

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

CENTRAL BALLARD COMMUNITY  
COUNCIL, ET AL.,

FILE NO. S-89-001

from an interpretation of the  
Director, Department of  
Construction and Land Use

#### Introduction

The Central Ballard Community Council, et al., appeal the interpretation of the Land Use Code issued by the Director, Department of Construction and Land Use, relating to proposals for development of two parcels at 6112 and 6116 22nd Avenue N.W.

The appellants exercised the right to appeal pursuant to the Seattle Municipal Code, Section 23.88.020, as amended.

Parties to the proceedings were: appellants, Central Ballard Community Council and Shawn Crowley, Nancy Dardarian, Ken Kutner and John Markuson represented by Shawn Crowley; the Director, Department of Construction and Land Use, represented by Andrew S. McKim, land use specialist; and the applicant, James Nickle, by his attorney, Terry L. Smith.

This matter was heard before the Hearing Examiner on February 7, 1989.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code unless otherwise indicated.

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. A request to the Director, Department of Construction and Land Use (DCLU), for interpretation of the Land Use Code as it applies to property at 6112 and 6116 22nd Avenue N.W. was made by the Central Ballard Community Council. One of the decisions reached in the interpretation was that the projects proposed by the applicant are vested to the zoning in effect at the time the applications were submitted. That decision is the subject of the appeal hearing and this decision. Two other issues of the appeal were dismissed prior to the hearing.

2. On January 8, 1988, a master use permit application for a short subdivision of the subject site was filed. On January 19, 1988, two applications for demolition and for construction of triplexes were filed, Nos. 8800206 and 8800207. Because the combined proposals involved construction of more than four units, the limit for categorical exemption at that time, the Director required environmental review and issued a determination of nonsignificance which was appealed to the Hearing Examiner and then to the City Council. During the pendency of the appeals the SEPA regulations changed making a project with six units exempt from environmental review.

3. In response to the change in the SEPA regulations, the applicant proposed to withdraw his applications and reapply under the new regulations. Computer documents obtained by appellant from the DCLU appear, on first examination, to show that both applications were cancelled but the testimony of Stuart Lorimer, production manager for the permits and plans division of DCLU, and additional documents provided by the DCLU convince the

examiner that only one application, No. 8800206, was cancelled by the department since Mr. Lorimer recognized that one application, by itself, had previously been exempt under SEPA and only a second application triggered the SEPA procedural requirements.

4. A new application, No. 8806018, was submitted on October 17, 1988, for the second project.

5. Ordinance 114196 became effective October 26, 1988. That ordinance imposed new zoning regulations for the area including the subject lots. The lots are now zoned Single Family Attached so the proposed triplex development would not be permitted.

6. The plans submitted with the applications showed a rear stairway within the required rear setback. After notice of the error, corrected plans were submitted but the revised plans were deficient by 30 sq. ft. per unit as to the required open space. On November 8, 1988, plans were submitted with this deficiency corrected. The plans which the designer used for this last submittal were stock plans provided by the owner. These plans showed a different site location, i.e., midblock instead of a corner lot, a different street and different surrounding structures. The designer had attempted to tailor the plans to this project but did not revise the street configuration, street label and surrounding structures. These plans were substituted for the plans originally filed by the plans examiner and the original plans were discarded. Later, on about November 22nd, new corrected plans were submitted showing the proper site, street configuration, etc.

7. The Director's interpretation concluded that because of the degree of scrutiny given plans at the intake screening and the plausibility of the applicant's explanation, the error occurred only on the later corrected sheets, not on the initial plans.

8. The Department of Construction and Land Use conducts its review of applications in stages. The first screening is a review for compliance with Section 302 of the Building Code which review consists of ascertaining that all the documents and information required in Section 302 is available. After that the land use components are sent to the land use division for review and the building permit documents are sent to a senior building inspector who screens to be sure that the information submitted is adequate for review by a plans examiner. Later, a plans examiner reviews for compliance with code standards.

9. The Department of Construction and Land Use considers an application "vested" as of the time of intake (submittal) if the information and plans required by Section 302 of the Building Code accompanies the application or at such time as it is provided. The department's position is that vesting does not require that the application comply in all respects with the code.

10. Stuart Lorimer explained that no submittal has or will ever comply in all respects with all code requirements because of the codes' complexities and the department's changing interpretations of the code provisions.

#### Conclusions

1. A master use permit is to be considered under (or is "vested" to):

...the Land Use Code and other land use control ordinances in effect on the date a fully complete building permit application, meeting the requirements of Section 302 of the Seattle Building Code, is filed.

2. The Director's decision that these projects are vested to the earlier zoning which was in effect at the time the permit applications were submitted is to be given substantial weight by the Hearing Examiner on review. Section 23.88.020E(5). To overcome that weight, appellants are required to prove that the decision was clearly erroneous. Brown v. Tacoma, 30 Wn.App. 762, 637 P.2d 1005 (1981).


3. Appellants disagree with the code interpretation and practice of the DCLU as to what is required for a "fully complete building permit application meeting the requirements of Section 302 of the Seattle Building Code." The Director's position is that to be fully complete requires submittal of all documents but does not require that the plans satisfy all Land Use Code requirements. The evidence showed that no application would ever be vested were perfection required.

4. Appellants appear not to argue that minor errors defeat vesting but instead argue that the errors in the submitted plans are extensive enough, for instance the errors making it impossible to calculate required front setback, that the application's documentation is not fully complete. The examiner recognizes that this error is material, however, there is no evidence that it was present on the plans initially submitted which were determined to be "fully complete." Because those plans no longer exist, appellants' burden of proof is most likely impossible to meet. The decision made by the Director, that the error did not exist at the time of intake, has not been shown to be clearly erroneous so must be affirmed.

#### Decision

The interpretation of the Director as to the vesting of the subject application is affirmed.

Entered this 22nd day of February, 1989.

  
M. Margaret Klöckars  
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 a 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.