

BEFORE THE CITY OF LAKEWOOD HEARINGS EXAMINER

IN RE:	)	NO. _____
8226, 8228, 8232 and 8234 CUSTER ROAD SW	)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION DENYING APPEAL
S&D DAVIS REAL ESTATE, LLC,	)	
Appellant.	)	

THIS MATTER comes before the Hearing Examiner upon the appeal of S&D Davis Real Estate, LLC, owner of duplex units at 8226, 8228, 8232 and 8234 Custer Road SW in Lakewood (the "Properties"). Of these four duplex units, Units 8232 is at issue. Appellant appeals the "Rental Housing Noncompliant Notice" for Unit 8232 given to the property owner on August 15, 2023 (the "Notice").

The Appellant appears through Sharon Eva, Property Manager and daughter of Suk Davis, owner of S&D Davis Real Estate, LLC. The Appellant is represented by Justin Morgan. The City appears through Jeff Gumm, Program Manager for the City's Rental Housing Program, and is represented by Eileen McCain, Assistant City Attorney.

The Appellant raises three issues on appeal:

1. That the Appellant was not properly served with the Notice;
2. That the Rental Housing Safety Program (RHSP) lacks authority over Unit 8232 as this unit is exempt from the regulations imposed under Chapter 5.60 LMC as it is a "Facility . . . offering three or more lodging units . . . for periods of less than 30 days" and is therefore exempt from the Chapter's provisions; and

1           3.       Even if the RHSP has authority over Unit 8232, the violations claimed by the City  
2 are inaccurate and the Notice should not have been issued.

3           In advance of the hearing both parties presented witness statements, documentary  
4 evidence and briefing. The City proposed the following Exhibit List:

5           A.       2023-08-15   Notice of Rental Housing Safety Program (RHSP) Non-  
6 Compliant Unit.

7           B.       2023-08-15   Emails Findings of Violations.

8           C.       2023-08-16   Appeal of Administrative Decision (Rental Housing).

9           D.       2023-11-15   Appellant's Appeal Brief.

10          E.       2023-11-15   Appellant's Exhibit A - Declaration of Manager.

11          F.       2023-11-15   Appellant's Exhibit B - Notice.

12          G.       2023-11-16   City's Proposed Exhibit List.

13          H.       2023-11-16   City's Hearing Brief.

14          I.       2023-11-16   City's Declaration of Holverstott with attachments.

15          J.       2023-11-16   City's Declaration of Gumm with attachments.

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17           The Appellant agreed to this Exhibit List and both parties agreed to the admission of the  
18 exhibits as listed. Exhibit J (Declaration of Jeff Gumm with attachments) had each of the  
19 attached photos further identified as Attachments 1-31. During the course of the hearing it was  
20 discovered that Mr. Gumm's Declaration had additional photos attached which had inadvertently  
21 been excluded. These were recognized and admitted as an additional Attachment 32 to his  
22 Declaration. The Appellant also sought the admission of three photos as Exhibits L, M and N  
23 and they were admitted over the City's objection.  
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1 Following the admission of exhibits, the Appellant moved to dismiss based upon: (1)  
2 lack of service; and (2) the Properties' exemption from the RHSP as stated above. The City  
3 presented a cross-motion to dismiss based upon the Appellant' failure to comply with the  
4 requirements for appeal found in LMC 5.02.190 and LMC 1.36.115, arguing that the Appellant's  
5 Notice of Appeal failed to identify the issues on appeal and was therefore invalid. The Hearing  
6 Examiner advised the parties that these cross-dispositive motions would be deferred so that a  
7 fuller record could be established in the event either party sought further appeal of the Hearing  
8 Examiner's Decision.  
9

10 The Appellant then presented the testimony of Jeff Gumm as a hostile witness. Mr.  
11 Gumm is the Program Manager for the City's RHSP. At the conclusion of Mr. Gumm's  
12 testimony the Appellant then presented its witness, Sharon Eva, Property Manager for the  
13 Appellant. At the conclusion of the Appellant's witnesses the City then called Mr. Gumm as its  
14 witness. No other witnesses were called.

15 Following the party's closing arguments the Hearing Examiner:

- 16 1. **Denied** the Appellant's earlier motions to dismiss;
- 17 2. **Denied** the City's earlier motion to dismiss;
- 18 3. **Denied** the Appellant's appeal.

19 The Hearing Examiner's decisions are based upon the following:  
20

### 21 FINDINGS OF FACT

22 1. The Appellant S&D Davis Real Estate, LLC, is the owner of a single-family  
23 residence and two duplexes collectively located along Paine Street SW and Custer Road SW  
24 within the City.  
25

1           2.       Any Findings of Fact contained in the foregoing introduction are incorporated by  
2 reference and adopted by the Hearing Examiner as his Findings of Fact.

3           3.       Suk Davis is the owner of S&D Davis Real Estate, LLC. Sharon Eva is the  
4 daughter of Mrs. Davis and is the Property Manager.

5           4.       The single-family residence owned by the Appellant has an address of 8201 Paine  
6 Street SW and is occupied by Ms. Eva's brother (Ms. Davis' son).

7           5.       The two duplexes are located next to each other. Each has two one-bedroom  
8 units. The four units in these two duplexes have addresses of 8226, 8228, 8232 and 8234 Custer  
9 Road SW.

10          6.       Duplex Unit 8226 is occupied by Mrs. Davis.

11          7.       The other unit in the first duplex (8228) and the two units in the other duplex  
12 (8232 and 8234) are rented

13          8.       As noted earlier, Unit 8232 is at issue in this appeal.

14          9.       According to Ms. Eva, these Properties have been owned by Mrs. Davis and/or  
15 her company since 2002.

16          10.       Appellant has, at times, rented the Properties as longer term rental units and at  
17 other times as short term stays. Appellant presented evidence that the units have recently been  
18 used exclusively for short term stays (Declaration of Eva) but also acknowledged that it  
19 advertises the units for longer stays as well.

20          11.       Jeff Gumm is the Program Manager for the Rental Housing Safety Program  
21 (RHSP or the "Program") for the City.

22          12.       Mr. Gumm was involved in the creation of RHSP, enacted by the City in 2016 as  
23 Ordinance 644. He was also responsible for drafting the Program's administrative rules. Mr.  
24  
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1 Gumm has been employed by the City for 22 years. Before becoming the Program Manager, he  
2 served as a licensed building inspector for the City and, prior to that, worked as a contractor for  
3 25 years. Mr. Gumm is well versed in the City's adopted version of the International Building  
4 Code (IBC).

5 13. Heather Holverstott is the City's Program Coordinator for RHSP.

6 14. Both Mr. Gumm and Ms. Holverstott are familiar with the RHSP Administrative  
7 Rules established for the RHSP. Section IV(C) of the Administrative Rules provides that "every  
8 rental property/complex shall obtain and maintain in good order a Rental Business License  
9 issued by the City through the rental registration process. A Rental Business License shall have  
10 an issuance date of January 1 of the calendar year in which it is issued and shall expire on  
11 December 31 of the calendar year following registration or renewal."  
12

13 15. The Appellant's Properties were selected for the RHSP lottery inspection in 2018  
14 but failed to comply and be inspected (Holverstott Declaration). The Properties were not  
15 registered for the years 2018, 2019 and 2020.

16 16. As a result of the Appellant's noncompliance with inspection requirements, the  
17 City issued infractions commencing in 2020. A total of five infractions were issued. These  
18 infractions were resolved earlier in 2023.

19 17. In March 2020, the City sent First Class and certified letters to Appellant  
20 reminding her that the Properties had not been properly registered as rental property with the  
21 RHSP and had not been inspected. The City's letter provided a deadline for registering the  
22 Properties and paying any required fees, and a deadline for their inspection, with all Properties to  
23 be compliant by the end of 2020 (Holverstott Declaration). The Appellant did not respond.  
24

1           18.     In June 2021, the City sent another letter to Appellant advising it that the  
2 Properties remained noncompliant. The Appellant was given a deadline of July 9, 2021 to  
3 properly register the Properties and pay any fees due the City together with a deadline of  
4 June 23, 2021, to have the Properties inspected and July 9, 2021, to be compliant. None of these  
5 deadlines were met (Holverstott Declaration).

6           19.     On August 16, 2021, the Appellant paid all 2021 fees required for registering the  
7 rental Properties in the RHSP.

8           20.     On October 15, 2021, the City was allowed to inspect the Properties. The  
9 inspection was undertaken by former RHSP Coordinator, Sam Maloney. Mr. Maloney's  
10 inspection revealed noncompliances with the requirements of the RHSP. He provided Appellant  
11 with a list of these noncompliances by unit, including needed repairs to Unit 8232 (Declaration  
12 of Holverstott, Attachment 3). The Appellant was given until November 5, 2021, to correct the  
13 noncompliances and have the Properties reinspected. The Appellant did not respond or pay the  
14 fees.  
15

16           21.     On August 15, 2022, Ms. Holverstott issued another "Notice of RHSP  
17 Noncompliant Property" letter to Appellant as it had not registered the Properties in RHSP for  
18 2022 and had not obtained the required Rental Business License. On October 28, 2022, the  
19 Appellant paid the required 2022 license fees and was properly registered in the Program for  
20 2022. The Appellant did not arrange for the Properties to be inspected.

21           22.     On June 14, 2023, Jeff Gumm visited the Properties. A person was inside Unit  
22 8232 and allowed Mr. Gumm to enter and inspect.

23           23.     Mr. Gumm's June 14, 2023, inspection revealed numerous code violations. These  
24 violations are demonstrated in a series of photos taken by Mr. Gumm during his inspection and  
25

1 are identified as Attachments 1-21 to his Declaration. Among other things, Mr. Gumm  
2 determined that:

3           ●       A new water heater and associated plumbing had been installed without a  
4 plumbing permit.

5           ●       Sheetrock had been removed in the laundry area to allow for plumbing and wiring  
6 changes and then replaced without a required building permit;

7           ●       The bathroom's shower surround had had its plumbing replaced without a  
8 plumbing permit, and the shower surround had new backerboard installed without a building  
9 permit, while a new toilet was installed without a plumbing permit.

10           ●       A bathroom vent/light had been replaced without a mechanical permit.

11           ●       A wall heater had been replaced without the required mechanical permit and,  
12 perhaps, required building permit.

13           ●       One wall of exterior siding had been replaced with T1-11 siding without the  
14 required building permit.

15           ●       Plumbing under the kitchen sink had been replaced without the required plumbing  
16 permit.

17           ●       Plumbing repairs under the sink likely required removing and replacing all  
18 gypsum board without the required building permit.

19           ●       Electrical wiring associated with these various improvements had been altered or  
20 upgraded without required electrical permits.

21           ●       The exterior windows had been replaced at some time during the Appellant's  
22 ownership (although not recently) without the required building permit.

1           24.     Based upon this inspection, Mr. Gumm posted Unit 8232 with a "Stop Work"  
2 Notice (Gumm Declaration, Attachment 12).

3           25.     On August 8, 2023, Ms. Holverstott and Mr. Gumm returned to the Properties and  
4 met with Ms. Eva at Unit 8232 for the purpose of reinspecting the property. The property did not  
5 pass inspection. Mr. Gumm also discovered that the Stop Work Order posted on the property on  
6 June 14 had been removed and that, contrary to the Stop Work Order, additional repairs had been  
7 made to the unit including completion of plumbing upgrades to the bathroom; additional wiring  
8 was installed in the laundry area; additional sheetrock work had been performed and other new  
9 plumbing had been installed (Gumm Declaration, Attachments 22-32). All of this additional  
10 work was undertaken without obtaining permits and in violation of the Notice of Stop Work.  
11

12           26.     On August 15, 2023, Ms. Holverstott mailed a "Notice of Rental Housing Safety  
13 Program Noncompliant Property" and a separate "Notice of RHSP Noncompliant Unit" by First  
14 Class and certified mail to the Appellant (Holverstott Declaration, Attachment 4). The Notice  
15 was also posted on the property the same day.

16           27.     The August 15, 2023, Notices of Noncompliance referenced above notified the  
17 Appellant that Unit 8232 had been improperly and illegally modified without required permits or  
18 needed inspections. The Notice advised the Appellant that violations included new plumbing  
19 supply and drain lines to kitchen, bathroom, laundry and water heater; new exterior doors;  
20 sheetrock removal and replacement; wall heater replacement; kitchen sink replacement; bathtub  
21 enclosure replacement; shower valve replacement; toilet replacement; bathroom sink  
22 replacement; bathroom vent fan replacement; kitchen vent fan replacement; water heater  
23 replacement; and electrical modifications including new circuitry. This list is consistent with  
24 Mr. Gumm's observations on June 15 and again on August 8.  
25



1           28.     Appellant does not deny that it should have obtained a plumbing permit in order  
2 to undertake the various plumbing upgrades. It also admits that a mechanical permit was likely  
3 required for the replacement of the bathroom vent and the wall heater but that these  
4 modifications were minor. Appellant disagrees with the City's claim that the work required a  
5 building permit. Appellant asserts that any sheetrock work was merely "repair and repatching"  
6 and therefore exempt from building permit requirements; that replacement of exterior doors  
7 should not require a building permit as a mere replacement; that the Appellant had not installed  
8 new T1-11 exterior siding anytime recently; and that the Appellant had not installed new  
9 backerboard underneath new tiling in the shower surround; and that no windows had been  
10 installed in recent memory.  
11

12           29.     Mr. Gumm's testimony, supported by his expertise and his photos, is more  
13 credible than Ms. Eva's with respect to whether the repairs undertaken by Appellant required a  
14 building permit. More specifically:

15           ●     Mr. Gumm was more credible with respect to their having been recently installed  
16 T1-11 siding on the exterior of the residence requiring a building permit.

17           ●     Mr. Gumm was more credible with respect to there having been backerboard  
18 (concrete board) installed in the shower surround area prior to the installation of new tile and  
19 requiring a building permit.

20           ●     The installation of new exterior doors requires a building permit.

21           ●     The removal of sheetrock and portions of walls in the laundry and kitchen areas,  
22 and possibly also bedroom area, in order to install new plumbing and/or electrical upgrades and  
23 then reinstalling the sheetrock is not a "repair" but is substantive construction triggering a  
24 building permit.  
25

1           ●       The unit's vinyl windows, while not recently installed, have clearly been installed  
2 during the Appellant's ownership (as evidenced by the use of vinyl windows) without obtaining  
3 the required building permit.

4           30.     In summary, the City has provided sufficient, credible evidence that the work  
5 undertaken by Appellant has occurred without required plumbing, mechanical and building  
6 permits as well as the required electrical permit (issued by L & I). The Notice is therefore  
7 accurate in its itemization of work undertaken without required permits.  
8

9           31.     As noted in earlier Findings, Mr. Gumm serves as Program Manager for RHSP  
10 and was directly involved in creation of the Program in 2016, and continues to be responsible for  
11 developing and implementing the Program's administrative rules.

12           32.     Lakewood has codified the RHSP at Chapter 5.60 LMC. LMC 5.60.005 declares  
13 that the purpose of the RHSP is to "protect the public health, safety and welfare of tenants by  
14 encouraging the proper maintenance of residential rental housing, by identifying and requiring  
15 correction of substandard housing conditions, and by preventing conditions of deterioration and  
16 blight that could adversely impact the quality of life in Lakewood."

17           33.     LMC 5.60.010 defines a "rental unit" as a rental housing unit occupied or rented  
18 by a tenant or available for rent by a tenant. Unit 8232 meets this definition.  
19

20           34.     Pursuant to LMC 5.60.025, the RHSP applies to all residential housing units with  
21 certain exceptions. One of the listed exceptions is:

22           "Any facility such as a hotel, motel, condominium, resort or any other facility or  
23 place offering three or more lodging units to guests for periods of less than 30  
24 days; provided, that if any guest resides for a period of 30 days or more, then such  
25 facility shall be subject to this chapter." LMC 5.60.040(C).

1 35. Mr. Gumm declares that the Appellant's duplexes do not qualify as a "facility" as  
2 defined by LMC 5.60.040(C) and are therefore not exempt from the RHSP.

3 36. As noted in earlier Findings, Unit 8232 is one of two residential units contained in  
4 a duplex owned by Appellant, with another, separate, duplex containing another two individual  
5 rental units located next door, together with a single-family residence located next to the two  
6 duplexes.

7 37. The fact that the duplex containing Unit 8232 is adjacent to another duplex and  
8 single-family residence owned by the Appellant does not constitute a "facility" as defined by  
9 LMC 5.60.040(C) and is therefore not exempt from the provisions of the RHSP.  
10

11 38. The Appellant has not demonstrated that Unit 8232 is not exempt from the  
12 provisions of the RHSP; the City's inspection of Unit 8232 uncovered modifications to the unit  
13 constructed without required plumbing permits, mechanical permits and building permits in  
14 violation of the City's Building and other codes; the City properly notified the Appellant of these  
15 violations and of the actions needed to cure the violations; and the Appellant admitted receiving  
16 the notice (testimony of Eva).

17 Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

18 **CONCLUSIONS OF LAW**

19 1. The Hearing Examiner has jurisdiction over the parties and the subject matter.

20 2. Any Conclusions of Law contained in the foregoing Public Hearing Section and  
21 Findings of Fact are hereby incorporated by reference and adopted by the Hearing Examiner as  
22 his Conclusions of Law.

23 3. The Appellant has the burden of proving that the Notice was improperly issued.  
24 The Appellant has not met this burden.  
25

1 4. The Appellant was properly served with the Notice.

2 5. The City's interpretation of its own ordinance must be given deference, especially  
3 when the interpretation is by the person responsible for drafting the ordinance.

4 6. The City's interpretation of "facility" as used in LMC 5.60.025 is reasonable.

5 7. The Appellant's residential units, including Unit 8232, is not exempt from the  
6 provisions of the RHSP, Chapter 5.60 LMC.

7 8. The Appellant's construction activity at Unit 8232 was undertaken in violation of  
8 requirements for plumbing permits, mechanical permits and building permits and was therefore a  
9 violation of the RHSP, Chapter 5.60 LMC.

10 9. The Notice was properly issued to Appellant.

11 10. Appellant's appeal should therefore be dismissed.

12  
13 **DECISION**

14 The Hearing Examiner having entered his Findings of Fact and Conclusions of Law,  
15 now, the Appellant's Appeal is **dismissed**.

16 DATED this 27 day of November, 2023.

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19 \_\_\_\_\_  
20 Mark C. Scheibmeir  
21 City of Lakewood Hearing Examiner  
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