



CITY OF EVERETT Violations Hearing Examiner

City of Everett, a Washington)	
Municipal Corporation,)	Case No: CE17-0857
Petitioner,)	FINAL
vs.)	FINDINGS OF FACT,
Northwest Evergreen Investments LLC, Owner ¹)	CONCLUSIONS OF LAW,
2701 Wetmore Avenue)	AND ORDER OF THE
Everett, Washington 98201)	HEARING EXAMINER
)	
Laura Hunter, Responsible Party)	
2701 Wetmore Avenue)	
Everett, Washington 98201)	
Respondents)	
_____)	

INTRODUCTION

A hearing on the above captioned matter was held before the Hearing Examiner of the City of Everett on October 26, 2017. At the hearing, the following presented testimony and evidence:

- Kevin Fagerstrom, City of Everett Code Enforcement Officer
- Tony Lee, City of Everett Building Official
- Ted de Budden, City of Everett Building Division
- Katie Rathbun, City of Everett Legal Department
- Leroy McNulty, City of Everett Fire Marshal's Office
- Steve Banks, City of Everett Building Department
- Bruce Allen, Contractor for Laura Hunter
- Tom Bigsby, Attorney for Laura Hunter
- Chuck Monson, Registered Agent for Northwest Investment LLC, Respondent
- Laura Hunter, Purchaser, Respondent
- Angela McLaughlin, Tenant

EXHIBITS

At the hearing, the following exhibits were submitted and were admitted in the record of these proceedings:

- Exhibit 1a-1c Inspection Photos, dated October 13, 2017
- Exhibit 1d-1jj Inspection Photos, dated October 6, 2017

¹ The Snohomish County Assessor's incorrectly lists the owner of 2701 Wetmore Avenue as Northwest Evergreen Investments, LLC. Its correct name is Northwest Evergreen Investment, LLC. The correct name is used throughout the rest of these proposed findings.

- Exhibit 1kk-1nmn Inspection Photos, dated August 8, 2017
- Exhibit 2 Proposed Order as submitted by the City of Everett Code Enforcement Unit, dated October 26, 2017
- Exhibit 3 Violation Citation, dated September 5, 2017 with mail receipts
- Exhibit 4 Declaration of Service, dated September 5, 2017 with photos
- Exhibit 5 Email from Ted de Budden, dated August 24, 2017
- Exhibit 6 City of Everett Inspection Report #W1708-014, dated August 31, 2017
- Exhibit 7 Notice to Stop Work, dated August 31, 2017
- Exhibit 8 Unlawful Structure Placard, dated August 31, 2017 with photo
- Exhibit 9 Notice of Condemnation, dated September 5, 2017 with mail receipts and photos
- Exhibit 10 City of Everett Inspection Report, dated September 12, 2017
- Exhibit 11 TRAKIT PermitTrak Permit #BW1709-001 Screen Print, dated September 14, 2017
- Exhibit 12 Corrections Letter, dated September 19, 2017
- Exhibit 13 Request for Hearing in Advance of Condemnation, dated September 15, 2017 with attachments
- Exhibit 14 Notice of Hearing, dated September 15, 2017 with mail receipts
- Exhibit 15 Amended Violation Citation, dated September 21, 2017 with mail receipts
- Exhibit 16 Declaration of Service, dated September 22, 2017 with photo
- Exhibit 17 Washington Secretary of State Corporations Registration Information, dated September 21, 2017
- Exhibit 18 Building Code Violations Noted at 2701 Wetmore, dated September 25, 2017
- Exhibit 19 Conditions of Occupancy Letter, dated September 28, 2017
- Exhibit 20 Email from Jim Venturo, dated September 28, 2017
- Exhibit 21 TRAKIT PermitTrak Permit #EW1709-004 Screen Print, dated September 29, 2017
- Exhibit 22 TRAKIT PermitTrak Permit #B1710-004 Screen Print, dated October 2, 2017
- Exhibit 23 TRAKIT PermitTrak Permit #B1710-006 Screen Print, dated October 2, 2017
- Exhibit 24 TRAKIT PermitTrak Permit #B1710-007 Screen Print, dated October 2, 2017
- Exhibit 25 TRAKIT PermitTrak Permit #B1710-008 Screen Print, dated October 2, 2017
- Exhibit 26 TRAKIT PermitTrak Permit #B1710-009 Screen Print, dated October 2, 2017
- Exhibit 27 Amended Violation Citation, dated October 16, 2017 with unclaimed mail receipts
- Exhibit 28 Declaration of Service, dated October 16, 2017 with photo
- Exhibit 29 Snohomish County Assessor's record, dated October 23, 2017
- Exhibit 30 Go Sync Map
- Exhibit 31 Exhibit List, dated October 26, 2017
- Exhibit 32 Photo of Illegal Parking with code citation
- Exhibit 33 Email from Chuck Monson

Exhibit 34	Construction permit applications
Exhibit 35	Letter from Dion Smith
Exhibit 36	Email from Laura Hunter
Exhibit 37	Email from Laura Hunter with attachments
Exhibit 38	Email from Laura Hunter with attachments
Exhibit 39	Excerpt Fire suppression code
Exhibit 40	Photo of broken sprinkler
Exhibit 41	Email from Leroy McNulty

Based upon a review of the record, the following findings of fact and conclusions of law hereby constitute the basis of the decision of the Everett Violations Hearing Examiner.

FINDINGS OF FACT

1. Despite information to the contrary in the Snohomish County Assessor's records, Northwest Evergreen Investment LLC, Respondent, is the owner of record of property at 2701 Wetmore Avenue, Everett, Washington (subject property), which is in a B-3, Central Business District zone. Charles Monson is the registered agent for Northwest Evergreen Investment LLC. A large mixed-use building with multiple commercial and residential tenant locations is constructed on the subject property. Although Northwest Evergreen Investment LLC is the sole owner of the subject property, Mr. Monson testified that the LLC has entered a purchase and sale agreement with Laura Hunter, who is authorized by Northwest Evergreen Investment LLC as the primary point of contact and person responsible for bringing the subject property into compliance with the Everett Municipal Code (EMC).² Prior to hearing and in her testimony, Ms. Hunter asserted status as Respondent. For the purpose of the instant code enforcement proceedings, the City is treating both Northwest Evergreen Investment LLC and Ms. Hunter as Respondents. *(Exhibit 29, Snohomish County Assessor's record, dated October 23, 2017.)(Exhibit #17, Washington Secretary of State Corporations Registration Information, dated September 21, 2017) (Exhibit 17, Washington Secretary of State Corporations Registration Information, dated September 21, 2017)(Exhibit #30, Go Sync Map)(Testimony of Charles Monson)(Exhibit 13, Request for Hearing in Advance of Condemnation, dated September 15, 2017)*
2. In response to a complaint of an unsafe alteration to a lower level dwelling unit, City of Everett Building Division Chief Inspector Ted de Budden and Code Enforcement Supervisor Kevin Fagerstrom conducted an inspection of the subject property on August 8, 2017. During a tour of the portions of the building to which the complainant had authorized access, Chief Inspector de Budden and Officer Fagerstrom observed and photographed unpermitted alterations occurring within the mixed-use structure, including construction

² The City has, on numerous occasions, requested a copy of the purchase and sale agreement documenting Ms. Hunter's interest in the subject property, but did not receive a copy of the agreement prior to close of the record. *(Testimony of Officer Fagerstrom)* Mr. Monson offered to provide it Monday following the Thursday hearing. *(Testimony of Charles Monson)*

activity occurring at the time of the inspection.³ Chief Inspector de Budden identified alterations to the plumbing, electrical, and fire suppression systems. Work had been done to remove framing walls and at least two additional dwelling units had been/were in the process of being constructed. Inspector de Budden testified that these unpermitted activity had compromised the electrical, fire, egress, and life safety systems of the structure, and determined the structure to be unlawful, dangerous, and unsafe for human occupancy. (*Exhibit #1kk-1nnn, Inspection Photos, dated August 8, 2017*) (*Exhibit #5, Email from Ted de Budden, dated August 24, 2017*) (*Testimony of Code Enforcement Officer Fagerstrom*) (*Testimony of Chief Inspector de Budden*)

3. Upon inspection of City records, Inspector de Budden determined that the Respondents had not applied for or obtained the required City permits for the extensive construction work being conducted on the subject property. On August 31, 2017, a notice to stop work and an unlawful structure placard were posted on the subject property. (*Exhibit#6, City of Everett Inspection Report #W1708-014, dated August 31, 2017*) (*Exhibit #7, Notice to Stop Work, dated August 31, 2017 with photo*) (*Exhibit #8, Unlawful Structure Placard, dated August 31, 2017 with photo*) (*Testimony of Code Enforcement Officer Fagerstrom*)
4. On September 4, 2017, Officer Fagerstrom observed that the stop work notice and unlawful structure placard had been removed from the subject property. (*Testimony of Code Enforcement Officer Fagerstrom*)
5. According to Assessor's records, the property is owned by Northwest Evergreen Investments LLC - Investments with an 's'. (*Exhibit 29, Snohomish County Assessor's record, dated October 23, 2017*) On September 5, 2017, the City issued a violation citation to Respondent Northwest Evergreen Investments LLC for violations of: International Property Maintenance Code (IPMC) 106.1 Unlawful Acts as adopted by EMC 16.005.010; IPMC 108.1.4 Unlawful Structure as adopted by EMC 16.005.010; IPMC 108.1.5 (8, 10) Dangerous Structure or Premises as adopted by EMC 16.005.010; and International Building Code (IBC) 105.1 Permits Required as adopted by EMC 16.005.010. Copies of the violation citation were mailed via first class and certified mail to the Respondent's last known address, which Officer Fagerstrom obtained from Snohomish County Assessor's record. Notice was provided to Tom Ruttinger, registered agent for the Respondent for Northwest Investments LLC. A copy was posted on the property. (*Exhibit #3, Violation Citation, dated September 5, 2017 with mail receipts*) (*Exhibit #4, Declaration of Service, dated September 5, 2017 with photo*) (*Testimony of Code Enforcement Officer Fagerstrom*)
6. On September 5, 2017, a notice of condemnation was mailed via first class and certified mail to Respondent Northwest Evergreen Investments LLC. The notice informed the

³ At hearing, Officer Fagerstrom and Inspector de Budden testified that their tour of the property with the complainant, who claimed to be a residential tenant, only accessed portions of the structure that the general public (e.g., the Avon lady) would have access to, and that no key codes, key cards, or keys were used to access any part of the structure they saw, and that no area they entered was marked 'Authorized personnel only'. (*Testimony of Officer Fagerstrom*) Respondent Hunter disputed this testimony, asserting the complainant was actually a contractor who had failed to get permits for the work she performed, despite her contract requiring her to, and asserted that the alleged complaint was an act of retaliation by the contractor for having been fired. (*Testimony of Laura Hunter*) The complainant did not provide testimony at hearing.

Respondent of the violations on the property and ordered that the commercial structure be vacated no later than October 5, 2017. A copy of the condemnation notice and a condemnation placard were posted on the subject property. Following these notices, Mr. Ruttinger contacted Code Enforcement Officer Fagerstrom and informed him that Northwest Evergreen Investments LLC did not own the subject property. (*Exhibit #9, Notice of Condemnation, dated September 5, 2017 with mail receipts and photos*) (*Testimony of Code Enforcement Officer Fagerstrom*)

7. On September 7, 2017, Respondent Hunter authorized City staff to conduct an additional inspection. City of Everett Building Official Tony Lee, Chief Building Inspector Ted de Budden, Electrical Inspector Steve Banks, and City of Everett Assistant Fire Marshal Jim Venturo participated in the inspection. The inspection confirmed previously noted conditions violating the EMC, along with staff observing new conditions in violation of the EMC. Corrective actions required for observed electrical system violations are identified as follows:

- a. Close unused openings and properly secure and support cables and conduits.
- b. Remove cords that are not allowed in place of building wiring.
- c. Guard live electrical parts.
- d. Single conductors must be installed in a conduit or cable.
- e. Boxes are to be properly supported.
- f. Conduits are to be electrically and mechanically continuous.
- g. Install box covers – boxes to remain accessible.
- h. NM cable is not allowed above a T-grid ceiling.
- i. Provide a proper disconnect for water heater.
- j. NM cable not allowed unprotected between floors.
- k. Install breaker blanks.
- l. Panel not allowed in bathroom.
- m. Remove shelving to maintain clearance for working on panel.
- n. Provide GFCI protection for washing machine and kitchen counter receptacles.
- o. Install properly spaced receptacles in kitchen.
- p. Protect unfused conductors/install LB covers.
- q. Install device covers.
- r. Cables are to be used as listed with proper fittings – roof, etc.
- s. Cords are not allowed inside of walls or above T-grid ceiling.

(*Exhibit #10, City of Everett Inspection Report, dated September 12, 2017*) (*Testimony of Code Enforcement Officer Fagerstrom*)

8. Following the issuance of the Notice of Condemnation and in an effort towards bringing the structure into compliance with code, on September 13, 2017 Respondent Hunter applied for a permit to re-install fire doors. The application was approved on September 26, 2017. However, Respondent Hunter had been notified through a corrections letter on September 19, 2017 that the number and extent of violations in the structure requires that an architect prepare permit drawings prior to receiving building permits. *(Exhibit #11, TRAKIT PermitTrak Permit #BW1709-001 Screen Print, dated September 14, 2017) (Exhibit #12, Corrections Letter, dated September 19, 2017) (Testimony of Code Enforcement Officer Fagerstrom)*
9. On September 15, 2017, Laura Hunter filed an appeal of the condemnation order with the City. Ms. Hunter's appeal requested an extension of time from 30 days to 90 days to vacate the structure and for a stay on the condemnation. Notice of the appeal hearing was sent via first class and certified mail to Ms. Hunter, which informed her that a hearing was scheduled before the City of Everett Violations Hearing Examiner on September 28, 2017. After the record was opened and the hearing on the appeal had commenced, the parties went off the record to discuss potential settlement. On that same date, Ms. Hunter withdrew her appeal as a result of a settlement agreement that included an understanding between all parties that temporary certificates of occupancy could be issued if the Respondents complied with all City ordinances. *(Exhibit #13, Request for Hearing in Advance of Condemnation, dated September 15, 2017 with attachments) (Exhibit #14, Notice of Hearing, dated September 15, 2017 with mail receipts) (Testimony of Code Enforcement Officer Fagerstrom)(Exhibit 19, Conditions of Occupancy Letter, dated September 28, 2017)*
10. On September 21, 2017, the City had issued an amended violation citation to Respondent Northwest Evergreen Investment LLC for violations of: International Property Maintenance Code International Business Code (IPMC) 106.1 Unlawful Acts as adopted by EMC 16.005.010; IPMC 108.1.4 Unlawful Structure as adopted by EMC 16.005.010; IPMC 108.1.5 (8, 10) Dangerous Structure or Premises as adopted by EMC 16.005.010; and International Building Code (IBC) 105.1 Permits Required as adopted by EMC 16.005.010. Copies were mailed via first class and certified mail to the Respondent's last known address, which Officer Fagerstrom obtained from the Washington Secretary of State Corporations Registry. Notice was provided to Chuck Monson, the correct registered agent for the Respondent. A copy was posted on the property on September 22, 2017. Each method of service used is independently sufficient to provide notice pursuant to EMC 1.20.010.C.1. *(Exhibit 17, Washington Secretary of State Corporations Registration Information, dated September 21, 2017)(Exhibit #15, Amended Violation Citation, dated September 21, 2017 with mail receipts) (Exhibit #16, Declaration of Service, dated September 22, 2017 with photo) (Testimony of Code Enforcement Officer Fagerstrom)*
11. Tony Lee, City of Everett Building Official, assembled an outline of building code violations present on the subject property during the September 7, 2017 inspection, which was sent to the Respondents and City staff on September 25, 2017. The outline noted these conditions:

- a. The building does not have a fully-functioning sprinkler system throughout, as required by City ordinance due to its size.
- b. A dwelling unit has been unlawfully created and inhabited in the SE corner of the basement. That space was formerly approved as a commercial laundry, per permit #B1508-011. This is a change of occupancy from a Factory occupancy to a Residential occupancy without required permits, inspections, and approvals as required by Sections 105.1, 109.1 and 110.1 of the International Existing Building Code (IEBC).
- c. A dwelling unit is unlawfully under construction in the center of the building on the first floor. That space was formerly used as garage/storage. This is a change of occupancy from a Storage occupancy to a Residential occupancy without required permits and inspections as required by Sections 105.1 and 109.1 of the IEBC.
- d. Per the City permit records, there are two historical dwelling units within the building. The manager of the building (Dan, no last name given) stated to city staff that there are five units within the building. The fifth unit had not been witnessed by city staff as of the date of the revised violation citation.
- e. An Assembly occupancy is being unlawfully created in the sub-basement area of the northern part of the building. That space was formerly used as storage/equipment access and has been converted to a room for parties or gatherings. This is a change of occupancy to an Assembly occupancy without required permits per IEBC Section 105.1.
 - (1) There is only one means of egress from this Assembly space, whereas a minimum of two are required. The use of the room is “dangerous” per Section 108.1.5.
- f. An existing church has unlawfully exceeded its approved maximum occupant load of 49 persons, based on self reported information given by a person from the church during the site visit. This is a change of occupancy from a Business occupancy to an Assembly occupancy without required permits, inspections and approvals as required by International Building Code (IBC) Sections 105.1, 109.10, and 110.1.
- g. A brewery and drinking room were being unlawfully created in the NE end of the building on the first floor. This space was formerly approved as mercantile and storage/parking per permit. This is a change of occupancy from Mercantile and Storage occupancies to Factory and Assembly occupancies without required permits and inspections as required by Section 105.1 and 109.1 of the IEBC.
- h. A fire-rated door into the eastern stair enclosure has been unlawfully removed. The removal of this door violates the integrity of the exit and creates a dangerous structure per International Property Maintenance Code (IPMC) 108.1.5 (1).
- i. The western stairway lacks a completed fire-rated enclosure. This condition appears to have been present for several years. This is a violation as of the 2006 International Fire Code (IFC) and continues to exist in violation of the current IFC per Section 1103.4.2.
- j. Parking stalls have been created on the north side of the building within the public right-of-way; it is not possible to access these parking stalls without driving across the public sidewalk. This is not permitted. (*Exhibit #32*)
- k. The guardrails of the west stair are in violation of IFC Section 1104.6.2.

- l. The creation of the dwelling unit in the basement triggers a fire-rated corridor requirement. The corridor is also required to be continuous to two exits. The corridor is neither fire-rated nor continuous to two exits.
- m. Non-complying stairs have been built in the brewery.
- n. Partitions have been built in the former garage spaces that now separate tenant spaces.
- o. An enclosure has been added behind the coffee house.
- p. There are trellises built in the public right-of-way that are attached to the building.
- q. A bathroom has been created in the basement (in addition to the fixtures within the dwelling unit).
- r. An exterior door from the 2nd story to the alley lacks a guard rail, creating a two-story fall-hazard.
- s. Corridor continuity is not maintained from the existing dwelling units on the second floor to the two exit stairwells.
- t. Many of the fire-doors within the stair enclosures were either not self-closing or were wedged open.
- u. The two historical dwelling units have never received final approval. Lacking are plumbing and mechanical final inspections.

*(Exhibit #18, Building Code Violations Noted at 2701 Wetmore, dated September 25, 2017)
 (Exhibit #32, Photo and Code Citation) (Testimony of Code Enforcement Officer Fagerstrom)(Testimony of Building Official Tony Lee)*

12. On September 28, 2017, following the withdrawal of the appeal on the condemnation by Respondent Hunter, the City of Everett Public Works Department issued a notice of conditions of occupancy to the Respondents. The notice stated that the condemnation and vacancy requirements are for the entire building and all tenants within. The following conditions were identified:
 - a. In order to receive a temporary certificate of occupancy (TCO) for any specific tenant space, all significant life-safety violations within that space and within the building as a whole that affect that tenant space (as determined by Code Officials) must be completely abated. Once all violations within the building are abated, a final Certificate of Occupancy can be issued for the building and individual spaces within.
 - b. In order abate violations within the building, a plan is required that identifies code violations and proposed corrections to the violations. All plans and construction documents submitted for permit review are required to be prepared and sealed by an architect licensed by the State of Washington.
 - c. No work may commence until required construction permits are properly permitted and issued. No occupancy of any individual tenant is permitted until the permitted work is inspected and approved.
 - d. Known issues to systems that affect the entire building include, but are not limited to, the fire suppression system, fire alarm system, egress system, and electrical system.

Each separate building system will be required to be certified as safe by qualified, licensed contractors of the particular discipline and approved through inspection by City Officials.

(Exhibit #19, Conditions of Occupancy Letter, dated September 28, 2017)

13. Jim Venturo, City of Everett Fire Marshal, informed City staff that although the fire alarm in the building may be working, it had not been brought up to NFPA 72 Standard. He further said that there were places in the building that did not have adequate smoke detector coverage (Everett requires smoke detection in all egress pathways), and mini horns as notification devices were limited in use. He recommended a new Fire Alarm plan be written to include the church area. It was not clear based on site inspection whether there was a functioning sprinkler system present in the mixed-use structure. *(Exhibit #20, Email from Jim Venturo, dated September 28, 2017) (Testimony of Code Enforcement Officer Fagerstrom)*
14. On September 29, 2017, the Respondents applied for and were issued an emergency permit (#EW1709-004) to complete electrical work intended to fix and make safe the electrical system in the building. Upon inspection by City staff, corrections were required to bring the electrical system of the building into compliance with City ordinance. *(Exhibit #21, TRAKIT PermitTrak Permit #EW1709-004 Screen Print, dated September 29, 2017) (Testimony of Code Enforcement Officer Fagerstrom)*
15. On October 2, 2017, the Respondents applied for building permits and inspections to allow temporary certificates of occupancy for: the coffee shop (#B1710-004); the historical dwelling unit on the 2nd floor (#B1710-006); the office “call center” (#B1710-007); the 2nd floor nail salon (#B1710-008); and the 2nd floor dental lab (#B1710-009). Permits were issued for all by October 12, 2017. Although permits have been issued for the work, temporary certificates of occupancy have not been issued. *(Exhibit #22, TRAKIT PermitTrak Permit #B1710-004 Screen Print, dated October 2, 2017)(Exhibit #23, TRAKIT PermitTrak Permit #B1710-006 Screen Print, dated October 2, 2017 (Exhibit #24, TRAKIT PermitTrak Permit #B1710-007 Screen Print, dated October 2, 2017)(Exhibit #25, TRAKIT PermitTrak Permit #B1710-008 Screen Print, dated October 2, 2017)(Exhibit #26, TRAKIT PermitTrak Permit #B1710-009 Screen Print, dated October 2, 2017)(Testimony of Code Enforcement Officer Fagerstrom)*
16. On October 6, 2017, Officer Fagerstrom and Building Official Tony Lee were accompanied by an electrical contractor to conduct an inspection of the subject property. While on site, Officer Fagerstrom observed and photographed that continued construction work had been completed on a dwelling unit, the sub-basement “party room”, and in a section of the coffee shop. Further observations were made of an incorrect fire door installation, windows and doors installed in an office space, and electrical power cords being used to power equipment in the first floor coffee shop. *(Exhibit #1d-1jj, Inspection Photos, dated October 6, 2017)(Testimony of Code Enforcement Officer Fagerstrom)*
17. On October 13, 2017, Officer Fagerstrom reinspected the subject property and observed and photographed that the coffee shop was open and operating business. Officer Fagerstrom

observed that the dental lab and nail salon were open and conducting business. (*Exhibit #1a-1c, Inspection Photos, dated October 13, 2017*) (*Testimony of Code Enforcement Officer Fagerstrom*)

18. On October 16, 2017, the City issued an amended violation citation to Respondent Northwest Evergreen Investment LLC and Laura Hunter for violations of: International Property Maintenance Code (IPMC) 106.1 Unlawful Acts as adopted by EMC 16.005.010; IPMC 108.1.4 Unlawful Structure as adopted by EMC 16.005.010; IPMC 108.1.5 (8, 10) Dangerous Structure or Premises as adopted by EMC 16.005.010; IPMC 108.5 Prohibited Occupancy as adopted by EMC 16.005.010; IPMC 112.4 Failure to Comply as adopted by EMC 16.005.010; and International Building Code (IBC) 105.1 Permits Required as adopted by EMC 16.005.010. Copies were mailed via first class and certified mail to the Respondents' last known addresses, which Officer Fagerstrom obtained from Ms. Hunter directly and the Washington Secretary of State. Notice was provided to Chuck Monson, Registered Agent for Respondent Northwest Investment LLC. A copy was posted on the property. Each method of service used is independently sufficient to provide notice pursuant to EMC 1.20.010.C.1. (*Exhibit #27, Amended Violation Citation, dated October 16, 2017 with unclaimed mail receipts*) (*Exhibit #28, Declaration of Service, dated October 16, 2017 with photo*) (*Testimony of Code Enforcement Officer Fagerstrom*)
19. A hearing on the October 16th violation citation was convened on October 26, 2017. At the outset of the hearing, Laura Hunter's attorney Tom Bigsby requested that the hearing be continued to allow Respondent Hunter to complete City permit requirements. The City objected to the continuance and the hearing proceeded.
20. Chief Inspector de Budden testified at the hearing that he had observed unsafe conditions in the lower level dwelling unit including: an electrical panel in a bathroom, which is illegal; a gas furnace vent was not installed to vent to the outside; no covers were installed on furnace outlets, exposing live electrical connections; a bedroom window did not have proper egress and the kitchen did not have required amount of electrical receptacles. Steve Banks, City of Everett Building Division Electrician testified at the hearing that he could only see one switch and only one receptacle in a photo of the kitchen area. Mr. Banks stated that City code requires two receptacles with ground-fault circuit interrupter (GFCI) to be installed in kitchen areas. (*Testimony of Chief Inspector de Budden*) (*Testimony of Steve Banks*)
21. Steve Banks testified at the hearing that the electrical system of the entire mixed-use structure was an antiquated and incomplete electrical system and that in its condition as of the most recent site inspection, it rendered the structure unsafe. (*Testimony of Steve Banks*)
22. City of Everett Fire Marshal Leroy McNulty testified as to concerns whether the current residential tenants in the dwelling units are safe due to unknown functioning fire protection systems and the lack of clearly marked fire exit pathways within the mixed-use structure. He testified that the current condition of the structure, including dead end corridors, incomplete emergency egress pathways, and fire alarm/fire suppression systems of unknown functional capacity, creates a danger to any entering fire department personnel responding to a fire in the structure. He testified that there was an overnight fire in a commercial structure

in Everett a few blocks away within the last month, from which one person was rescued by fire department personnel. (*Testimony of Leroy McNulty*)

23. Angela McLaughlin, currently a leasee intending to operate the brewery in the structure, testified at the hearing. She testified that she and her husband (the brewer) were told by Ms. Hunter that the condemnation notice posted on the structure did not apply to the leased brewery space and that the brewers were responsible for going to the City to obtain a certificate of occupancy to open the brewery within the mixed use building. Ms. McLaughlin testified that she and her husband intend to terminate their lease and vacate the structure. (*Testimony of Angela McLaughlin*)

24. Respondent Hunter testified at the hearing that the initial complainant, whose complaint led to the discovery of the condition of the structure, had been hired by Ms. Hunter as a construction contractor, and that the woman did not have authority to show areas of the structure that were clearly labeled 'no entry/authorized personnel only' to City staff. Ms. Hunter has since hired a master contractor and subcontractors to repair dangerous electrical systems within the structure. Ms. Hunter testified that as of the hearing date there are two residential units occupied by five persons and five commercial lease areas currently occupied by a permanent make up salon, a dental lab, a call center, an office space, and a coffee shop called Snax. Ms. Hunter testified that the building's sprinkler system is functioning and has been inspected and was found to be in working condition. Ms. Hunter testified that, since the date of the City's inspections, her contractors have replaced flex wiring, fire doors, and conduits and have repaired most of the unsafe electrical issues. The propane tanks have been removed from the dental lab; the dental technician is using a 3-D printer instead. Ms. Hunter testified that no construction activity that required a permit has occurred in the sub-basement "party room" or any other areas of the structure without the required permits. She explained that the previous tenant of the area that resembles a loading dock (but was actually a storage area and not a loading dock) had installed the walls City staff observed that should have had permits. Ms. Hunter testified that to her knowledge and understanding, the current tenants have all permits and approvals required to occupy their respective lease areas and that she believes that all violations identified in the September 28th notice of conditions of occupancy have been abated. She denied that an additional dwelling unit has been created, and claimed that the area identified by City Staff at hearing in the photo at Exhibit 1e as a dwelling unit is in fact a lunch room; she argued that it is not a dwelling unit because the sink is not connected and therefore it is not a kitchen. She stated there are no dead end corridors in the structure and that, to aid in compliance, unused corridors can be blocked off. (*Testimony of Laura Hunter*)

25. In support of her assertion that the residential and commercial tenants currently in the building should be allowed to stay, Ms. Hunter offered nine construction permit documents issued October 12, 2017: B1710-001, Inspection for TCO, Church; B1710-002, Inspection for TCO, SP G-1, Job Shack; B1710-003, Inspection for TCO, Photography studio; BC1710-004, Inspection for TC, Coffee shop, 1st Floor; B1710-005, Inspection for TCO, Residential Unit 1, 2nd Floor⁴; B1710-006, Inspection for TCO, Residential Unit 2, 2nd

⁴ B1710-005 notes: "Historical dwelling unit lacks building/mechanical/electrical/plumbing finals."

Floor⁵; B1710-007, Inspection for TCO, Office space "call center, 2nd Floor; B1710-008, Inspection for TCO - salon, 2nd floor; and B1710-009, Inspection for TCO, dental lab, 2nd floor. (*Exhibit 34*)

26. On October 3, 2017, Respondent Hunter emailed to the Fire Marshal's Office a wet sprinkler inspection report, prepared by Fireshield Inc of Gig Harbor, relating to a fire sprinkler inspection conducted at the subject building on September 25, 2017. In the deficiency section of the report, it is noted: "Section of building does not have enough sprinkler protection. Bldg rep is working with contractor to fix issue." (*Exhibit 37, Email from Laura Hunter with attachments*)⁶
27. On October 3, 2017, Respondent Hunter emailed a fire alarm inspection form relating to an inspection of the subject building conducted by Sonitrol on September 25, 2017. No deficiencies are noted on the form. (*Exhibit 38, Email from Laura Hunter with attachments*)
28. On October 6, 2017 Respondent Hunter emailed three pages of plans dated July 2012 to Building Official Tony Lee, which she obtained from Burns Fire Systems, showing the sprinkler and alarm drawings for the structure. (*Exhibit 36*) The Fire Marshal had not been provided these plans prior to the hearing. (*Testimony of Leroy McNulty, City of Everett Fire Marshal's Office*)
29. Respondent Hunter argued that based on EMC 16.76.037, Fire Suppression, subsection C, the areas of the building in which she is trying to keep tenants while the structure is brought into compliance with code are each below 6,000 square feet and are therefore exempt from the requirement to provide approved automatic fire suppression systems. (*Laura Hunter Testimony.*)
30. Ms. Hunter testified that she has spent approximately \$30,000 since issuance of the building permits attempting to bring the structure into sufficient code compliance to prevent eviction of her tenants, which is what she understood the settlement agreement from the condemnation appeal to have offered her. She explained that having to force the five residential tenants in two units and the five commercial tenants out of the building until final inspections and approvals would be a hardship not only for her, potentially resulting in the termination of all those leases, but a hardship for the tenants as well. Contending that she is very close to achieving the requirements for issuance of the temporary certificates of occupancy, she asked that she be granted an extension of time to obtain those TCOs rather than being required to force out all building tenants. (*Laura Hunter Testimony*) Contractor Bruce Allen, Ms. Hunter's uncle, testified that crews are working ten hour days, seven days per week, attempting to fulfill the requirements for the issuance of the TCOs. Mr. Allen

⁵ B1710-006 notes: "Historical dwelling unit lacks building/mechanical/electrical/plumbing finals."

⁶ An email offered in evidence by the City from the fire protection company who pulled the permit to install or update the sprinklers on site states that (as of email date September 6, 2017) the sprinkler system is not complete and the company dropped the contract because the Respondent was behind in her payment schedule. There is no evidence in the record showing that that contractor re-assumed the job or that a new contractor has substituted on the existing permit, or filed for a new permit. (*Exhibit 41*)(*Testimony of Leroy McNulty*)

testified that Ms. Hunter is trying to do everything by the book and above board, and that evicting the tenants would be unfair. (*Bruce Allen Testimony*)

31. In response to Respondent Hunter's testimony and argument, Building Official Tony Lee testified that a change of occupancy for any structure, or any portion of a structure, requires permits, inspections, and approvals prior to certificate of occupancy issuance, and that none of the recently performed construction on-site has been inspected and approved. With regard to the EMC 16.76.037 provisions forwarded by Ms. Hunter, Mr. Lee testified that this section of the code applies to new buildings and only exempts structures up to 6,000 square feet, or in limited circumstances, two contiguous areas of not more than 6,000 square feet, from the requirement to provide automatic fire suppression systems. In no case would a mixed use building of approximately 30,000 square feet be exempt from the requirement to provide fire sprinklers. Mr. Lee emphasized that without final fire approval for the structure as a whole, no lease area can receive a temporary certificate of occupancy. Mr. Lee stated that, as of the hearing date, inspections had not been conducted to demonstrate compliance to the submitted architectural plans for any required fire safety issues.⁷ The August 31, 2017 stop work order that was posted on the property was for all construction activity within the mixed-use structure. The ongoing presence of multiple residential and commercial tenants after the October 5, 2017 deadline to vacate the building established in the September 5, 2017 condemnation notice constitutes an ongoing violation of that order, the appeal of which was withdrawn by Ms. Hunter. Mr. Lee testified that the structure remains unlawful. (*Testimony of Tony Lee*)
32. Fire Marshal McNulty testified that he had not received any emails from Ms. Hunter because the emails had been sent to the Fire Marshal's Office plan reviewer and not directly to him. Upon briefly reviewing Exhibit 37, the fire sprinkler inspection report submitted by Ms. Hunter, Mr. McNulty pointed out that the report states that the sprinkler system is not fully functioning. In order to obtain sign off from the City's fire official, the entire "shell" of the building must be shown to be safe for all occupants through submittal and approval of fire suppression system plans. (*Exhibit #37, Email from Laura Hunter with attachments*) (*Testimony of Leroy McNulty*)
33. Based on the evidence submitted, Code Enforcement Officer Fagerstrom requested that the Respondents be required to fully abate all current violations of the building, including but not limited to: ceasing all construction activities until required permits are issued; allowing an inspection of the structure on a date certain to determine whether the life safety issues identified by the Building Official as the minimum necessary requirements to obtain temporary certificates of occupancy for certain of the lease areas have been satisfied; immediate cessation of any and all commercial activity in the structure until inspections are completed and occupancies are approved; vacation of all dwelling units until inspections occupancies are approved; and completion of construction necessary to bring the building into compliance with all codes not later than April 26, 2017. Officer Fagerstrom also asked that a fine of \$500 each for violations of IBC 105.1, IMPC 106.1, IPMC 108.5, and IPMC

⁷ Based on the brief review of the July 2012 plans during the hearing by the Fire Marshal (*see Exhibit 36*), the undersigned is not persuaded that the requirement for plans by a licensed architect have yet been submitted that would satisfy the conditions for occupancy.

112.4, for a total fine of \$2,000, joint and several, be imposed, to be payable within 15 days of issuance of the instant decision and order. *(Exhibit 2) (Testimony of Officer Fagerstrom)*

34. In light of Respondent Hunter's arguments, the undersigned asked the City officials representing Building, Electrical, and Fire departments, as well as Code Enforcement, if it were even possible for the required inspections and approvals to be coordinated and issued within one week of the hearing. Based on the difficulties of coordinating, at least one significant out of office (Building Official), and past lack of cooperation by Respondent Hunter, the various officials did not come forward to support any extension of the abatement deadlines requested in the Code Enforcement Department's proposed order. Based on the serious life safety concerns implicated by the evidence, the fact that at least five persons are admitted to reside in the structure overnight, the daily/regular use of the structure by the employees and an unknown number of patrons of the five active commercial tenancies on site, the existing unsafe conditions in the structure for fire personnel, and the history of noncompliance on the part of Respondents, Officer Fagerstrom asked that the Order require the structure to be vacated within 72 hours of the issuance of the decision and order. *(Testimony of Officer Fagerstrom)*

Based on the above findings of fact, the Violations Hearing Examiner enters the following conclusions:

CONCLUSIONS OF LAW

Jurisdiction:

Pursuant to EMC Chapter 1.20 or any Everett Municipal Code provisions that identify EMC Chapter 1.20 for enforcement, the Violations Hearing Examiner of the City of Everett has jurisdictional authority to hold this hearing and to issue the decision. EMC 1.20.020

Applicable Law:

1. **IPMC 106.1 Unlawful acts**, which reads:

It shall be unlawful for a person, firm or corporation to be in conflict with or in violation of any of the provisions of this code.

2. **IPMC 108.1.4 Unlawful Structure**, which reads:

An unlawful structure is one found in whole or in part to be occupied by more persons than permitted under this code, or was erected, altered or occupied contrary to law.

3. **IPMC 108.1.5 (8, 10) Dangerous Structure or Premises**, which reads:

For the purpose of this code, any structure or premises that has any or all of the conditions or defects described below shall be considered dangerous:

- (8) *Any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the approved building or fire code of the jurisdiction, or of any law or*

ordinance to such an extent as to present either a substantial risk of fire, building collapse or any other threat to life and safety.

(10) Any building or structure, because of a lack of sufficient or proper fire-resistance-rated construction, fire protection systems, electrical system, fuel connections, mechanical system, plumbing system or other cause, is determined by the code official to be a threat to life or health.

4. IPMC 108.5 Prohibited Occupancy, which reads:

*Any occupied structure condemned and placarded by the code official shall be vacated **as ordered by the code official**. Any person who shall occupy a placarded premises or shall operate placarded equipment, and any owner, owner's authorized agent or person responsible for the premises who shall let anyone occupy a placarded premises or operate placarded equipment shall be liable for the penalties provided in this code.*

5. IPMC 112.4 Failure to Comply, which reads:

Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not less than [AMOUNT] dollars or more than [AMOUNT] dollars.

6. IBC 105.1 Permit required, which reads:

Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or cause any such work to be done, shall first make application to the building official and obtain the required permit.

Conclusions of Law Based on Above Findings:

1. As of the dates of the August 8th and September 7th inspections, construction activity was being conducted on commercial property within the City of Everett without required City permits, which is a violation of IBC 105.1. Unpermitted construction work conducted on the subject property rendered the structure unlawful as defined by IPMC 108.1.4 in violation of IPMC 106.1. The record demonstrates said City ordinances were violated.
2. As of the dates of the August 8th and September 7th inspections, the unpermitted alterations made to the structure's electrical, plumbing, and fire safety systems rendered the structure dangerous as defined by IPMC 108.1.5 (8, 10), in violation of IPMC 106.1. The record demonstrates said City ordinance was violated.
3. Any occupied structure condemned and placarded by the code official must be vacated as ordered by the Code Official. By the Respondents' admissions, two residential tenancies and

five commercial tenancies remain in place despite the condemnation order's deadline to vacate the building by October 5, 2017. Occupants remaining in place after the deadline for vacation established in the condemnation order is a violation of IPMC 108.5. The record demonstrates said City ordinance was violated.

4. As evidenced by photos taken on October 6, 2017, construction work continued on the subject property after a stop work order was posted by City staff on August 31, 2017, and prior to the October 12th issuance of building permits, in violation of IPMC 112.4. The record demonstrates said City ordinance was violated.
5. In weighing the financial hardship for the building tenants and the Respondents against the public interest in life safety protections and the City's responsibility to uphold its codes, balancing the interests at stake in this case is far beyond the difficulty of a typical code enforcement matter. In light of the unwillingness of the various City officials whose professional judgment is brought to bear in this matter to agree to any interim or mid way solution that would prevent the necessity of vacating the hazardous structure, the undersigned will choose to err on the side of safety and uphold the proposed abatement order with minor modifications. The abatement timeline shall be modified consistent with code enforcement testimony on the record. The deadline for payment of the assessed fines shall be extended as a means of facilitating compliance with the more urgent and immediate need for the structure to be brought into compliance.
6. The evidence submitted by Respondent Hunter during the hearing did not go the full distance to showing that the sprinklering system is functional; there was no way to assess or corroborate the validity of her assertions as to compliance of the fire systems with applicable codes during the hearing. However, significant progress has allegedly been made towards completion of the September 28th notice of conditions of occupancy, which identified the minimum necessary steps to obtain approval of TCOs for certain tenancies within the building. If this substantial progress has been achieved, then the duration of any given vacancy could be relatively brief, which would mitigate the hardships to the various parties to some extent.

ORDER

Based on the findings of fact and conclusions of law stated above, it is hereby concluded that the Respondents allowed violation of IPMC 106.1, IPMC 108.5, IPMC 112.4, and IBC 105.1 on the subject property and they are hereby ordered as follows:

1. The Respondents must abate all violations of IPMC 106.1, IPMC 108.5, IPMC 112.4, and IBC 105.1 on property located at 2701 Wetmore Avenue, Everett, Washington.
2. Abatement shall include the following:
 - a. The Respondents shall **immediately** cease construction activity within the mixed-use structure unless and until all required permits for that work have been issued by the City of Everett Building Division.

- b. **Within three days of the issuance of this order**, Respondents shall cause to cease all business operations within the building until such time as the building has been inspected and occupancy approved by the City of Everett Building Division.
 - c. **Within three days of the issuance of this order**, Respondents shall cause to cease all residential tenancies within the building until such time as the building has been inspected and occupancy approved by the City of Everett Building Division.
 - d. The Respondents shall apply for and obtain all of the necessary and required permits to bring the property into compliance with City ordinances. The Respondents shall provide plans prepared by a licensed architect, shall have a qualified contractor conduct and complete all of the required work, and shall have the work inspected and approved by the City of Everett Building Division by **April 26, 2018, or by 180 days after the issuance of required building permits, whichever is later.**
3. The Respondents shall be fined (joint and several) \$500.00 for each violation of IPMC 106.1, IPMC 108.5, IPMC 112.4, and IBC 105.1 for a total fine of \$2000.00.
 4. The Respondents shall pay the \$2000.00 fine no later than **January 31, 2018**. Payment shall be made to the City of Everett Treasurer at 2930 Wetmore Suite 100, Everett Washington, 98201. If payment is not made on or before January 31, 2018 collection action will be taken, which may include assigning the debt to a collection agency pursuant to EMC 1.20.050(D).
 5. If the Respondents fail to abate the identified violations as directed by this Order, the City of Everett is authorized to undertake and complete the abatement in conformance with the provisions of the Everett Municipal Code, Chapter 1.20, at the full expense of the owner, which shall be in addition to the fines as imposed herein. The City may act without further order or direction of the Violations Hearing Examiner.
 6. The Respondents shall not violate any ordinance set forth in EMC 1.20.020 or any ordinance or regulation that identifies the enforcement procedure described in EMC Chapter 1.20 as the procedure for said regulations or ordinance, for the next twenty-four (24) months.
 7. Any post hearing motions shall comply with the Rules of Procedure of the City of Everett Hearing Examiner for Code Enforcement which can be found on the City of Everett website.
 8. Any appeal of this Order must be filed in Superior Court and be made within twenty-one days of the issuance of this Order and comply with the procedures set forth in Chapter 36.70C of the Revised Code of Washington. EMC 1.20.040 (F)(8)(h).

Violation of this Order is a misdemeanor offense EMC 1.20.080.

Done and dated 30th day of October 2017.



Sharon Rice
City of Everett Violations Hearing Examiner

Anne Weech, do hereby certify that on
Oct 30, 2017, I mailed certified / 1st class
Northwest Evergreen Investment LLC,
Laara Hunter, Tam Bixby -emca
a true and accurate copy of the order / VC issued re:
case # CE17-0857
Anne Weech
Signature