

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

MALL, INC.

FILE NO. S-83-010
DCLU INT. NO. 83-014

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

Introduction

The Director of the Department of Construction and Land Use entered an interpretation December 2, 1983 regarding the use of property at 401 Pine Street, concluding that the total lot and maximum building area is 4170 sq. ft. Appellant, asserting that the lot area is 15,226 sq. ft. because of the underlying fee, submitted this appeal.

The appellant exercised its right to appeal pursuant to the Seattle Municipal Code, Chapter 23.88.

Parties to the proceedings were: appellant by Henry C. Jameson of Ferguson and Burdell; and the DCLU Director by assistant city attorney Judith B. Barbour.

This matter was heard before the Hearing Examiner on February 7, 1984.

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

After due consideration of the evidence elicited during the public hearing, the following shall constitute the findings, conclusions and decision of the Hearing Examiner.

Findings of Fact

1. The parties stipulated to the relevant facts as follows:

Mall, Inc. owns certain property located in the City of Seattle at 401 Pine Street. Mall, Inc. acquired its interest in the property through a Statutory Warranty Deed dated March 14, 1963 to Mall, Inc. as grantee from John A. Metzger, Saxon Lew, and Nancy Lee Lew as grantors. A true and correct copy of the Statutory Warranty Deed is attached (hereto) as Exhibit 1.

2. The legal description of the property owned by Mall, Inc. is set forth on the Statutory Warranty Deed of March 14, 1963 attached (hereto) as Exhibit 1.

3. The property owned by Mall, Inc. is located in Block 19 of A.A. Denny's Third Addition to the City of Seattle. The plat of A.A. Denny's Third Addition was recorded on April 5, 1869. A true and correct copy of that plat is attached (hereto) as Exhibit 2.

4. Mall, Inc.'s title to the subject property can be traced through an unbroken chain of title to the year 1902. At that time R.C. McCormick and Brownie McCormick owned all of Lots 1 and 4 of Block 19 of A.A. Denny's Third Addition to the City of Seattle. The entire interest in Lot 5 of Block 10 of A.A. Denny's Third Addition was owned by Hiram W. Utter.

5. On February 13, 1902, the City of Seattle passed Ordinance No. 7733, which authorized the condemnation of land for the creation of Westlake Avenue. A true and correct copy of Ordinance No. 7733 is attached (hereto) as Exhibit 3. The actual condemnation of land for Westlake Avenue occurred in a lawsuit filed by the City of Seattle under King County Cause No. 36118. A true and correct copy of an abridged version of the Judgment condemning the land for Westlake Avenue is attached (hereto) and marked as Exhibit 4. That Judgment condemned portions of Lots 1, 4 and 5 of Block 19 of A.A. Denny's Third Addition to the City of Seattle for Westlake Avenue. The owners of Lots 1 and 4 were paid the sum of \$44,700 for the taking. The owners of Lot 5 were paid the sum of \$25,600 for the taking.

6. The portions of Lots 4 and 5 in Block 19 of A.A. Denny's Third Addition to the City of Seattle lying easterly of Westlake Avenue were subsequently conveyed by Mall, Inc.'s predecessors in interest to other parties. Mall's predecessors retained title to Lot 1 and to portions of Lots 4 and 5.

7. On July 13, 1965, the City of Seattle passed Ordinance No. 93917 to acquire by condemnation property rights necessary to use and maintain the monorail system, including the terminal and escalator access thereto. A true and correct copy of the Ordinance is attached (hereto) and marked as Exhibit 5. Ordinance No. 93917 was subsequently modified by Ordinance No. 96059 passed on August 28, 1967, which modified and reduced the size of the Westlake monorail terminal. A true and correct copy of Ordinance No. 96059 is attached (hereto) as Exhibit No. 6. A condemnation of property rights pursuant to such ordinances was accomplished by a lawsuit filed by the City of Seattle under King County Cause No. 642 136. A true and correct copy of that portion of the final Judgment pertaining to the property of Mall, Inc. is attached (hereto) and marked as Exhibit No. 7. The final Judgment was entered in May of 1968 and Mall, Inc. was paid the sum of \$24,000, plus applicable interest, in accordance with the Judgment.

8. The property owned by Mall, Inc. is zoned Metropolitan Business (BM). For the purposes of this proceeding, it is assumed that the interest acquired by the City of Seattle in Westlake Avenue as a result of the 1903 condemnation proceedings is an easement for street purposes. In the 1968 monorail condemnation, the City of Seattle acquired fee simple title to such property rights as are necessary to maintain the monorail, including the terminal and escalator access thereto. Such rights constitute a servitude contained in a three-dimensional box in the air, describing the physical limits to which the City may burden the abutting property with such use. Subject only to the City of Seattle's easement in Westlake Avenue and rights acquired for the monorail system, appellant Mall, Inc. has an unbroken chain of title to, and the underlying fee ownership in, all of the portion of Lot 1 taken for street purposes as well as portions of Lots 4 and 5 of Block 19 A.A. Denny's Addition to the City of Seattle taken for street purposes. A sketch showing the approximate dimensions of the fee ownership claimed by appellant Mall, Inc. is attached (hereto) and marked as Exhibit No. 8.

9. Mall, Inc. owns the undisputed fee in the property which has been shaded red on Exhibit No. 8 and claims fee ownership in the property shaded yellow subject only to the City's easement for Westlake Avenue and the rights for the monorail acquired by the City. The Bartell Building is currently located on that portion of Mall, Inc.'s property which is shaded in red. The square footage of the area shaded in red on Exhibit 8 is 4,170 square feet. The easement for Westlake Avenue currently encumbers that portion of Mall, Inc.'s fee ownership which is shaded in yellow on Exhibit No. 8. For the

purposes of this hearing only, the parties agree that the square footage of the land owned by Mall, Inc., shaded in yellow on Exhibit No. 8, and subject to the easement for Westlake Avenue is approximately 11,056 square feet. The exact square footage of Mall's ownership in the area shaded in yellow has not been agreed upon by Mall and the City, but is not directly relevant to this appeal. Exhibit No. 8 is not necessarily to scale, and the property lines shown on Exhibit No. 8 are intended for illustrative purposes only.

10. The parties also stipulated to the admission of Exhibits 1-8, entered officially in the record at the public hearing.

11. In 1981, appellant commissioned an architect to study the feasibility of developing the site noted as a red triangle on Exhibit 8. The architect concluded that use of the entire fee, inclusive of the red shaded portion, would allow development of no less than 150,000 sq. ft. in floor area; accordingly, the architect proposed a 35 story building with retail stores underneath the top floor offices and residences.

12. In August 1983, Mall, Inc., applied for a Master Use Permit to construct the 35-story, mixed-use building on the land represented by the red shading of Exhibit 8. DCLU refused to process the application. Mall requested an interpretation, which concluded adverse to Mall, Inc.'s position. This appeal followed.

13. According to the architect, the Westlake Avenue issue presented to him for the first time the case of a "street considered as an easement."

14. To date, DCLU has not included a street's dimensions in Floor Area Ratio (FAR) calculations.

15. Private and sewer easements are considered to cause a 25-50% reduction in value. A street easement, on the other hand, approximates a 100% value decline.

16. Generally, DCLU considers that the property underlying an easement is legally part of one of the parcels of property. In re Aneva Freeman, Re-Evaluation and Request for Reconsideration, S-83-002; Exhibit 14, DCLU Information Bulletin No. 103, How to Draw a Plot Plan, requiring inclusion of "any easements that cross the property or other pertinent legal features", and illustrating inclusion of the utility easement. The Hearing Examiner finds, however, as testified by DCLU witness Pestinger that when the City of Seattle condemns for a street, in "99%" of the cases an easement interest is acquired. Further, there is no significant difference between deed vs easement acquisition costs since the fee owner has extremely limited rights remaining.

Conclusions

1. The Hearing Examiner has jurisdiction of this matter pursuant to Chapter 23.88, Seattle Municipal Code, wherein it is provided that in appeals to the Hearing Examiner the Director's interpretation is entitled to substantial weight. Section 23.88.20 E.4. Because the subject site is in the BM zone, the substantive provisions of Title 24 apply.

2. The resolution of this case turns upon the reading of Seattle Municipal Code Section 24.46.110, which provides that:

- A. The gross floor area of any structure...
shall not exceed ten times the lot area...

Floor area for accessory parking or stories used exclusively for mechanical equipment such as heating and ventilation are not included in this 10:1 Floor Area Ratio (FAR).

3. Lot area is defined at Section 24.08.130(L) as "the total horizontal area within the lot lines of a lot." The term "lot lines" is defined at Section 24.08.130 as "the property lines bounding a lot." Title 24 does not separately define "property lines."

4. The Zoning Code definition of lot is:

... a platted or unplatted parcel of land unoccupied, occupied or to be occupied by a principal use or building and accessory buildings, together with such yards and open spaces as are required by this subtitle and abutting by not less than twenty feet upon a street sufficiently improved for automotive travel or having an exclusive, unobstructed permanent access easement serving not more than two principal uses and jointly owned by the two property owners served and at least twenty feet wide and not exceeding one hundred fifty feet in length to such street...

Section 24.08.130. A "street" is a public way at least 30 ft. wide permanently open to the public. Section 24.08.200.

5. A corner lot is defined as "a lot situated at the intersection of two streets, or bounded on two or more adjacent sides by street lot lines." A street lot line is a lot line "abutting upon a street." (emphasis added) Section 24.08.130.

6. It is clear that Westlake Avenue is, as a practical matter, a street, although reference to it as an easement is hypertechnically correct. The great majority of City of Seattle condemnations for street purposes are phrased in terms of easements.

7. It is of little significance to this case that Mall, Inc. cannot build on the portion of Westlake Avenue taken for street use. It is not required that a building be situated on all of a lot or a specific portion of a lot except where specific bulk regulations require.

8. More to the point is the definition of lot, "a platted or unplatted parcel of land ...abutting by not less than 20 ft. upon a street ..." The Hearing Examiner is inclined to agree with the Director that this phraseology suggests that the abutting street be excluded from consideration as a part of the lot itself. Further support for this conclusion is found in the definitions of "corner lot" and "street lot line." The definitions show a legislative intent to recognize that street lot lines can "bound" a lot since by definition, street lot lines abut upon a street, and in fact bound the lot of a corner lot.

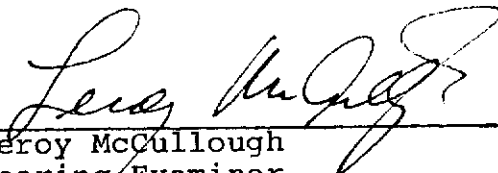
9. Appellant cites Talbot v. Gray, 11 Wn.App. 807, 525 P.2d 801 (1974) to support the contention that appellant's fee ownership in Westlake Avenue should be included in its FAR calculations. Appellant's witness knew of no circumstance where a street had been included in the FAR computation. DCLU has not previously included street dimensions in lot area calculations. And Talbot, supra, did not present a case where the land in question was either heavily restricted or encumbered in the manner of a street. In fact, the issue was whether the corridor in question was a part of the lot even though outside the rear yard. Talbot's general premise that the property lines encompass all of the land owned by a party is, in this case, met and outweighed by the specifics and degree of the Westlake Avenue condemnation and its use for street purposes. The general principle is also countered by the scheme of the Zoning Code, which sufficiently indicates an intention to use street margins as borders of lots for purposes of Zoning Code calculations of a buildable lot area. It is clear that this controversy could have been avoided if the Zoning Code definition presented more specific information as to whether the fee underlying a street should be included in lot area calculations.

10. The question of Mall, Inc.'s rights to use the subsurface of Westlake Avenue is not in issue. Nor is the question of Westlake Avenue's vacation, and the reversionary rights of Mall, Inc. upon that circumstance.

Decision

The Director's interpretation is Affirmed.

Entered this 21st day of February, 1984.



Leroy McCullough
Hearing Examiner

Concerning Further Review

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any request for court review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418(1977); JCR 73 (1981). Should such request be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court.