

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

In the Matter of the Appeal of

WADE R. DANN

FILE NO. S-80-049

from a determination of the Director,
Department of Construction and Land Use

The Decision of the Director of the Department
of Construction and Land Use is affirmed.

Introduction

Wade R. Dann, appellant, appeals an interpretation by the Director of the Department of Construction and Land Use (CLU) of the Zoning Ordinance as it relates to property at 310 S. Henderson Street.

The appellant exercised his right to appeal pursuant to Section 25.40 of the Zoning Ordinance (86300, as amended).

Parties to the proceeding were: Appellant, represented by Dan McMonagle, Taylor & Ulin, P.S., attorneys at law, and the Director of the Department of Construction and Land Use, represented by Greg Borba, Program Coordinator, Support Services Section, CLU.

This matter was heard before the Hearing Examiner on October 30, 1980.

For purposes of this decision, all section numbers, unless otherwise indicated, refer to the Zoning Ordinance (86300, as amended).

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 subject property is a vacant lot at 310 S. Henderson Street zoned Single Family Residence High Density (RS 5000).

2. Ed Hewlett owns the subject property and rents it to Cleo Manning of Manning Construction, Inc., for storage of construction equipment.

3. Mr. Manning has lived at 214 S. Henderson for approximately 30 years and has purchased other vacant lots in the area.

4. Mr. Manning has used the subject property for storage of his construction equipment since 1956.

5. In May, 1980, during a general survey of land use in the South Park area, an inspector reported the storage use of the subject property and a letter notifying of the violation was sent by the Department of Construction and Land Use.

6. Storage of construction equipment is not permitted in an RS zone.

7. The zoning of the subject property was R-1 prior to 1957. Storage of construction equipment was not permitted in an R-1 district.

8. The character of the area of the subject property is a mixture of residential and industrial. General Industrial (IG) zoning is nearby.

9. No new residences have been constructed in the immediate area in the last 30 years. One house has been relocated in the area from the vicinity of the airport.

10. The nature of Mr. Manning's business is such that the equipment is

stored on the site approximately 10% of the time. It has been at the Trident site, for instance, for the past six years.

11. Mr. Manning could have easily obtained property zoned for the use in 1956 had he known that his use of the subject site was not legal. Now it will be difficult and expensive to obtain property for equipment storage.

Conclusions

1. The Washington Court has recognized that equity may require an equitable estoppel through laches where there is a reasonable opportunity to discover the situation and an unreasonable delay in enforcement resulting in damage to the person subject to the action. Buell v. City of Bremerton, 80 Wn.2d 518 (1972). The court required a showing of need to prevent a "manifest injustice" in Finch v. Matthews, 74 Wn.2d 161 (1968).

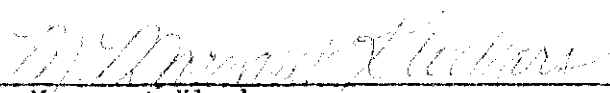
2. In the instant case, although the property has been dedicated to the storage use for some 24 years, no construction or other activity requiring a permit from the City was ever undertaken on the site and the small percentage of time the property was actually used for storage would not have made it reasonably likely that the City would have discovered the illegal use.

3. Since other remedies such as petitioning to rezone the property are available, no manifest injustice is present.

Decision

The decision of the Director of the Department of Construction and Land Use is affirmed.

Entered this 5th day of November, 1980.


M. Margaret Klockars
Deputy Hearing Examiner

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any appeal to the Superior Court should be filed within 20 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977).