



PLANNING COMMISSION OF THE CITY OF MARTINEZ AS HEARING EXAMINER  
FOR ADMINISTRATIVE CITATION APPEALS

In re the matter of

JAMES VON WALDEGG,

Appellant.

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DECISION AND FINDINGS  
UPHOLDING ISSUANCE OF AN  
ADMINISTRATIVE CITATION

This matter came before the Planning Commission of the City of Martinez sitting as the Hearing Examiner for Administrative Citation Appeals pursuant to Martinez Municipal Code Section 1.15.090 (“Hearing Examiner”). This hearing was held as a result of James VonWaldegg’s (“Appellant”) appeal filed on April 3, 1009 (“Appeal”) of Administrative Citation #118 issued on February 9, 2009 by William L. Dillard, Code Enforcement Inspector, (“Dillard”) for violation of Martinez Municipal Code Section 22.12.080 – Number of horses allowed (“Citation”).

The appeal hearing having been properly noticed, and evidence, both oral and written, having been received by the Hearing Examiner, the Hearing Examiner determined to proceed with the hearing on May 12, 2009. Appellant was represented at the hearing by his Attorney in Fact, J. Renee Corley (“Corley”). Appellant and Dillard having presented evidence, given argument, and submitted the matter to the Hearing Examiner for final decision, the Hearing Examiner hereby finds, determines and orders that for the following reasons, the appeal of James Von Waldegg from said Citation be, and the same is, hereby denied, and said Citation is hereby upheld.

## **DECISION AND FINDINGS**

The Citation was issued to Appellant for violation of Martinez Municipal Code Section 22.12.080. Martinez Municipal Code Section 22.12.080 provides, in part that, the following uses of land within the City of Martinez shall be permitted: “H. In the RR districts, private stables for the keeping of not more than two horses on a site of not less than 40,000 sq. ft, in area, provided that one additional horse may be kept for each additional 20,000 sq. ft. of the site. . .” Citation #118 was issued by Dillard on 2/9/2009. Said Citation was based on the presence of six horses at the property located at 4847/4863 Northridge Rd. APN# 162-060-005-4, #162-060-011-2 (the “Subject Property”), a property comprised of two parcels of land totaling 2.21 acres. For the following reasons, the Hearing Examiner agrees that Dillard has established, by a preponderance of the evidence, that Appellant has violated Martinez Municipal Code Section 22.12.080(H) by maintaining six horses on the Subject Property where no more than 4 are permitted.

The preponderance of the evidence presented at the hearing established the following:

A code enforcement complaint was received by the City on December 06, 2006 relating to the Subject Property. The complainant advised there were six horses being kept on the Subject Property. The Subject Property is comprised of two lots with a total combined acreage of 2.21 acres. Martinez Municipal Code Section 22.12.080 provides, in part that, the following uses of land shall be permitted in the City of Martinez: “H. In the RR districts, private stables for the keeping of not more than two horses on a site of not less than 40,000 sq. ft, in area, provided that one additional horse may be kept for each additional 20,000 sq. ft. of the site. . . .” The Subject Property is located in the RR zoning District. Based upon Section 22.12.080(H), a

maximum of four horses would be permitted on the Subject Property based on the combined 2.21 acres.

A Courtesy Warning Notice was mailed to Appellant advising of the December 2006 complaint relating to the number of horses present on the Subject Property. Mr. Vonwaldegg responded, advising the horses belonged to a tenant (J. Renee Corley) and he would advise her she could only keep four horses on his property. During the next six months, numerous additional complaints were received by the City regarding the number of horses present on the Subject Property.

On June 26, 2007, Dillard inspected the Subject Property and observed that there were a total of seven horses present on the Subject Property. On August 31, 2007, Dillard issued Administrative Citation #112 relating to the number of horses present on the Subject Property. Appellant later contacted Dave Scola, Martinez Building Official and advised that all but four horses had been removed. Citation #112 was therefore cancelled.

On December 03, 2008, the City received another code enforcement complaint relating to the presence of more than four horses on the Subject Property. Dillard performed an inspection of the Subject Property and observed six horses located thereon. On February 2, 2009, Dillard again inspected the Subject Property and observed six horses located thereon. On February 9, 2009 Dillard issued Administrative Citation #118 to Mr. Vonwaldegg for violation of Martinez Municipal Code Section 22.12.080.

On February 19, 2009, Mr. Vonwaldegg filed a letter requesting a hearing to contest Administrative Citation #118. On March 5, 2009, a letter was mailed to Mr. Vonwaldegg advising him a deposit in the amount of the Administrative Citation was required to

schedule the appeal hearing. On April 3, 2009, the required deposit was made resulting in the instant appeal hearing.

At the hearing, Appellant alleged that the Subject Property was not governed by Martinez Municipal Code Section 22.12.080 based upon two theories. First, Appellant maintained that Martinez Municipal Code Section 22.12.080 (H) had been previously amended to provide that one additional horse may be kept for each additional 20,000 sq. ft. of the site OR ANY PORTION THEREOF. Appellant alleged that this amendment meant that an additional horse could be kept for ANY additional land in excess of 40,000 sq. ft. No evidence was presented by appellant documenting this alleged amendment to Section 22.12.080(H). Appellant alleged that records had been lost by the City, but again no evidence of such lost records was presented by Appellant. Based upon the evidence submitted, the Hearing Examiner finds and determines that no such amendment to Section 22.12.080(H) had been adopted by the City and that Section 22.12.080(H) does not permit the keeping of any additional horses unless a full 20,000 sq. ft. of additional area of the site exists.

Appellant also argued that the Conditions, Covenants and Restrictions (CC&Rs) applicable to the Subject Property provide that one additional horse may be kept for each additional 20,000 sq. ft. of the site OR ANY PORTION THEREOF. The Hearing Examiner finds and determines that Appellant's argument is without merit in that the CC&Rs do not operate to amend, repeal, supersede, or in any other manner affect the interpretation or enforcement of the Martinez Municipal Code.

Dillard presented evidence that since annexation of the Subject Property, there were periods of more than twelve consecutive months when there were fewer than five horses

located on the Subject Property, thereby establishing that the Subject Property would not be entitled to legal nonconforming use status for the keeping of more than four horses. No contrary evidence was submitted by Appellant. The Hearing Examiner therefore finds and determines that the Subject Property is not entitled to legal nonconforming use status for the keeping of more than four horses.

Ms. Corley testified that two of the horses present on the Subject Property at the time of Dillard's inspection and issuance of Citation #118 were not full grown horses and that therefore they should not be counted toward the number of horses present on the site. Ms. Corley did not provide any additional evidence as to the age of the horses in question. Dillard provided photographs of the horses in question and testified that based upon his personal observation of said horses it was his opinion that they were full grown horses at the time of his inspection. Based upon the testimony presented, the Hearing Examiner finds that the preponderance of the evidence established that all six of the horses present on the Subject Property on February 2, 2009 were full grown horses subject to inclusion in the number of horses for purposes of calculation pursuant to Martinez Municipal Code Section 22.12.080(H).

### **CONCLUSION**

For the foregoing reasons, the Hearing Examiner finds that the preponderance of the evidence established that Appellant violated Martinez Municipal Code Section 22.12.080 H. Consequently, Mr. VonWaldegg's appeal is denied and the Citation is hereby upheld, in the amount of Two Hundred Dollars (\$200.00).

Appellant may appeal this decision to the Contra Costa Superior Court pursuant to the procedures set forth by Government Code Section 53069.4

CITY OF MARTINEZ ADMINISTRATIVE CITATION HEARING EXAMINER

By: \_\_\_\_\_

Dated:

Frank Kluber, Chairperson

By: \_\_\_\_\_

Dated:

Harriett Burt, Member

By: \_\_\_\_\_

Dated:

Mark Hughes, Member

By: \_\_\_\_\_

Dated:

Mike Marchiano, Member