

## FINDINGS AND DECISION

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

In the Matter of the Application of

JANET M. WORTHINGTON and the  
UNIVERSITY PARK COMMUNITY CLUB

FILE NO. S-77-023

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, Janet M. Worthington and the University Park Community Club, filed an appeal requesting review of the decision of the Superintendent of Buildings to issue a demolition permit to Arley Lee Nichols for property at 5212 21st Avenue N.E.

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

This matter was heard before the Hearing Examiner on January 12, 1978.

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. Following a notice of intention to issue a use permit, an appeal, remand, revision of plans, a new notice of intention to issue and finally the running of the appeal period, a use permit was issued May 6, 1977, to the applicant, Arley Lee Nichols, for construction of a triplex and carport at 5212 21st Avenue N.E. The appeal of the use permit had questioned applicant's compliance with the code provision allowing a triplex which meets certain conditions in a duplex zone.

2. A demolition permit was issued December 3, 1976, which expired without application for renewal. The applicant applied for a second demolition permit December 12, 1977, and the Superintendent published notice of intent to issue December 14, 1977. The instant appeal followed raising the issues of lack of conformance to the code's requirements for triplexes in a duplex zone, environmental impacts, value of the building to be removed to the area and the affect of the rezoning.

3. The Superintendent had found the action to be categorically exempt from the SEPA threshold determination pursuant to the SEPA ordinance and WAC 197-10-170. Prior to hearing the Superintendent moved to dismiss the appeal as to the SEPA and use permit issues.

4. Section 20, Ordinance 105735 (the SEPA Ordinance) sets out three City decisions subject to administrative review. Those are threshold determination, adequacy of the final EIS, and the final action on a proposal involving a major action.

5. Section 25.40, Ordinance 86300, as amended by Ordinance 106438, includes issuance or denial of a demolition permit in the list of reviewable rulings of the Superintendent.

6. Sections 301 and 302, Ordinance 85500, as amended, Building Code of Seattle, establish the requirement of a permit for removing or demolishing a building and direct their issuance if the Superintendent is satisfied that the work described and plans filed conform to requirements of the code and other pertinent laws and ordinances and that the permit fee is paid. No citation to specific laws or ordinances which the applicant must show conformity with were offered at hearing. The "Draft Department Operation Instructions" which are currently in use by the Department and were followed in this case show that prior to issuing a demolition permit the personnel determine if the demolition is categorically exempt and whether there is a fee, provide copies of the application to the Fire Department and the Health Department and include the demolition in the list of appealable rulings to be published. After publication and the expiration of the appeal time, the personnel issue a permit for a categorically exempt demolition conditioned on any requirements of the Fire Department.

### Conclusions

1. The Hearing Examiner's authority to review decisions of city departments is granted by ordinance. Where the ordinance does not make a decision specifically reviewable, as with the SEPA ordinance and the decision that an action is categorically exempt, no authority exists. Therefore, the appeal as to the decision that the proposed demolition is categorically exempt must be dismissed.

2. The filing of a timely appeal creates jurisdiction to review a case where the Hearing Examiner has been granted authority by ordinance. The Hearing Examiner has the authority to review the issuance of a use permit and did conduct such a review of the Superintendent's decision in November, 1976. The appeal period for the issuance of a permit for the revised proposal has long passed so the Hearing Examiner is without jurisdiction to consider issues relating to the use permit. Appellant's argument that the Council intended to create an opportunity for a "second look" at the use permit by the addition, by amendment, of the demolition permit to the list of appealable decisions is without merit. A "second look" at a permit is specifically provided for by the language of Section 25.40 at the time of renewal of a permit when the law has changed but that is limited to a review of the initial permit of the same specie of permit, not of one of a different category. Here, if the demolition permit were being renewed the provision would make it possible to consider any change as to the law relating to demolition permits rather than requiring an automatic renewal. Because the first demolition permit expired the Superintendent regarded this as an application for a new demolition permit so any change in the law could have been considered without the provision. In neither case, however, can the validity of the use permit be challenged so long as the appeal period has passed and the use permit remains in force.

3. The appellants have failed to show that the Superintendent's ruling that a demolition permit should issue is incorrect. Therefore, the appeal must be denied.

4. With regard to the State Environmental Policy Act of 1971 (SEPA) and Ordinance 105735, the action proposed in this application is categorically exempt pursuant to the provisions of WAC 197-10-170.

Decision

The appeal is DENIED and the Findings and Decision of the Superintendent of Buildings are affirmed.

Entered this 24th day of January, 1978.

Margaret Klockars  
Margaret Klockars  
Deputy Hearing Examiner

Notice of Appeal

The decision of the Hearing Examiner in this case is the final administrative determination and any further appeal must be made to the courts.