

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

RAINIER CHAMBER OF COMMERCE AND  
NEWELL P. DAVIS

FILE NO. S-81-019

from a interpretation of the Director  
of the Department of Construction and  
Land Use

#### Introduction

Appellants, Rainier Chamber of Commerce and Newell P. Davis, appeal an interpretation by the Director of the Department of Construction and Land Use for property at 9236 Renton Avenue South.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 24 (Ordinance 86300, as amended), unless otherwise indicated.

Parties to the proceedings were: appellants by Matt Sayre, attorney at law; the Director of the Department of Construction and Land Use (Director) by Elizabeth A. Edmonds, assistant City Attorney; Pioneer Cooperative Affiliation (PCA) by Louis D. Peterson, Hillis, Phillips, Cairncross, Clark and Martin; King County by Susan Agid, Deputy Prosecuting Attorney.

This matter was heard before the Hearing Examiner on August 26, 1981.

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. At the request of Matt Sayre, the Director issued an interpretation for 9236 Renton Avenue South. The decision that "the inclusion of inmates transferred from the King County Jail has not changed the character of the existing alcohol rehabilitation program, that Pioneer Center is still considered to be a halfway house, and that the use is permitted on the property" was challenged by a timely appeal.

2. Appellants do not challenge the Director's Findings of Fact Nos. 1, 2, 6, 7 and 8. Those findings are as follows:

- (1) The subject property is located at 9236 Renton Avenue South. The legal description is:

That portion of Block 79, Rainier Beach, recorded in Vol. 8 of Plats, page 11, records of King County, Washington, lying northerly of a line drawn at right angles to the east line of said Block 79 from a point on said east line northerly 195 ft. from the south-east corner thereof to the easterly line of Renton Avenue and lying easterly of the easterly line of Renton Avenue as established by condemnation under Ord. No. 37687 of the City of Seattle; TOGETHER WITH the westerly 10 feet of Barton Place as vacated by Ord. No. 46639 of the City of Seattle.

- (2) The property is zoned RD 5000 (Single-Family Residence High-Density).
- (6) As stated in the Program Description and Goals: King County Alcohol Offender Program, the Center is providing "treatment of alcoholism to eligible King County Jail clients who are misdemeanants, have been sentenced to a term of incarceration, and have been diagnosed as being in need of alcoholism services by qualified professionals" to those individuals who are transferred from the jail.
- (7) The Seattle Municipal Code defines halfway house as:

An establishment operated with full-time supervision for housing resident persons who, by reason of their mental or physical disability, addiction to drugs or alcohol, or family and social adjustment problems, require a transitional non-medical treatment program for rehabilitation and social readjustment. For purposes of this Ordinance, a non-medical treatment program consists of counseling, vocational guidance, training, group therapy and other similar rehabilitative social services. These services shall not include drug and/or alcohol detoxification. Monitoring the taking of prescription medication shall be permitted. Programs providing alternative to imprisonment, including pre-release, work-release and probationary programs which are under the supervisions of a court, state or local agency are included within this definition.

Section 24.08.090 (Sec. 3.09 of the Zoning Ordinance 86300, as amended).

- (8) Halfway houses are permitted as conditional uses in residential zones.

3. No evidence to the contrary of the Director's Findings of Fact No. 3 was adduced therefore it is adopted as follows:

- (3) The established use of the property is an alcoholism treatment program operated by the Pioneer Cooperative Affiliation (PCA) and known as Pioneer Center South. PCA has operated a variety of social rehabilitation programs on the site since October, 1973, including both alcohol and work release programs. The present program is licensed by the state to serve 105 people.

4. While appellants argue that the Florence Crittenton Home, the preceding occupant, cared only for unwed mothers, the evidence offered did not negate the possibility of other individuals receiving care. Therefore, Director's Findings of Fact No. 4 is accepted.

- (4) Prior to 1973, the site was occupied by the Florence Crittenton Home, which was primarily a home for unwed mothers but which also provided transitional care to certain other individuals with social adjustment problems. In 1973 the Department determined that the principal use of the property by the Florence Crittenton Home "lies substantially within the definition of 'halfway house' as defined in the Zoning Code".

5. No admissible evidence refuted Director's Findings of Fact No. 5, therefore it is adopted.

(5) Of the approximately 105 people participating at any one time in the alcohol rehabilitation program, some are referred by a private governmental agency; some enter the program without referral; and up to 36 individuals may be transferred from the King County Jail under a contract between PCA and King County. All of the participants in the program are treated the same and all are subjected to the same restrictions. Any restrictions imposed on the participants are necessitated by the program and do not constitute a jail-type of incarceration.

6. There was no period of vacancy of the buildings on the subject property between the occupancy by the Florence Crittenton Home and PCA's.

7. Section 24.08.110(1) provides:

"Jail" means a facility for the incarceration of persons under warrant, awaiting trial on felony or misdemeanor charges, or serving a sentence for such conviction, including work-release programs and other accessory services commonly associated with such incarceration.

#### Conclusions

1. Appellants argue that the program operated fits within the definition of jail, that the "flavor" of the nonconforming use has changed thus causing a use expansion or change and that the change of use requires compliance with SEPA.

2. The facts are not sufficient to determine whether or not persons transferred from the King County Jail to the facility are "incarcerated" with the ordinary meaning of the word to come within the Code's definition of "jail". The facts clearly do show, however, that the facility fits within the Code's definition of "halfway house". That definition being more specific and less inclusive, it is appropriately used.

3. Appellants cited no authority for regarding a change in the "flavor" of a non-conforming use to be a change of use. The court has discussed intensification of non-conforming use in Keller v. Bellingham, 92 Wn.2d 726, 600 P.2d 1276 (1979). The court used the test of "whether the intensified use is 'different in kind' from the nonconforming use in existence when the zoning ordinance was adopted".

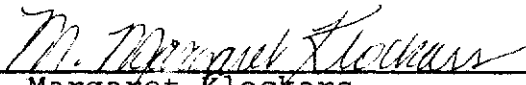
While appellants challenged the Director's conclusion that both uses, the prior and current, fall within the definition of halfway house, they did not produce evidence of the difference in character. One may presume that an alcoholic rehabilitation program is different from that for unwed mothers and for individuals with social adjustment problems, however, appellants bear the burden of proving that difference. The Director's decision is to be accorded substantial weight. Section 24.10.070. Without proof of clear error that determination must be upheld.

4. Compliance with SEPA is required for any "action" as defined in WAC 197-10-040(2). WAC 197-10-025. No action is proposed or has taken place under the terms of that provision.

Decision

The determination of the Director of the Department of Construction and Land Use is AFFIRMED.

Entered this 9th day of September, 1981.

  
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M. Margaret Klockars  
Deputy Hearing Examiner

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981).