Administrative Approval Use for a second dwelling unit obtained, before the County could grant a Final Occupancy Permit for the new single-family residence. On September 8, 2009, a different Building Inspector granted temporary occupancy of the new home, pending the removal of the manufactured home at the time of final inspection. At this time, the Millar's and County Officials got involved in an ongoing disagreement about whether the 1963 Anderson was properly designated as a travel trailer (in which case it could remain on the property without permits, so long as it was disconnected from utilities), or a mobile home, which required its removal or the permits necessary to legalize it as a second residence on the property.

III.

Whatcom County had taken the position that the mobile onsite had to be either permitted as an Accessory Dwelling Unit (ADU) or removed from the property. During this period of time, the Appellants indicated a willingness to consider applying for a permit to legalize the mobile as an Accessory Dwelling Unit. However, no application for ADU approval followed. The County received additional complaints about the mobile being an illegal home on the property. The two year period to use the mobile as a temporary residence during the construction of the home had ended and the home was ready to receive Final Occupancy Approval.

On February 26, 2010, the County instituted additional enforcement action, by issuing a Notice of Penalty to the Appellants for failing to comply with the 2007 Order to Correct. Negotiations between the Appellants' Attorney and Planning resulted in a rescission of the original Notice of Violation and the Notice of Penalty, allowing the enforcement process to start over.

During this time, the Parties were active in working with the Washington State Department of Licensing (DOL), in an attempt to ascertain whether the mobile was considered a mobile home or travel trailer by DOL. The Department of Licensing changed its interpretation more than once and,

as of the date of the hearing, had apparently determined that, for State licensing purposes, the 1963 Anderson was a travel trailer.

In the meantime, County Enforcement Staff, based on an earlier Department of Licensing's opinion that this was a mobile home, issued a new Notice of Violation on June 18, 2010. This Notice of Violation was appealed in a timely manner by the Appellants and is the subject of this appeal.

Historically, the mobile in question has been treated by Whatcom County as a residential structure and taxed as real property. Whatcom County Planning Enforcement has taken the position that the mobile is a dwelling unit and cannot be stored or staged on the property as a second dwelling unit, unless proper permits are obtained to legalize a second residential dwelling unit on the property. The Appellants argue that the mobile is a travel trailer and can be stored on the property as a recreational vehicle.

It is possible that in 1963, when this mobile was constructed, it could have been used as a recreational vehicle and towed from place to place for short stays. At this point, a mobile of this size cannot be towed on county roads without a permit. It would not be feasible today to use this 1963 Anderson as a recreational vehicle. Pictures in the file clearly show the mobile is currently set up as a residence.

IV.

The record is somewhat unclear as to the exact size of the vehicle. Documentary evidence from the Assessor indicates that the size is 38-ft x 10-ft. Other measurements have lead Enforcement to conclude that the unit is a little over 400-square feet in size. The mobile has two bedrooms and a full bath, is fully plumbed to be hooked-up to an outside water source, and has a full range of appliances.

Photographs of the mobile unit in question show the attached porch/deck area; two-doors along the side, each accessed by stairs; complete coverage of the unit with a metal roof not part of the original structure; and some kind of chimney protruding through the roof area. Appearance-wise it is similar to many older, single-family manufactured homes being used throughout the county as residential structures and being taxed as such.

The mobile originally came on a steel chassis, had wheels, and was capable of being towed.

The Appellants obtained a written statement from Shane Gentle who stated he worked at Lakeside Recreational Vehicle Sales, L.L.C., and was familiar with the 1963 Anderson, and that, "It in no way resembles a "mobile home" and was intended and is suited for use as a towable camper or travel trailer in today's terms." This quote comes out of the typed portion of the document which includes a handwritten postscript that states, "There is one stipulation if this camper is over 8-feet wide it is a "mobile home," and is signed by Shane Gentle. It is over 8-feet wide.

Jim Griffith, an Appraiser in the Whatcom County Assessor's Office, testified at the hearing.

He indicated that he worked with a lot of mobile homes. He indicated that after 1992 the category of a Park Model Home was created for mobiles less than 399-square feet. These were designated as Park Models and were considered recreational vehicles until sited on real property. His interpretation of State law was that when such a unit is on a property with services available, it becomes assessed as real property.

The weight of the evidence indicates that the mobile in question is less than 399-square feet, and that if constructed after 1992, it would have been designated as a Park Model, which would be taxed as real property when sited and hooked-up to utility services, including water and a septic drainfield or sewer.

The record shows that the Washington State Department of Labor and Industries has a process by which they decertify mobile homes and after which they can be used as a nonresidential structure on a site.

V.

Photographs supplied by the Appellants show that the mobile is on a steel, I-beam-type frame, has wheels, has a towing tongue, and has been towed.

VI.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following

CONCLUSIONS OF LAW

I.

The central legal issue to be decided in this controversy is whether or not the mobile in question is a recreational vehicle or a residential structure. If it is a recreational vehicle, it can be stored onsite. If it is a residential structure, it must meet the requirements of the Building Code and the density requirements for Residential Uses in the Rural zone. Apparently this trailer could be approved as a residential structure by having it approved as an Accessory Dwelling Unit and having it located on the property in a manner consistent with the current International Building Code.

A third alternative suggested by the Appellants is that it be treated as an Accessory Use and used as either an office, some kind of studio, or for storage.

The Hearing Examiner concludes that under the current set of circumstances, this mobile located on the Appellants' property and connected with services to take care of sewage, water, and electricity; set on blocks; covered with an attached metal roof; and accessed through wooden stairs and an attached porch/deck, is a residential structure. This is confirmed by the fact that the Appellants used it as such during the period when their home was being constructed. As it now sits,

the mobile provides complete, independent living facilities for one or more people and supplies permanent provisions and fixtures for living, sleeping, eating, and sanitation. It is a dwelling unit as defined by WCC 20.97.105. It is not a recreational vehicle or travel trailer.

In order to have the mobile remain (in its current configuration) on the property, it must be approved as a residential structure. In this case, it could be approved as an Accessory Dwelling Unit and could be used as living quarters for either the owners, or their renters, if the owners were living on the site.

Under current law, it would be virtually impossible and highly impractical to use this mobile as a recreational vehicle.

II.

Relying on the Washington State Department of Licensing Classification for determining whether this is a recreational vehicle or a mobile home for zoning purposes is clearly of little use in regard to this 1963 Anderson mobile since the Department of Licensing cannot decide even for licensing purposes the proper classification for this structure. Because of the width of the structure, the mobile in question appears to have no reasonable use as a towable recreational vehicle. In any case, the Whatcom County Code does not refer to other agencies to determine what is or is not a recreational vehicle or a residential mobile home.

A determination as to whether this mobile is a recreational vehicle or a mobile home for purpose of the requirements of the Whatcom County Zoning Ordinance must rely on the definitions and intentions expressed in the Zoning Ordinance.

The Hearing Examiner concludes that the structure in its current configuration is a dwelling, meeting the definition of mobile home in WCC 20.97.250, and that it requires permit approval for an Accessory Dwelling Unit to remain onsite, unless decertified by the Washington State Department of Labor and Industries and allowed as an accessory use.

The Hearing Examiner further concludes that the mobile home in question, even if unhooked from existing, permanent utility services, and, even if, the stairs, deck, and roof covering the structure are removed, is not a recreational vehicle as defined in WCC 20.97.335. The age of this single-wide built in 1963 makes application of current laws, regulations, and definitions somewhat difficult because they were not designed specifically for a unit more than 45-years old. However, the Zoning Ordinance, in its attempt to distinguish between recreational vehicles, park models, and manufactured or mobile home dwelling units, centers on intended use. The Zoning Ordinance Definition of a recreational vehicle is one that is designed and intended for casual or short-term human occupancy for travel, recreational, and vacation uses. This part of the recreational vehicle definition cannot be stretched to include the approximately 400-square foot, 10-foot wide, structure now sitting on the Appellant's property.

III.

Testimony at the hearing indicated that Enforcement Staff felt the structure could remain onsite, with proper Building Department approval, by having it go through the decertification process administered by the Washington State Department of Labor and Industry, which oversees the licensing/regulation of manufactured or mobile homes.

If the mobile is not decertified and approved as an accessory structure, the Appellants must either obtain Administrative Approval and necessary building permits to allow the structure to remain onsite as an Accessory Dwelling Unit or remove the structure from the property.

IV.

The Notice of Violation which gave raise to this appeal, dated June 18, 2010, alleged violations of both the Whatcom County Zoning Ordinance, WCC Title 20, and violation of the International Residential Code (IRC). The notices included separate, identified appeal rights and procedures for the violation of the Zoning Ordinance and for the violation of the International Residential Code (IRC).

The Hearing Examiner upholds the violations of the Whatcom County Code alleged in the Notice of Violation.

However, the Hearing Examiner does not have the authority to rule on building code issues raised under the International Residential Code. The Appellants were notified of their rights to appeal alleged violations of the International Residential Code and of their right to appeal the alleged violation pursuant to the IRC to the Whatcom County Board of Appeals.

The Hearing Examiner has jurisdiction to decide the issues raised by the appeal of the alleged violation of the Zoning Ordinance. The Hearing Examiner does not have the authority to adjudicate issues relating to the alleged violations of the IRC set forth in the Notice of Violation.

V.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following

DECISION

The Whatcom County Hearing Examiner upholds the determination of Whatcom County Planning and Development Services in reference to the alleged violation of the Whatcom County Zoning Ordinance, WCC Title 20. The structure onsite is a mobile home and the Appellants must either obtain Administrative Approval for it as an Accessory Dwelling Unit; remove the structure from the site; or legally establish the structure as a nonresidential accessory structure allowed on the site

incidental to the single-family residential use. Establishing the unit as a nonresidential structure requires compliance with the decertification process administered by the Washington State Department of Labor and Industry.

NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF
THE WHATCOM COUNTY HEARING EXAMINER

This action of the Hearing Examiner is final. The following review procedure is available from this decision and may be taken by the applicant, any party of record, or any County department.

Appeal to County Council. Within ten business days of the date of the decision a written notice of appeal may be filed with, and all required filing fees paid to, the Whatcom County Council, Courthouse - 1st Floor, 311 Grand Avenue, Bellingham, WA 98225. The appeal notice must state either:

- 1) The specific error of law which is alleged, or
- 2) How the decision is clearly erroneous on the entire record.

More detailed information about appeal procedures is contained in the Official Zoning Ordinance at Section 20.92.600-.830. A copy of this document is available for review at the County Council Office.

After an appeal has been filed and the Council office has received the hearing record and transcript of the public hearing, the parties will be notified of the time and date to file written arguments.

DATED this 16th day of November 2010.

Michael Bobbink, Hearing Examiner



WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES
STAFF REPORT

October 4, 2010

Hearing Date: October 13, 2010

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| The application of Richard & Sita Millar for an Appeal of the Whatcom County Zoning Ordinance | APL2010-00018 FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS |
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I. SUMMARY OF APPEAL

Summary: The applicants are appealing a Notice of Violation issued by Whatcom County for a code enforcement determination requiring discretionary approval (Administrative Approval) for a mobile home placed on the subject site as a second dwelling.

Recommendation: The County recommends the Hearing Examiner uphold staffs determination that Administrative Approval is required for a second dwelling pursuant to the Whatcom County Zoning Ordinance.

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

Applicant: Richard & Sita Millar
23160 Marshall Road
Lexington Park, MD 20653

Site Location/Address: The site address is 3904 Bay Road.

Legal Description: The property lies within the Southwest ¼ of the Northwest ¼ of the Southeast ¼ of Section 33, Township 40, Range 1 East, W.M., Whatcom County, WA.

Assessor's Parcel Number(s): 400133 340167

Zoning: Rural (R10A)

Total Acreage: 10.00 acres

B. AUTHORIZING CODES, POLICIES, PLANS, AND PROGRAMS:

1. Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance

III. FACTS AND FINDINGS

On November 1, 2005, the property owners, Richard & Sita Millar, submitted a building permit application to Whatcom County Planning & Development Services, Division of Building Services, (PDS) to construct a single-family residence (SFR) on their property located at 3904 Bay Road in Ferndale, Washington.

While conducting site inspections for the SFR, two different staff members observed a singlewide mobile home on the site and notified code enforcement of the violation. The mobile home had a chimney, permanent metal roof, and an attached porch. (Appendices A & B.)

On March 20, 2007, Whatcom County code enforcement staff issued an Order to Correct (Appendix C) to the property owners for having a singlewide mobile home on their property without the required permits. The Order to Correct was sent through the United States Postal Service (USPS) by certified mail return receipt. Records indicate the Order to Correct was signed on March 20, 2007 by Sita Millar (Appendix D).

Research of the case revealed that a building permit for a stick frame single-family residence was issued to the Millar's on August 31, 2006. Based upon this information, the Order to Correct provided the property owners the option of living in the mobile home as a temporary dwelling while their permanent home was under construction.

Since a valid permit was on file with PDS, code enforcement staff issued a letter dated March 23, 2007. This letter was in response to the Order to Correct and reiterated to the Millar's that the mobile home could be used as a temporary dwelling pursuant to WCC 20.36.104, thus, staff would be closing the enforcement case. (Appendix E).

After the building permit had been issued, various staff members again informed the Millar's that the mobile home needed to be removed or an Administrative Approval (permit) obtained.

On July 29, 2009 a building inspector documented on a checklist to the property owners that the mobile home had to be removed or Administrative

Approval obtained in order for the County to grant final occupancy for the SFR. (Appendix F – Highlighted in Yellow.)

On September 8, 2009 a different building inspector granted temporary occupancy of the single-family residence pending removal of the manufactured home at the time of final inspection. (Appendix F – Highlighted in Orange)

Whatcom County received a fax on September 8, 2010 from Mr. Millar. It contained a Change Address/Address Declaration from the Washington State Department of Licensing, a Supplemental Statement, a hand written note from the previous owner of the mobile home releasing right of ownership, and an Affidavit of Loss Release of Interest. These documents show no proof that the unit in question is a travel trailer or a mobile home. (Appendix G.)

On September 9, 2009, the Whatcom County permit coordinator sent a facsimile (fax) to Mr. Millar showing that the State of Washington, Department of Licensing (DOL) classified the unit as a mobile home not a recreational vehicle. (Appendix H.)

On September 9, 2009, Richard Millar sent an e-mail to the Building Official stating he would “appreciate the opportunity to look into applying for a permit for it [the mobile home] as a accessory dwelling unit”. He further states that it would not be until November that he could come to the office to pick up the required paper work. (Appendix I.)

On September 15, 2009, the building official received a telephone call from the property owner stating that they would apply for Administrative Approval for the mobile home sometime in November 2009. (Appendix F – Highlighted in Pink.)

On November 16, 2010, the permit coordinator received a facsimile (fax) from the property owners. The fax contained a copy of the Vehicle Certificate of Ownership (Title) from the State of Washington showing the Vehicle Identification Number (VIN) as S970, the Year as 1963 and the Make of the unit as an Anderson (Ander). The Use Class indicated TVL. (Appendix J.)

Since the property owner’s failed to make application for Administrative Approval as they promised to do by November 2009, and the mobile home had not been removed, the building inspectors would not grant a final inspection for the SFR.

The Millar’s, wanting a certificate of occupancy for their home, began inundating staff, the Building Official and the Director of Whatcom County PDS with telephone calls. Code enforcement staff advised the building inspectors to go ahead and sign off on the building permit and to let enforcement handle the illegal mobile home.

On December 4, 2009, Whatcom County received another Code Violation Report from a citizen indicating the mobile home was still on the site long past the two year time frame allowed pursuant to WCC 20.36.104.

Mr. Millar continued to contact management and demanded to know a date in which he could expect to receive a Notice of Violation. After conducting research on the property, staff realized that an Order to Correct had previously been sent to the Millar's in 2007; therefore another notice of violation was not necessary. Instead, code enforcement staff issued a Notice of Penalty on February 26, 2010 to Mr. & Mrs. Millar for failing to comply with the 2007 Order to Correct. (Appendix K).

On March 10, 2010 code enforcement staff sent an e-mail (Appendix L) to the Washington State Department of Licensing (DOL) requesting clarification regarding the two documents on file with their department. One document dated November 19, 2004 depicted the unit as a mobile home (Appendix H) while the 2005 Vehicle Title from DOL described the unit as a travel trailer (Appendix J-2).

Realizing they only had two days remaining to file an appeal, Mr. Millar contacted our Director once again regarding the situation. Management directed staff to rescind the Notice of Penalty until our department could determine whether or not the unit was a travel trailer or a mobile home.

On this same day, March 10, 2010, a person representing Peter R. Dworkin of Belcher Swanson Law Firm came into our office to file an appeal. Staff advised the person that our office would be rescinding the Notice of Penalty pending further discussion with the Washington State Department of Licensing. Staff asked if the person could wait a few minutes so that a letter could be drafted for her to return to Mr. Dworkin. A letter agreeing to rescind the Notice of Violation and to extend the right to an appeal was provided. (Appendix M.)

The following morning, March 11, 2010, enforcement staff and the building official received an e-mail with an attached letter from Mr. Dworkin. His letter (Appendix N.) was in response to the letter we provided to his representative the prior day.

Later the same day, March 11, 2010, the Building Official sent a reply e-mail to Mr. Dworkin explaining that staff was out of the office, but that the County would agree to the terms of his letter. (Appendix O.)

Mr. Dworkin asked for staff to write another follow up letter agreeing to the terms of his letter dated March 11, 2010. Staff wrote a second letter to Mr. Dworkin dated March 10, 2010. However, the date on this letter contains a Scribner's error. The letter was actually written on March 12, 2010. (Appendix P.)

On April 13, 2010 and April 16, 2010, Whatcom County enforcement staff received e-mails from two separate DOL personnel stating that the unit in question is in fact, a mobile home based on the Vehicle Identification Number (VIN). (Appendix Q.)

Since Whatcom County had rescinded the Notice of Penalty and staff had received a clear determination from DOL stating the unit was a mobile home, a new Notice of Violation dated June 18, 2010 was issued to Mr. & Mrs. Millar as agreed upon per the terms in Mr. Dworkin's letter. Separate appeal rights were provided for each of the codes cited in the notice. (Appendix R.)

On July 8, 2010 staff received a telephone call and a letter from Mr. Dworkin stating that his client did not wish to appeal the Notice of Violation and was willing to comply with the County's request to remove the travel trailer. In addition, Mr. Dworkin requested a six month extension. (Appendix S.)

Given the lack of follow through by the Millar's to comply with previous requirements, staff agreed to a grant a four month extension with no exceptions. The Millar's were given until October 18, 2010 to comply. Mr. Dworkin agreed to this and said he would send a letter summarizing our discussion.

On July 19, 2010, staff received a voice mail message from Mr. Dworkin stating that his clients advised him to file an appeal.

On July 20, 2010, Whatcom County PDS received this appeal.

IV. BASIS FOR APPEAL & STAFF'S DETERMINATION

1. Why I believe the determination or interpretation is correct:

The true argument of this appeal is whether the unit is a travel trailer or a mobile home. For the purpose of this appeal staff will refer to the unit in question as a mobile home.

The appellant states that both the zoning and building codes do not require that the Millar's remove the mobile home from the site. He states that the key to whether or not a permit is required is based upon whether it is occupied. However, he offers no code section in support of his defense.

The appellant should have made this argument by filing an appeal to the Whatcom County Appeals Board, since this is specifically defined in the International Residential Code (IRC) and was cited in the Notice of Violation. The Whatcom County Hearing Examiner is not authorized to hear appeals of the International Residential Code.

A dwelling unit as defined by WCC 20.97.105 means, "a single residential

structure providing complete independent living facilities for one or more persons, including permanent provisions and fixtures for living, sleeping, eating, and sanitation.”

The Whatcom County zoning code does not allow for a second dwelling to be stored or “staged” on a property. WCC 20.36.051 specifically allows for one single-family detached dwelling per lot unless legally permitted by other means.

The property owner’s were permitted to live in this structure, whether a travel trailer or a mobile home, pursuant to WCC 20.36.104 which allows (as an accessory use), “Temporary dwelling units which have full living accommodations including sleeping, self-contained cooking, bathing, and toilet facilities where the plumbing is connected to permanent site sewage and water systems, including those travel trailers and recreational vehicles that meet the above description, for use by owners during the period of construction of a permanent dwelling while building permit is valid, not to exceed two years.”

The valid building permit that allowed the temporary occupancy of the mobile home was issued on August 31, 2006. Even though the Millar’s never obtained the required building permit to keep the mobile home as a temporary dwelling, the Whatcom County Zoning Ordinance – Title 20, under which this appeal is being heard, only permitted this use while the permit was valid not to exceed two years. The permit was issued on August 31, 2006. Therefore, the mobile home should have been removed by August 31, 2008 unless the applicants received discretionary land use approval through the Administrative Approval process pursuant to WCC 20.36.132.

The appellant makes the argument that the mobile home is a travel trailer because the unit is a vehicle and can be removed from the site. He also states that because it is not on a concrete pad, has wheels, a trailer tongue and a hitch, then it’s a travel trailer.

The Washington State Department of Licensing (DOL) regulates the “use” classification of what is determined to be a recreational vehicle and what is a mobile home. Two different DOL employees have already made the determination that the unit in question is not a recreational vehicle, but a mobile home. Whatcom County regulates how these vehicles are used on a property through the administration of the Whatcom County Zoning Ordinance– Title 20.

Whether it is classified as a mobile home, manufactured home or a travel trailer, they are all considered vehicles. This is why they are regulated through the DOL.

RCW 46.04.302, states, “Mobile home” or “manufactured home” means a structure, designed and constructed to be transportable in one or more

sections, and is built on a permanent chassis, and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities that include plumbing, heating, and electrical systems contained therein. The structure must comply with the national mobile home construction and safety standards act of 1974 as adopted by chapter 43.22 RCW if applicable. Manufactured home does not include a modular home. A structure which met the definition of a "manufactured home" at the time of manufacture is still considered to meet this definition notwithstanding that it is no longer transportable."

In the e-mail from Carol Guyer of DOL, she states, "From the description you sent, this trailer does not meet the description of a travel trailer. A travel trailer can only be 400 square feet in size and though this one is only 420 square feet it cannot be designated as a travel trailer." (Appendix Q.)

The appellant previously agreed to remove the mobile home and asked staff for a six month extension. The reason for the extension was because the mobile home couldn't be easily moved. He said it was connected to utilities on site and that it would require professional assistance to disconnect the electrical and other connections before it could be removed. The unit in question also has a permanent roof attached to the mobile home, a separate attached porch with a separate metal roof, and the mobile home has a wood stove or some form of chimney pipe sticking out of the roof. Hardly, the typical recreational vehicle you see being towed or driven down the road.

The appellant states that the Notice of Violation may be invalid because the facts upon which the County relied to prove the violation were gained through a trespass.

Staff respects and abides by the Fourth Amendment and did not trespass on the Millar's property. Furthermore, the Whatcom County Hearing Examiner does not have jurisdiction regarding violations of the United States Constitution.

2. What I believe to be the correct determination or interpretation:

The applicant has requested that the Hearing Examiner dismiss the Notice of Violation since the unit is not being used as a dwelling. The appellant believes the unit is a travel trailer which is an accessory use incidental to a primary permitted use.

The State through the application of the Revised Code of Washington (RCW) determines what is a travel trailer and what is a mobile home.

Not one, but two separate employees of the Washington State Department of Licensing (DOL) have already determined that this unit is a mobile home. They also stated that they don't know how it was ever changed from the

classification of a mobile home to a travel trailer. It's obvious it is not a travel trailer since it is hooked up to utilities, has a chimney pipe sticking out of it, and has affixed permanent structures.

The Whatcom County Assessor's Office has been assessing this mobile home as real property and has classified it as a mobile home. The Millar's have been paying property taxes on it. The Whatcom County Assessor does not assess cars, boats, or travel trailers; it assesses real property. This is further evidence that the unit is a mobile home. (Appendix T.)

In addition, a travel trailer is one you can easily drive or pull down the road to a campground or other destination. Many people use their travel trailers on adventures across the Country. This unit is not a travel trailer because the Millar's can't simply pull it down the road. Movement of oversized vehicles, as this unit is classified, requires a special moving permit to be moved on any County right-of-way.

Pursuant to WCC 10.32.010, "Any individual, firm or corporation planning to move, transport or haul any mobile home or other structure over 10 feet in width or 35 feet in length through Whatcom County on any route which consists solely of county roads and highways shall, prior to said movement or transport, obtain a permit from the Whatcom County engineer." (Appendix U.)

The property owner's have 10.00 acres of land in the Rural (R10A) zone district. WCC 20.36.132(10) states, "Outside of an urban growth area, the minimum lot size for detached accessory units shall be on a lot of record no less than 4.5 acres..."

The Millar's have the density to keep the mobile home on their property. If they are able to meet the criteria of the code then they should make application for Administrative Approval. Otherwise, they should legally remove the mobile home from their property as required by law.

3. How the decision adversely affect me or my property:

The appellant lists three specific financial reasons why the decision adversely affects his client. However, all of these reasons are monetary and are not the subject of this appeal.

The property owner's created their own hardship. The Millar's never included the mobile home on their site plan (as required) when they submitted their building permit application to construct their single-family residence.

In 2007, Whatcom County staff sent the Millar's a letter closing the original enforcement case only because they realized the Millar's had an application on file with the County to construct a home. Pursuant to WCC 20.36.104, staff

knew that the Millar's could live temporarily in the mobile home for a period not to exceed two years while their permit was valid. The mobile home was required to be removed on August 31, 2008 but it was never removed. The Millar's have known for several years that both a land use (discretionary permit) and a building permit are required for the mobile home.

The County has been more than fair in giving the property owners ample time to comply with Whatcom County codes. During the past year the Millar's have had numerous conversations with various Whatcom County staff. All of which have told them that a permit is required for the mobile home or it would have to be removed from the site.

The owners even sent correspondence to our Building Official stating that they would in fact apply for a permit. Even their attorney provided a letter in writing stating they would comply by either selling or removing the mobile home. It appears there has been a lack of good faith on the part of the property owner to comply with Whatcom County requirements.

It is staff's opinion that the property owners are aware they can't comply with the requirements of WCC 20.36.132. Therefore, they are trying to make the argument that the mobile home is a travel trailer.

1. The property owner's can't comply with WCC 20.36.132(2) which states, "The owner(s) of the single-family lot upon which the accessory apartment or detached accessory dwelling unit is located shall occupy as their primary domicile at least one of the dwelling units on that lot."

The Millar's live in Lexington Park, Maryland as confirmed in the correspondence by their attorney. Their primary domicile is not in Whatcom County.

2. The approved on-site sewage system (OSS) for this parcel is 3-bedrooms. The Millar's do not have an adequate septic system to handle a second dwelling on their site. They would be required by the Whatcom County Health Department to install another on-site sewage (OSS) system if they were to keep the mobile home pursuant to WCC 24.05.180. (Appendix V.)

V. CONCLUSION

The County is not telling the Millar's that they can't have the mobile home on their property. The County is upholding the law by requiring that they make application for the necessary permits in order to legally keep it on their site.

As stated in the June 18, 2010, Notice of Violation, "An Administrative Approval (ADM) permit for an accessory dwelling unit (ADU) is required pursuant to WCC 20.36.132. Since there is no record of Administrative

Approval for the ADU, the use is prohibited pursuant to WCC 20.36.200.

Staff humbly requests that the Whatcom County Hearing Examiner uphold the Notice of Violation that the mobile home on the subject site requires Administrative Approval to be in compliance with the Whatcom County Zoning Ordinance.

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