

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

In the Matter of the Appeal of

CHRISTO AND DOROTHY TOLIAS

FILE NO. DHM-89-001

from an Order under the Downtown
Housing Maintenance Ordinance

Introduction

This matter was heard before the Hearing Examiner on April 5 and 11, 1990, and the record remained open for memoranda and legal authority until April 23, 1990.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code unless otherwise indicated.

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. A timely notice of appeal of a decision of the Director of the Department of Construction and Land Use ("Department") was filed with the Office of the Hearing Examiner, the City of Seattle.

2. The subject property is located at 1513 1/2 1st Avenue in Seattle, King County Washington. This is on the west side of 1st Avenue and south of Pine Street. The subject premises consist of the upper floors of a three-story structure. These premises are generally referred to as the Seven Seas Hotel. It contains approximately 34 rooms, none with a shower or bath.

3. Access to the structure's basement can be obtained from Post Alley to the west. Service utilities enter the building from the alley. The elevation of the alley is about 20 ft. below the grade of 1st Avenue.

4. The structure was built in the latter part of the last century or the early part of this century. It has endured many incarnations.

5. The ground floor of the building is mostly occupied by a business. Access to the upper floor is by way of a stair case immediately to the north of the storefront. The business obtains heat from a source separate and apart from the upper story premises. Similarly, its sewage and running water systems are distinct from the remainder of the building.

6. From 1980 through 1989 the upper floors were leased to Plymouth Housing Group, a not for profit corporation that provided low income housing. By the end of the lease term the corporation was paying \$799 per month to the landlord/appellant.

7. When landlord/appellant regained the premises in August 19, 1989, only three occupants remained in rooms within the subject property. The property could not be maintained with so few people inside because of the need to guard against vandalism and to maintain the remainder of the premises. These last occupants were asked leave by landlord/appellant.

8. Landlord/appellant did nothing either directly or indirectly to discourage occupancy of the rooms in the subject property before the end of the lease with Plymouth Housing Group. Plymouth did not want to renew the lease at the end of its term. Landlord/appellant is not in the business of providing low cost

or no cost housing.

9. The interior of the subject property is, in a word, dilapidated. Plaster has fallen away in places exposing lathing; floors are encrusted with grime and filth; windows are frozen shut; trash fills many rooms to shoulder heights; toilets are filthy beyond belief and paint is flaking or totally soiled in most areas.

10. The owners/appellants of the subject property do not appear to have any specialized training in building renovation or repair nor do they have any familiarity with the complexities of the codes which govern building maintenance and repair.

11. The building owners will need the services of an architect/designer to plan the repairs necessary to establish a living environment that meets even the minimal code requirements of the Downtown Housing Maintenance Ordinance. In addition, they will likely need the services of engineers for structural, electrical and heating systems.

12. Because of the age of the structure and the number of renovations which have occurred over time, it is impossible to tell the condition of plumbing and electrical systems. Further, the age of structural members increases the likelihood that they may no longer bear loads to their original design capacity.

13. The services to be provided by professionals in any repair of the building reasonably include preliminary cost estimations; architectural analysis; schematic design and project administration; electrical engineering and mechanical and structural engineering.

14. The Department prepared, at different times, estimates of the cost to the appellant of bringing the subject property into compliance with the Downtown Housing Maintenance Ordinance. These estimates do not provide for professional fees. The Hearing Examiner credits testimony of the appellants' witnesses that such services are necessary. A reasonable fee for these services should not exceed \$25,000. This is based upon the estimates provided by Mithun Architects in Appellants Exhibit 2. However, the full amounts set forth in that exhibit are not credited because they may be overstated, especially with respect to schematic design and construction administration; structural engineering and hazardous material engineering. Increases in professional fees are to be anticipated and should be taken into account by way of an overall contingency for cost overruns.

15. The heating plant for the residential units consists of a steam heat exchanger located in the basement located off of Post Alley. The present heating system needs to be replaced. The heat exchanger itself and many of the heating parts leading into the interior of the building are insulated with asbestos. At the time the heating system is repaired and replaced, the asbestos insulation will have to be removed in a manner which complies with applicable safety standards. The total cost for removal, including an engineering survey, is \$9,000.

16. A new heating system, according to the Department's Exhibit 12, will cost \$10,000 while Appellant's Exhibit 2 states the price to be \$15,013. However, the Department's estimate of this cost item does not include modifications of radiators, descaling and a main regulating valve. Installation of a new heating plant necessarily involves work at these areas. A reasonable cost for these items and services, including the new heat exchanger itself, totals \$13,500.

17. New plumbing has to be provided to existing toilets and room sinks. This work will include some new fixtures and piping. Appellants' architect estimates this cost to be \$40,599 while the Department comes to a cost estimate of \$28,000 in its Exhibit 12. Appellants estimate is in part based upon the assumed need under the Building Code to provide a separate toilet room for females on each of two floors. The Department could not provide

authority or direct evidence to contradict this assumption. The Hearing Examiner credits appellants evidence on this point but not to the extent claimed in Appellant's Exhibit 2.

18. The Hearing Examiner does not believe the following items have been proved by appellants: replacing janitor sink, \$1,100; replacing chipped and broken lavatories \$900; replacing lavatory faucets, \$375. In Addition, the Hearing Examiner believes the cost of connecting the roof drain to the street storm sewer system is \$4,500 rather than \$5,500. Similarly, the cost of replacing painted fire sprinkler heads is overstated by \$1,500 and should be only \$3,000. Thus, the estimated plumbing cost will be \$35,724.

19. Both parties recognize that pest control is necessary. The Department's estimate of \$1,800, however, does not have as its source an estimate from a pest control service. Appellants' estimate of \$4,900 is in fact based upon such an estimate and is, therefore, more credible. The Hearing Examiner credits the estimate provided by appellants on this point.

20. The Department and appellants each recognize the need for plaster repair and painting. The estimates are \$40 apart, according to Appellants' Exhibit 2 and Department's Exhibit 12. The cost of this work will be \$15,200.

21. Appellants' estimate for electrical work, according to its Exhibit 2, is \$11,487 while that of the Department in its Exhibit 12 is \$1,980. Appellants estimate includes a contingency of \$2,500 for Code violations uncovered during construction. This should not be included in the estimate for this particular work as an overall project contingency should suffice. Likewise, the Department's estimate takes into account only basement wiring and correction of 28 citations. The visual inspection of the subject premises revealed cracked or unmounted wall sockets and light fixtures in a number of rooms. Ground fault outlets should be installed in bath and toilet areas if only to reduce the owners' liability for personal injury to potential tenants. The fixtures necessary can be obtained at less cost than those estimated by appellants. Further, appellants Exhibit 2 misstates the extension cost of placement of the basement fuse box by \$250. Electrical work will reasonably cost \$7,000.

22. Certain of the flooring in the subject property has to be repaired or replaced. The Department does not recognize this as a cost item, while appellants estimate a cost of approximately \$15,000. Replacing subflooring at the sink in unit 32 and toilet rooms and installation of rubber basing is reasonably necessary for minimal standards of habitation. The cost of this will be \$1,750.

23. Work on the roof will be required for plumbing, venting or installation. This will cost \$1,250.

24. Broken windows and window frames will have to be repaired or replaced at a cost of \$835. This was not a cost item recognized by the Department. But the work clearly has to done for reasons of tenant health and safety.

25. Minimal compliance with the Building Code will require installation of fire rated doors at shower/toilet rooms, janitor closet, office and at the head of the stairwell. These will cost \$4,787.

26. Removal of trash and debris will cost \$4,000. The Department's estimate of \$100 is wholly unrealistic given the amount of trash already found on site and does not take into account construction debris. The appellants of \$11,500 seems far too high even assuming permanent closing of the New Castle landfill.

27. Total construction costs, including professional fees, come to \$122,943. Construction costs, standing alone, total \$97,934.

28. To the construction cost must be added reasonable contract overhead and profit. The Department figures that to be 18 percent. The Hearing Examiner recognizes that determining profit in the context of construction contracts is largely a metaphysical exercise depending upon creativity in keeping books. But both parties insisted these are discrete, observable events, much like detection of some subatomic particles is said to be. Total profit and overhead comes to \$22,130.

29. The Department assumes a 10 percent contingency for overruns while the appellant assumes 15 percent. Both seem low because of the age of the building and the unpleasant surprises reasonably expected to be discovered given the amount of work to be done with systems already in place and the decrepitude of this structure. The appellants' figure is the more reasonable, or contingency for services, construction, profit and overhead is reasonable or the total sum of \$21,761.

30. To be added to construction costs is state sales tax of 8.1 percent or \$8,634 ($\$107,925 \times .081$) (construction costs plus profit, plus overhead, plus contingency less professional fees and contingency).

31. The total cost of providing minimal habitability to 24 units of the subject property's \$178,120 or \$7,421 per unit.

Conclusions

1. The Hearing Examiner of the City of Seattle has jurisdiction of the subject matter and of the parties.

2. The matter is before the Examiner under SMC 22.220.140. The decision of the Director may be reversed only if the decision below is "clearly erroneous." The review by the Hearing Examiner is de novo. Id.

3. The Hearing Examiner recognizes that estimating renovation of the subject property in this case is, to some extent, arbitrary. Each side has a wholly different interest. Each side is not bargaining at arms-length to provide a bid for work to be done at the subject property. The appellant does not desire to have the work performed while the Department desires to have appellant perform the work. Each side's estimates were made in like regard.

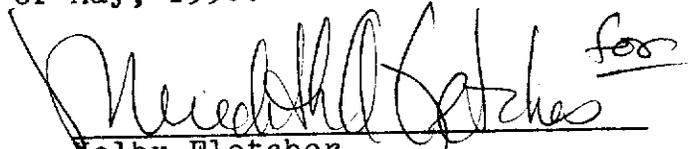
4. The Order of the Director in this case was premised upon the conclusion that the appellants could effect repairs and rehabilitation to the living units at the subject property at an average cost of less than \$4,000 per low income rental unit. See former SMC 22.220.060B. Finding No. 31 shows that the total cost of rehabilitation and repair, on average, of the housing units will be in excess of \$6,000. In any event, the \$6,000 threshold set out in ordinance 114865 is not effective in this case as it would affect a substantive right of appellants which existed as of the time the Director made a final decision in this case. See In re Moto, 114 Wn.2d 465, 471 (1990).

5. The Hearing Examiner is firmly of the opinion that a mistake has been made in the decision of the Director below. Therefore, the decision of the Director is reversed and the Director shall be and hereby is instructed to file any paper, document, or thing necessary to remove any cloud on title, if any there be, on and to the subject property with respect to any deficiencies found pursuant to SMC 22.220.010 et. seq.

Decision

The decision of the Director is reversed.

Entered this 7th day of May, 1990.

 Melby Fletcher ^{for}

Kelby Fletcher
Hearing Examiner Pro Tempore

Concerning Further Review

Any appeal of this decision must be filed in the Superior Court within 30 days of the date of the decision.