

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

THEODORE F. BROWN

FILE NO. H-86-001

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

Introduction

Appellant contests a DCLU Order of the Director concerning property known as 4309 Evanston Avenue North.

The appellant exercised the right to appeal pursuant to Chapter 22.206, Seattle Municipal Code.

This matter came on for hearing before the Hearing Examiner on March 3, 1986.

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

After due consideration of the evidence elicited during the public hearing the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The subject property, addressed as 4309 Evanston Avenue North, is legally described as:

Lots 28 and 29, Block 5, Motor Line Addition to the City of Seattle as recorded in Volume 2 of Plats, page 164, records of King County, Washington.

2. The property is currently owned by Theodore F. Brown, appellant herein. Sophia Zavales is the prior owner.

3. A Notice of Land Use Code Violation dated September 9, 1985, which named the subject property, listed nine categories of "observed violations and required corrections." Details of those items follow.

4. From the testimony and other information of record, the Hearing Examiner determines that appellant requested DCLU reconsideration of the September 9, Notice of Violation, and a DCLU hearing was accordingly held to reconsider the Notice of Violation on December 6, 1985. Appellant did not attend that hearing. Appellant claims, but the Hearing Examiner declines to find, that he received no notice of the December 6, hearing. By Order of the Director dated December 9, 1985, DCLU sustained "In All Respects" the September 9, Notice of Violation. This Order of the Director was served on appellant or agent on January 8, 1986.

5. By letter dated January 9, 1986, date stamped at DCLU January 28, 1986, and received in the Office of Hearing Examiner January 30, 1986, appellant stated that he was appealing the DCLU Hearing Officer's findings of December 6, 1985, "on the grounds that we were not notified..."

6. The matter was then scheduled for Hearing Examiner public hearing date of March 3, 1986, 9:30 a.m. The Office of Hearing Examiner issued notice of this date and time to appellant at the return address given on the letter of appeal, i.e., 10901 Aurora Avenue North.

7. Appellant appeared at the Hearing Examiner hearing, after the scheduled hearing time and following a telephone inquiry from the Office of Hearing Examiner as to whether appellant intended to appear. Once in hearing, appellant suggested that he did not receive the Office of Hearing Examiner Notice of Public Hearing. Upon further inquiry applicant provided clarifying specifics on his mailing address.

8. In hearing, appellant indicated that he wished to have the matter remanded in order to contest the DCLU hearing officer's findings. The Hearing Examiner denied the request and the matter proceeded to hearing.

9. Appellant did not contest several of the "observed violations"; rather, appellant testified that he would "take care" of them particularly if given a 90 day compliance period. (Following therefore, are principally "observed violations" that remain in dispute).

10. Appellant did not contest the items listed under the following categories. Section references are to the September 9, 1985, Notice of Violation.

- Inadequate Light and Ventilation (unopenable windows)
- Inadequate Structural Condition (rear exterior stair assembly)
- Inadequate Heating Facility (lack of upper unit heat control)
- Inadequate Electrical System (includes exposed, or improper wiring and fixtures)
- Duties of Owners (storage of opened cans of flammable material; lack of smoke detector)

11. Under the category of Inadequate Sanitation, the parties agreed that Item 2(B)(1) has been corrected. As to Item (2)(A), "basement laundry lacks a hot water supply", appellant challenged whether the cited provisions, Seattle Municipal Code Section 22.206.050(F), did in fact require a hot water supply; and alternatively whether there was any requirement that he provide a laundry tray. The DCLU inspector declined to specify that a laundry tray was required.

12. The DCLU witness did testify that the lower unit lavatory was not properly secured to the wall and that the resulting instability jeopardizes the drain line. Item 2(B)(2). Appellant was incredulous at the citation and at citation 2(B)(3) regarding a missing relief valve drain pipe on the upper unit water heater. Appellant, however, offered no contrary evidence.

13. Notice of Violation Categories 2(C)(1-3) mention the existence of cross-connected faucets in the lower and upper unit bathtubs and in the upper unit lavatory. Appellant objected that "5-10,000" homes in Seattle have the same kind of old plumbing features. The DCLU posture was that unless the separation between the discharge openings of the spouts is one inch above the flood level rim of the fixture, there could be a "back siphonage" or contamination of the water supply by waste water.

14. For the most part, appellant did not object to the items listed under Category 4, Inadequate Maintenance, with the exception of the citations relating to ill-fitting entrance doors, Items 4(A)(2)(e), and 4(A)(2)(b). Appellant's objections to the charge of ill-fitting doors is that the structure is an older house.

15. Appellant also objected to the Notice citation that specified windows would either not open or would not stay up, if raised, because of broken sash cords, decayed sashing, or other malfunction.

The Hearing Examiner finds in accord with the testimony of a tenant/witness that certain windows described in the Notice of Violation have been painted shut and are unopenable and that other windows will not stay up without placement of a book or similar prop. Appellant also objected to the charge that the south kitchen window of the upper unit had or has decayed lower rails. The DCLU witness testified that one's finger could be stuck through the rail. Appellant had no specific contrary evidence but stated a general objection to the charge.

16. Regarding Inadequate Fire Safety, Category 7, appellant agreed to supply the front porch steps with a handrail, but objected to the suggestion that the step from the north exterior door and the step from the lower unit rear door violated the maximum rise and run provisions of the Seattle Municipal Code. One of the reasons appellant contested the charge related to the rise and run is the history of the property. According to appellant, when the steps formerly extended further out, autos have torn the step. This which suggests to appellant that the correction should not be made or required.

17. Appellant objected to the items listed under Inadequate Security, on the basis of the history of the structure. In other words, the older structure uses designs and features in accord with its age. Appellant did agree to provide both lower and upper unit rear doors with observation ports and to provide the south basement window with a latching device.

Conclusions

1. The Hearing Examiner has jurisdiction of this matter pursuant to Chapter 22.206, Seattle Municipal Code.

2. Seattle Municipal Code Section 22.206.230(B) provides that the Hearing Examiner's decision shall be made on the same basis as that of the Department of Construction and Land Use Director. The Section also provides that the Director's Order shall be deemed prima facie correct and that appellant has the burden of establishing a position contrary to that of the DCLU Director.

3. Appellant did not contest the items as listed in the Findings of Fact above. In a positive vein he has agreed to perform the necessary repair. Since there is no challenge to those items before the Hearing Examiner the Order of the Director related to them is affirmed.

4. Seattle Municipal Code Section 22.206.050(F) was cited by DCLU for the requirement that appellant provide a hot water supply for the laundry tray. The specific section states in relevant part that "there shall be an approved system of water supply, providing both hot and cold running water". The Code section does not specifically mention or include auxiliary features such as laundry trays. On the other hand, laundry facilities are not excluded. The Code subsection begins with a reference to "all plumbing fixtures". The Director's Order is considered prima facie correct. (The Hearing Examiner was presented with no evidence as why the laundry supply facility should be exempt from the requirement of hot and cold running water). The Notice of Violation as to that item is therefore affirmed. This conclusion shall only be read to require that if appellant provides a laundry tray, appellant should provide the hot and cold running water.

5. Seattle Municipal Code Section 22.206.050(G) provides that all required fixtures, facilities and equipment shall be maintained in a "safe and sanitary condition". The Hearing Examiner is adequately persuaded by the evidence that the instability of the lower lavatory unit; the absence of a relief drain pipe (upper unit water heater); and the existence of cross-connected faucets are not in accord with safe and sanitary requirements of the Code. With specific reference to the cross-connected faucets, the Hearing Examiner cannot conclude that their historical use exempts them from present day safety requirements.


6. Similarly, the vintage of the structure, the only issue raised in defense by appellant, does not exempt the responsible party from providing that the building entry doors be reasonably weathertight, Seattle Municipal Code Section 22.206.080; providing that the windows and rails be in sound condition; providing compliance with the stairway rise and run requirements; and compliance with the security (doors) requirement of the Code. See e.g., Seattle Municipal Code Section 22.206.130(A) which specifically requires that unattended building entrance doors "be self-closing, self-locking, and equipped with a dead latch". Regarding windows, the Hearing Examiner was presented with direct, credible testimony that certain structure windows were not functional, i.e., in sound condition. The Hearing Examiner therefore affirms the Order of the DCLU Director relating to the contested items in the categories of Inadequate Maintenance, Inadequate Fire Safety and Inadequate Security.

7. Appellant has requested a 90 day period for completion of the repairs required. In part because of suspected deliberate delays in compliance, DCLU requests that compliance be ordered forthwith. The list of items to be corrected is extensive and the repair may be time consuming and costly. Since The Hearing Examiner received insufficient evidence on the practical costs in time or finances, the matter of a compliance date is deferred to DCLU. DCLU shall consider any requests for extension in accord with the provisions of Seattle Municipal Code Section 22.206.240.

Decision

The Order of the Director is AFFIRMED.

Entered this 28th day of March, 1986.


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.