

August 11, 2004

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0300665**

MIKE STERN
Code Enforcement Appeal

Location: 6923 237th Avenue Northeast

Appellant: Mike Stern, *represented by*
Richard W. Hively
Zeno, Drake and Hively, P.S.
4020 Lake Washington Blvd. NE, Suite 100
Kirkland, Washington 98033
Telephone: (425) 822-1511
Facsimile: (425) 822-1411

King County: Department of Development and Environmental Services, *represented by* **Erroll Garnett**
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 296-7102
Facsimile: (206) 296-6604

SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Appeal denied

EXAMINER PROCEEDINGS:

Hearing Opened:	August 5, 2004
Hearing Closed:	August 5, 2004

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.

A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. Based on complaints dating back to July 2003, on June 10, 2004 the King County Department of Development and Environmental Services, Code Enforcement Section, issued a notice and order to Michael Stern at 6923 – 237th Avenue Northeast. Mr. Stern was cited for operating a Matco Tool sales business from a residential property in violation of the standards for a permitted home occupation. The specific violation alleged is the “business use of a vehicle greater than one ton capacity”. Mr. Stern has filed a timely appeal of the notice and order. He concedes that a Matco Tool truck is regularly parked on his property overnight, but avers that his business use of the residential property is limited to such overnight parking and therefore does not rise to the level of a home occupation.
2. There is no dispute as to the essential facts. Mr. Stern has been a Matco franchisee since about May 2003 and in pursuit of his business uses a large delivery truck with Matco signage on its sides. It has been described by his neighbor, Mr. Paine, as a three ton truck, while county staff has related that it is registered as a four ton truck. In any event, there is no doubt that the truck capacity exceeds one ton.
3. Until recently Mr. Stern was receiving tool deliveries at home from Matco via Federal Express and United Parcel Service. The FedEx deliveries, though less frequent, seem to have been the larger events and attracted the attention of neighboring property owners. It appears that at least once a month a FedEx truck has made a major delivery of Matco inventory to the Stern residence, at which the time the truck pulls into the driveway and unloads a pallet stacked with boxes. The boxes then are either temporarily stored in the garage or loaded directly onto Mr. Stern’s delivery vehicle. In addition, UPS deliveries occur three or four times a week.
4. According to Mr. Stern’s uncontradicted testimony, in late May 2004 he began to instruct his supplier to desist sending inventory for delivery at his home and instead began picking up the deliveries at the freight terminal. He testified that the last home delivery of tools occurred in early July and introduced to the record freight delivery labels from Matco carrying late July dates and the notation “UPS Hold for Customer Pickup”. Mr. Stern’s representations are consistent with the testimony of neighbors Paine, Altenburg and Jordan, none of whom could recall seeing a major delivery to the Stern residence after mid-June, 2004.
5. It was also Mr. Stern’s testimony that with the cessation of home receipt and storage of Matco inventory business activities no longer occur at the residential site. Mr. Stern stated that he does no ordering, billing or recordkeeping at home, with all such administrative tasks conducted from the truck via lap top computer, cell phone and wireless credit card terminal. While some skepticism regarding this assertion was expressed by county staff and neighboring residents, no evidence to the contrary was introduced. Finally, Mr. Stern testified that he uses his Matco delivery truck strictly for commercial purposes, and it serves no non-business functions.

CONCLUSIONS:

1. Accepting at face value Mr. Stern's representations that all other Matco-related business activities have been removed from the residential property, the question becomes whether the overnight parking of a commercial delivery truck in excess of one ton capacity at an RA-5 zoned site constitutes a code violation. Mr. Stern's theory is that a commercial vehicle of any size may be legally parked on the property so long as it is not associated with a home occupation. According to his understanding, if there is no home occupation the one ton vehicle capacity limit does not apply, and no other restriction exists with respect to the parking or storage of a commercial vehicle. It is the correctness of this assertion that must be evaluated.
2. But first a few words on delivery and storage of inventory, a topic which dominated the testimony of the neighborhood residents. If a business otherwise qualifies as a home occupation, KCC 21A.30.080 does not prohibit or regulate the delivery and storage of goods. Indeed, storage and distribution of products associated with the home occupation is specifically contemplated by the code section, a fact which necessarily presupposes that such goods or the constituent parts thereof somehow would be delivered to the site. Thus, while the arrival of large delivery trucks to the Stern residence may be the activity most upsetting to the neighborhood residents, the delivery process is not in fact directly regulated by code, but only indirectly through control of the weight capacity of the property owner's business vehicle.
3. The RA zone is a regulatory hybrid. With the increasing gentrification of unincorporated King County, the RA zone has become for most purposes a residential designation. But in addition to residential activities the RA zone acknowledges the continued legitimacy of traditional rural resource-based uses such as forestry and agricultural. Accordingly, while resource uses are permitted to continue, all other commercial uses are strictly regulated and in most instances prohibited.
4. The major exception to the strict limitation on non-resource commercial uses in the RA zone is contained within the home occupation provisions of KCC 21A.30.080. That section allows a variety of otherwise prohibited commercial uses to occur provided they meet strict performance standards designed to limit their impacts on surrounding residential properties. Absent the home occupation provisions, a home-based tool sales business would be prohibited within the RA zone.
5. KCC 21A.08.030A describes the residential land uses permitted in each zone. Under the heading of accessory uses, in addition to home occupations which are permitted outright and home industries which are conditionally permitted on larger parcels, "residential accessory uses" are allowed. The definition of "residential accessory use" stated at KCC 21A.06.020 includes at subparagraph 8 the "storage of private vehicles, e.g. motor vehicles, boats, trailers or planes". This definition appears to be the source of the Appellant's argument that so long as the home occupation provisions are not triggered by other on-site business activities, the simple storage of a large business delivery vehicle on a residential property is not otherwise precluded.
6. But the Appellant did not carry his definitional investigation far enough. KCC 21A.06.020A(8) employs another key regulatory term specifically defined within the code, the word "private". KCC 21A.06.900 gives a zoning definition of the term "private" that is somewhat counterintuitive in its scope. "Private" means "solely or primarily for the use of residents or occupants of the premises; e.g., a non-commercial garage used solely by residents or their guests

is a private garage.” Due to the operation of this specialized meaning the word “private” as used within the “residential accessory use” definition is limited to uses which are residential and non-commercial in nature. Therefore, storage of a four ton RV used by property residents for family vacations is a permitted residential accessory use, but the overnight parking of a four ton business delivery truck that has no residential use is prohibited. Or in other words, the home occupation provisions of KCC 21A.30.080 operate primarily as an expansion of the commercial uses permitted under the zoning code and only secondarily as a limitation. Non-resource commercial uses are generally prohibited in the RA zone unless they qualify as home occupations. As a commercial vehicle Mr. Stern’s tool delivery truck does not qualify as a residential accessory use, and it fails to meet the home occupation standard because it exceeds the one ton capacity limit. The appeal must be denied and the truck parked offsite.

DECISION:

The appeal is DENIED.

ORDER:

1. No penalties shall be assessed against the Appellant or his property if within 21 days of the date of this order the Matco delivery truck is removed from the Appellant’s residential property and parked at an offsite location zoned for such use.
2. If the deadline stated above is not met, DDES may assess penalties against the Appellant and his property retroactive to the date of this order.

ORDERED this 11th day of August, 2004.

Stafford L. Smith
King County Hearing Examiner

TRANSMITTED this 11th day of August, 2004, by certified mail to the following:

Mike Stern
6923 – 237th Avenue Northeast
Redmond, Washington 98053

TRANSMITTED this 11th day of August, 2004, to the parties and interested persons of record:

Michael Altenburg
6933 - 237th Ave. NE
Redmond WA 98053

Richard W. Hively
4020 Lake WA Blvd. NE, Ste. 100
Kirkland WA 98033

Jeff Paine
23702 NE 70th Street
Redmond WA 98053

Mike Stern
6923 - 237th Ave. NE
Redmond WA 98053

Suzanne Chan
DDES, Code Enf.
MS OAK-DE-0100

Elizabeth Deraitus
DDES/LUSD
Code Enf. Supvr.
MS OAK-DE-0100

Erroll Garnett
DDES/LUSD
Code Enf. Section
MS OAK-DE-0100

Patricia Malone
DDES/LUSD
Code Enf. Section
MS OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE AUGUST 5, 2004 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0300665.

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing was Erroll Garnett, representing the Department; and Richard W. Hively, representing the Appellant, and Mike Stern, Jeff Paine, Bill Jordan and Michael Altenburg.

The following Exhibits were offered and entered into the record:

- Exhibit No. 1 Staff report to the Hearing Examiner
- Exhibit No. 2 Copy of permits plus comment screen
- Exhibit No. 3 Copy of the violation letter dated August 21, 2003
- Exhibit No. 4 Copy of the violation letter dated December 24, 2003
- Exhibit No. 5 Copy of a letter and photos sent by Jeff Paine dated April 17, 2004
- Exhibit No. 6 Letter sent to Mr. Stern dated April 26, 2004
- Exhibit No. 7 Copy of the Notice & Order issued June 10, 2004
- Exhibit No. 8 Copy of the Appeal received June 28, 2004
- Exhibit No. 9 Copies of codes cited in the Notice & Order
- Exhibit No. 10 Photographs taken by Erroll Garnett dated March 5, 2004
- Exhibit No. 11 Photographs taken by Jeff Paine dated July 6, 2004
- Exhibit No. 12 UPS receipts

SLS:gao
E0300665 RPT