

October 10, 2003

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

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**REPORT AND DECISION**

SUBJECT: Department of Development and Environmental Services File No. **E0300471**

**SONNY KWAN**  
Code Enforcement Appeal

Location: 1007 – 17<sup>th</sup> Place South

Appellant: Sonny Kwan, *represented by*  
**Evan L. Loeffler**, Attorney at Law  
Harrison Benis & Spence, LLP  
2033 Sixth Avenue, Suite 1040  
Seattle, Washington 98121-2532  
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King County: Department of Development and Environmental Services, *represented by*

**DenoBi Olegba**  
900 Oakesdale Avenue Southwest  
Renton, Washington 98055-1219  
Telephone: (206) 205-1528  
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:

September 30, 2003

Hearing Closed:

September 30, 2003

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. On August 15, 2003, the King County Department of Development and Environmental Services, Code Enforcement Section, issued a notice and order to Gene Y. and Sonny C. Kwan based on alleged code violations at a residential apartment complex located at 10007 – 17<sup>th</sup> Place South. The notice and order cites the property for construction of a weight-bearing wall and deck supports without required building permits; maintenance of substandard dwelling units and common areas in violation of the King County Code, the Uniform Building Code, the Uniform Housing Code and the Uniform Code for the Abatement of Dangerous Buildings; and accumulation of inoperable vehicles, salvage and debris and lack of adequate garbage storage and removal facilities. The citation for maintenance of substandard dwelling units and common areas itemizes nine separate property conditions in support of the allegation. Sonny Kwan filed a timely appeal of the notice and order on behalf of himself, his family and the Kwan LLC. A public hearing on this appeal was held by the King County Hearing Examiner's Office on September 30, 2003.
2. There are two items of documentary evidence that need to be addressed as to their probative value before proceeding to a detailed discussion of the items cited within the notice and order. First, the Appellant relies upon a correction notice issued by the King County Fire Marshal's Office on April 2, 2003, and a reinspection performed on August 2, 2003, as evidence that many of the violations itemized in the notice and order have been remedied. DDES counters that the Fire Marshal inspection was based solely on safety issues and has no relevance to code citations for structural or permitting defects. Neither party called Deputy Fire Marshal Dona Bogan as a witness even though she is a DDES employee. We agree with DDES that as a general proposition a fire marshal has neither the jurisdictional mandate nor the necessary expertise to perform a structural inspection. Moreover, an examination of the April 2, 2003, correction list discloses its focus on safety issues. To the extent, however, that the substandard dwelling unit allegations are safety-based and such issues are specifically mentioned in Ms. Bogan's correction list, her reports have evidential value.
3. A second evidential issue concerns the photographs taken by Code Enforcement Officer DenoBi Olegba. According to his testimony Mr. Olegba has been on the premises of the Kwan Apartments at least 20 times since February 2003. He stated that on some of these occasions he took the photographs that are collected in exhibit 5. However, as pointed out by the Appellant's attorney, none of the photographs submitted by Mr. Olegba carry a 2003 date stamp. Instead the automatic date-stamping feature on the camera printed on the photographs dates which include July 29, 30 and 31, 1998, and August 1 and 2, 2001. Mr. Loeffler argued that the premises may have indeed been in disrepair in 1998, but that the photographs were not relevant to its condition in 2003. Mr. Olegba responded that the automatic dating mechanism on the camera he used was malfunctioning at the time the photographs were taken, pointing out that he was still a resident of New York City in 1998 at the time indicated in the earliest photographic date stamps.



4. We find that Mr. Olegba's explanation of the date stamp malfunction is credible and supported by other evidence. According to DDES records the first complaint at the Kwan Apartments was received October 12, 1998, so the likelihood that the extensive array of photographs date-stamped July 1998 are accurately identified by the automatic dating mechanism is remote. Further, while none of the other witnesses supplied by staff testified as to having been present when the photographs were taken, Scott Lavielle, Battalion Chief of the North Highline Fire District; Bernard Moore, Assistant Supervisor of the County Building Inspections Unit; and Elizabeth Deraitus, Supervisor of the County Code Enforcement Section all testified as to having been in the Kwan Apartments in 2003 with Mr. Olegba and stated that the photographs accurately represented the conditions on the premises at that time. Based on this corroborating testimony and the virtual certainty that the July 1998 date stamp information is incorrect, we conclude that the photographs were indeed taken in 2003 as indicated by Mr. Olegba. The evidence, however, precludes identifying a specific date in 2003 to which the photographs can be attributed.
5. Turning now to a consideration of the specific items contained within the notice and order, the first section cites the property for construction of a weight-bearing wall and deck support without required building permits. Although photographs were submitted by staff showing newly installed wall board in a location where a window may previously have been, there was no evidence demonstrating that the wall was a weight-bearing structure. The notice and order is therefore unsubstantiated as to that allegation. The deck supports are clearly weight-bearing, and the photographs of unpainted support timbers indicate that this is relatively recent repair work and not the original supports. In addition, Mr. Olegba and other staff witnesses testified to seeing these supports and to the accuracy of the photographs. No contradictory evidence was introduced by the Appellants, thus the citations for installing deck supports without a building permit should be sustained.
6. Moving on to the specific items identified in section 2 of the notice and order as supporting the citation for maintenance of substandard dwelling units and common areas, the first allegation is that mold and mildew are present throughout the complex. This allegation is abundantly substantiated both by the testimony and the photographs. Heavy mold and mildew have been shown to be present on ceilings, walls, around electrical fixtures, around bathroom and kitchen plumbing fixtures and near windows and doors. The extent of mold and mildew in the Kwan Apartments evidences inadequate maintenance, dilapidation and decay resulting in an unsanitary condition prohibited by section 302 of the Uniform Code for the Abatement of Dangerous Buildings.
7. The second specific citation within paragraph 2 of the notice and order is for common walking surfaces, including parking areas, that are hazardous due to uneven surfaces and potholes in depressed areas that hold water. The primary evidence supporting this citation is found in the photographs within exhibit 5D, which show uneven cemented surface areas, standing water and walking surfaces covered by sheets of scrap plywood. The Appellant has not introduced evidence to contradict this citation or to indicate that it has been repaired. On the other hand, it is not clear that the code sections cited by the Department, which contained numerous references to exits, are intended to apply to walkways outside the buildings themselves.
8. The third citation in section 2 of the notice and order is for walls, ceilings and door and window frames in the dwelling units which are rotted and/or crumbling or structurally unsound. As noted

above, the witness testimony and photographic evidence amply supports the contention by staff that most of the glass doors and windows in the apartment units are heavily infested with mold. In an extreme circumstance a chronically damp window or door will result eventually in a rotted frame and structural instability. The evidence of record in this proceeding implies the existence of such deterioration but does not directly demonstrate it.

9. The fourth condition cited within paragraph 2 of the notice and order is that the exterior stairways to the apartment units are structural unsound. This allegation is supported by the record. Photographs 3 and 4 in exhibit 5I show wooden stairs with paint peeling off them, a rotting side rail and a stair tread with a couple of wooden blocks wedged underneath for structural support. Building Inspection Supervisor Bernard Moore testified that he observed dry rot within the stair jacks and rails and an absence of a grippable rail as required by code. In addition, the testimony and photographs describe outdoor decking that is slimy and dangerous and jerry-built deck coverings assembled out of precariously balanced scraps of wood, fiberglass sheeting, refrigerator grates and blue polyester tarps. The deck coverings were clearly fabricated without building permits. These conditions are in violation of paragraph 2, section 302, of the Uniform Code for the Abatement of Dangerous Buildings and Uniform Housing Code Section 1001.
10. The fifth element cited within paragraph 2 of the notice and order is for water leakage onto all ceilings. As with the other water-related allegations, this citation is pervasively supported in the record by the testimony of the staff witnesses and the following photographs: exhibit 5 photos 2, 3 and 4; exhibit 5B, photos 1, 5, 7 and 8; exhibit 5F, photo 1; exhibit 5H, photo 2; exhibit 5K, photo 7; exhibit 5M, photos 2, 3, 5 and 6; exhibit 5N, photo 2; and exhibit 5O, photos 1, 2 and 3. Whether this array in fact represents all of the units in the building is not clear from the record, but it is certainly sufficient to sustain the allegation. The extensive presence of water leakage above the apartment unit ceilings constitutes dilapidation, deterioration and decay of sufficient magnitude to imply a risk of structural collapse as prohibited within paragraph 8, section 2, of the Uniform Code for the Abatement of Dangerous Buildings and evidences an unsanitary condition within the meaning of paragraph 15 of that same section.
11. The sixth item cited within paragraph 2 of the notice and order is for hazardous and/or defective electrical fixtures, including wiring outlets, switches, heating units and appliances. Here again many of the potentially dangerous conditions result from water seepage through the ceilings of the apartment units. The photographs cited within the preceding finding frequently show ceiling light fixtures surrounded by water-marked wallboard or filled with water leaked down through the ceiling itself. The existence of water damaged ceiling light fixtures as depicted in the photographs was verified by Bernard Moore, who also noted that at least one of the units did not have a functional heating system. Electric wiring and water are a dangerous combination. Electrical fixtures damaged by water leakage are not maintained in a safe manner as required by sections 701.2 and 1001.5 of the Uniform Housing Code. They also constitute a hazardous condition within the meaning of paragraph 16, section 302, of the Uniform Code for the Abatement of Dangerous Buildings.
12. The seventh item noted within section 2 of the notice and order alleges hazardous and/or leaking plumbing fixtures. This citation is supported by photographs which show an especially heavy buildup of mold around bathroom and kitchen plumbing fixtures. See, in particular, the photographs contained in exhibits 5A, 5L, 5M and 5N. Fixtures with heavy concentrations of

mold evidence plumbing that has not been maintained in good condition within the meaning of

Uniform Housing Code section 1001.6, as well as inadequate maintenance, dilapidation and decay resulting in an unsanitary condition as described in paragraph 15, section 202, of the Uniform Code for the Abatement of Dangerous Buildings.

13. The eighth item cited within section 2 of the notice and order is for inadequate weather protection resulting from ill-fitting doors and broken windows. Mr. Moore testified as to his observation of doorways without weather stripping, which testimony is generally supported by the photographs of exit doors from the units. No evidence of broken windows was introduced to the record. Uniform Housing Code Section 601.2 requires every building to be weather-protected “to provide shelter for the occupants against the elements and to exclude dampness”. The combination of evidence describing inadequate weather stripping and heavy mold and mildew infestations is sufficient to support a finding of violation of this section.
14. The final item cited within section 2 of the notice and order is for missing and/or inoperative smoke detectors. This appears to have been a primary focus of the inspections conducted recently by both the County Fire Marshal’s Office and Mr. Lavielle, the North Highline Fire District Battalion Chief. The evidence indicates that the deficiencies identified within the smoke detector system have been corrected by the Appellant.
15. Section 3 of the notice and order cites the property for an accumulation of inoperable vehicles, salvage and debris, as well as inadequate garbage storage and removal facilities. There seems to be general agreement that the principal inoperable vehicle remaining at the site is a recreational vehicle belonging to one of the tenants of the Kwan Apartments. The Appellant has agreed to have this vehicle removed in an expeditious manner, and the order attached to this decision implements that offer.

Assuming that the other inoperable vehicles have already been removed from the site, the remaining issues appear to involve a collection of salvage auto parts and some storage of miscellaneous items under the decks. As shown by the photographs, the largest accumulation of junk is within unit 4, which the tenant has agreed to vacate by the end of January 2004. As far as garage disposal generally, Mr. Olegba testified that he observed chronic overloading of a single dumpster located on the site to serve the apartments. While we are not convinced that the garbage and debris disposal problem is sufficiently egregious to be regarded as a violation in itself, it contributes to the overall unsanitary conditions on the premises.

16. In addition to the specific code citations discussed above, both KCC Title 21A and the various uniform codes referenced in the notice and order contain general prohibitions against the maintenance of a public nuisance. The most comprehensive of the definitions provided is found at section 401 of the Uniform Housing Code, which defines a nuisance to include “whatever is dangerous to human life or is detrimental to health. . . .”, “inadequate or unsanitary sewage or plumbing facilities”, and “uncleanliness. . . .” UHC section 1001.4 states that buildings or portions thereof “in which there exist any nuisance as defined in this code are deemed substandard buildings”. The conditions demonstrated to exist at the Kwan Apartments, particularly those related to water damage and resultant mold infestations, should be regarded as a public nuisance. This is because chronic water leakage inevitably results in structural deterioration that will be dangerous to human life and will foster disease conditions detrimental to health. In addition, damp and moldy plumbing facilities must be regarded as inadequate, unsanitary and unclean. Although not identified as a separate citation within the notice and

order, staff testimony as to observing major infestations of cockroaches in the apartment units and rats in the yard also supports a general finding of inadequate, unsanitary and unclean facilities.

#### CONCLUSIONS:

1. Although the evidence of record may not be sufficient to justify an adverse finding for every item in the long list of specific citations contained within the notice and order, the majority of these citations are adequately supported and are collectively sufficient to uphold the notice and order. To some extent it appears that Mr. Olegba may have been so overwhelmed and outraged by the squalor encountered at the Kwan Apartments that he became frustrated in his ability to present an organized and objective case. Be that as it may, the totality of evidence offered in support of the citations, particularly those relating to the pervasive existence of mold, mildew, rot and water damage, is more than adequate to sustain the broad parameters of the notice and order. This evidence requires not only the denial of the appeal, but a rigorous and immediate enforcement and compliance program. The Appellant's attorney, Mr. Loeffler, has agreed in principle to such an enforcement regime, but it is not altogether clear that his client will provide the level of cooperation necessary to achieve it.
2. The evidence of record supports upholding the notice and order issued in this case on all specific citations except for construction of a weight-bearing wall without a building permit, structurally unsound walls, ceiling, door and window frames, and inoperative or missing smoke detectors. With respect to the structural issues noted above, there is a reasonable probability that the citations may be well-grounded, but such facts cannot be conclusively determined without a more comprehensive inspection. Staff has demonstrated the existence on the premises of unsafe exterior walkways but has not provided a code citation that clearly pertains to this condition.
3. The Kwan Apartments are a public nuisance and a substandard building within the meaning of the Uniform Housing Code.

#### DECISION:

The appeal is DENIED.

#### ORDER:

1. No penalties shall be assessed against the Appellant or his property if all of the following deadlines are met:
  - a. An inspection of the Kwan Apartments' premises shall be scheduled with DDES officials to take place not later than **October 17, 2003**. In view of the history of poor communications between Mr. Kwan and Mr. Olegba, it is recommended that this inspection be arranged by Mr. Loeffler through Code Enforcement Supervisor Elizabeth Deraitus. The purpose of the inspection is to identify all code violation conditions on the premises that need to be corrected and to establish priorities among these items based on the level of risk to human health and safety.



- b. All permit applications necessary to effect the corrections identified in subparagraph a above shall be filed with DDES and other public agencies no later than **October 31, 2003**.
  - c. Except as provided herein, all remaining inoperable vehicles and garbage, salvage, junk and debris remaining on the site shall be removed from the premises by **November 30, 2003**. Removal of debris from apartment number 4 shall occur within 7 days of the vacation of the premises by the occupant.
  - d. Full compliance with all of the items identified for correction pursuant to the inspection required above under subparagraph a shall be completed by **January 9, 2004**; provided that, DDES may extend this deadline based on a good faith effort toward effecting compliance in a timely manner.
2. If any of the above-stated deadlines are not met by the Appellant, DDES may impose penalties upon the property dating back to the date of this order.
  3. The Hearing Examiner's Office shall retain jurisdiction over this appeal proceeding in order to facilitate compliance with the terms of this order. Except for the inspection deadline stated above in condition 1.a., the remaining deadlines stated herein may be amended for good cause shown based on the motion of any party. DDES shall provide to the examiner a status report describing progress made towards bringing the site into compliance which shall be submitted not later than **November 30, 2003**.

ORDERED this 10th day of October, 2003.

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Stafford L. Smith  
King County Hearing Examiner

TRANSMITTED via certified mail on this 10th day of October, 2003, to the following persons:

Evan Loeffler  
2033 Sixth Ave., Ste. 1040  
Seattle, WA 98121-2532

Sonny Kwan  
941 N. 104<sup>th</sup> St., #201  
Seattle, WA 98133

TRANSMITTED this 10th day of October, 2003, to the parties and interested persons of record:

Peter Ho  
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Seattle WA 98118

Sonny Kwan  
941 N. 104th St., #201  
Seattle WA 98133

Scott Lavielle  
Fire Marshall  
1243 SW 112th  
Seattle WA 98146

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Elizabeth Deraitus  
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Patricia Malone  
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Bernard Moore  
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DenoBi Olegba  
DDES/LUSD

Heather Staines  
DDES/BSO

Building Inspection  
MS OAK-DE-0100

Code Enforcement  
MS OAK-DE-0100

Code Enf.-Finance  
MS OAK-DE-0100

## NOTICE OF RIGHT TO APPEAL

The action of the hearing examiner on this matter shall be final and conclusive unless a proceeding for review pursuant to the Land Use Petition Act is commenced by filing a land use petition in the Superior Court for King County and serving all necessary parties within twenty-one (21) days of the issuance of this 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 SEPTEMBER 30, 2003 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0300471.

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were DenoBi Olegba, Bernard Moore, and Elizabeth Deraitus representing the Department; and Evan L. Loeffler, representing the Appellant, and Sonny Kwan, Chief Scott A. Lavielle and Peter Ho.

The following exhibits were offered and entered into the record:

- |                |  |
|----------------|--|
| Exhibit No. 1  | DDES Report to the Hearing Examiner dated October 2, 2003                                |
| Exhibit No. 2  | Notice and Order dated August 15, 2003   |
| Exhibit No. 3  | Notice and Statement of Appeal dated August 30, 2003                                     |
| Exhibit No. 4  | Copies of Codes Cited in the Notice and Order  |
| Exhibit No. 5  | Photographs (5 color) of the site (dates uncertain)                                      |
| 5A             | Photographs (6 color) of the site (dates uncertain)                                      |
| 5B             | Photographs (8 color) of the site (dates uncertain)                                      |
| 5C             | Photographs (3 color) of the site (dates uncertain)                                      |
| 5D             | Photographs (7 color) of the site (dates uncertain)                                      |
| 5E             | Photographs (6 color) of the site (dates uncertain)                                      |
| 5F             | Photographs (6 color) of the site (dates uncertain)                                      |
| 5G             | Photographs (5 color) of the site (dates uncertain)                                      |
| 5H             | Photographs (5 color) of the site (dates uncertain)                                      |
| 5I             | Photographs (6 color) of the site (dates uncertain)                                      |
| 5J             | Photographs (8 color) of the site (dates uncertain)                                      |
| 5K             | Photographs (8 color) of the site (dates uncertain)                                      |
| 5L             | Photographs (4 color) of the site (dates uncertain)                                      |
| 5M             | Photographs (6 color) of the site (dates uncertain)                                      |
| 5N             | Photographs (7 color) of the site (dates uncertain)                                      |
| 5O             | Photographs (6 color) of the site (dates uncertain)                                      |
| Exhibit No. 6  | Subpoena Duces Tecum for Superior Court, case no. 03-2-34224-6SEA, dated August 26, 2003 |
| Exhibit No. 6B | L&I Report of Inspection dated April 8, 2003   |
| Exhibit No. 7A | King County Fire Marshal's Office Inspection Report dated April 2, 2003                  |
| Exhibit No. 7B | King County Fire Marshal's Office Inspection Report dated July 2, 2003                   |
| Exhibit No. 8  | Letter to Gene & Sonny Kwan from DenoBi Olegba dated June 9, 2003                        |
| Exhibit No. 9  | Stipulation for Settlement, case no. 03-2-34224-6SEA, dated September 29, 2003           |