

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

In the Matter of the Appeal of

PAULINE ADAMS

FILE NO. S-85-005

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

Introduction

Pauline Adams appeals the interpretation by the Director, Department of Construction and Land Use, of the Land Use Code as it applies to property at 3121 Fuhrman Avenue East.

Parties to the proceedings were: Appellant, Pauline Adams, pro se and by Charles Hamilton, attorney at law; the Director by Judy Talman, senior land use specialist, and the property owner, Davidson Dodd, by Howard Todd, attorney at law.

This matter was heard before the Hearing Examiner on December 31, 1985.

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

A motion to dismiss for lack of jurisdiction was argued at hearing and denied by the Hearing Examiner. The motion was renewed at the end of the case on the merits. After due consideration of the evidence in support of the motion to dismiss elicited during the public hearing, the following findings of fact shall constitute the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The Director issued a determination letter to the owner of the subject property, at his request, advising him that the property comprises two legal building sites for single-family residences.

2. A neighbor requested that the Director issue a formal interpretation. An interpretation was issued which is the subject of this appeal, concluding that the property comprises two building sites.

3. The interpretation of the Director was issued October 31, 1985. A copy of the interpretation was mailed to Pauline Adams November 1, 1985.

4. Pauline Adams delivered her notice of appeal in an envelope to the Office of the Director, DCLU, on November 20, 1985. The letter was addressed to Seattle Department of Construction and Land Use and the salutation was to Ms. Ryan, who is interim director. The envelope was not opened in Ms. Adams' presence.

5. The Office of Hearing Examiner received the notice of appeal from the Department of Construction and Land Use on November 27, 1985.

6. The filing fee did not accompany the notice of appeal.

7. The filing fee was received by the Office of Hearing Examiner on December 2, 1985.

8. Notice was given by the Director, Department of Construction and Land Use, that the appeal period for the interpretation ended November 21, 1985.

Conclusions

1. The property owner challenges the jurisdiction of the Hearing Examiner in this matter on two grounds, the untimeliness of the filing of the notice of appeal with the Office of Hearing Examiner and the failure to accompany the notice of appeal with the filing fee.

2. Section 23.88.20 provides, in part:

1. Any person significantly affected by or interested in a code interpretation may appeal to the Hearing Examiner within a period extending to five o'clock p.m. of the fourteenth calendar day following the date of publication of the interpretation....

2. Appeals of code interpretations shall be accompany (sic) by payment of a filing fee as established by the Permit Fee Ordinance, Chapter 22.900.

3. Rule 8.3, Hearing Examiner Appeal Rules, provides:

The appeal must be accompanied by a filing fee of \$25.00.

4. Rule 8.4, Hearing Examiner Appeal Rules, provides:

The appeal shall be filed with the Examiner within a period extending to 5:00 p.m. of the fourteenth (14th) day following the date of publication of the ruling or interpretation.

5. Does the filing of a notice of appeal with the Director, DCLU, within the appeal period, with payment of the filing fee after the appeal period give the Hearing Examiner jurisdiction over the matter? It must be noted that there is no inherent right to administrative review of an agency decision. Any right is the creature of statute or ordinance. Lumpkin v. Department of Social and Health Services, 20 Wn. App. 406, 581 P.2d 1060 (1978). Further, the Hearing Examiner has only that jurisdiction that the law confers. See Dechenes v. King County, 83 Wn. 2d 714, 521 P.2d 1181 (1974).

6. One of the requisites of the ordinance creating the appeal right is the filing of a timely notice of appeal. Section 23.88.20. Here, we have an appeal filed on time but not with the Hearing Examiner. That filing occurred after the appeal period. Many cases address the situation where service of notice on other parties is a jurisdictional prerequisite and has not occurred in a timely manner. Only a few involve failing to file the appeal with the court on time. In those cases, without exception, the courts have determined that no jurisdiction was obtained. E.g. Cohen v. Stingl, 51 Wn.2d 866, 322 P.2d 873 (1958), Dechenes v. King County, 83 Wn.2d 714, 521 P.2d 1181 (1974), Glass v. Windsor Navigation Co., 81 Wn.2d 726, 504 P.2d 1135 (1973), Malott v. Randall, 8 Wn. App. 418, 506 P.2d 1296 (1973).

7. The examiner's search of the case law disclosed one Washington case where the Court held that substantial compliance with the requirements for service of notice would confer jurisdiction. In that case, In re Saltis, 94 Wn.2d 889, 621 P.2d 216 (1980), the notice was mailed to the department instead of the director. The test that was fashioned by the court for the legal sufficiency of the notice was whether the notice was served in a manner reasonably calculated to give notice to the director and if the director actually received the letter.

8. In the instant case the notice was directed to and delivered to the Director with no reference to the Hearing Examiner. This situation is similar to that in Spokane v. Department of Labor and Industries, 34 Wn.App. 581, 663 P.2d 843 (1983), where the notice of appeal was served on the board because of mislabeling of the second envelope but it was required to be served on the board and the department. In determining whether the notice was served in a manner reasonably calculated to give notice to the director, the court observed that the board is an independent agency of the state separate from the department and is housed in a separate building. Though an employee of the board attempted to forward one copy to the department director there was no evidence that it was received by the director. The court concluded that this could not be treated as substantial compliance, that if it was allowed, any governmental agency would be made "a repository of all notices of appeal" imposing a new duty on them. Spokane, supra, p 589.

9. Chapter 3.02 created the Office of Hearing Examiner as a "separate and independent office of the city." Section 3.02.110. A letter addressed to the Department of Construction and Land Use and its director and delivered to that office is not reasonably calculated to reach the Hearing Examiner. Further, the second test for substantial compliance is not met because it was not filed in the Office of Hearing Examiner until six days after the end of the appeal period. Whether strict compliance with Section 23.88.20 is required or substantial compliance is allowed, no jurisdiction was secured.

10. Appellant suggested that the department's action in accepting the letter may estop the City from denying jurisdiction. Estoppel, however, cannot create jurisdiction in an administrative agency. Cf. Piolo v. Higher Education Personnel Board, 16 Wn.App. 642, 558 P.2d 1364 (1976).

11. Late payment of the filing fee would not deprive the Hearing Examiner of jurisdiction in this case. First, it is questionable whether the City Council intended that jurisdiction would be created only on the payment of a fee when it, in Ordinance 110978, the ordinance fixing filing fees for hearings before the Hearing Examiner, provided for waiver of the fee in cases where payment would cause financial hardship. Second, Chapter 22.900 does not establish a filing fee for interpretation appeals, despite its reference in Section 23.88.20E, so no payment can be required as a jurisdictional prerequisite. Ordinance 110978, amending Chapter 3.02, fixes the fee at \$25.00 which amount can be, and was, charged appellant but cannot be treated as jurisdictional.

12. Because the Hearing Examiner lacks jurisdiction pursuant to Chapter 23.88 to hear this appeal, the appeal must be dismissed.

Decision

The appeal is dismissed for lack of jurisdiction.

Entered this 14th day of January, 1986.


M. Margaret Klockars
Deputy Hearing Examiner