

BEFORE THE HEARING EXAMINER FOR
SAN JUAN COUNTY
STATE OF WASHINGTON

In Re:)
07APL003)
Appeal of administrative decision) ORDER
by Grant Telfer) HE29-07

FINDING OF FACT

1. Grant Telfer owns property on Orcas Island located at 98 Bunny Lane, tax parcel #271123013.
2. In 1997 Mr. Telfer moved a travel trailer onto the property and has used it since as his residence. A water hookup from Eastsound Water Association has been installed.
3. In the year 2000 Mr. Telfer built a small structure on the property. He received assistance from his brother. The structure is approximately 240 square feet, is less than 16 feet in height and is not built upon a foundation. The structure contains a toilet and sink which are hooked up to the Eastsound Water system. There is no bathtub, shower, oven, stove, water heater, bed, closet or clothes storage. There are cabinets, a compact refrigerator, a television and stereo, a computer system, chairs and various living accessories. The structure is also used for storage of non-living accessory items. Mr. Telfer has never slept, bathed or cooked within the structure.
4. The structure has been wired for 110 watt service. Plumbing for the sink and toilet have been installed. These items were done by Mr. Telfer and/or his brother without permits or inspections.
5. Subsequent to the building of the structure a septic system permit was applied for, built and approved by the County. The system services the trailer and the structure.
6. At the time of building of the structure in 2000 San Juan County had adopted Code Section 15.04.060 as follows:

“The provisions of UBC Section 301(b) shall be modified as follows: a building permit shall not be required for the following: A 1-story detached accessory building used for tool, wood and other storage sheds, miscellaneous small agricultural buildings, playhouses, or similar uses, provided the projected roof area does not exceed 400 square feet and the overall height does not exceed 16 feet measured from 6 inches above the lowest natural grade point around the building to the highest point of the finished roof, and further provided that the remainder of Section 301(b) shall remain the same. Such building shall not be used for human habitation.”

The term “human habitation” was not defined by any provision of the San Juan County Code (SJCC). The record does not contain reference to any definition of “human habitation” found in the UBC.

7. Over time the structure has been used by Mr. Telfer for storage but also for computer usage,

1 television and stereo useage and “legal writing.”

- 2 8. On September 6, 2006 Mr. Telfer submitted a building permit application for a two story building
3 consisting of a garage on the ground floor and a dwelling unit on the second floor.
- 4 9. Thereafter a number of meetings, conferences, phone calls, e-mails, etc. took place. Finally on
5 May 1, 2007 San Juan County Community Development and Planning Department (CDPD)
6 issued a letter signed by Jeff Wasnick, Code Enforcement Officer, which was received by Mr.
7 Telfer. The letter provided the County’s position that the structure constituted one that had been
8 used for “human habitation” without obtaining proper permits. The letter also provided Mr. Telfer
9 with two options to deal with the problem and stated that the current building permit application
10 would not be issued until the problem with the existing structure had been resolved.
- 11 10. Thereafter, Mr. Telfer timely filed a notice of appeal from the May 1, 2007 Administrative
12 Determination and the matter proceeded to hearing on July 11, 2007. Witnesses were sworn,
13 testimony was taken and exhibits were admitted.
- 14 11. The May 1 2007 letter, in essence, determined that Mr. Telfer had violated SJCC 15.04.060 (as it
15 existed in 2000) by using the existing structure for “human habitation”. The letter also pointed out
16 that a building permit exemption would not, in any event, exempt “all mechanical and plumbing
17 permits” as well as “electrical permits and inspections” from the State Department of Labor and
18 Industries.
12. There is no credible evidence that either the Administrator or any staff member of the Department
has singled out Mr. Telfer in any way. Rather this is a good faith difference of opinion between
CDPD and Mr. Telfer as to what constitutes human habitation.
13. The County chose to not issued the pending building permit (06BPA440) on the basis of SJCC
18.100.030(F).
14. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the persons and the issues properly presented idn the appeal.
2. The appeal was properly filed and presented. The issue in the appeal is whether San Juan County properly declined to further process the pending building permit application of Grant Telfer to construct a two-story building. The subset issues are (1) whether the existing structure was constructed in violation of state law or county ordinance, or (2) has subsequently been used in violation of SJCC 15.04.060 as it existed in 2000.
3. The hearing examiner does not have authority to consider or rule on claims concerning violation of civil rights, due process or any damages accruing from such claims.
4. CDPD points out that the UBC definition of “habitable space” includes such amenities as refrigerators, stereos, computers, televisions, sinks, toilets and the like.
5. Mr. Telfer contends that the proper definition of human habitation is that of a “dwelling unit” as found in SJCC 15.04.500.

1 6. A proper interpretation of an ordinance starts with a reading of the words themselves. SJCC
2 15.04.060 provides that a structure is exempt from a building permit if it is properly sized (not an
issue in this case) and used for:

- 3 1) tools, wood or other storage;
- 4 2) miscellaneous agricultural buildings;
- 5 3) playhouses;
- 6 4) similar uses (to all of the above)

7 The overriding prohibition is that human habitation is not allowed in the structure.

8 7. The clear intent of this ordinance is that such buildings will be used for storage or children's play
9 activities. The ultimate interpretation of the human habitation prohibition is whether that
10 prohibition limits "casual" habitation or if the intent of the ordinance is to prohibit "permanent"
11 habitation.

12 8. The Administrator has chosen to interpret the prohibition as one involving even "casual" human
13 habitation. The Administrator's determination is entitled to substantial weight on review. SJCC
14 18.10.030(3).

15 9. CDPC did not claim that the structure was built in violation of SJCC. The exemption clearly
16 applies as it existed in 2000. Rather the claim is that subsequent event and uses (electricity,
17 plumbing and use as a legal office) have taken the structure out of the exception.

18 10. While the definitions cited by appellant at page 6 of his brief could lead to a conclusion of
"permanence" in the habitation prohibition, it is an interpretation that the Administrator has chosen
not to make. It is the appellant's burden under SJCC 18.10.030(4) to demonstrate that the decision
being appealed is "clearly erroneous". This Mr. Telfer has not done.

11 11. The appellant claimed that he was exempt from obtaining any permit under the ordinance. This is
12 clearly an incorrect reading. The exemption applies only to a building permit. Appellant cited no
13 authority for the proposition that he was exempt from obtaining electrical and/or plumbing permits
14 for the structure.

15 12. Appellant acknowledged the need for electrical and plumbing permits by acknowledging that he
16 was applying for plumbing and electrical permits under SJCC 15.04.710.

17 13. SJCC 18.100.030(F) directs that CDPD is prohibited from issuing a new permit for a lot on which
18 there is a "final determination" of a State law or County ordinance violation. Under these facts
there is a violation of the electrical and plumbing permit requirements for the structure. The
Administrator's interpretation of ordinance provisions also establishes a violation of SJCC
15.04.060. The "final determination" referred to in SJCC 18.100.030(F) is one that is made by
CDPD. Mr. Telfer's claim that in each and every instance a court must make that determination is
without merit.

14. Any finding herein which may be deemed a conclusion is hereby adopted as such.

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DECISION

The Administrator has interpreted the human habitation prohibition as one involving casual habitation rather than permanent habitation. The facts support a determination that Mr. Telfer has violated the ordinance under that interpretation. Mr. Telfer has failed his burden of showing that the determination was clearly erroneous. He has also violated other permit requirements on the property. CDPD is prohibited from issuing the pending building permit because of SJCC 18.100.030.

The administrative decision is upheld.

DATED this _____ day of August, 2007.

Wm. H. NIELSEN, Hearing Examiner

Appeal

Any appeal of this decision shall be to Superior Court pursuant to the Land Use Petition Act, Chapter 36.70 RCW, within 21 days of the issuance of the decision. See Home Rule Charter, Section 3.70.