

December 30, 2010

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

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **A10F0011**

DARYLL BOYD

Fee Appeal

Location: 28237 – 338th Avenue SE

Appellant: **Daryll Boyd**
12017 SE 219th Court
Kent, Washington 98031
Telephone: (206) 412-0522
Email: dboyd@rfi.com

King County: Department of Development and Environmental Services (DDES)
represented by Jarrod Lewis
900 Oakesdale Avenue SW
Renton, Washington 98055
Telephone: (206) 296-6713
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Email: jarrod.lewis@kingcounty.gov

SUMMARY OF RECOMMENDATION/DECISION:

Department's Preliminary Recommendation:

Deny appeal

Department's Final Recommendation:

Deny appeal

Examiner's Decision:

Grant appeal

EXAMINER PROCEEDINGS:

Hearing opened:

December 7, 2010

Hearing continued administratively:

December 7, 2010

Hearing record closed:

December 16, 2010

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:

1. On September 18, 2007, Appellant Daryll Boyd applied to DDES for a building permit to construct a new single-family residence on the subject property. A permit was issued under file B07L1152 on September 8, 2008.
2. Imposition of impact fees on developments is authorized generally by Chapter 21A.43. Specific authorization is set forth in KCC 21A.43.020. However, a school district must be formally qualified as eligible for such fees in order for fees to be imposed. At the time of Mr. Boyd's building permit application in 2007, Enumclaw School District No. 216, within which the property lies, was not certified under county code as qualified for the imposition of school impact fees on development. [KCC 27.44.010, codifying ordinances 15636, effective January 1, 2007, and 16698, effective January 1, 2010, among others] Because the District had not been eligible for school impact mitigation fee payments under county code in 2007, no school impact mitigation fees were imposed on permit B07L1152.
3. Mr. Boyd encountered great difficulties with the performance of his hired architect in the design of the subject residential structure. The architect unilaterally designed a home far beyond Mr. Boyd's desires and intentions, and the design contained errors regarding insufficient attention to drainage and design impacts. The resultant product was a residential design which would have greatly exceeded Mr. Boyd's budget for the residence. Other issues evidently aggravated the unsatisfactory architectural performance, including the architect's personal difficulties, relocation, and unavailability and uncommunicativeness over months and months of time. The architect also refused to transfer the hand-drawn original architectural documents so that Mr. Boyd could see if they could be revised to be satisfactory, after interviewed building contractors expressed dismay and unacceptability of the complicated nature of the design for them to construct.
4. As a result of the unsatisfactory design, Mr. Boyd was required to engage new design consultants in 2009 and obtain a completely new design and building footprint, as the original architectural design was from a practical sense too difficult to simply revise to bring it into satisfactory status.
5. Upon application to DDES to revise the building permit based on the new residential design, DDES required a replacement building permit, which was issued under B10L0192. Given the DDES requirement of a new building permit as a replacement rather than allowing a revision to the existing permit B07L1152, Appellant Boyd lost his vested right to have his residential development considered under the laws and regulations in effect upon the completeness of his original building permit application. The new "vesting date" for his building proposal was the application date for the required new permit, April 1, 2010.
6. Effective January 1, 2010, by ordinance 16698, the Enumclaw School District was eligible for school impact mitigation pursuant to KCC 27.44.010. Accordingly, Mr. Boyd's new building permit under B10L0192 was subjected to the imposition of school impact fees at the certified district rate of \$7,789. The fee was paid.
7. Under county code, "impact fees may be adjusted by the county, at the county's discretion" in cases where "unusual circumstances identified by the developer demonstrate that if the standard impact fee amount was applied to the development, it would be unfair or unjust." [KCC 21A.43.070.E.2]

8. Inclusion of the issue of imposition of school impact mitigation fees in fee appeals is authorized by KCC 21A.43.070.G, which in effect refers the matter to the fee appeal process established under Chapter 27.50 KCC. Under that process, an administrative DDES fee waiver must first be sought.
9. After having been assessed the school impact mitigation fees on his new building permit, Mr. Boyd filed a fee waiver request with DDES pursuant to KCC 27.50.070 (pertaining to non-project managed permits), requesting a waiver of the school impact fees because of the permit situation pertaining to his proposed residential development.
10. DDES denied Mr. Boyd's fee waiver request, concluding that given the lawful change of Mr. Boyd's vested rights by the DDES requirement of a new building permit (which requirement is not a matter under the Examiner's appellate jurisdiction in the instant case), the imposition of school impact mitigation fees on the 2010 replacement building permit B10L0192 was required under the law.
11. Mr. Boyd filed the instant appeal of DDES's fee waiver denial. (The appeal made claims additional to those brought forward in the fee waiver request regarding unperformed charged inspections and site reviews and duplicated fees, but as ruled preliminarily at hearing such issues may not be considered in the appeal since they were not raised below in the fee waiver request to DDES.)
12. The architect's failure of proper performance in the instant case, which resulted in an unworkable building design from both construction feasibility and cost standpoints, is a matter beyond Appellant Boyd's reasonable diligence and control.

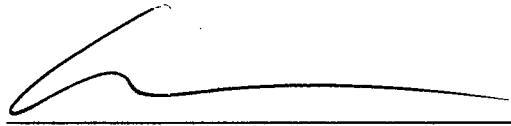
CONCLUSIONS:

1. The circumstance of Mr. Boyd's unfortunate architectural experience resulting in an unsatisfactory and unworkable building design, which was performed outside of Mr. Boyd's reasonable diligence and control, constitutes an unusual circumstance.
2. The unusual circumstance demonstrates that the necessity of obtaining a wholly new building permit as required by DDES was not due to Appellant Boyd's action, and if it were not for the requirement of a new building permit in 2010, Mr. Boyd's 2007 building permit would have remained in effect.
3. Since the 2007 building permit, which was not subject to the imposition of school impact mitigation fees, was in effect required to be relinquished with a loss of building permit-associated vested rights due to circumstances beyond Mr. Boyd's control, and the required 2010 building permit was only required because of such circumstances, imposition of school impact mitigation fees, which were applicable to building permits issued in 2010 but not in 2007, would be manifestly unfair and unjust.
4. As the instant situation meets the two-pronged test established in KCC 21A.43.070.E.2 for adjustment of school impact fees, Mr. Boyd's permit situation qualifies for such adjustment.
5. In this case, the adjustment should be to no imposition of school impact mitigation fees, since that was the situation applicable to his 2007 building permit for the proposed residence. Mr. Boyd's appeal shall therefore be granted in full with respect to school impact fees.

DECISION:

The appeal is GRANTED. The amount of \$7,789 imposed on building permit B10L0192 as a school impact fee for the Enumclaw School District shall be REFUNDED to Mr. Boyd.

ORDERED December 30, 2010.



Peter T. Donahue
King County Hearing Examiner

NOTICE

County code provides that the Hearing Examiner decision on fee appeals under Chapter 27.50 KCC is the final decision of the county.

**MINUTES OF THE DECEMBER 7, 2010, PUBLIC HEARING ON DEPARTMENT OF
DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. A10F0011**

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Appellant Darryl Boyd and Jarrod Lewis representing the Department.

The following Exhibits were offered and entered into the record:

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|----------------|--|
| Exhibit No. 1 | Department of Development and Environmental Services (DDES) staff report to the Hearing Examiner for A10F0011 |
| Exhibit No. 2 | Summary of Charges Detail for permits B07L1152 and B10L0192, dated September 22, 2010 |
| Exhibit No. 3 | Hourly Charges Detail for permits B07L1152 and B10L0192, dated September 22, 2010 |
| Exhibit No. 4 | Fee Waiver for permit B10L0192 filed August 3, 3010 |
| Exhibit No. 5 | DDES decision on Notice and Statement of Appeal, dated September 22, 2010 |
| Exhibit No. 6 | Notice and Statement of Appeal, filed August 24, 2010 |
| Exhibit No. 7 | Copy of check in the amount of \$50 for fee appeal filing charge |
| Exhibit No. 8 | <i>not submitted</i> |
| Exhibit No. 9 | Email from Appellant to Washington State Department of Licensing (DOL) describing experience with previously licensed Architect Carlton Kovell |
| Exhibit No. 10 | Printout of webpage from DOL, which is a listing of disciplinary actions against architects in 2008, printed February 19, 2009 |
| Exhibit No. 11 | Site plans for permits B07L1152 and B10L0192 |

The following Exhibits were entered during the administrative continuance:

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|----------------|--|
| Exhibit No. 12 | Email from Jarrod Lewis dated 12/15/10 regarding documents requested at 12/07/10 hearing – 3 attachments |
| Exhibit No. 13 | Email response from Darryl Boyd to documents submitted in Exhibit 12 |