

**BEFORE THE HEARING EXAMINER  
FOR CITY OF KENNEWICK**

In the Matter of the CODE	)	
ENFORCEMENT APPEAL #19000075	)	
	)	
OF	)	FINDINGS, CONCLUSIONS
KURWIN GUMMOW Jr.	)	AND DECISION
_____	)	

**SUMMARY OF RECORD**

On September 12, 2019, the City of Kennewick Code Enforcement Department (City) issued a Notice and Order to Kurwin Gummow Jr. (Appellant) that violations of KMC 9.48.010, KMC 18.12.100, and KMC 18.12.010.A.2(5) existed on the property that he owned at 1315 S. Cascade Ave, Kennewick, Washington (property). The Appellant has denied living on the property and an appeal of the City’s Notice and Order of September 12, 2019 was made.

**Hearing Date:**

The Hearing Examiner of the City of Kennewick held an open record hearing on the appeal on November 4, 2019.

**Testimony:**

At the open record hearing the following individuals presented testimony under oath:

1. Ms. Jessica Foltz, City Attorney Office<sup>1</sup>
2. Ms. Jeani Ginder, City Code Enforcement
3. Mr. Wes Romine, City Planning Department
4. Mr. Kurwin Gummow Jr, Appellant
5. Ms. Nicole Gummow, Appellant

**Exhibits:**

At the open record hearing the following exhibits were admitted:

1. Staff Report
2. Case Report
3. KMC 9.48.010 Public Nuisance
4. KMC 18.12.010 A.1 Residential Use Table
5. KMC 18.12.010 A.2 Residential Use Standards
6. KMC 18.12.100 Junk
7. Warning Notice and Order May 2, 2019, photographs and Affidavit
8. Notice and Order September 12, 2019, photographs and Affidavit
9. Statutory Warrant Deed
10. City of Kennewick Ordinance No. 2509
11. Benton County Property Search
12. Emails with Waste Management May 1, 2019 confirming service for Kurwin and

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<sup>1</sup> Ms. Foltz provided legal argument and testimony.

Nicole Gummow

13. Email received from Nicole Gummow May 7, 2019
14. Letter from Jessica Foltz to Mr. and Mrs. Gummow May, 17, 2019
15. Kennewick City Council Citizen Sign-In Sheet June 4, 2019
16. City of Kennewick Council meeting minutes June 4, 2019
17. Audio recording of Kennewick Council Meeting June 4, 2019
18. String of emails with Nicole Gummow from May 6, 2019 to June 17, 2019
19. Email from Evelyn Lusignan June 18, 2019
20. Email from Jessica Foltz to Nicole Gummow June 18, 2019
21. Email from Jeani Ginder to City staff regarding posting and mailing of Notice and Order Sept. 12, 2019
22. Email from Jeani Ginder to Nicole Gummow advising of Notice and Order with a copy attached
23. Email from Nicole Gummow with Declaration stated, photographs and rental contract for Nicole. September 15, 2019
24. Appeal to Hearing Examiner form dated September 16, 2019 with rental contract for Nicole Gummow and photographs attached
25. Exhibit Log

Upon consideration of the testimony and exhibits submitted at the open record hearing, the Hearing Examiner enters the following Findings and Conclusions:

### **FINDINGS**

1. The Appellant is the owner of the property that is the subject of the appeal. *Exhibit 1, Staff Report, pg. 1*; He attained title to the property through inheritance. *Testimony of Mr. Gummow*
2. On May 1, 2019, a City Code Enforcement Officer, Jeani Ginder, responded to a nuisance complaint at 1315 South Cascade Street, Kennewick WA. that had been filed with the City's Code Compliance office by a citizen. *Testimony of Ms. Foltz; Exhibit 1, pg. 1*. The initial focus of the complaint was that pigs were being kept on the property. However, the Code Compliance office was also informed that the Appellant and his family were allegedly living in a recreational vehicle that was parked on the property and it did not meet RMH 6000 zoning standards for residences. *Testimony of Ms., Ginder; Exhibit 1 pg.1; Exhibit 10*
3. On May 2, 2019 the City issued a formal Compliance Warning Notice to the Appellant. The Warning Notice detailed the violations occurring at the property and the required corrective action to bring the property into compliance with the KMC. *Exhibit 1, pg. 1; Exhibit 7* The Notice also provided information that if all corrective actions were not taken by June 16, 2019, an additional Notice and Order with an accompanying \$500 fine would be issued. *Exhibit 1, pg. 1; Exhibit 7, pg. 3.*

4. Subsequent to the issuance of the May 2, 2019 Compliance Warning, Appellant Nicole Gummow sent an email to the Code Enforcement Department requesting clarification of the alleged code violations on the property. Ms. Gummow requested the authority that prohibits living in the recreational vehicle on site. *Exhibit 13*. In a May 16, 2019 email to Ms. Gummow, the City maintained its position as set forth in the May 2, 2019 Compliance Warning. *Testimony of Ms. Ginder*. In further response the City Attorney's office, in a May 21, 2019 letter, informed the Appellants that the property is zoned by the City as Residential Mobile Home (RHM) which allows for storage of recreational vehicles, but does not allow dwelling within the recreation vehicle. *Exhibit 14*
5. On June 4, 2019, Appellants Gummow testified at a Kennewick City Council meeting that her husband was living in the recreational vehicle on the property. *Exhibit 1, pg. 1* Further, in a June 17, 2019 email to the City Code Compliance Office, Ms. Gummow informed Ms. Ginder that the Appellants were both planning to live in the recreational vehicle on the property along with her two sons. They were planning to reside there for a year while their home was being built or until they could find other living arrangements. *Exhibit 18, pg. 1; Testimony of Ms. Ginder*. Their recreational vehicle was not attached to a foundation and did not exceed 14 feet in width. Both of these are standards for a permanent residential structure in Kennewick. *Testimony of Mr. Romine*
6. On September 10<sup>th</sup> and 11<sup>th</sup>, 2019 Ms. Ginder inspected the property. According to her testimony and the City's Staff Report, it "appeared" to her that the recreational vehicle was used as a residence. *Testimony of Ms. Ginder; Exhibit 1, pg. 2*, This impression was based in part by the presence of a white pickup truck was parked near the front of the vehicle. During earlier visits to the property, Ms. Ginder had been told by a neighbor that the vehicle was driven by either Kurwin Jr. or Nicole Gummow. *Exhibit 1, pg. 2*.
7. During the September inspection by Ms. Ginder, a white pickup truck belonging to the Gummows was parked in front of the recreational vehicle around 6:00 am. Ms. Ginder did not observe anyone doing work at the property at that time. The recreational vehicle was gone when Ms. Ginder again visited the property at 1:30 pm on September 11, 2019, the pickup was removed from the property. *Exhibit 1, pg. 2 and 3*.
8. Another observation of Ms. Ginder that was presented to support the City's position that the recreational vehicle was being used as a residence was that "it appeared there was still garbage service being paid for at the location". *Exhibit 1, pg. 2; Testimony of Ms. Ginder. 1, pg. 4*
9. According to the City the Gummows were "persistent about attempting to get an exception to the zoning code that would allow them to live in the recreational vehicle on the property". *Exhibit 1, pg. 3*. After being informed that no extension would be granted without adherence to the development standards of the City, the Appellants stopped contacting the City even though the deadline to vacate the recreational vehicle had passed. *Exhibit 1, pg. 3; Testimony of Ms. Ginder*.

10. On September 12, 2019, the City of Kennewick Code Enforcement Department (City) issued a Notice and Order to the Appellant that violations of KMC 9.48.010, KMC 18.12.100, and KMC 18.12.010.A.2(5) had occurred on the property at 1315 S. Cascade Ave. Kennewick, Washington (property). The Compliance Notice stated that the following violations had occurred on the property:

- KMC 9.48.010: Public Nuisances and Other Terms Defined.  
-section (1) and (1-a)  
-sections (2) and (2-b); (2-r); (2-u) and (2-x)
- KMC 15.52.030: Displaying Numbers
- KMC 18.12.040: Animal Keepings
- KMC 18.12.100: Junk
- KMC 18.12: Zone Districts and Standards.

In Exhibit 1, the City's Staff Report it was stated "The Notice and Order was based on the violations of KMC 18.12.010.A.2(5) for using a recreational vehicle as a dwelling and violations of KMC 9.48.010 and KMC 18.12.100 for allowing inoperable vehicles to be stored on the property". The Notice and Order included a \$500 civil monetary penalty and specified that if the code violations were not corrected by September 27, 2019, additional enforcement action would be taken. *Exhibit 1, pg. 2*

11. On September 15, 2019, an email from Appellants Gummow was received by City Staff stating that they were no longer living in the recreational vehicle. In the email it was further stated that both of the Appellants had secured alternative living arrangements. They also indicated that they would continue to receive mail at the property and keep their dogs there. *Exhibit 23*; The information contained in the September 15<sup>th</sup> email was also testified to by Appellant Nicole Gummow at the public hearing, that she was not living in the recreational vehicle on site, but was renting a living unit with a roommate at a different location. *Testimony of Ms. Gummow*. In September Mr. Gummow moved back to his parents' home. *Testimony of Mr. Gummow*. According to City staff, after the June 17<sup>th</sup> email, no information was provided to the City by the Appellants of any changes of their living arrangements. *Testimony of Ms. Ginder*

12. The Appellants claimed that although they were not living on the property, they visited it daily to feed and water their dogs and on weekends to take care of the property. They further claimed that the City did not have proof that they were living in the recreational vehicle because Kurwin Gummow work shift was from 6:00 am to 4:30 pm and Nicole Gummow's work shift was from 7:30 am to 6:00 pm and that City employees would only have been at their property when the Gummows were at work and would not have observed them living on site. *Exhibit 23; Testimony of Nicole Gummow and Kurwin Gummow*.

13. The Gummows responded in a September 15, 2019 email to the City that the recreational vehicle was not being lived in on September 11, 2019. To support this claim, the Appellants submitted records from a storage unit which indicated that as of July 1, 2019 they began the rental of a storage unit. A copy of a residential rental contract was submitted as evidence that on October 1, 2019, Nicole Gummow would be

residing at a rental living unit in Richland, Washington. *Exhibit 1, pgs. 3 and 4.* Nicole submitted that until October 1, 2019 she was staying at another person's residence. *Testimony of Ms. Gummow.* Kurwin Gummow submitted testimony that he was now living with his relatives since leaving the recreational vehicle. *Testimony of Kurwin Gummow.* The City stated in its Staff Report that "Neither of these items prove that no one was living in the recreational vehicle on September 12, 2019". In a later statement the City contends that: "Neither Kurwin or Nicole Gummow have submitted any evidence other than bare assertions to prove that neither of them, nor anyone else, lived in the travel trailer on September 12, 2019". *Exhibit 1, pg. 4.*

14. Another issue of the Order was the presence of inoperable vehicles parked on the property. During her initial visit to the site, Ms. Ginder observed what appeared to her to be inoperable vehicles on the property, including an orange SUV-type Chevrolet vehicle. Her impression of this vehicle was that it was inoperable because of where it was parked on the property and that weeds had grown up around the vehicle. She also noted that there were no tire tracks going to and from the vehicle. *Exhibit 1, pg. 4.* At a later inspection of the property in September 2019, the orange vehicle was in the same location as when she inspected the property on May 1, 2019 and the weeds had grown taller around the vehicle. *Exhibit 1, pg. 4.*
15. During her September 12, 2019 visit to the property, Ms. Ginder observed two other vehicles that appeared to her to be inoperable. She identified the vehicles as a "green sedan-type car" and a "red sedan-type car" that had a windshield which had been nearly removed from the vehicle and therefore was inoperable to drive. *Exhibit 1, pg. 4.*
16. The September 12<sup>th</sup>, 2019 Notice and Order described the violations on the property as "inoperable vehicles stored on the lot; using a recreational vehicle as a dwelling unit". *Exhibit 8, pg.1.* The other alleged violations mentioned in the May 2, 2019 Warning Notice were not included in the September Order.

## CONCLUSIONS

### Jurisdiction:

The Kennewick Hearing Examiner is granted jurisdiction to hear and decide appeals of the Kennewick Code Enforcement office. That jurisdiction is granted in *Kennewick Municipal Code (KMC) 4.04.040: - Appeals* which reads:

Except for actions commencing or refusing to commence a criminal or civil action, the decision or action of any department head, board, commission, or other agency of the City government may be reviewed by the Hearing Examiner.

### Relevant Ordinances:

*KMC 4.04.080: - Decision.*

The Hearing Examiner will render a decision in writing as soon as reasonably practical. The decision will set out facts as determined, any applicable law, rule or regulation relied on and

the decision or action appealed. The Hearing Examiner may affirm, modify, reverse or return with directions, the action or decision appealed. The Hearing Examiner's decision is final.

*KMC 9.48.010: - Public Nuisance and Other Terms Defined.*

- (1) Every act unlawfully done and every omission to perform a duty, which act or omission does any of the following, shall constitute a public nuisance:
  - (a) Annoys, injures, or endangers the safety, health, comfort, or repose of the citizens of the City; or
  - (b) Offends public decency; or
  - (c) Unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, a public park, street, alley, highway, or other public area; or
  - (d) In any way renders any citizens of the City insecure in life or use of property.
- (2) The following acts, in addition to any others in violation of subsection (1) of this Section, shall constitute a public nuisance:
  - (b) Causing or allowing garbage, waste, refuse, litter, debris, or other offensive materials, to be collected or deposited, or to remain in any place in the City, to the annoyance of any person, unless otherwise permitted by law;
  - (r) Open storage of materials and furnishings. No person shall openly store or keep outside on their property any equipment, materials or furnishings; or any item that creates an unsightly condition or one that promotes urban blight. This may include, but is not limited to, indoor furniture, household appliances, auto parts, shopping carts or building materials.
  - (x) Violate any provision of Titles 9, 13, 15 and 18.

*KMC 18.12.100: - Junk.* The storage or collection of junk, scrap, licensed or unlicensed, wrecked or inoperative vehicles, and equipment or parts thereof, or abandoned sheds, buildings or the like, are not permitted in any district.

*Conclusions reached by Hearing Examiner based on Facts:*

1. Appellant Kurwin Gummow Jr. is the owner of property 1315 South Cascade Street, Kennewick WA. On May 2<sup>nd</sup>, 2019, the Appellant and his family resided in the recreational vehicle that was parked on the property. The property was the subject of a Compliance Warning Notice issued by the City on May 2, 2019. In the Warning Notice numerous actions were listed to bring the property into compliance. No further administrative action, other than communication between the City and the Appellants, occurred until September 12, 2019, which is the date the Notice and Order of Code Enforcement was issued by the City Code Enforcement Office. An Order of Compliance was issued on September 12, 2019. *Findings of Fact Nos. 1, 3 and 10*
2. Subsequent to the issuance of the Warning Notice, the Appellant, his wife Nicole and the City were in communication on the condition of the property. Based on the testimony given at the public hearing, the key issue of compliance was the use of a recreational vehicle for permanent residential purposes. There was no dispute that the recreational vehicle did not meet the building requirements for a residence in an

RMH-6000 zone, namely it was not attached to a permanent foundation and it was less than 14 feet in width. *Findings of Fact Nos. 2 and 4.*

3. There appears to be no dispute that prior to the September 12, 2019 Order the Appellant and his family lived, or occasionally lived, in the recreational vehicle on site. However, what is disputed between the parties is whether anyone lived in the recreational vehicle after September 12, 2019.
4. The evidence presented by the City failed to establish that the recreational vehicle was being used as a residence on September 11<sup>th</sup>, 2019. The evidence presented does adequately establish that anyone was living in the recreational vehicle at that time. The parking of a white pickup truck on site does not establish the residency in the recreational vehicle. The pickup belonged to the Appellant who was not prohibited from parking it on site. The observations of the City Staff are insufficient to prove someone is residing in the recreational vehicle. Both vehicles, the pickup and the recreational vehicle, were legally on the property. The pickup on site is not a “smoking gun” that proves residency in the recreational vehicle. *Findings of Fact Nos 6 and 7.*
5. The use of garbage collection services on site does not prove residency in the recreational vehicle. Garbage collection is regulated by the City in KMC Title 9 chapter 4. *KMC 9.04.040: - Regular Removal and Disposal of Waste* requires residential properties in Kennewick to have garbage collection. The ordinance does not distinguish residential versus non-residential properties as an element for garbage collection. In fact, *KMC 9.04.030-Collection of Solid Waste subsection 12* reads:
  - (12) Collection Required. No solid waste collector may refuse service to any person in any area where he is authorized to collect if payment or security for payment is made.Subsection 12 allows “any person” to seek garbage collection. There is no condition of a residence being on the property before collection can occur. The only requirement for collection is payment being received. In the instant case, the fact that garbage was being collected on the property did not establish a residence unit being on the site.
6. The enforcement of inoperable vehicles on the property was consistent with *KMC 18.12.100: - Junk*.

The storage or collection of junk, scrap, licensed or unlicensed, wrecked or inoperative vehicles, and equipment or parts thereof, or abandoned sheds, buildings or the like, are not permitted in any district.

(x)

Throughout the entire scenario of events and correspondence between the City and the Appellants there was one constant—There were vehicles onsite that qualified as Junk as defined in *KMC 18.12.100*.

7. The cars in question included an orange SUV-type Chevrolet vehicle that was surrounded by vegetation and had not been moved for a significant period of time. The storage of this vehicle which is not operated or moved is prohibited in the RMH-6000 zone. The storage of this vehicle is prohibited by KMC 18.12.100, *Finding of Fact No. 14*. Another car described as a red sedan-type car has a partially missing or defective windshield. *Finding of Fact No. 15*. This vehicle is prohibited from storage on site because of its wrecked and inoperative condition. *KMC 18.12.100*

### **DECISION**

Based on the Findings of fact and Conclusions as stated above the following constitute the Decision of the Hearing Examiner:

1. The Decision of the Hearing Examiner is that the City's evidence did not support the allegation that the Appellant and others were residing in the recreational vehicle on September 12, 2019. This decision, however, should not be interpreted as an allowance of any residency on site unless approved by the City.
2. The key date of this matter is September 12, 2019, the day of the Order of the City. While there appears to be sufficient evidence during the period after the Warning Notice of May 2, 2019 and the September 12<sup>th</sup> Order, including admissions of living on site by the Appellant and his wife, there is sufficient evidence that the residency had stopped by September 12, 2019. The Gummows were living at different locations and the evidence does not prove that they were living on site on September, 12, 2019.
3. The City has failed to adequately prove that the Appellants were living at the property in the recreational vehicle on the date of the September 12<sup>th</sup> Order. There is no doubt that the recreational vehicle did not qualify as a residence in an RMH-6000 zone. To reside in the vehicle would be a violation of the standards of the zone. However, the City's evidence to prove that the Appellants were living in the recreational vehicle on September 12, 2019 is based on presumption rather than factual support. The parking of a pickup truck on the property and the payment of garbage services are not sufficient to determine residency on site.
4. The City properly enforced the inoperable vehicle violations on site. Reference is made to Conclusions 6 and 7 above.
5. The Hearing Examiner has been unable to find authority to modify the fine imposed by the City. Because the inoperable vehicles violations of KMC 18.12.100 have been upheld, the issue of the fine is not resolved. The case is remanded to the Department of Code Enforcement to determine any change to the original imposed fine.

Dated the 21<sup>st</sup> day of November, 2019.

James M. Driscoll  
Kennewick Hearing Examiner