



## CITY OF KIRKLAND

Planning and Community Development Department

123 Fifth Avenue, Kirkland, WA 98033 425.587.3225

www.ci.kirkland.wa.us

### MEMORANDUM

**Date:** May 11, 2006

**To:** Anne Watanabe, Hearing Examiner

**From:** Judd Tuberg, Code Enforcement Officer

**Subject:** Appeal of Kevin Peterson and Renee Peterson, 8700 126th Avenue NE, Kirkland, WA (hereinafter referenced as the complaint address) Re Department of Planning and Community Development (hereinafter referenced as DPCD) File No. ENF 05-208 (COM05-00307) – Case (Formal file) No. APL06-00005.

#### I INTRODUCTION

City of Kirkland staff ("staff") offer this staff report with regard to the above-referenced Code Enforcement matter.

#### II. ISSUES PRESENTED

1. Whether Kevin Peterson and Renee Peterson (hereinafter referenced as appellants) have maintained and/or allowed a junk accumulation and/or a junk yard at the complaint address (King County parcel # 123310-0735), in violation of section 115.70, Kirkland Zoning Code.
2. Whether appellants achieved the Corrective Action specified and required in the DPCD Notice of Violation & Order to Correct to the appellants on Dec. 8, 2005, to wit: permanently removing and cleaning up all junk accumulation items and/or all junk yard items listed in the NOV&OC Description of Violation from the complaint address before March 10, 2006, the date that DPCD issued a Notice of Civil Infraction to appellants in this matter.
3. Whether appellants are responsible for \$800.00 in monetary penalties assessed by Notice of Civil Infraction issued by DPCD on March 10, 2006, from and including March 10, 2006, through March 17, 2006, (8 days at \$100.00 per day or portion thereof through March 17, 2006, PM, - the date the appellants' undated appeal letter and white envelope were received at city hall by city staff, and for monetary penalties of \$100.00 per day accruing from the date of the decision of the Hearing Examiner resulting from the appeal hearing scheduled for May 18, 2006, until such time as the violation(s) involving the

continuing junk accumulation and/or junk yard at 8700 126th Avenue NE, Kirkland, WA, in violation of Section 115.70, Kirkland Zoning Code, are certified as corrected by DPCD.

### III. STATEMENT OF FACTS

Appellants have resided at 8700 126th Avenue NE, Kirkland, WA for approximately 18 years. On Sept 23, 2005, DPCD received a 2-page complaint from a Kirkland resident alleging a long-standing condition of disabled vehicles at the complaint address

I investigated the complaint and determined that the complaint address/site was owned by Kevin and Renee Peterson. My investigation of the complaint address/site confirmed many items on the site which comprised a junk accumulation and/or junk yard in violation of Section 115.70 Kirkland zoning code. Subsequently, I contacted Kevin Peterson at his residence, explained the junk accumulation and/or junk yard violations, provided him with a copy of Section 115.70, Kirkland Zoning Code, together with definitions from Chapter 5.10.447 &.448, respectively defining "junk accumulation" and "junk yard", and requested on several occasions (both in person at his residence and during telephone conversations with him) that he voluntarily remove the many junk accumulation items, and/or junk yard items, and/or permanently discontinue and stop allowing and/or maintaining a junk accumulation and/or a junk yard at the complaint address.

Kevin Peterson declined on several occasions to remove the junk accumulation items and/or junk yard items at 8700 126th Avenue NE, Kirkland, WA.

On Dec. 8, 2005, I served a Notice of Violation & Order to Correct on behalf of DPCD to Kevin Peterson at the complaint address, posted a copy of the NOV on site with the assistance of the Kirkland Police Dept., and sent a copy to Kevin and Renee Peterson by Certified Mail, Return Receipt requested. The Correction Date specified in the Dec. 8, 2005, NOV&OC was 8AM Dec. 16, 2005.

On Dec. 16, 2005, PM, DPCD received a 1-page letter from Kevin Peterson with white envelope (dated Dec. 13, 2005) addressed to Judd Tuberg, Code Enforcement. In part, with reference to the 8 AM, Dec. 16, 2005, time for completion of "Corrective Action" required in the Dec. 8, 2005, NOV&OC per ENF 05-208, the letter stated: ..... "It has come to my attention that this violation must be taken care of as of the 16th of this month. Financially and most physically this is not possible, so I am asking of you to please give me an extension to this deadline of at least 30 days for the cleanup and an additional 30 days for the vehicles." .....

On January 20, 2006, I wrote a 2-page letter to Kevin and Renee Peterson on behalf of DPCD stating 1) that several DPCD recent site visits to the complaint address indicated that little progress had been made as of Jan 20, 2006, in permanently removing and cleaning up junk accumulation items and/or junk yard items described and listed in the Description of Violation in the NOV&OC issued to them on Dec. 8, 2005; 2) DPCD would not grant further time extensions in this enforcement matter unless they submitted a written proposal to DPCD for review, consideration and written approval no later than Jan 27, 2006, specifically detailing which junk

accumulation/junk yard items they intended to permanently remove and cleanup from the subject property premises, and the date by which each junk accumulation item and/or junk yard item described and listed in the Description of Violation contained in the Dec. 8, 2005, NOV&OC would permanently be removed from the subject property premises.; and 3) if Kevin and Renee Peterson did not respond in writing to my request letter of Jan.20, 2006, with their written proposal on or before Jan. 27, 2006, DPCD might issue a Notice of civil Infraction to them in the near future.

On January 30, 2006, DPCD received a 1-page letter dated Jan. 26, 2006, from Renee Peterson, referencing ENF 05-208, responding to my 2-page letter of Jan 20, 2006. In part, she started: .....“her husband, Kevin Peterson, had been in and out of town, and would be all next week handling family business. As soon as he returns we can write you the letter you requested. Sorry for the inconvenience.” .....

DPCD did not receive a subsequent letter form Kevin and Renee Peterson, in response to my 2-page letter to them dated Jan. 20, 2006, despite the assurances of Renee Peterson in her letter of Jan. 26, 2006. This inaction appeared to be a further evidence of a lack of cooperation by Renee and Kevin Peterson in the junk/junk yard abatement proceedings, and indicated an intent to delay compliance with Section 115.70, Kirkland Zoning Code.

I continued my efforts to contact Kevin Peterson at his residence or by contacting him by telephone at his residence to renew my request(s) that all junk accumulation items and/or junk yard items be permanently removed and cleaned up from the complaint address. My sites visits to the complaint address in January and February, 2006, indicated little progress or cooperation from Kevin and Renee Peterson in permanently removing and cleaning up junk accumulation items and/or junk yard items at 8700 126th Avenue NE, Kirkland, WA.

For these reasons DPCD issued a Notice of Civil Infraction on March 10, 2006, to Kevin and Renee Peterson with attendant \$100.00 per monetary penalties, posted a copy of the notice of Civil Infraction at the complaint address, and served a copy to Renee Peterson at the complaint address with the assistance of the Kirkland Police Dept. A copy of the notice of Civil Infraction was also sent to Kevin and Renee Peterson by Certified Mail. On March 10, 2006, while at the violation address, I observed that little progress had been made to permanently remove or cleanup junk accumulation items or junk yard items at the complaint address when the Notice of Civil Infraction was posted in the east rear yard, and served to Renee Peterson.

By 1-page letter received by DPCD on March 17, 2006, PM, Kevin Peterson appealed the Notice of Civil Infraction issued by DPCD on March 10, 2006.

On April 28, 2006, DPCD scheduled the appeal hearing for Kevin and Renee Peterson re APL06-00005 with the City of Kirkland Hearing Examiner for a hearing scheduled at 9 AM, May 18, 2006, at the City Council Chambers, City Hall. 123 5th Avenue, Kirkland, WA , and sent a copy of the Notice of Appeal Hearing to Kevin and Renee Peterson on April 28, 2006, by Certified Mail Return Receipt Requested with Certified Mail Receipt #7000 2870 6385 0240.

#### IV. LEGAL ANALYSIS

Chapter 115, Kirkland Zoning Code establishes Miscellaneous Use Development And Performance Standards.

Chapter 115.70, Kirkland Zoning Code prohibits junk accumulations and junk yards in the City of Kirkland.

Chapter 5.10.447 & .448 defines junk and junk yard, respectively, as follows:

Junk - Old or scrap copper; brass; rope; rags; batteries; paper; trash; rubber debris; wastes; machinery; scrap wood; junked, dismantled, or wrecked automobiles, or parts thereof; iron; steel; or other ferrous or nonferrous material.

Junk Yard – A property or place of business which is maintained, operated, or used for storage, keeping, buying, selling or salvaging junk.

Appellants have chronically maintained and/or allowed a junk accumulation and/or a junk yard at the complaint address for the past approximate 8 months – after being requested by DPCD to permanently remove and cleanup all junk accumulation items and/or junk yard items from their residence. Little progress in removing a significant amount of junk/junk yard items from the complaint address has been observed until after a Notice of Civil Infraction was issued on March 10, 2006- at which time junk, trash, debris, wastes, and scrap metal in the rear beds of 2 pickup trucks: ( 1 inoperable, junk 1957 red Ford truck with expired vehicle license plate and damage-Wash. Lic # (A73382G),and 1 1989 white non-junk Chev S-20 pickup truck – expired Wash Lic plate # A58733H) was removed, and 1971 orange/white junk GMC pickup truck with junk in rear bed (Wash. Lic. plate #90983H- expired 8-29-01) was relocated possibly into an interior residential garage on site.

After March 10, 2006, DPCD discovered another inoperable junk vehicle- 1 junk VW Scirocco vehicle in the SE corner of the complaint address obscured by vegetation and up against the south side of an accessory building in rear east yard.

Although a small, limited amount of the total junk items and/or junk yard items described and listed in the Dec 8, 2005, NOV&OC, and the 3-10-06 Notice of Civil Infraction have been removed after the March 10, 2006, Notice of Civil Infraction was issued, a significant amount of junk accumulation items and/or junk yard items currently remain at the complaint address, including but not limited to 3-4 junk vehicles, many tires, and many tires mounted on rims, scrap wood, scrap metal, machinery, vehicle parts, 1 vehicle rear end/axle and differential gears with 2 tires and rims attached, old building materials, several pieces of ABS plastic pipe, salvage, blue plastic tarps on ground, 1 metal engine puller, furniture, 1 metal vehicle lift and 2 or more white wood doors, wastes, trash, and debris in the rear east yard of the complaint address.

Based on the testimony to be presented by DPCD, together with numerous exhibits and evidence consisting of correspondence between the appellants and the City of Kirkland, emails, government records, and photographs before the Hearing Examiner at 9 AM, May 18, 2006, the DPCD will prove a long-standing violation of section 115.70, Kirkland Zoning Code, at the complaint address.

Monetary Penalties are established for violations of the Kirkland Zoning Code by Chapter 170, Kirkland Zoning Code. Section 170.25, 2.a., Kirkland Zoning Code states:

"Monetary penalty- The amount of the monetary penalty per day or portion thereof for each violation is as follows:

- a. First violation: \$100.00";

Please note that in addition to payment of monetary penalties by a person, there is a continuing duty to correct the violation as ordered by the applicable department director per Section 170.25.3., Kirkland Zoning Code.

Section 170.40.6.b, Kirkland Zoning Code (Action of Hearing Examiner) authorizes the Hearing Examiner to modify any monetary penalty imposed by a Notice of Civil Infraction if it is established that the intent of the appeal was to delay compliance, or if the appeal was frivolous.

## V. CONCLUSION

DPCD Staff respectfully request that the Notice of Civil Infraction (per ENF 05-208) issued by DPCD on March 10, 2006, to Renee and Kevin Peterson be upheld, and that the monetary penalties of \$100.00 per day from March 10, 2006, through March 17, 2006, (\$800.00 total monetary penalties) be imposed against Renee and Kevin Peterson, together with the imposition of prospective monetary penalties) against Renee and Kevin Peterson until the violation(s) of Section 115.70, Kirkland Zoning Code at 8700 126th Avenue NE, Kirkland, WA are certified as corrected by DPCD.