

**BEFORE THE HEARING EXAMINER
FOR ISLAND COUNTY**

In the Matter of the Appeal of)	No. COV-047/19
)	
David Muresan)	
)	FINDINGS, CONCLUSIONS,
<u>Of an Enforcement Order</u>)	AND DECISION

SUMMARY OF DECISION

The Island County Department of Planning and Community Development alleges that David Muresan (Appellant) violated the Island County Code (ICC17.03.180.I), which addresses requirements for Guest Cottages and Accessory Living Quarters, in allowing tenants to reside on his property in a converted shop structure without temporary use permits or building permits. The Appellant has admitted to the allegations but argues that he is responding to an emergency need for affordable housing and that Island County wrongfully ignored a permit he requested.

Island County has proved by a preponderance of the evidence that violations have occurred. The explanations offered by the Appellant in defense of his actions are inapposite or beyond the scope of the current appeal hearing. The appeal, therefore, is **DENIED**, and penalties are assessed as detailed below.

SUMMARY OF PROCEEDINGS

Hearing Date:

The Island County Hearing Examiner held an open record hearing on the appeal on June 15, 2020, using remote technology due to the COVID-19 pandemic. The record was left open to June 16, 2020, to allow Island County to file an additional document requested by the Hearing Examiner. The requested information was provided on June 16, 2020, and the record closed at 4:30 PM that day.

Testimony:

The following individuals presented testimony under oath:

County Witnesses:

Garlend Tyacke, Tenant
John Brazier, County Code Enforcement Officer
Ted Corey, County Building Inspector

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*Appellant Witnesses:*¹

David Muresan, Appellant, testified on his own behalf

Attorney Jesse Eldred represented the County at the appeal hearing.

Exhibits:

The following documents were admitted as exhibits:

Appellant Exhibits:

None

County Exhibits:

- C-1. Amended Initial Enforcement Order, dated June 1, 2020
- C-2. County's Response to Appellant's Motion to Dismiss, dated May 29, 2020
- C-3. Appellant's Motion to Dismiss, dated May 19, 2020
- C-4. Appeal, received May 12, 2020
- C-5. Initial Enforcement Order, dated April 30, 2020
- C-6. Staff Report, dated June 5, 2020, with the following attachments:
 - 15. Island County Planning and Community Development Complaint Investigation Request re: David Muresan, 1578 Crestview Dr., Camano Island, WA, with photos, dated September 13, 2016, and identity release form, dated September 7, 2016
 - 16. Island County and Community Development Complaint Investigation Request re: David Muresan, 1578 Crestview Dr., Camano Island, WA, received June 1, 2018
 - 17. Letter from John Brazier, Island County Planning and Community Development, Code Enforcement, to David Muresan, dated September 4, 2018
 - 18. Sewage Failure Notice of Violation, Case # 092/17, to Mr. and Mrs. Muresan, dated December 21, 2018
 - 19. Island County Planning and Community Development - Stop Work order, dated February 20, 2019
 - 20. Letter from Andy Griffin, County Planning and Community Development, to David and Maria Muresan, dated February 22, 2019, with Stop Work order, dated February 20, 2020, and On Site Investigation Report, dated February 19, 2020
 - 21. Department of Labor and Industries - Electrical Inspection Witness Statement, dated February 25, 2019, with photos dated February 20, 2019
 - 22. Return Receipt (front and back), delivery date February 28, 2019
 - 23. Island County Planning and Community Development, Building Department - Stop Work order, dated April 4, 2019, with On Site Investigation Report, dated April 4, 2019

¹ Although the Appellant listed several witnesses on the Appellant's witness list, he did not call any of these witnesses at the appeal hearing.

24. Letter from Andy Griffin, Island County Planning and Community Development, Stop Work Order, to David and Maria Muresan, dated April 5, 2019
25. Letter from Island County Planning and Community Development to David and Maria Muresan, dated April 19, 2019, with Initial Enforcement Order, dated April 18, 2019
26. Island County Planning and Community Development Complaint Investigation Request re: David Muresan, 1578 Crestview Dr., Camano Island, WA, received April 22, 2019, with attachments
27. Letter from David Muresan, dated April 22, 2019, with enclosed Building Application and plans, dated February 26, 2019
28. Letter from Tansy Schroeder, Island County Planning and Community Development, to David Muresan, dated April 29, 2019, with attachments
29. Letter from John Brazier, Island County Planning and Community Development, to David and Maria Muresan, dated January 14, 2020
30. Letter from John Brazier, Island County Planning and Community Development, to David and Maria Muresan, dated February 19, 2020
31. Initial Enforcement Order, No. COV 047/19, issued April 30, 2020, with mailed certified, date of delivery May 5, 2020
32. Appeal, David Muresan, dated May 5, 2020, with Certificate of Service
- C-7. Island County Sheriff's Office Deputy Report for Incident 20-109414, dated May 31, 2020
- C-8. Declaration of Bob and Debbie Christopher in Support of Island County, dated May 26, 2020
- C-9. Declaration of Lawrence Baum in Support of Island County, dated June 2, 2020, with 11 photos
- C-10. Five (5) photos, Lawrence Baum, dated February 25, 27, 2020
- C-11. Declaration of Keith Higman, MPH, in Support of Island County, dated May 25, 2020, with two attachments
- C-12. Letter from Tim Jones to David Muresan, dated June 24, 2019
- C-13. Email from Tim Jones to Michele Rushworth, dated June 3, 2020, with email string
- C-14. Email from Jesse Eldred to Helen Tan, dated June 8, 2020, with email string and eleven (11) photos, undated
- C-15. Declaration of Jesse Eldred, dated June 15, 2020, with attachment
- C-16. Video of Muresan property - thumbdrive

Orders and Motions

- Hearing Examiner's Pre-Hearing Order, dated May 18, 2020
- Appellant's Motion to Dismiss, dated May 19, 2020
- Notice of Appearance (Jesse J. Eldred), dated May 20, 2020, with Certificate of Service
- County's Response to Appellant's Motion to Dismiss, dated May 29, 2020, with Certificate of Mailing/Service; Declaration of Keith Higman, dated May 25, 2020; and Declaration of Bob and Debbie Christopher, dated May 26, 2020

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- Appellant Witness List, dated May 31, 2020
- Hearing Examiner’s Ruling on Appellant’s Motion to Dismiss, dated June 1, 2020
- Initial Enforcement Order (of April 30, as AMENDED JUNE 1, 2020)
- Declaration of Lawrence Baum, dated June 2, 2020
- Appellant’s Request for Laws, dated June 4, 2020
- County’s Response to “Request for Laws,” dated June 8, 2020, with Certificate of Service
- Island County’s Documents List, dated June 8, 2020, with Certificate of Service
- Island County’s Witness List, dated June 8, 2020, with Certificate of Service
- Hearing Examiner’s Response to Appellant’s Request, dated June 9, 2020

FINDINGS

Background and Initial Enforcement Order

1. David Muresan owns five acres at 1578 Crestview Drive, Camano Island, WA. The property is zoned Rural Residential and located within the Lost Lake Residential Area of More Intensive Rural Development, which has a minimum lot size of 2.5 acres. *Exhibit C-6; Exhibit C-6-28*. The County and Mr. Muresan have engaged in many discussions about appropriate use of his property. *Exhibits C-6 through C-11*. Neighboring property owners have also engaged in discussions with the County and Mr. Muresan about appropriate use of his property, including concerns about increased vehicle traffic, density of persons on the property, and unsafe living quarters. *Exhibits C-12 through C-14*.
2. On April 30, 2020, the Island County Planning Director (County) issued an Initial Enforcement Order (Order) to David Muresan. The Order states that there is a violation of Chapter 17.03 of the Island County Code (ICC) at 1578 Crestview Drive, Camano Island, in a Rural Residential zone. The Order alleges that “Recreational Vehicles, Trailers, and Tents” are occupied as illegal dwelling units on the Muresan property because a temporary use permit is needed for this use during construction, and that no permit has been issued. The Order describes the use as an “illegal campground” and ordered Mr. Muresan to cease and desist from “all illegal land use activities” until a permit is obtained. A *temporary use* is defined in the county zoning code as “a use specified in section 17.03.180 requiring no permanent improvements and conducted for a limited duration.” *ICC 17.03.040*. Uses specified in ICC 17.03.180 that are relevant to this matter include those described in subsection I of ICC 17.03.180 as “Guest cottages and accessory living quarters.” *Exhibit C-5; ICC 17.030.040; ICC 17.03.180 I*.

Amended Enforcement Order

3. On June 1, 2020, the County amended its Initial Enforcement Order. The amended Initial Enforcement Order (Amended Order) alleged a violation of ICC 17.03.180.I by converting a shop/garage into seven bedrooms and a single bathroom without a building permit or an adequate septic system. The Amended Order further alleged that continuous occupation of these rooms are a threat to the health, safety, and well-being of all residents

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in the neighborhood due to exposed electrical wire and no heating, insulation, hot water, or refrigeration.

The county code referenced in the Amended Order reads as follows:

1. Guest cottages may be established as accessory dwelling unit in the Rural, Rural Residential on lots one (1) acre or greater in size, Rural Agriculture, Rural Forest and Commercial Agriculture Zones. A guest cottage shall meet the requirements of this chapter and the following standards:
 - a. No more than one (1) guest cottage or accessory living quarters per single family dwelling unit;
 - b. Permit applications for a guest cottage must be in the name of the owner of the lot or parcel;
 - c. No individual shall receive more than one (1) guest cottage permit per calendar year;
 - d. A guest cottage shall not exceed 1,000 square feet of gross floor area or twenty (20) percent of the gross floor area of the single family dwelling, whichever is larger, but not to exceed 2,500 square feet, and must share a common driveway with the single family dwelling to which it is an accessory dwelling;
 - e. No home occupation or home industry shall be permitted for the residents of the guest cottage;
 - f. The accessory living quarters are subject to applicable Health Department standards for water and sewage disposal;
 - g. The applicant must apply for a building permit for a guest cottage. A guest cottage shall comply with applicable building, fire, and health and safety codes;
 - h. A guest cottage cannot be segregated or separately sold, transferred, given or otherwise conveyed unless the lot is of sufficient size to meet base density and other County Code requirements;
 - i. No more than thirty-five (35) building permits for guest cottages shall be issued by the county each calendar year; and
 - j. Guest cottage area shall be calculated pursuant to the description provided for in the definition of gross floor area located in section 17.03.040. However, when measuring gross floor area for a guest cottage, garage/shop space that is not living space shall not be counted in the overall floor area calculation. Internal access to any garage/shop space

may be permitted provided any future conversions shall comply with the adopted guest cottage requirements.

2. Accessory living quarters. In order to encourage the provisions of affordable housing, accessory living quarters may be established as a permitted use in the Rural, Rural Residential, Rural Agriculture, Rural Forest and Commercial Agriculture Zones as a permitted use, subject to the following criteria:

...

- f. Accessory living quarters shall be located within an owner occupied primary residence

ICC 17.03.180.1

4. The Amended Order directs Mr. Muresan to:
 - immediately cease and desist operating an illegal campground;
 - immediately cease renting the unpermitted uninhabitable structure until it has been permitted, inspected, and certified for safe occupancy;
 - immediately cease and desist and stop all unpermitted construction on the accessory structure and other unpermitted buildings additions; and immediately remove all junk accumulation and junk vehicles on the property.²

Exhibit C-1.

Appeal and Preliminary Matters

5. On May 12, 2020, Mr. Muresan (Appellant) filed an appeal of the April 30 Order and requested a hearing to contest the alleged violation.³ The Hearing Examiner issued a Pre-Hearing Order (PHO) on May 18, 2020, to set a hearing date and dates for motions and filing of witness and document lists. In compliance with the PHO, the Appellant timely filed a Motion to Dismiss, and the County filed a timely response. In his motion, the Appellant explained that he rents space in his shop and in trailers and cars and tents to tenants living on his property. *Appellant's Motion to Dismiss, Paragraph 4, page2, lines 20-22.* In his motion, he requested that the Hearing Examiner adopt an initiative that

² The Amended Order alleges a violation of ICC 17.03.180.M in allowing an accumulation of junk and junk vehicles on the property). This alleged violation was not pursued by the County at the hearing and was expressly withdrawn as an alleged violation for the purposes of the appeal hearing. The County noted, however, that it intended to pursue enforcement of the alleged violations in a different forum. *Statements of Attorney Eldred.*

³ The appeal was filed of the Initial Enforcement Order of April 30, 2020. The County amended this order on June 1, after the appeal was filed, and the Appellant filed this second appeal. The Appellant was given an opportunity to respond to the additional allegation in the Amended Order at the time of hearing or to request additional time if needed.

would allow him to provide affordable living spaces for homeless individuals. He also stated in his motion that certain courts have ruled that providing for homeless individuals is protected by state laws and the federal courts. In its response, the County asked that the motion be denied so that it could present evidence that a violation of ICC 17.030.180.I exists on the property.

The Examiner denied the motion. In the denial, he noted that, although the Appellant would prefer that the Hearing Examiner resolve the dispute he has with the County by approving his initiative to change the law, the Hearing Examiner has no authority to adopt new laws; that authority rests with the people by a properly submitted initiative or with the elected Board of Commissioners under powers delegated to it by the people to adopt ordinances. *Hearing Examiner's Ruling on Appellant's Motion to Dismiss (June 1, 2020)*.

Appeal Hearing

County's Witnesses and Argument

6. The County presented three witnesses at the appeal hearing. Mr. Garlend Tyacke, a tenant on the property, testified that Mr. Muresan rents out six to eight rooms in what once was a shop structure on the property. He testified that he lived in one of those rooms, which is approximately eight feet by eight feet. He stated that the structure has no smoke or CO2 detectors and has exposed wiring laid over the floor. He noted that, as a handicapped person, he did not have access to a bathroom or shower because they were inaccessible to him, so he is obligated to use a portable toilet and does not shower. He estimated that between 10-15 persons live on the property, with some in other rooms like his, some in the house, some in trailers, and others in tents. *Testimony of Mr. Tyacke; Exhibit C-7.*
7. County Code Enforcement Officer John Brazier testified that the previous owner of the subject property built the shop structure with appropriate permits. He testified that he has visited the property several times and helped prepare the enforcement orders. He expressed his opinion that, because of the extent and nature of the work done without appropriate permits, the structure should be returned to its previous condition and should not be occupied by residents. He testified in response to questions by the county attorney that, although the amended enforcement order referenced three code violations (including accumulation of junk and failure to obtain septic permits), the County was pursuing just one violation at the appeal hearing: the alleged violation of ICC 17.03.180.I, failure to obtain a temporary use permit for residential use during construction, and failure of the guest housing and accessory living quarters, established without a permit, to be in compliance with standards specified in the county ordinance. *Testimony of Mr. Brazier.*
8. County Building Inspector Ted Corey testified that he visited the property in February

2019 in response to a complaint. He stated that he identified numerous violations of county building codes during his visit, including violations related to penetrations of the building envelope with wires and plumbing; violations of the energy code, including lack of insulation; and violations of the health code related to overuse of an on-site septic system. He testified that he issued a stop work order on February 20, 2019. *Exhibit C-6-19*. Mr. Corey stated that a previous owner had constructed a code-compliant structure as an accessory shop/structure, but that it was not permitted as a habitable structure. He testified that he did not see anyone living on the property at the time he visited. He concluded that it appeared to him, at the time, that the shop structure was being converted to living quarters, and that no building permit had been filed to do this work.⁴ *Testimony of Mr. Corey*.

9. In response to questions by the Appellant regarding his alleged submittal of a building permit, the County recalled Mr. Brazier, who testified that he could access the online records that the county maintains of all applications, and submit them for the hearing record. *Testimony of Mr. Brazier*. The record was kept open for this submittal. On June 16, 2020, Attorney Jesse Eldred, as attorney for the County, submitted a declaration with an attached printout of building permit applications for the property. It appears to support the testimony of Mr. Corey that there are no pending or former building permit applications associated with the residential living quarters (guest cottages), accessory living quarters, or remodeling of the shop structure on the property. The declaration of Attorney Eldred cites to Mr. Brazier and Ms. Summer Price, a Permit Tech for the County, to confirm this as a fact: there are no pending or former building permit applications associated with any accessory living quarters on the subject property. *Exhibit C-15*.

Appellant Testimony

10. At the hearing, Mr. Muresan explained in testimony that he rents out the single-family residence on the property. Also, in his Motion to Dismiss, Mr. Muresan stated that he

⁴ At the hearing, Mr. Muresan disagreed with Mr. Corey's assertion that no application for a building permit had been filed as Mr. Muresan attested that he attempted to submit a building permit shortly after receiving notice of the violations on his property. The record is unclear on this point. County Exhibit C-6, Code Enforcement Office Brazier's administrative report includes a time-line of events which references attached exhibits. Exhibit 27 to that staff report is identified as an "Email from David Muresan sent to IC Code Enforcement Officer with enclosed Building Application requesting the corresponding fees for submittal." *Exhibit C-6-27*. There were no documents or testimony offered at the appeal hearing concerning the fate of this alleged permit application. Apparently, the County did not accept it for filing either because it was not complete or because no fees were paid. The Hearing Examiner is not able to discern from the record what, exactly, happened with this submittal by Mr. Muresan. Exhibit C-15 clarifies that there is no former or pending building permit application associated with the property but does not address what happened to the attempt by Mr. Muresan to submit a building permit. Regardless, the record is clear that no temporary use permit was obtained for the "rental" structures on the property, and no building permit was issued for any of them.

rents space in his shop and in trailers and cars and tents to tenants living on his property. *Appellant's Motion to Dismiss, Paragraph 4, page 2, lines 20-22.* In all, he testified that 12 tenants live on his property at various rental rates, with some working in exchange for living space. In his defense to the allegations of the County, he referred to an initiative he prepared that would support his efforts to assist homeless people, including allowing some to live in a converted shop building and some in tents, trailers, and RVs. He stated that he contacted Island County about the need for a building permit, but the County would not accept his application or his drawings.⁵ *Testimony of Mr. Muresan.*

County Closing Argument

11. In his closing remarks, Attorney Eldred confirmed that the County was merely seeking a determination that the alleged violation of ICC 17.03.180.I had occurred related to the need for a temporary use and/or building permit for guest cottages and accessory living quarters on the subject property owned by Mr. Muresan.⁶ The County requested that a \$500 penalty be assessed for this violation, and that some additional amount be assessed if the violations continue past a date to be specified by the Hearing Examiner. *Argument of Attorney Eldred.*

CONCLUSIONS

Jurisdiction

An enforcement order, including a supplemental order, any assessed civil penalty, or both, may be appealed to the Island County Hearing Examiner. *ICC 17.03.260.E.3.a.* The Hearing Examiner is directed by County Code to receive and examine available information, conduct public hearings, prepare a record, and enter decisions including decisions on appeals of enforcement orders issued by the Planning Director. *ICC 16.13.110.a.7; ICC 17.03.260.E.1.b.*

Review Authority

The responsibility of the Hearing Examiner is to review the enforcement orders of the County, as well as the appeal, and determine based on facts and law if the County can show by a preponderance of evidence that a violation has occurred. The Hearing Examiner has the authority to reject or modify the enforcement order, including modification of the civil penalty requested by the County. The County has the burden of proof to show that the Appellant has violated the county code. *ICC 17.03.260.E.3.b.* The Hearing Examiner must accord substantial deference to the County's interpretation of its own ordinances. *Cockle v. Department of Labor and Industries*, 142 Wn.2d 801, 829, 16 P.3d 583 (2001); *Doe v. Boeing Co.*, 121 Wn.2d 8, 15, 846 P.2d 531 (1993); *McTavish v. City of Bellevue*, 89 Wn. App 561, 564, 949 P.2d 837 (1998).

⁵ See note 4, above.

⁶ In response to a question from the Hearing Examiner, Attorney Eldred stated that other alleged violations related to removal of junk vehicles and compliance with septic codes are not before the Hearing Examiner at this time. He noted, however, that previous enforcement orders alleging these violations had not been appealed and that the County may decide to pursue compliance and penalties at some later date. *Statement of Attorney Eldred.*

The Hearing Examiner's duty is to review the entire record before him to determine if the County or the Appellant should prevail on appeal. To properly decide the appeal, the Hearing Examiner must decide what facts are important to make a decision, determine those facts with reference to specific exhibits or testimony, draw conclusions from those facts, and make a decision based on those conclusions. *See Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 873 P.2d 498 (1994).

Conclusions Based on Findings

- 1. There is substantial evidence in the record of the hearing to support the allegation of the County that violations of ICC 17.03.180.I, related to the need for permits for guest cottages and accessory living quarters, have occurred.** This conclusion inevitably must follow from the facts established at the appeal hearing. The County alleged that no temporary use or building permits had been obtained by Mr. Muresan for the rental spaces on his property. Mr. Muresan admitted that 12 individuals reside on his property in RVs, tents, and trailers, as well as in his house and shop, which is undergoing remodeling into living quarters. The County established that there are no former or pending permits for these living quarters or for remodeling of the shop structure. Mr. Muresan did not dispute that he did not obtain permits, but merely testified that he tried to do so. Regardless of his effort, the fact remains that no land use or building permits have been issued. The alleged violation was shown to exist by a preponderance of evidence. *Findings 1 – 10*
- 2. It is appropriate to assess a penalty for establishing and renting structures on the subject property for residential purposes without compliance with ICC 17.03.180.I, and to provide for ongoing penalties if the violations continue.** The alleged violations have been ongoing for some time, perhaps as much as over a year. The surrounding neighbors have suffered from increased occupancy of the property with concomitant vehicles, noise, and human activity. The residents on the property occupy, and apparently pay for, residences that are unsafe for the occupants; thus, they increase the risk of fire in the neighborhood and may introduce unhealthy conditions to the property and surrounding neighborhood, such as rats and unsanitary sewage disposal. Building codes are intended to ensure health and safety for all, and it is inappropriate for one property owner to resist or avoid compliance. Such non-compliance can have negative impacts on others in the area. That is what is happening here. It is an oft-stated but highly inaccurate axiom that one may use one's property as one wishes, but such use must comply with local, state, and federal laws, which are intended to protect *all* residents in a neighborhood and to ensure a high quality of life free from interference by others. Mr. Muresan has not complied with the law, and is harming others by failing to do so. It is not helpful to homeless individuals to offer unsafe and unsanitary living quarters. The process of obtaining permits helps ensure that safety, sanitation, and appropriate use requirements are met within a neighborhood to the benefit of all who live

in that neighborhood. Although Mr. Muresan strongly believes his action of renting rooms and space for RVs, trailers, and tents is helpful to others, it is not. It causes harm; both to those who rent unpermitted living quarters and to the neighbors that live nearby. His activity must stop unless proper permits are obtained that ensure the health and safety of the residents and the buildings where they may reside. *Findings 1 – 11*

DECISION and ORDER

Based on the preceding findings and conclusions, the appeal is **DENIED**, and the following order is issued:

The Appellant must notify tenants on his property to vacate unpermitted residential structures and living quarters within 21 days of service of this order. He may not provide housing for others, except as guests within the single-family house on the subject property, unless and until the temporary use permits and building permits required for a guest cottages and accessory living quarters have been approved and issued by the County, including permits for converting the shop building into living quarters.

Mr. Muresan is immediately assessed a \$500 fine for allowing persons to inhabit structures and otherwise reside on his property as tenants without first obtaining proper permits, including a temporary use permit while a structure is under construction and building permits for all living quarters. If residents on the property (other than Mr. Muresan and any immediate family) remain after 21 days from the date this order is served upon Mr. Muresan, or if Mr. Muresan fails to pay the \$500 fine by that time, Mr. Muresan shall be assessed an additional fine of \$500 per day until all residents (other than Mr. Muresan and any immediate family) are no longer residing on the property or otherwise inhabiting structures on the property. Residents may return to the property only if the required building permits are issued by the County, or if an initiative sponsored by Mr. Muresan is properly passed into law that obviates the need for those permits.

Dated this 29th day of June 2020.



THEODORE PAUL HUNTER
Hearing Examiner
Sound Law Center