

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

WILLIAM H. DOWNEY

FILE NO. H-87-006

from a decision of the Director of  
the Department of Construction and  
Land Use pursuant to the Housing  
Code

#### Introduction

William H. Downey appeals the order of the Director, Department of Construction and Land Use, concerning the Director's complaint regarding a building unfit for human habitation or other use at 549 North 85th Street.

The appellant exercised the right to appeal pursuant to Section 22.206.230, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on July 1, 1987.

Parties to the proceeding were appellant, as agent for his mother, Nellie Downey, and the Director, by Faith Lumsden, acting code compliance coordinator.

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. Don McGregor, senior housing and zoning inspector, visited the property at 549 N. 85th Street on January 16, 1987, in response to a complaint. He observed a dilapidated garage with rotted foundation and walls propped by 2 x 4's and leaning against a dog pen on the adjoining property.

2. After reinspecting the property on February 2, 1987, the inspector wrote a notice of violation, "Director's Complaint: Building Unfit for Human Habitation or Other Use," dated February 10, 1987. Exhibit 6.

3. The notice of violation cited the following as high hazard conditions:

STRUCTURAL DEFECTS: The detached garage structural members are defective and unsound to include the walls and roof assemblies.

DEFECTIVE OR INADEQUATE WEATHER PROTECTION: Detached garage has broken, missing, and deteriorated exterior wall covering. Garage roof covering and sheathing is deteriorated and missing. Garage doors are inoperative and deteriorated.

FIRE AND SAFETY HAZARDS: Garage is full of litter, debris, and scrap lumber.

4. After a hearing before the department's hearing officer, the same "high hazard" conditions were found and W. A. Downey and Nellie Downey 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 not later than May 26, 1987, and to vacate and close the building not later than March 26, 1987." The order was issued February 26, 1987.

5. Appellant, son of Nellie Downey, as her agent, and having an interest in the building in his own right, appealed the order.

6. Mr. Downey has spent one month working on the garage, preparing the plywood with wood preservative for repair of the garage, and has gathered materials and exposed some of the foundation. He has affixed a cable to part of the garage so that he can hold it together as he rights it and makes repairs.

7. Mr. Downey has been ill and unable to work during part of the time since the order.

8. The materials in the garage have value to Mr. Downey and include lumber, garden stakes and pickets for fencing.

9. The garage is tilting to the west at an angle of about 30 degrees.

10. The roof covering and sheathing has been removed exposing the interior of the garage to the elements.

11. The inspector found the foundation to be entirely rotted.

12. Inspector McGregor, an inspector for 27 years, estimates that the structure is 85 percent deteriorated.

13. Photos, Exhibits 1 and 2, show the structure to be severely deteriorated and pervious to rain.

14. Mr. Downey learned about building repair on the farm when he was growing up and from observing his father and neighbors. He believes the structure is not as deteriorated as stated by the inspector and, if it is, it is worthy of repair.

#### Conclusions

1. The Hearing Examiner has jurisdiction over these parties and this subject matter pursuant to Chapter 22.208.

2. Appellant urges that he be given more time to complete repair of the garage and contends that 1) the garage is not so deteriorated as found by the inspector, presumably less than 50 percent, and 2) that the conditions found do not constitute a high hazard.

3. The Director may grant an extension of the time for compliance of up to 30 days upon a showing that the required improvements have been started and that work is progressing satisfactorily Section 22.208.070. At the time of hearing, the Director did not see satisfactory progress.

4. The code establishes the standards for repair or demolition in Section 22.208.020.

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 repair 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.

5. Section 22.208.010 lists conditions determined to be "high hazard." The conditions in need of correction cited in the complaint and order constitute high hazard conditions 22.208.010-A, "Structural members that are of insufficient size or strength to carry imposed loads with safety....," Section 22.208.010B, "Inadequate protection to the extent that occupants are directly exposed to the weather...." and Section 22.208.010F, "Conditions that enhance the risk of fire or accident...."

Since the City Council has legislatively determined that these are high hazard conditions, their designation as such cannot be challenged to the Hearing Examiner.

6. On appeal, the Director's order is to be deemed to be prima facie correct and the burden of establishing the contrary is upon the appellant. Section 22.208.050B.


7. The testimony of appellant as to the condition of the structural components of the garage did not overcome the presumption of correctness where the inspector is experienced and his opinion is supported by pictures showing a very deteriorated building, near collapse.

8. "Accumulations of junk and debris" is listed as a high hazard condition under Section 22.208.010F. The complaint and order listed "litter, debris, and scrap lumber." To the extent the lumber is usable it is neither junk nor debris and its storage would not violate the Housing Code. The order should be modified to remove usable lumber from the cited fire and safety hazards.

#### Decision

The order of the Director requiring the owners to repair the structure or demolish it is modified to allow storage of usable lumber but in all other respects is affirmed.

Entered this 15<sup>th</sup> day of July, 1987.

  
M. Margaret Klockars  
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.