



**FINAL DECISION of the
SNOHOMISH COUNTY HEARING EXAMINER**

Millie Judge
Hearing Examiner

DECISION DATE: September 5, 2012
APPELLANT: Arthur Skotdal, Skotdal Enterprises, Inc.
FILE NO.: 12-104838 CT
TYPE OF CASE: Appeal of Notice of Violation
DECISION (SUMMARY): **APPEAL is DENIED**
LOCATION: 5001 Meridian Avenue North, Tulalip, WA 98271-6511

M/S 405
3000 Rockefeller Ave.
Everett, WA 98201

(425) 388-3538
FAX (425) 388-3201

This matter having come before the Hearing Examiner on August 29, 2012, and the testimony of witnesses having been heard and all exhibits having been admitted into evidence and considered, the Hearing Examiner enters the following Findings of Fact, Conclusions of Law and Decision based on a preponderance of the evidence:

FINDINGS OF FACT

1. **The Record.** The official record for this proceeding consists of the Exhibits entered into evidence (Exhibits 1 through 25), as well as the testimony of witnesses received at the open record hearing. The entire record was admitted into evidence and considered by the Examiner in reaching the decision herein.

NOTE: For a complete record, an electronic recording of the hearing in this case is available in the Office of the Hearing Examiner.

2. **Parties of Record.** The Parties of Record are set forth in the Parties of Record Register and include interested parties who testified at the open record hearing.

3. **Public Hearing.** The Hearing Examiner held an open record appeal hearing on August 29, 2012. Witnesses were sworn, testimony was presented, and exhibits were entered into the record at the hearing. Notice of the appeal hearing was issued as required by SCC 30.85.200. (Exhibit 13) Judy Wahl appeared and testified on behalf of the Snohomish County Department of Planning and Development Services (PDS). Arthur Skotdal of Skotdal Enterprises, Inc., Appellant, appeared at the public hearing and testified in support of the appeal. No other members of the public testified at the public hearing.

4. Arthur Skotdal of Skotdal Enterprises, Inc., (hereinafter "Appellants") is the owner of certain real property known as tax parcel 00548000000-507, located at 5001 Meridian Avenue North, Tulalip, WA 98271-6511 (hereinafter, the "subject property"). (Exhibits 1, 3, 4, 5)
5. The facts in this case are largely undisputed. Arthur Skotdal is the owner of the subject property. He obtained the property through a contentious and lengthy foreclosure process. During the time that the house was vacant, it was vandalized and the property was the subject of illegal dumping. He removed 184 tires, car parts, car bodies, garbage, household goods, cleaned up the site and repaired the home to a habitable condition for resale. The scale of the cleanup was very large; they removed approximately 140 yards (or 14 dump trucks) full of items from the subject property. As part of the clean up, Mr. Skotdal cut certain Maple trees and pulled out the stumps. He cleared blackberries and shrubs, using a large metal beam that scraped the soil clean, prior to hydroseeding the cleared area with grass. He did not clear in a manner that changed the drainage patterns on the site. However, he added gravel materials to create a new driveway across the large lawn area to the home.
6. On June 3, 2012, PDS received a complaint from a member of the Tulalip Tribes about the clearing activity on the site. Judy Wahl, Senior Code Enforcement Officer, investigated and visited the site on June 14, 2012. She observed the clearing that had occurred from the public roadway. She saw evidence of recent clearing and fresh hydroseeding. Mr. Skotdal arrived and they discussed the complaint and issues. Officer Wahl determined that the amount of clearing was in excess of 7,000 square feet and that a Land Disturbing Activity (LDA) permit was required, but had not been obtained by the Appellant. A Notice of Violation (NOV) was issued on June 27, 2012. (Exhibits 4, 5, 6, 8, 9, 12, 22, 24, 25)
7. The NOV was sent to the Appellant by regular and certified mail. (Exhibits 11, 12)
8. Skotdal filed a timely appeal of the NOV on July 10, 2012. (Exhibit 1)
9. In support of his claim, Appellant submitted Exhibits 14 through 21 and testified at the appeal hearing. He alleges that the amount of clearing calculated by Officer Wahl does not exceed 7,000 square feet and also includes areas where grass previously existed (so it should not be counted). He testified that they were acting in good faith to improve the property so that it would have value again and could be sold.
10. In response, Officer Wahl argues that the amount of area of the clearing was calculated by observation and reference to aerial photography, for which she used the house as a scale. She calculated that an area greater than 100 feet deep by 70 feet wide was cleared at a minimum. Officer Wahl testified that the area was approximately 12,000 square feet. She stated that she subtracted from that calculation the areas where grass had existed in the photographs prior to the clearing activity. She testified that not only the clearing was in violation, but the addition and placement of gravel (new or replaced impervious surface) for the driveway constituted a violation. (See also, Exhibits 8, 18, 19, 20, 25)
11. Any Finding of Fact which should be deemed a Conclusion of Law in this Decision is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over the appeal of a Notice of Violation pursuant to Ch. 2.02 SCC and 30.85.190.
2. Appellants were cited in the NOV for engaging in land disturbing activity (clearing in excess of 7,000 square feet, and adding new/replacement impervious surfaces in excess of 2,000 square feet) without first obtaining a land disturbing activity permit. (Exhibit 1)
3. The term "land disturbing activity" means "...any activity that will result in movement of earth or a change in the existing soil cover or the existing soil topography (both vegetative and non-vegetative), including the creation and/or replacement of impervious surfaces. . . ." (SCC 30.91L.025)
4. The term "clearing" means "the destruction or surface removal of vegetation by cutting, pruning, limbing, topping, or relocating manually or mechanically, application of herbicides or pesticides, or other chemical methods, or any application of hazardous or toxic substance that has the effect of destroying or removing vegetation." (SCC 30.91L.112)
5. The Hearing Examiner concludes by a preponderance of the evidence that Officer Wahl proved that the Appellant cleared vegetation across the subject property in an amount greater than 7,000 square feet and approximating 12,000 square feet, for the purposes of adding a new grass lawn and a gravel driveway. The Hearing Examiner further concludes that a LDA permit was required prior to engaging in such activity and that the NOV was properly issued.
6. The Appellant failed to present sufficient persuasive evidence to refute the existence of the violation or that the NOV was improperly issued by PDS. Therefore, the appeal should be denied.
7. Any Conclusion of Law in this Decision which should be deemed a Finding of Fact is hereby adopted as such.

DECISION AND ORDER

The appeal is denied and the NOV is affirmed.

Dated this 5th day of September, 2012.



Millie M. Judge, Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

The decision of the Hearing Examiner is final and conclusive with a right of appeal to Superior Court. However, reconsideration by the Examiner may also be sought by one or more parties of record. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 30.85 SCC, the Snohomish County Hearing Examiner Rules and Superior Court Civil Rules.

Reconsideration

Any party of record may request reconsideration by the Hearing Examiner **within 10 days** from the date of this decision. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, Robert J. Drewel Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S No. 405, 3000 Rockefeller Avenue, Everett WA 98201) **on or before SEPTEMBER 17, 2012**. There is no fee for filing a petition for reconsideration. "The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing." [SCC 30.85.210]

A petition for reconsideration shall meet the requirements of SCC 30.85.210(3). The grounds for seeking reconsideration are limited to the following:

- (a) The Hearing Examiner exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner's decision;
- (c) The Hearing Examiner committed an error of law;
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by the record; and/or
- (e) New evidence which could not reasonably have been discovered prior to the hearing and which is material to the decision has been discovered;

Petitions for reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.85.210.

Appeal

An appeal to Superior Court may be filed by any aggrieved party of record **within 21 days from the date of this decision** pursuant to Chapter 36.70C RCW, the Land Use Petition Act. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the Superior Court.

NOTE: *Please include the County file number in any correspondence regarding this case.*

Staff Distribution:

Department of Planning and Development Services: Judy Wahl

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation." A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.

PARTIES OF RECORD REGISTER
SKOTDAL 12 104838 CT
APPEAL NOTICE OF VIOLATION

SKOTDAL ENTERPRISES
ARTHUR SKOTDAL
PO BOX 5267
EVERETT WA 98206

DEPT OF PLAN & DEV SERV
JUDY WAHL
3000 ROCKEFELLER AVEM/S 604
EVERETT WA 98201