

FINDINGS AND DECISION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

M. ANTHONY D'ALESSIO and
RONALD E. FARRELL

FILE NO. H-85-004

from a decision of the Director of the
Department of Construction and Land Use
pursuant to Title 22, Subtitle II, Seattle
Municipal Code (Housing Code, Ordinance
106319)

Introduction

Appellants contest a DCLU Order of the Director concerning property known as 714 Galer Street.

The appellants exercised the right to appeal pursuant to Chapter 22.208, Seattle Municipal Code.

Subsequent to approved continuance, this matter came on for hearing before the Hearing Examiner on October 29, 1985. This hearing was held concurrently with appeal H-85-005.

Parties to the proceedings were: appellants pro se, and the DCLU Director by Sandy Watson, code compliance officer.

After due consideration of the evidence elicited during the public hearing and subsequent to a site inspection of the subject property, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The subject lot is addressed as 714 Galer Street and is legally described as the:

Westerly 38 feet of Lots 1 and 2, Union Lake
Addition Supplemental to the City of Seattle as
recorded in Volume 2 of Plats, page 77, records of
King County, Washington.

2. The property is located immediately east and downslope of Aurora Avenue N. The site is separated from Dexter Avenue by a 1501 Dexter Avenue property and the elements of a rockery wall.

3. Prior to December 11, 1983, the subject 714 Galer lot was developed with a two-story dental office. The frame construction rested atop a concrete foundation.

4. On December 11, 1983, a slide emanating west of Aurora destroyed the dental building and carried its walls, roof and other portions downhill to the 1501 Dexter Avenue site and beyond. Most of the foundation remains at the subject site.

5. D'Alessio and Farrell, co-owners of the subject property, assert that (a) the slide was caused by City and therefore (b) the City should be required to clean up the site.

6. DCLU and appellants agree that appellants were in no way responsible for the December 11, slide.

7. On June 13, 1985, the DCLU Director issued a "Housing Code-Ordinance 106319" complaint entitled "Building Unfit for Human Habitation or other Use". After describing the subject property the Compliant stated that

[T]he following high hazard conditions were observed:

Structural Defects: This two story, frame, dental office was demolished as the result of a mud slide. Most of its remains slid down the hill to 1501 Dexter Avenue North. Most of the concrete foundation remains at subject address.

Fire and Safety Hazards: Broken portions of demolished building leaving concrete rubble, composition roofing, plaster boards and miscellaneous items.

8. The DCLU Order dated August 7, 1985, reflected as follows:

As stipulated in a Director's Complaint dated June 13, 1985, a hearing was held in accordance with Section 22.208 of the Seattle Municipal Code (Chapter 5 - Housing Code Ordinance 106319), on June 27, 1985. Pursuant to the conditions and standards of that Section, it has been determined that the subject building(s) is unfit for human habitation or other use and that the estimated cost of repairs will exceed fifty (50) percent of the market value of the buiding(s) in a repaired condition. BASED ON THESE DETERMINATIONS, IT IS HEREBY ORDERED THAT ALL PERSONS HAVING ANY INTEREST IN THE SUBJECT BUILDING(S) ARE REQUIRED TO REPAIR, ALTER OR IMPROVE IT TO RENDER IT FIT FOR HUMAN HABITATION OR OTHER USE OR DEMOLISH AND/OR REMOVE THE BUILDING(S) REMNANTS AND OTHER DEBRIS NOT LATER THAN OCTOBER 13, 1985 (Emphasis in original).

9. Appellants then submitted this appeal.

Conclusions

1. The Hearing Examiner has jurisdiction of this matter pursuant to Chapter 22.208, Seattle Municipal Code.

2. Seattle Municipal Code Section 22.208.050(B) provides that the Hearing Examiner's decision shall be made upon the same basis as the DCLU Director; and that the Director's Order shall be deemed prima facie correct.

3. The DCLU Director's Complaint and Order cite Chapter 22.208, Seattle Municipal Code as the basis of the action. For reasons stated below, the Hearing Examiner concludes that the citation was improper and the Order of the Director is reversed.

4. Chapter 22.208, Seattle Municipal Code is entitled "Buildings Unfit for Human Habitation or Other Use". The term "building" is defined at Seattle Municipal Code Section 22.204.060 as "any structure which is used, or designed or intended to be used for human habitation or other use". The foundation and other remains do not meet the definition of a "building". They are used, designed, or intended for no use.

5. Secondly, the Section 22.208.010 "conditions for declaring a building unfit for human habitation or other use" include as "high hazard" criteria insufficient structural members; inadequate weather proofing; sanitation; light, heat or ventilation; defective exits or

(F) Conditions that enhance the risk of fire or accident, including, but not limited to: (1) accumulations of junk and debris, (2) any building or device, apparatus, equipment, waste, vegetation, or other material in such condition as to cause a fire or explosion or to provide a ready fuel to augment the spread or intensity of fire or explosion arising from any cause.

6. The itemization shows that the 714 Galer Street foundation and other remains are not proper subjects of Seattle Municipal Code Section 22.208.010. Structural members, weather proofing and other items simply do not apply to the facts of this case. Nor was it shown that fire or other risk is enhanced by the present condition of the site.

7. Further, Seattle Municipal Code Section 22.208.020 states that a building found "unfit for human habitation or other use shall be ordered repaired or vacated and closed...otherwise the building shall be ordered repaired or demolished". The building has already been demolished. Therefore, even were the code sections applicable to the subject site, which they are not, there is no authority under this specific legislation to require further remedial action on the part of the owners. The DCLU order is reversed.

8. The Hearing Examiner declines to address the issue of damages against the City as that item is beyond the jurisdiction of the Hearing Examiner.

Decision

The Order of the Director is Reversed. Pursuant to Seattle Municipal Code Section 22.208.050(C), the City Treasurer is authorized to return appellants' filing fee of \$25.00.

Entered this 27th day of November, 1985.


Leroy McCullough
Hearing Examiner

Concerning Further Review

The decision of the Hearing Examiner in this case is the final administrative determination by the City, and is not subject to reconsideration except to correct errors on the ground of fraud, mistake, or irregularity in vital matters. Any request for judicial review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within fourteen days of the date of this decision. Should such request be filed instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104.