

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

In the Matter of the Appeal of

MRS. DELORES JENSEN, et al.

FILE NO. S-75-005

from a ruling of the Superintendent of Buildings

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

Introduction

The appellants, Mrs. Delores Jensen, et al., filed an appeal from the findings and decision of the Superintendent of Buildings (hereinafter the Superintendent). The findings and decision granted environmental approval for a halfway house to be located at 5614-24 17th Avenue N.W. The appellants contend that the use in question is a penal institution and therefore does not qualify as a halfway house.

The appellants exercised their 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 November 26, 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 Superintendent, on October 21, 1975, issued a decision with findings, made pursuant to the State Environmental Policy Act of 1971 (SEPA) (RCW 43.21 c), which granted environmental approval for a halfway house to be located at 5614-24 17th Avenue N.W. The decision and the findings included therein were appealable rulings pursuant to Section 25.40(c), Ordinance 86300, as amended by Ordinance 104795. Notice of this decision was published on October 28, 1975 and the instant appeal was filed with the Hearing Examiner on November 10, 1975.

2. The appeal letter contends that the use in question is not actually a halfway house but is rather a penal institution and therefore should not be located on the subject property. None of the appellants, or their representatives, appeared at the hearing nor provided any information beyond that contained in the appeal letter and additional letter received by the Hearing Examiner on November 25, 1975.

3. The subject property is located in an RM 800 zone, which permits outright the establishment of halfway houses, pursuant to Section 26.24.010(j), Seattle Code.

4. A halfway house is defined in the zoning code (Section 26.06.090 "H", Seattle Code) as the following:

An establishment operated with full-time supervision for housing resident persons who, by reason of their condition and circumstances, require a period of time for rehabilitation and social readjustment. Services provided shall be limited to counseling, vocational guidance, training, group therapy and similar activities. No medical treatment other than that for minor illness or injury shall be provided. A drug or alcohol detoxification center, mental or penal institution shall not be construed to be included in this definition.

5. The program in question is referred to as AGAPE, and its representative, James A. Cason, applied for a use permit on July 31, 1975 to occupy an existing apartment building on the subject property as a halfway house. Participants in the program are referred from the following sources: directly from the criminal justice system; through probation or parole intervention; or at the termination of a sentence a person is removed from a prison and brought into the community.

6. Participants in the program are generally employed and reside in the building when not at their place of employment. They are, however, permitted to visit with their families on weekend evenings and their primary restriction is a 10:00 p.m. curfew. The emphasis of the program is on rehabilitation of the residents rather than on punishment.

7. Ballantine's Law Dictionary defines the word "penal" in the following manner: "strictly and primarily denoting punishment imposed and enforced by the state...". The word "punishment" is defined in Ballantine's as "suffering or confinement inflicted on a person by authority of the law".

### Conclusions

1. Pursuant to Section 25.44 of Ordinance 86300, as amended by Ordinance 104795, the findings and decision of the Superintendent are to be regarded as prima facie correct and the burden of proof is on the appellants. When findings and decision are by statute prima facie correct, it means that there is a presumption on appeal that they are correct, unless it can be found from a preponderance of the evidence that they are in error. Allison v. Department of Labor & Industries, 66 Wn2d 263, 401 P.2d 982(1965).

2. The appellants have not met their burden of proof and have not presented any credible evidence that would establish that any of the findings of fact or conclusions are incorrect. The appellants have merely asserted that the program in question is a penal institution rather than a halfway house without providing any supporting testimony or other evidence.

3. The AGAPE program is not a jail, prison, nor a penitentiary, but rather involves a residence for persons who have committed an offense but are not considered of such a nature that incarceration is considered desirable or necessary. The residents are given counseling and instruction and are not withdrawn completely from society as they would be in a penal institution, but are rather encouraged to seek employment and participate in the community to a limited extent. The purpose of a halfway house such as AGAPE is

rehabilitation of the residents and not punishment as would be more the case in a penal institution.

Decision

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

Entered this 5<sup>th</sup> day of December,  
1975.

John L. Hendrickson  
John L. Hendrickson  
Deputy Hearing Examiner