

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

In the Matter of the Appeal of

COPPAGE REALTY

FILE NO. S-81-033

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

Introduction

The appellant exercised his right to appeal pursuant to the Seattle Municipal Code, Section 24.10.030, as amended.

Parties to the proceedings were: appellant, Richard Coppage; the Director, Department of Construction and Land Use by Judy Talman; and Cortana Space Port, Inc., lessee of the subject property.

This matter was heard before the Hearing Examiner on December 11, 1981.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 24, as amended, unless otherwise indicated.

After due consideration of the evidence elicited during the public hearing, the following findings of facts shall constitute the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The subject property is located at 4339 University Way N.E., Seattle. The legal description of the property is Lot 3, Block 2, Brooklyn Addition to the City of Seattle. Said premises are located within a Community Business (BC) zone.
2. The lessee of the subject property, Cortana Space Port, Inc., proposes to remodel the existing structure located on the subject property so as to change its use from retail to coin operated amusement center. The Director has determined that the change in use of the premises would require provision of 20 additional parking spaces. This is due to the fact that the use to which the property is proposed to be put will involve an indoor space of public assembly and thus require accessory parking. Because the existing improvement covers all of the subject property the parking required must be located at a location other than the principal site.
3. On July 17, 1981, the Director approved a parking covenant stating in part, "the lease agreement and covenant submitted to DCLU by the parties are sufficient to satisfy the parking requirements of Section 24.64.040(A)(4), 24.64.040(A)(7) and 24.64.120 of the zoning code...."
4. Section 24.64.040(A)(7) states, in part:

When accessory parking space is to be provided on a parcel of land or lot other than the parcel or lot which is or will be the site of the principal building or use and whether or not contiguous to such site, then evidence shall be provided that a covenant has been filed with the King County **Director of Records and Elections**, the covenant providing that the area used or to be used for parking accessory to the principal building located elsewhere shall be diverted or converted

to no other use as long as the principal building to which the parking is accessory shall continue to exist; provided, that such covenant shall not be required if an agreement for the joint use of such accessory parking space has been filed with the Superintendent in accordance with Section 24.64.100(F)(3).
(Emphasis supplied.)

5. Cortana Space Port, Inc., initially provided to the Director a lease for parking on property located at 4545-15th Avenue N.E., Seattle and legally described as Lots 3-15, Block 1, University Heights Addition to the City of Seattle. Said lease was executed on behalf of Lessor by James W. Groves, the person identified on the face of said lease as Branch Manager for Ampco Auto Parks, Inc., the Lessor, and, apparently, itself the Lessee of the same premises under another lease for a longer term. Said lease apparently was filed with the appropriate office of King County. On November 16, 1981, a covenant was entered into between Ampco Auto Parts, Inc., and Cortana Space Port, Inc. Said covenant was in favor of the City of Seattle and provides, in general terms, that Cortana may use parking at Ampco's site for a period of one year terminating on December 31, 1982. The covenant further provides that the accessory parking site shall not be converted to any other use during the term of the lease as long as the principal building "or use to which the parking is accessory" continues; that Cortana agrees to provide off-street parking upon termination of the lease with Ampco or, in the alternative, to terminate the use requiring such parking; and to provide notice to the Superintendent of Buildings if the accessory parking site is terminated or converted to any other use.

6. Appellant in this case frames the issue to be considered thus:

Can the Director properly consider and approve the lease covenant to provide accessory parking for a period of time contemporaneous with the use or must the time period be measured by the existence of the building for which the accessory parking is required?

Appellant believes that the language of Section 24.64.040(A)(7) requires the accessory parking must be tied to the period of time during which the building is in existence. This is due, appellant argues because of the plain meaning of the ordinance which provides, in part:

...the covenant providing that the area used or to be used for parking accessory to the principal building located elsewhere shall be diverted or converted to no other use as long as the principal building to which parking is accessory shall continue to exist....

It is appellant's contention that had the City Council intended for accessory parking to exist only for the duration of the use, the section would specifically say so. Appellant buttresses this argument with the observation that the same subsection earlier mentions "building or use", lending credence to the notion that the Council was aware of the distinction between existence of a building and duration of a use.

Conclusions

1. Section 24.10.070 states that the "ruling or interpretation shall be regarded as prima facie correct". The burden is on the appellant to prove otherwise. Id.

2. The only way accessory parking could be provided under the interpretation of Section 24.64.040(A)(7) urged by appellant would be by way of deed or a lease in perpetuity. Thus, even though a building may revert to a use which does not require accessory parking under the Code, such accessory parking would still be required to exist because the building itself remains in existence.

3. The interpretation of the Director is not unreasonable, arbitrary, capricious or infected with other error of law. It is reasonable to assume that the use of the word "building" by itself in later portions of Section 24.64.040(A)(7) refers to a structure to which parking is accessory. This is logical and consistent in light of the purpose of the section. Further, such an interpretation means that should the building ever be used for a use for which no accessory parking is required, it would not then be necessary for the owner or occupant of the building to provide such parking by lease and/or covenant.

4. Section 24.64.040(A)(7) allows joint use of parking as provided by Section 24.64.100(F)(3) in the event a parking lease/covenant is not obtained. Section 24.64.100(F)(3) plainly allows joint use parking agreements for a fixed time with no relation to duration of a building or use. Although not argued here, the agreement between Cortana and Ampco may be viewed as a joint use, thereby satisfying requirements of Section 24.64.100(A)(7).

5. Appellant has not persuaded the Examiner that the interpretation of the Director is arbitrary, capricious or unreasonable.

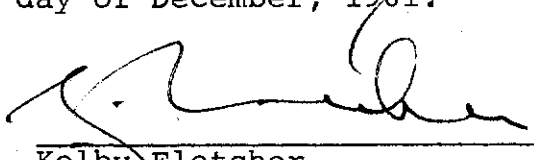
6. The interpretation urged by appellant would require land to be encumbered for an uncertain period of time. The trend of the common law affecting conveyances has consistently been to disfavor uncertain entitlement to land by way of reversion or otherwise.

7. The defects set forth by appellant with respect to mode and style of execution of the covenant and lease are matters which affect only the parties thereto. None of the supposed defects, which concern form of acknowledgment, authority of the attorney in fact, and authority of the Lessor, void the lease. At most, such defects may render the lease voidable by a party. However, in light of the equitable doctrine of part performance, it is doubtful whether such defects would even allow a party to or beneficiary of the transaction to avoid the terms and conditions of either of the documents.

Decision

For the reasons enumerated herein, the interpretation of the Director of the Department of Construction and Land Use is AFFIRMED.

Entered this 23^d day of December, 1981.



Kelby Fletcher
Hearing Examiner Pro Tempore

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981). Should an appeal 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.