

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

In the Matter of the Appeal of

CASCADE COMMUNITY COUNCIL

FILE NO. S-75-007

from a ruling of the  
Superintendent of Buildings

The appeal is DENIED and the decision of the  
Superintendent of Buildings is affirmed.

Introduction

The appellant, Cascade Community Council, filed an appeal from the decision of the Superintendent of Buildings to issue a building permit to demolish the structures located on property at 1810 Court Place. The appellant contends that such permit should not be issued until an Environmental Impact Statement is prepared.

The appellant exercised its right to appeal pursuant to Section 25.40(c), Ordinance 86300, as amended by Ordinance 104795.

This matter was heard before the Hearing Examiner on December 22, 1975.

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 State Credit Association, Inc. (hereinafter SCA) applied on November 18, 1975 for a permit to demolish the structures on property located at 1810 Court Place. The Superintendent of Buildings (hereinafter the Superintendent), on November 20, 1975 published notice of the decision to grant the requested permit. The appellant filed an appeal on December 3, 1975, maintaining that the permit should not be issued until an Environmental Impact Statement (EIS) is prepared by the Superintendent, pursuant to the State Environmental Policy Act of 1971 (SEPA) (RCW 43.21c).

2. The decision of the Superintendent is an appealable ruling pursuant to Section 25.40(c), Ordinance 86300, as amended by Ordinance 104795.

3. The subject property is zoned General Commercial (CG) and is developed with a single-family residence and attached garage, which due to the date of their construction are nonconforming uses in this zone. In a CG zone, dwelling

units are authorized to exist only as a conditional use when authorized by the Seattle City Council, pursuant to Section 26.36.085, Seattle Code. Dwelling units may also exist in a CG zone if they are nonconforming uses.

4. In the case of Cascade Community Council vs. Alfred Petty and Seattle Times Company, No. 799613 (Superior Court of the State of Washington for King County, October 30, 1975) (hereinafter referred to as Seattle Times), the court ruled that the Superintendent must prepare an EIS prior to issuing a permit for the demolition of the structures located on property at 116, 118, and 120 Fairview Avenue N.

5. The structures to be demolished in the Seattle Times case are located in a district referred to as the Cascade Neighborhood and are essentially residential in character. The demolition of nine dwelling units was at issue in this case. The structures involved included a single-family residence, a seven-unit apartment building, and a dwelling unit housed in a commercial building.

6. The court determined that the Superintendent should consider the cumulative impact of the proposed demolition of the nine dwelling units on low-income housing in the Cascade Neighborhood in evaluating the environmental impact of the demolition of those dwelling units.

7. The court's oral opinion in the Seattle Times case (exhibit no. 6) states at page 8 the following paragraph: "And I guess what I'm doing, is drawing the line. And I sincerely wish that the line could be drawn at a 30, 40 or 50 unit apartment rather than a 9 unit, but I believe the law requires the line to be drawn."

8. The demolition of a single-family residence, which is not of historical significance nor is located in a designated environmentally sensitive area, has been categorically exempted from the EIS requirements in the Proposed Guidelines for SEPA. These guidelines have been prepared by the Council on Environmental Policy and appear as W.A.C. 197-10-170.

9. The City of Seattle has initiated a Cascade Planning Study, the purpose of which is to guide the city in determining the feasibility of preserving and enhancing residential structures in the Cascade Neighborhood. If this action is determined to be feasible, the city would then maintain a policy to encourage retention and development of residential facilities in this area. The first phase of this study is scheduled for completion towards the end of January, 1976.

10. The subject property is located on the east side of Court Place which is an unusually narrow street that extends in length for only one block. This street is bounded on the south by Howell Street and on the north by Stewart Street and Denny Way. To the east is Eastlake Avenue E. and the Interstate Five (I-5) Freeway. The uses generally surrounding the subject property are essentially commercial in nature, although several additional residential units are located across Court Place to the northwest. The subject property is approximately 3 or 4 blocks southeast of the property involved in the Seattle Times case and is also within the Cascade Neighborhood.

11. The Seattle Comprehensive Plan designates the subject property as being within a commercial area. The Cascade Neighborhood has not been legislatively designated an environmentally sensitive area.

12. SCA plans to construct an office building adjacent to its existing structure at 1314 Howell Street and utilize the subject property for an off-street parking area.

13. The Department of Buildings, in reviewing the permit application of SCA, required that SCA provide a completed environmental worksheet, whereupon a department representative visited the subject site and completed a field report, noting any potential impacts of the proposed action. The Department determined that the proposed action was categorically exempt from the EIS requirements and therefore based the decision to grant the requested permit on the information gathered at the time. In making this evaluation the Department erroneously concluded that the subject property was an isolated residentially developed lot and that there were no other dwelling units in the vicinity.

### Conclusions

1. The appellant has not met the burden of proof of establishing by a preponderance of the evidence that the decision of the Superintendent to issue the permit requested by SCA was in error. The appellant's failure to meet the burden of proof is a product of the fact that the Seattle Times case is not applicable as a precedent for this appeal, that there is no evidence that the proposed demolition is a major action which will significantly affect the quality of the environment, and that the Superintendent does not have the discretion to delay the issuance of a permit until a related governmental study is completed.

2. The doctrine of stare decisis would apply to the Seattle Times case and the instant one if the facts of the two cases were substantially the same. It is, however, not necessary to adhere to the principles of the former case for the reason that the instant case is distinguishable in its facts. The most critical distinction between the two cases is the number of dwelling units proposed for demolition. Since in Seattle Times emphasis was placed by the court on the cumulative impact of the demolition of dwelling units on low-income housing, it was necessary for the court to find that the demolition of the nine dwelling units could potentially affect this cumulative impact. In so finding, the court "drew the line" at nine dwelling units with the resulting inference that a different conclusion might be reached if a significantly lower number of units were involved.

3. Further distinguishing factors between the two cases is the location of the subject property near several arterials and the I-5 Freeway, the alley-like width of Court Place, and the close proximity of several commercial uses, including the existing adjacent SCA building. Although residential developments exist in the immediate vicinity, the area is nonetheless predominantly commercial in nature, whereas dwelling units near the property involved in Seattle Times appear to be more numerous and viable.

4. The proposed action has been designated as categorically exempt from the EIS requirements according to the proposed SEPA guidelines. This is a very meaningful indication of the potential impact that the demolition of the subject single-family residence could be expected to have. The action proposed is minor in nature and there is no evidence that it could significantly affect the quality of the environment.


The only potential impact alleged by the appellant is the cumulative affect of all demolitions on low-income housing. It cannot be concluded, however, that the demolition of this single dwelling unit will significantly add to the cumulative affect of demolitions of low-income housing in this city. The appellant has presented insufficient evidence to conclude otherwise.

5. The granting or withholding of a building permit is not a matter of arbitrary discretion and generally if the applicant complies with the applicable laws he is entitled to a permit as a matter of right, regardless of the opinion or action of the issuing officials. 9 E. MCQUILLAN, THE LAW OF MUNICIPAL CORPORATIONS, § 26.206 (3rd ed. rev. 1964). The issuance of a building permit for the demolition of a structure is therefore considered a ministerial nondiscretionary act. The issuance thereof must follow as a matter of right if the requirements of the building and zoning codes and other applicable laws are satisfied by the applicant. Consequently, the Superintendent does not have the authority to delay the issuance of the requested permit until the Cascade Planning Study is completed.

#### Decision

The appeal is DENIED and the decision of the Superintendent of Buildings is affirmed.

Entered this 31<sup>st</sup> day of December, 1975.

  
John L. Hendrickson  
Deputy Hearing Examiner