

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

In the Matter of the Appeal of

HARVEY CYR

FILE NO. G-88-001

from a notice of violation of the
Grading Ordinance

Introduction

Appellant, Harvey Cyr, appeals a notice of violation of the Grading Ordinance issued by the Director, Department of Construction and Land Use, for grading at 8547 - 29th Avenue N.W.

The appellant exercised his right to appeal pursuant to Section 22.804.230, Seattle Municipal Code.

Parties to the proceeding were appellant, pro se, and the Director, Department of Construction and Land Use, represented by Ray Hicks, assistant code compliance coordinator.

This matter was heard before the Hearing Examiner on July 28, 1988.

After due consideration of the evidence of record, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. Appellant's property at 8547 - 29th Avenue N.W. is a lot which slopes down into a ravine on its westerly portion. The City's map of environmentally sensitive areas shows that approximately the western one-third is within an environmentally sensitive area. Ex. 4.

2. Appellant set about to improve the contour of his lot which had unusual holes and piles created by an earlier owner and debris from years of dumping. In the course of the grading and adding top soil, fill material spilled down the slope in the environmentally sensitive area.

3. Appellant had not obtained a grading permit understanding that unless more than 100 cubic yards were involved, none was necessary.

4. A Notice of Violation (Ex. 3) was issued to appellant stating that inspectors found that the owner "Violated the Grading and Drainage code by failure to obtain a permit for placing fill material and grading in an environmentally sensitive area." The notice cited Section 22.804.030, Seattle Municipal Code.

5. Appellant questioned the conclusion of the inspector that the area where he observed fill on the slope was environmentally sensitive but produced no evidence to the contrary.

Conclusions

1. The Hearing Examiner has jurisdiction over these parties and this subject matter pursuant to Section 22.804.230, Seattle Municipal Code.

2. The Hearing Examiner is required to give substantial weight to the notice of grading violation. Section 22.804.230 E, Seattle Municipal Code. The appellant, then, must prove the notice of violation is clearly erroneous. Brown v Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981).

3. Section 22.804.030, Seattle Municipal Code, provides that:

No person shall do any grading until the owner of the property to be graded receives an approval from the Director of Construction and Land Use; provided, however, an approval shall not be required for the following grading activities:

A. Where the resulting slope is not steeper than three (3) to one (1) and the grading is not located in an environmentally sensitive area:...

Therefore, any grading within an environmentally sensitive area requires an approval.

4. The grading done within the environmentally sensitive area without approval by the Director of Construction and Land Use constitutes a violation of the code.

Decision

The notice of violation is sustained.

Entered this 11th day of August, 1988.

M. Margaret Klockars
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Deputy Hearing Examiner