

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

DAVID L. BERDEL

FILE NO. H-86-007

from a decision of the Director of
the Department of Construction and
Land Use

Introduction

Appellant appeals the Order of the Director of the Department of Construction and Land Use concerning the Director's complaint that the building at 706 South Donovan Street is unfit for human habitation or otherwise.

The appellant exercised the right to appeal pursuant to Section 22.208.050, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on July 22, 1986.

Parties to the proceedings were: appellant, David L. Berdel, by his attorney, Robert Carpenter, and the Director, Department of Construction and Land Use, by Sandy Watson, code compliance officer.

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

Findings of Fact

1. David L. Berdel is the owner of a single family dwelling at 706 South Donovan Street.

2. The Director issued Director's Complaint notifying owners that the subject building had been inspected and was found to have a number of high hazard conditions.

3. A hearing was held on May 20, 1986, on the Director's Complaint and it was determined that the building 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 building(s) in a repaired condition." Exhibit 2. Owners were ordered "TO REPAIR, ALTER OR IMPROVE IT TO RENDER IT FIT FOR HUMAN HABITATION OR OTHER USE OR DEMOLISH AND/OR REMOVE THE BUILDING(S) NOT LATER THAN JULY 8, 1986." (Emphasis in original) Exhibit 2.

4. Appellant appealed, challenging the determination that the cost of repairs would exceed fifty percent of the repaired value of the building.

5. With the removal of items that do not represent repairs necessary to make the building no longer "unfit for human habitation" and the correction of one figure, the Director's estimate of the cost of repairs is \$19,066.

6. Item No. 4, Exhibit 4, "Replace all interior wall and ceiling covering" includes cabinetry and doors in the \$8,729 cost. New cabinetry is not necessary to make the structure no longer unfit for human habitation.

7. Director's Rule 3-86, effective March 10, 1986, provides that the cost of repairs may be determined by using the HOME-TECH Remodeling and Renovation Estimating Manual, Volume 1, (manual) but that other methods may be acceptable when the circumstances warrant.

8. The Director's estimate for cost of repairs is based on costs in the Residential Cost Handbook. The inspector calculated the amounts on March 24, 1986. The inspector later compared the cost estimated on the Residential Cost Handbook for one item with the estimate in the manual and found the latter to be higher.

9. The owner is a licensed plumber and a plumbing contractor. He has been a general contractor in the past. He is not a qualified electrician.

10. The owner's intention is to fix up the subject property and sell it. He has had an architect draw plans for the building.

11. Because the owner intends to do much of the repair work himself and can get materials at a contractor's discount his estimate of repair costs is markedly less than the Director's. He estimates his cost at \$11,633, without kitchen cabinets and doors.

12. Using the Square Foot Appraisal Form based on the Residential Cost Handbook the inspector estimated the repaired value of the structure to be \$33,448. This value was computed by multiplying the floor area by a square foot cost reduced by 25.25 percent for depreciation. The square foot cost used was that for a residence of low quality. The depreciation rate is a combination of age and condition. The inspector used the multiplier for the building's present condition which he determined to be poor.

13. Since the comparison to be made is with repaired value the multiplier used by the inspector for poor condition may have been incorrect. After repair the condition should be better than poor.

14. The multipliers to determine amount of depreciation range from .8 for excellent condition when repaired to 1.15 for poor condition.

15. The market value of the subject property in a repaired condition was estimated by Hansen Realty to be \$50,000. The letter did not state whether or not the figure included land.

16. The value of the land used by the King County Assessor's office for 1985-86 was \$21,600. In the past seven years the assessor has placed a value as low as \$7,000 on the land.

Conclusions

1. The Hearing Examiner has jurisdiction over the parties to this hearing and the subject matter pursuant to Section 22.208.050.

2. Section 22.208.020 provides:

Any building found unfit for human habitation or other use shall be ordered repaired or vacated and closed if the degree of structural deterioration of the building in relation to its repaired condition is less than fifty percent (50%) or the estimated cost of repairs will not exceed fifty percent (50%) of the market value of the building in a repaired condition; otherwise the building shall be ordered repaired or demolished.

3. The appeal raises the issue of whether the "estimated cost of repairs" can be particularized to the costs likely to be incurred by a specific owner. The Director argues that standardized repair costs should be used so that the Director applies the same standards to each property. Using standardized costs appears to be an acceptable approach for the Department in making its estimate. However, no language in the code prohibits con-

sideration of the actual costs, where known. Here, the owner has made a showing as to the costs he would actually incur. His figures were largely unrefuted.

4. The intent underlying the distinction between buildings where repairs would cost 50% or less of their repaired value and those costing more than 50% must be the assumption that if the cost would be more than 50% the owner would be unlikely to repair. In this case, the likely eventuality of demolition should be forced whereas if the cost is less than 50% the chance that the owner will repair the structure is good enough that the City is willing to await that action and allow closure of the structure. Since it is the effect of the cost on the owner's decision to repair or demolish that is critical, the actual cost to the owner, then, should be considered.

5. Since the actual cost of repairs would be less than 50 percent of the Director's estimate, the order should be modified to reflect that the estimated cost of repairs will not exceed fifty percent of the market value of the building in a repaired condition and that the owner is required to repair, alter or improve it to render it fit for human habitation or other use or close the building.

Decision

The Order of the Director is modified to provide:

Pursuant to the conditions and standards of Chapter 22.208, it has been determined that the building at 706 South Donovan Street is unfit for human habitation or other use and that the estimated cost of repairs will not exceed fifty (50) percent of the market value of the building in a repaired condition.

Based on these determinations, it is hereby ordered that all persons having any interests in the subject building are required to repair, alter or improve it to render it fit for human habitation or other use or vacate and close the building.

This matter is remanded for the purposes of establishing a compliance date and any conditions necessary for the closure of the building.

Entered this 21st day of August, 1986.

M. Margaret Klockars
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Deputy 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.