

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

In the Matter of the Appeal of

EUGENE V. LUX

FILE NO. S-76-009

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, Eugene V. Lux, filed an appeal from a ruling of the Superintendent of Buildings.

The appellant exercised his right to appeal pursuant to Section 25.40, Ordinance 86300, as amended by Ordinance 104795.

This matter was heard before the Hearing Examiner on March 31, 1976.

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 appellant applied to the Department of Buildings for renewal of a building permit (no. 555469) for the construction of a four-plex dwelling on property located at 11701 Beacon Avenue S. The application was denied and the appellant has exercised his right to appeal pursuant to Section 25.40, Ordinance 86300, as amended by Ordinance 104795.

2. The subject property was rezoned from Community Business (BC) to Single Family Residence Low Density (RS 9600) in 1957. The proposed four-plex is a use which is permitted in a BC zone but is prohibited under the current zoning. The appellant was, however, issued an original building permit for the proposed development on December 10, 1958, pursuant to Section 26.04.030, Seattle Code, which permits issuance of a building permit for a one year period on the basis of a prior repealed ordinance.

3. The original permit has been renewed on an annual basis fifteen times with the last renewal being on January 24, 1975. The latest renewal expired on December 21, 1975 and was a nonrenewable permit pursuant to an agreement reached between the Superintendent of Buildings (hereinafter, Superintendent) and the appellant.

4. The Superintendent exercised his discretion in not renewing the permit in accordance with Section 3.03.020(h), Seattle Code, which in relevant part provides as follows:

Renewed permits may be further renewed upon application within the thirty day period immediately preceding the date of expiration thereof, provided that the

work permitted has been started and is progressing at a rate approved by the superintendent of buildings. Where conditions require, the superintendent of buildings may, as he deems necessary, issue non-renewable permits which shall expire within a period less than one-year from date of issue.

5. In the sixteen years in which the proposed four-plex has been under construction, the structure has reached the point at which it is 35 to 40% complete. Much of the existing structure was constructed during the first few years after the original building permit was obtained, since which time only a minimal amount of work has been done each year. The appellant estimates that it would take six to nine months to complete the structure.

6. The subject property is not served by a sewer system, which fact has encouraged the appellant to move slowly in completing the development. Without a sewer hookup the four-plex could not be occupied even if completed. A long-promised sewer project for the area in which the subject property is located was approved in 1974 and is known as the Empire Way S. Sanitary Sewer Interceptor. The sewer project actually began construction in January, 1976, and may take two years to be completed.

7. The appellant was informed by a building inspector in November, 1969 that substantial progress had to be made on the development or the building permit would expire. This fact was emphasized when the permit was renewed in 1975, at which time the Superintendent initially decided not to authorize renewal. The permit was renewed only after a compromise was reached through intervention by the Mayor's Office.

Conclusions

1. The Superintendent has broad latitude in determining whether a proposed development is progressing at an acceptable rate, pursuant to Section 3.03.020(h), Seattle Code, and whether a building permit merits renewal. In reviewing the facts of this case, it is apparent that the Superintendent has not acted arbitrarily nor abused the discretion which is inherent in the making of this determination. It is evident that the structure is not progressing towards completion and the decision of the Superintendent not to renew the appellant's building permit is, therefore, affirmed.

2. The appellant's inactivity in bringing the development to completion is understandable in light of the fact that the structure could not be occupied until a sewer system, or acceptable alternative, became available. However, the project has been underway for sixteen years and there is no apparent willingness in the appellant to finish the structure until there is assurance of the completion of the sewer system. Since this completion date is not ascertainable, there is no means of determining when the appellant would complete the four-plex.

3. The appellant has had, since the initial issuance of the building permit, at least constructive knowledge of the fact that a certain level of progress had to be maintained on the project. Actual notice of this fact was received by the appellant as far back as 1969 and it has been emphasized in recent years. Although the work may have accelerated to

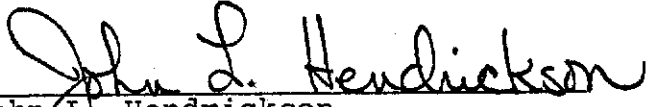
some degree, it does not appear that a significant amount of work has actually taken place. The burden has been on the appellant to demonstrate that the level of work would increase to an acceptable rate, but there is no evidence that this has occurred nor that the appellant intends to do so in the near future. The appellant's willingness to proceed with the project is unfortunately dependent upon the completion of the sewer system so that the completion date of the four-plex is undeterminable.

4. Pursuant to the procedural requirements of the State Environmental Policy Act of 1971 (SEPA) (RCW 43.21C), the action proposed in this application is not considered a major action having significant environmental impact.

Decision

For each of the above reasons, the appeal is DENIED and the decision of the Superintendent of Buildings is affirmed.

Entered this 7th day of April, 1976.


John L. Hendrickson
Deputy Hearing Examiner