



## CITY OF KIRKLAND

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### MEMORANDUM

**To:** Sue Tanner, Kirkland Hearing Examiner

**From:** Oskar Rey, Assistant City Attorney *OER*

**Date:** August 14, 2008

**Subject:** Morgan Building Code Enforcement Appeal, File No. MIS07-00024

City of Kirkland staff offers this hearing memorandum in connection with the August 21, 2008 appeal hearing of the above referenced matter. Staff intends to introduce this hearing memorandum and its exhibits into the record at the August 21, 2008 hearing.

#### I. STATEMENT OF FACTS

In early July, 2007, the City became aware of two structures being constructed along the north property line of property commonly known as 8249 – 122<sup>nd</sup> Avenue NE, Kirkland, Washington (“Property”). A GIS photograph of the area is attached hereto as **Exhibit A**.<sup>1</sup> The GIS photo depicts the approximate boundary lines of the properties in the area. Based on property records, the Property (8249) is owned by Sharon Morgan. Her husband, Martin Morgan may have a community property interest in the 8249 property. Property records indicate that Martin and Sharon Morgan are the owners of the property known as 8251 – 122<sup>nd</sup> Avenue NE. Finally, property records indicate that Sharon Morgan owns the property known as 8241 – 122<sup>nd</sup> Avenue NE. Again, Martin Morgan may have a community property interest in the 8241 property. Photographs of the structures taken by Craig Salzman, the City’s code enforcement officer taken on July 2, 2007 are attached hereto as **Exhibit B**.

The Kirkland Building Official viewed the property and the structures and, on July 10, 2007, issued an Amended Notice of Violation and Order to Correct to the Morgans (“Amended Notice”) a copy of which is attached hereto as **Exhibit C**.<sup>2</sup> The Amended Notice stated that the two structures do not meet the requirements of the International Residential Code<sup>3</sup> (“IRC”) and that the structures constitute dangerous buildings under the 1997 Uniform Code for the Abatement of Dangerous Building (“Dangerous Building Code”).<sup>4</sup> The Amended Notice indicated that even structures that are exempt from the requirement of a building permit must meet the requirements of the IRC. See KMC Section 21.06.215. In addition, existing

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<sup>1</sup> Please note that the GIS photo does not depict the structures at issue in this case because it predates the structures. It is simply offered to provide an overview of the property configuration.

<sup>2</sup> The City had previously issued a Notice of Violation on July 6, 2007, but the July 10, 2007 Amended Notice superseded the original Notice.

<sup>3</sup> The IRC is adopted by reference in Section 21.06.050 of the Kirkland Municipal Code.

<sup>4</sup> The Dangerous Building Code is adopted by reference in Chapter 21.39 of the Kirkland Municipal Code.

structures that are not legal as of July 1, 2007 must be brought into conformance with current code. See KMC 21.06.115.

The Morgans appealed the Amended Notice of Violation on August 3, 2007, through their attorney, Jack Borland, and the matter was heard by the Hearing Examiner on September 20, 2007. **See Exhibit D (Letter of Appeal)**. On October 28, 2007 the Hearing Examiner issued a ruling reversing the issuance of the Amended Notice of Violation. **Exhibit E (Hearing Examiner Decision)**. The Hearing Examiner concluded that the structures must meet the requirements of the IRC, but that the Amended Notice did not sufficiently describe how the structures fail to meet the requirements of the IRC and the manner in which the violations should be corrected. **Id, pp. 5-6.**

On April 16, 2008 the City issued a Second Amended Notice of Violation and Order to Correct ("Second Amended Notice") to the Morgans with respect to the structures. **Exhibit F**. At the time of the issuance of the Second Amended Notice, the parties were scheduled to conduct mediation in connection with junk vehicle litigation between the parties. The parties agreed to mediate the issue of the structures in addition to the vehicles in an effort to reach a global resolution of the pending code enforcement matters with respect to the Morgan properties.

The mediation occurred on April 22, 2008 and a Settlement Agreement was reached. **Exhibit G (Settlement Agreement dated April 22, 2008)**. With respect to the structures, the Morgans agreed to either remove them within 30 days or bring them into compliance with applicable codes within 60 days. The Settlement Agreement states 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.

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.<sup>5</sup> The issuance of the stop work order has not been appealed by the Morgans (although there has been communication between the City and the Morgans as to the circumstances under which the stop work order will be lifted). Photographs of the structures as they appeared at the time of issuance of the stop work order are attached hereto as **Exhibit H**.

The City Building Official also issued a Third Amended Notice of Violation and Order to Correct ("Third Amended Notice") on June 25, 2008. **Exhibit I**. The Third Amended Notice describes the nature of the violations and the corrective action required as follows:

1. 2003 IRC Section R301.6. *Roof Load. Roof shall be designed for the live load indicated in Table R301.6 or the snow load indicated in Table R301.2(1), whichever is greater.* The snow load for this area is 25 pounds per square foot. The tarps covering the roofs do not provide adequate snow load support. On June 23, 2008, I observed that plywood had been added to the roof of the front structure. The addition of the plywood constitutes work without a permit. A building permit must be obtained and a building

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<sup>5</sup> Building Department representatives measured the structures at the time the stop work order was issued. One of the structures is approximately 190 square feet and the other 160 square feet.

inspection completed to determine if the plywood was installed properly and if it will adequately support the loads.

2. 2003 IRC Section R602.10. *Wall Bracing. All exterior walls shall be braced in accordance with this section.* The exterior walls do not contain any type of bracing such as plywood sheathing. Consequently the exterior walls have no lateral support to resist wind or seismic loads. On June 23, 2008, I observed that plywood had been added to the walls of the front structure. The addition of the plywood constitutes work without a permit. A building permit must be obtained and a building inspection completed to determine if the plywood was installed properly and if it will adequately support the loads.

3. 2003 IRC Section R703.1 *General. Exterior walls shall provide the building with a weather resistant exterior wall envelope. The exterior wall envelope shall include flashing as described in Section R703.8. The exterior wall envelope shall be designed and constructed in such a manner as to prevent the accumulation of water within the wall assembly by providing a water-resistive barrier behind the exterior veneer as required by Section R703.2.* The exterior walls do not have any weather protection. The lumber the walls are made of will deteriorate if exposed to the weather.

4. 2003 IRC Section R902.1. *Roof covering materials. Roofs shall be covered with materials as set forth in Sections R904 and R905.* The roofs are not protected from the weather by approved materials. The lumber the roofs are made of will deteriorate if exposed to the weather.

5. KMC 21.06.205. *Permit Required. A permit must be obtained prior to altering a building.* On June 23, 2008, I observed plywood had been added to the roof and walls of the front structure. This constitutes work without a permit. A building permit must be applied for and obtained and a building inspection must be requested.

The Third Amended Notice also includes copies of the applicable provisions of both the 2003 IRC and the 2006 IRC.<sup>6</sup>

On July 8, 2008, the Morgans, through their attorney, appealed the issuance of the Third Amended Notice. **Exhibit J.** The appeal letter does not contain a clear reference to the matter being appealed or a statement of the specific elements of the building official's order, decision or determination disputed by the Morgans. See KMC 21.06.576. A Notice of Hearing for this matter was issued by the City on July 24, 2008. **Exhibit K.**

## II. LEGAL ANALYSIS

### A. The Notice of Appeal is Deficient.

KMC 21.06.576 provides that appeals of orders of the building official "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." The appeal notice filed by the Morgans does not contain any reference to the specific elements of the Third Amended Notice being appealed. Nor have

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<sup>6</sup> Since the structures were allegedly constructed before the 2006 IRC took effect in Kirkland, the descriptions of the violations are with reference to the 2003 IRC. Corrective action is governed by the 2006 IRC since the City is asserting the structures constitute current code violations.

the Morgans made any attempt to further clarify their reasons for appealing the Third Amended Notice. As a result, their appeal is fatally flawed and the issuance of the Third Amended Notice should be affirmed.

**B. The Violations are Apparent.**

The violations set forth in the Third Amended Notice are readily apparent. The recent photographs of the structures depict the fact that the walls and roofs of the structures are unfinished and not constructed of materials that will withstand applicable loads and exposure to the weather. **See Exhibit H.** The Third Amended Notice contains specific references to the sections of the IRC that have been violated and has copies of the applicable code provisions attached to it. Accordingly, the nature of the violations and the corrective action required have been sufficiently described.

**C. Conclusion.**

Staff respectfully requests that the Hearing Examiner affirm the Third Amended Notice of Violation issued by the Kirkland Building Official.

EXHIBITS FOR THE MORGAN APPEAL  
HEARING ARE AVAILABLE FOR VIEWING AT:

KIRKLAND CITY HALL  
PLANNING DEPARTMENT

123 5<sup>TH</sup> AVENUE

KIRKLAND WA 98033

8:00 AM - 5:00 PM

MONDAY-FRIDAY