

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

In the Matter of the Appeal of

MAE LOUISE CLAYPOOLE

FILE NO. S-87-002

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

Introduction

Mae Louise Claypoole appeals the interpretation by the Director, Department of Construction and Land Use, that "only one house can be built on the property located at 11745 Exeter Avenue Northeast."

Parties to the proceedings were: appellant, by Richard Sanders, attorney at law; and the DCLU Director by Guy Fletcher, senior land use specialist. Dr. Marjorie Muecke, an adjoining land owner, was granted limited intervenor status and appeared pro se.

This matter was heard before the Hearing Examiner on February 24, 1987.

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 of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The essential facts are undisputed. The subject property was originally platted in 1910 and is legally described as

Lots 17 and 18, Block 20, University Lake
Shore Addition, Divisions 1, 2 and 3...

Lot 17 is approximately 4351 sq. ft. in area, and Lot 18 4902 sq. ft.

2. The street address is 11745 Exeter Avenue N.E. The site is zoned SF 7200.

3. In 1949 the Frenches' built a house on Lot 16 of the subject Block 20, street address 11751 Exeter Avenue N.E. This property was ultimately purchased by Dr. Muecke in August, 1979.

4. A property survey for Dr. Muecke shows that a wooden fence extends easterly from Lot 16's western boundary to approximately midway through the lot. The survey, Exhibit 14, shows the fence to be 4.4 ft. south of Lot 16's south property line. In some contrast, appellant's survey, Exhibit 11, shows the fence to be approximately 7.5 ft. south of Lot 16's southern platted boundary.

5. Continuing easterly from the fence terminus are rose and holly bushes that also are south of Lot 16's southern platted boundary. Dr. Muecke testified credibly that she understood from her real estate agent that Lot 16's southern property line was marked by the subject fence and by a continued easterly line from the fence to the east abutting Exeter N.E. right-of-way.

6. Dr. Muecke's intent at the time of purchase was to purchase Lot 16. She has paid no real estate taxes on any

portion of Lot 17.

7. DCLU and appellant's witness agree that precise boundary lines in this area are difficult to ascertain. Appellant's and Muecke's surveys both show, however, that a portion of Muecke's residence extends into Lot 17, beyond Lot 16's platted southern boundary.

8. On January 14, 1987, appellant granted an easement

...to Margery Muecke for her benefit...and
...successors in interest...to Lot 16...for
the purposes of allowing an existing improve-
ment on Lot 16 to encroach on Lot 17, to-wit,
a house and a fence...

The terms of the instrument continued that the easement would continue until "said improvement is removed or altered at which time said easement shall terminate."

9. According to Muecke, the legal boundaries of the Lots 16 and 17 are still in dispute, and she is filing an action to quiet title to the disputed portion. Muecke's claim to the disputed land has yet to be ruled upon by a court or other body with jurisdiction.

10. The essence of the subject DCLU Interpretation, dated December 19, 1986, is found at Conclusions 2, 3, and 4 of that Interpretation. In relevant part the Interpretation concludes that

While Lots 17 and 18 were initially created prior to 1957, it is apparent that there are claims against Lot 17 that will likely require an alteration of that lot's northern boundary ...Lot 17, after such alteration, will no longer meet the requirements of the minimum lot size exception...

Notice of the interpretation request was received by appellant on November 10, 1986. Mail receipt Exhibit 16. No challenge was made to the Director's indication that notice of the decision was published in the Daily Journal of Commerce on December 29, 1986.

11. The DCLU Interpretation references a June 16, 1981 City Law Department opinion, confirmed by memo of March 17, 1986, that

a lot which becomes substandard by adverse possession must be treated in the same manner as a lot which is reduced by a voluntary deed transaction.

12. The Frenches', referred to in Finding 3, above, also formerly owned Lots 17 and 18. In 1951, Lots 17 and 18 were sold to a buyer (or buyers) by the name of Lopas. In the same year, a residential structure was built on Lot 17, property address 11745 Exeter Avenue N.E.

13. There is some testimony that the present Lot 17 structure was built as a garage with living quarters which would serve until a larger, more centralized Lot 17-18 structure could be constructed.

14. May 17, 1962, appellant Mae L. Claypoole and Robert W. Claypoole were granted a Statutory Warranty Deed from "Maurine F. Johnson, formerly Maurine F. Lopas" to subject Lots 17 and 18. Exhibit 1. When this property was acquired, appellant understood the acquired interest to be in two lots, not in a single or unitary parcel. The lot 17 structure and shed were still on-site at the time of the Claypoole's purchase.

15. The Claypoole unit has paid the real estate taxes on Lots 17 and 18 since 1962, and paid off the real estate contract in August 1976.

16. The subject property was annexed to the City in 1953.

Conclusions

1. The subject property is within the SF 7200 zone. However, the 7200 sq. ft. minimum lot area requirement may be excepted if

The lot was established as a separate building site in the public records of the county or city prior to July 24, 1957 by deed, contract of sale, mortgage, property tax segregation, platting or building permit.

Seattle Municipal Code Section 23.44.010(B)(1).

2. DCLU acknowledges that "lots 17 and 18 were initially created prior to 1957," Interpretation, Conclusion 2; DCLU nevertheless considers that Dr. Muecke's pending claim to Lot 17 property will cause a modification to Lot 17 so that "it will not be the same lot as existed prior to 1957." Interpretation, Conclusion 3.

3. The Hearing Examiner concludes that Lots 17 and 18 were established as separate building sites by 1910 platting. And, although there is less hard evidence on the building permit history concerning the development on Lot 17, it strains credulity to suggest that Lot 17 was not established as a separate building site by c. 1951 building permit. These acts occurred well before the 1957 operative date of Seattle Municipal Code Section 23.44.010(B)(1). Thus, the true inquiry concerns "alterations" to Lot 17.

4. There is presently no court decree or order which amends the bounds or area of Lot 17. Dr. Muecke's claim to a portion of platted Lot 17 has not been litigated. The representation by Muecke's real estate agent, regarding Lot 17's north boundary, is of no legal consequence in this proceeding.

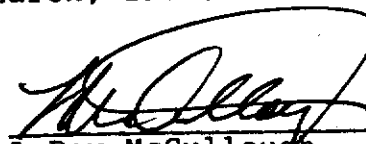
5. Further, the Law Department opinion, relied on by DCLU, addressed a King County Superior Court decree that an adverse possession claim to a 5 ft. 8 in. strip of land was in fact valid. The opinion thus concerns lots that are "rendered substandard by adverse possession..." The Law Department opinion is inapposite to the present case.

6. Finally, the Land Use Code defines "lot area" as the "total area of the horizontal plane within the lot lines of a lot". Seattle Municipal Code Section 23.84.024"L." Lot lines are not defined to honor or exclude easement areas. loc. cit. Thus, Claypoole's grant of an easement to Muecke does not alter the amount of Title 23 area in Lot 17 that is "within the lot lines."

Decision

The DCLU Interpretation is Reversed.

Entered this 10th day of March, 1987.


LeRoy McCullough
Hearing Examiner

CONCERNING FURTHER REVIEW

The decision of the Hearing Examiner in this case is the final administrative determination by the City, and is not subject to reconsideration except on the ground of fraud, mistake, or irregularity in vital matters. Any request for judicial review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within fourteen days of the date of this decision. 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. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104.