

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

In the Matter of the Appeal of

MR. and MRS. RAYMOND A. BLADINE

FILE NO. H-85-005

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 1501 Dexter Avenue N.

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-85-004.

Parties to the proceedings were: appellants by Bruce Fine, attorney at law, 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 1501 Dexter Avenue N. and is legally described as the:

easterly 70.21 feet of Lots 1 and 2, Block 2, Union Lake Addition Supplemental to the City of Seattle as recorded in Volume 2 of Plats, page 177, records of King County, Washington.

2. The property is located east and downslope of Aurora Avenue N. at the corner of Galer Street and Dexter Avenue N.

3. Prior to December 11, 1983, the subject lot was used as an asphalted parking lot with a double driveway to Dexter Avenue. A rear (west) rockery wall separated the 1501 property from the more elevated west adjacent site addressed as 714 Galer. The Galer property was developed with a two-story, frame dental office building.

4. On December 11, 1983, a slide emanating west of Aurora destroyed the dental building and carried the vast majority of its walls, roof and other portions downhill to the 1501 Dexter Avenue site and beyond. Most of the foundation remains at the subject site. City personnel bulldozed or scraped some of the concrete and other items from the Dexter Avenue right-of-way onto the 1501 Dexter property. Appellants gave no permission for this to be done. The slide also left the 1501 lot completely covered with mud.

5. The north adjacent site, addressed as 1511 Dexter Avenue N. is also owned by appellants and was also covered with post-slide mud and debris. The slide destroyed the rear and bathroom of the 1511 office building. Appellants repaired the office building in their effort to retain tenants.

6. The DCLU Housing Code Complaint dated June 13, 1985, describe the following "fire and safety hazard" conditions observed on site:

Broken portions of the demolished building leaving concrete rubble, composition roofing, plaster, boards and miscellaneous items.

7. By Order of the Director dated August 7, 1985, DCLU ordered that all

...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 REMNANTS AND OTHER DEBRIS NOT LATER THAN OCTOBER 31, 1985 (emphasis in original).

Appellants then submitted this appeal.

8. The DCLU inspector determined that after his March, 1985, site review that both the 714 Galer and 1501 Dexter sites were "hazardous". That witness testified that the situation was hazardous because children could walk inside broken portions of the gable roof, drunks could attempt to spend the night amongst the pile and that the composition roofing would be a fire hazard three months of the year.

9. No person has attempted occupation of the 1501 pile of rubble.

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; 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". A "building" is "any structure which is used, or designed or intended to be used for human habitation or other use". Seattle Municipal Code Section 22.204.060. Assuming that the collection of rubble that was involuntarily deposited on the 1501 site is a "structure", the record fails to reflect that the rubble is "used, designed or intended to be used for human habitation" or for any other use.

5. Further support for appellants' challenge to the DCLU Order lies in the Chapter 22.208 legislative scheme. The "high hazard" criteria considered in declaring a building unfit for human habitation or other use include whether there is 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.

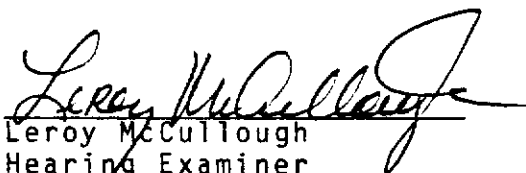
Seattle Municipal Code Section 22.208.010. The criteria, whether read collectively or singly do not apply to a collection of rubble. The only criterion potentially applicable is Section 22.208.010(F). Even here, however, the risk of fire or explosion is particularized and limited. If the risk of fire or explosion were enhanced to a prohibitive degree, the threshold question of whether the rubble equates to a "building" would remain.

6. Finally, 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" was a 714 Galer Street dental office structure. Its remains were unceremoniously dumped on the 1501 property. As far as 1501 is concerned, there never was a "building" on site to be repaired or demolished. Assuming to the contrary that there was a "building", it has already been demolished. No further authority is presented under Chapter 22.208, Seattle Municipal Code, to require any activity of appellants with respect to the property.

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.