FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

RICHARD K. WYMAN FILE NO. H-83-005

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

Introduction

Richard K. Wyman appealed a Notice of Violation issued by the Director of the Department of Construction and Land Use (DCLU) concerning premises known as 1217 South Angelo Street.

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

This matter was heard before the Hearing Examiner on January 31, 1984, after the parties and interested persons agreed to continue the case from the originally scheduled date of January 10, 1984.

Parties to the hearing proceedings were: Appellant by Daniel Kellogg of Warren and Kellogg, P.S., and the DCLU Director by Sandra M. Watson, code compliance officer. Curt Epperson of Epperson, O'Shea and Straight appeared on behalf of Italian Specialty Foods, a neighboring business of the subject property.

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. The subject property, addressed as 1217 South Angelo Street, is legally described as:

> Lot 7, Block 2, Boitano's Supplemental Addition to the City of Georgetown, as recorded in Volume 14 of Plats, page 33, records of King County, Washington.

The owner is Richard K. Wyman, apellant herein.

2. By Notice of Violation dated August 31, 1983, the Seattle Department of Construction and Land Use asserted ten categories of "observed violations", namely:

1. inadequate light and ventilation
2. inadequate sanitation
3. inadequate structural condition
4. inadequate shelter
5. inadequate maintenance
6. inadequate heating facility
7. inadequate electrical system
8. inadequate fire safety
9. inadequate security
10. (presence of) garbage and other debris; (absence of) smoke detection devices.

3. K. Swanigan, a Housing and Zoning Manager, served as the DCLU hearing officer for the October 1983 hearing granted pursuant to appellant's request for reconsideration. Swanigan recalled no testimony from appellant regarding either appellant's bankruptcy or illness status, but did remember that appellant requested a compliance date extension. Following reconsideration of the Notice of Violation DCLU sustained the Notice of Violation by Order dated October 7, 1983.

4. By letter dated and received in the Office of the Hearing Examiner December 15, 1983, appellant complained that on November 15, 1983, Legal Messenger Service delivered "a Notice from the Department of Land Use, upon their request, to someone in my neighborhood." The letter continued that the person who received the notice was unknown to appellant and "did not reside at my address". Appellant stated that he discovered the service when he called the Department of Land Use within the two weeks preceding his letter. (The Affidavit of Service of record states that a Gary Wilson, resident of 1217 South Angelo, was served with the October 7 order on November 15, 1983, at 11:05 a.m.)

5. Appellant's letter then complained about the "illegal due process"; that federal bankruptcy court has jurisdiction over the property in question; and that appellant was under tremendous stress. The letter closed with a request for a 6 - 12 month extension "to complete the issue according to my satisfaction and mental condition".

6. This matter was then set for hearing date of January 10, 1984. On that date appellant, DCLU and interested neighbors appeared before the Hearing Examiner and agreed, pursuant to appellant's request, to continue the hearing to January 31, 1984. The record of the January 10 proceeding further reflects that the DCLU representative served appellant with Notice of the Violation while parties were assembled in hearing.

7. Also on January 10, 1984, the Office of the Hearing Examiner issued and mailed to the parties and to the neighbors' representative an Order granting the requested Continuance and setting the hearing for January 31, 1984.

8. In the January 31 hearing, appellant testified that regarding his due process claim DCLU had impermissibly broadened the scope of an inspection, which resulted in the charges here at issue. Appellant reiterated his assertion that no jurisdiction lay with the City Department of Construction and Land Use since appellant's property was covered by bankruptcy court. With respect to the due process and bankruptcy issues, appellant presented no further argument or legal authority.

9. Appellant did testify and the Hearing Examiner finds that appellant's wages and property became subject to the jurisdiction of the Bankruptcy court in 1982.

10. The Notice of Violation required corrective action on the cited violations by December 1, 1983. Based upon responses to direct hearing inquiries by the Hearing Examiner and other participants, the Hearing Examiner ruled in hearing and here finds that the appellant's appeal did not contest the cited violations, but rather was focused on the request for an extension of time for compliance. Appellant testified that a host of financial, health and technical problems have affected his non-compliance to date, but that 80% of corrections would be complete within 6 months of the January 31 hearing.

11. Appellant's most recent plot plans are approximately 3 years old. Appellant has hired no licensed contractor for the tasks. However, Rick Jimmy and some co-workers with carpentry experience have volunteered to assist appellant in repairing the subject property.

12. Community activist Kay M. Durkee also testified that she, student architects and others form organizations such as the Cherry Hill Coalition have assisted in picking up debris from appellant's property and plan to offer further assistance.

13. When DCLU Housing and Zoning inspector Petersen first inspected the subject premises in April 1980, he observed what appeared to be housing code violations, such as inadequate windows. To date of the hearing, Petersen testified that 8 complaints about the subject premises had been received by DCLU.

14. Peterson also inspected appellant's property on August 23, 1983, and the Notice of Violation was issued on August 31, 1983. The December 1, 1983, compliance date provided in the Notice was based on Petersen's experience "as a builder and inspector"; and considered that building permit approval would be required for some items, such as the replacing of structural components. Petersen testified credibly that he further considered that an electrical permit would be required to correct the electrical system problems.

15. The December 1 compliance date also assumed some work, less than 40 hours per week, by the appellant. With a hired contractor, Petersen projected one month for completion of the project.

16. Petersen made a third, partial, pre-arranged inspection on December 7, 1983. By then, much debris had been removed and some progress had been made. It was obvious to Petersen that some improvement was underway, although no application for an electrical permit had yet been made. See photographic Exhibit, Director's 4.

17. Appellant was present during the December 7 inspection. He was capable of understanding the DCLU concerns expressed before and during the inspection.

18. On January 6, 1984, appellant applied for an electrical permit, and on January 11, 1984, the application of Order to allow an Administrative claim of $325.35 to DCLU was approved by the Chapter 13 (Bankruptcy) Trustee and signed by the Bankruptcy judge.

19. E. Appel, another Housing and Zoning Code inspector, inspected the subject premises on January 24, 1984 at the request of appellant's attorney and DCLU. Appel testified that of the 10 categories of violations noted in the Notice of Violation only plumbing fixture sub-item 2g and shelter sub-item 4b, water on basement floor, were corrected.

Conclusions

1. The Hearing Examiner has jurisdiction of Housing Code appeals pursuant to Chapter 22.206, Seattle Municipal Code. Section 22.206.210 requires that pursuant thereto the Director shall cause a notice of violation to be served "upon the owner, tenant, or other person responsible for the condition, by personal service, registered mail..." The DCLU Director also shall conspicuously post the notice of violation on the property. Within 30 days of the date of service and posting, any affected party may appeal to the Hearing Examiner. Section 22.206.230.

2. The first question is whether DCLU, hence the Hearing Examiner, has jurisdiction of this matter. Appellant's letter of appeal dated December 15, 1983, asserted lack of personal service on November 15, 1983. This stands in some contradiction to the Affidavit of Service of record, which states that a resident of 1217 South Angelo was served. Also, service was made upon appellant on January 10, 1984, in the hearing of that date. Appellant has neither alleged nor proved any detriment or injury resulting from the alleged "due process" violation. At worst, appellant could allege that his service first occurred January 10, 1984, and that therefore he should have had 30 days thence to appeal. However, appellant did not amend, withdraw or substitute his December 15, 1984, letter of appeal after the January 10, 1984, service. The January 10

hearing was continued at the request of appellant. The other general allegations on due process and preempted jurisdiction having been considered as well, the Hearing Examiner concludes that Hearing Examiner jurisdiction of this matter is proper.

3. Section 22.206.230 provides that the Hearing Examiner decision "shall be made upon the same basis" as the Director, provided that the Director's order shall be deemed to be prima facie correct, with the burden of establishing the contrary upon the appellant.

4. In determining a "reasonable time" for compliance the Director, and on appeal, the Hearing Examiner, shall consider: the type and degree of hazard cited; any expressed intent of the responsible party to refrain, demolish or close the building; procedural requirements (permits); and "any other circumstances beyond the control of the responsible party". Section 22.206.210.

5. Appellant has not met the burden of overcoming the prima facie correctness of the Director's decision. The evidence of record shows that complaints to DCLU relating to appellant's property date from 1980; that the great majority of sanitation, fire safety, garbage, and inadequate shelter problems, of more than an insignificant degree, remain unresolved at least to date of January 24, 1984; that the application for an electrical permit was not filed until January 6, 1984; and that not all of the corrections required building permit application. Nevertheless, these corrections were not made. Appellant has not shown how bankruptcy proceedings impaired his ability to repair the property. In fact, once the application for electrical permit cost was made, it was approved by the court. It is to appellant's credit that some community minded persons have volunteered to assist in the correction effort, and that in spite of bouts of illness appellant made some progress as was noted following the December 1983 inspection. Although the Director's decision is here affirmed, the Director may choose to acknowledge appellant's efforts made after the public hearing.

Decision

The Director's determination is affirmed. The request for extended compliance date is denied.

Entered this 14th day of February, 1984.

Leroy McCullough
Hearing Examiner

Concerning Further Review

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any request for court review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981). Should such request be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examaner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court.