

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

In the Matter of the Appeal of

WENDELL POOLE

FILE NO. S-77-006

from a ruling of the Superintendent
of Buildings

The appeal is DENIED and the ruling of
the Superintendent is affirmed.

Introduction

The appellant, Wendell Poole, filed an appeal from the issuance of a use permit for property at 4737-51 16th Avenue N.E.

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

Parties to the proceeding were: Janet Quimby, representing the appellant, Barry Ernstoff, representing the permittee and Joyce Kling, representing the Superintendent.

A pre-hearing conference was held on this matter on March 16, 1977. It was agreed to by all parties that the matter would be submitted on briefs and no further hearing would be held.

After due consideration of the evidence elicited during the pre-hearing conference and arguments submitted in the form of briefs by parties to the proceeding, the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. On February 10, 1977, the applicant filed for a use permit to construct a 29 unit apartment on property located at 4737-51 16th Avenue N.E. Notice of the Superintendent's intention to grant the use permit was published on February 15, 1977.

2. No threshold determination has been made by the Superintendent pursuant to the State Environmental Policy Act of 1971 (SEPA) and Ordinance 105735 prior to the February 15, 1977, publication. The Superintendent stated that no use permit will be issued until a threshold determination has been made.

3. The appeal letter filed by the appellant on March 1, 1977, raises two issues. First, that the building plans have not been finalized and that an appeal at this time would be premature since the plans may be changed at a later date. Second, that the environmental review process or at a minimum a threshold determination must be completed prior to the Superintendent's publishing notice with regard to the use permit.

Conclusions

1. The appeal is denied. The appellant has failed to show that the procedures utilized by the Superintendent were in violation of the requirements of Ordinance 105735 or of Ordinance 86300, as amended by Ordinance 104795.

2. The main issue raised by the appellant concerns the timing of the environmental review process. Section 5 of Ordinance 105735 provides as follows:

1) ...The threshold determination and the Environmental Impact Statement (EIS), if required, should ideally be completed at the beginning of this process. In many cases, however, preliminary decisions must be made upon a proposal before the proposal is sufficiently definite to permit a meaningful environmental review and analysis.

2) The threshold determination and the EIS, if required, should be completed at the earliest point in the planning and decision-making process at which principal features of the proposal and its impacts upon the environment can be reliably identified. At a minimum, the threshold determination and any required EIS shall be completed prior to the City taking the first major action on a proposal or making any decision which would result in irreversible commitment to the proposal. (Emphasis supplied.)

3. Since no use permit has been issued, the Superintendent has not placed himself in the position of making an irreversible commitment to the proposal and therefore no technical violation of the appeal or SEPA ordinances has occurred. However, it does appear from the record, the Superintendent has made little effort to integrate SEPA into the process by which use permits are issued. Section 4 of Ordinance 105735 provides for the integration of SEPA into the permit process in order to avoid lengthy time delays and unnecessary duplications. It would seem advisable for the Superintendent to review the existing permit process in order to assure compliance with the intent of Ordinance 105735.

4. The building plans submitted with the use application do not have to be final prior to the publication of the use permit. In considering the building plans, two interests must be balanced. First, the appellant has a right to be assured that the plans on file with the Superintendent basically reflect the proposed development and that they will not be changed in any substantial or significant manner. On the other hand, due to the many unforeseen elements involved in construction, the permit applicant has a right to make certain minor and technical changes without being subject to a second appeal. In this case, the appellant has not alleged that there has been any substantial or significant deviation from the plans and consequently no justiciable issue has been raised.

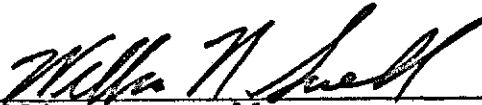
5. With regard to procedure in general, it should be noted that Ordinance 86300, as amended by Ordinance 104795 provides in Section 25.42 for an advance ruling procedure. A developer may obtain an advance ruling as to whether a use permit would comply with the Zoning Ordinance by filing a request with the Superintendent describing the essential

features of a proposed development. Any permit applicant seeking a preliminary review may utilize this procedure and it would be in the best interests of all parties if this procedure was utilized under the appropriate circumstances.

Decision

The appeal is DENIED and the ruling of the Superintendent is affirmed.

Entered this 29th day of March,
1977.



William N. Snell
Hearing Examiner