

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

PATRICK C. FELKER

FILE NO. MUP-82-016(P)
APPLICATION NO. 81310-0436

from a decision of the Director of
the Department of Construction and
Land Use on a master use permit
application

Introduction

Appellant, Patrick C. Felker, appeals conditions of approval imposed by the Director of the Department of Construction and Land Use (Director) for a short plat of property at 3000 S.W. 106th Street.

The appellant exercised his right to appeal pursuant to the Master Use Permit Ordinance, Chapter 24.84, Seattle Municipal Code.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 24 (Ordinance 86300, as amended) unless otherwise indicated.

This matter was heard before the Hearing Examiner on March 24, and May 7, 1982. The record was reopened to allow response to the examiner's proposed modification of conditions.

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. Appellant applied for a master use permit to short plat property at 3000 S.W. 106th Street. The Director approved the short plat with certain conditions. Appellant appeals conditions requiring street and water improvements.

2. Appellant proposes to divide a parcel located between S.W. 106th Street on the south and S.W. 105th Street on the north into four lots. "A" and "B" would front on unimproved S.W. 105th and "C" and "D" on S.W. 106th. "B" and "D" would also abut upon unopened 30th Avenue S.W.

3. Appellant proposes to create an easement cul-de-sac for access to "A" and "B" from S.W. 106th. Water service would be provided by 1 or 1½ in. lines to each lot from S.W. 106th.

4. The conditions of approval challenged by the appellant are:

3. Provide the following to the satisfaction of the City Engineer:

- A. If improvements are provided by a Local Improvement District process improve the 105th Street roadway extending from the westerly margin of 30th Avenue South West (sic) west to the existing roadway and provide a turn-around.

or

- B. If improvements are provided by private contract, improve South West (sic) 105th Street extending from the existing roadway to a line 39 feet west of the west margin of 30th Avenue South West (sic) and provide a turn-around.
4. Provide for adequate water service and appurtenances in South West (sic) 105th Street to the satisfaction of the Seattle Water Department. Obtain a letter from said Department that this has been done.
5. The Water Department would require installation of a standard (8 in.) watermain in S.W. 105th to serve the subject property. Some 700 ft. of main would have to be installed before the street is paved.
6. The cost of water service in 105th to the Water Department standards could be \$28-35,000.
7. Water service is supplied in S.W. 105th to a point approximately 60 ft. west of the subject property by a 2 in. main connected to a 4 in. main farther west installed by a water district before the area was annexed. In S.W. 106th water is supplied by a 12 in. main.
8. A fire hydrant is located approximately 260 ft. west of the property on 105th with fire flow of 250-300 gallons per minute. This represents one fourth to one third of the amount needed by the Fire Department to fight a fire. A standard fire hydrant is located in 106th with fire flow in excess of 1,000 gallons per minute.
9. If "temporary" water service lines are installed to serve "A" and "B" as proposed by appellant, future owners of the lots could face the cost of connection to a new water main in 105th, their share of an LID for that and any repair of the "temporary" lines. The lines are considered temporary by the Water Department because when a main is installed in the street on which they abut those houses would be required to connect to that main.
10. Installation of "temporary" water service lines would cost approximately \$1 per foot.
11. "Temporary" water service lines are approved for installation by the Water Department where there are interior lots not abutting on any City street right-of-way.
12. A special tap charge proposal for improvements was rejected by the owners of improved properties on S.W. 105th during the pendency of this appeal.
13. At the time the Director made the decision imposing the conditions the special tap charge survey had not been made.
14. An LID was rejected in the past but covered a wider area. In light of the special tap charge vote it is unlikely that an LID would be approved.
15. Appellant could carry out the improvements by a private contract and request the City Council to approve a payback agreement. That process would require appellant to pay the cost of improvements but with payments from the future owners of approximately \$1,800 per lot as vacant lots request water service. The three properties with "no protest" agreements and five other vacant properties could eventually pay.

16. The Water Department requires installation of the new main if 105th is opened to avoid the expense later of removing and replacing paving and to assure that future owners are not surprised by unexpected costs.

17. Extending the 2 in. main to 105th to temporarily serve "A" and "B" until other vacant lots are to be developed would reduce the amount of water available to those houses now served. Further, the Fire Department would require special fire protection measures for any house built on "A" or "B" such as a sprinkler system and automatic alarm system. These measures would add approximately \$2,000 to the cost, for installation, and a continuing monthly charge which is now \$27 per month.

18. The Director found that requiring the street improvements serves two purposes: providing better access and upgrading substandard utilities. Street access, as opposed to a cul-de-sac, allows on-street parking, clearer addresses, better separation between pedestrians and vehicles and for better service vehicle access.

19. The Director's representative stated that the Director does not like easements for access because the property owners have the burden of improving and maintaining them and good maintenance agreements are not written.

20. The Real Estate Monitor reported two sales of comparable lots in the area in 1981, one at \$16,200 or \$3.04 per sq. ft. and one at \$18,500 or \$2.11 per sq. ft.

21. The subject property was purchased by Greg Anderson in April, 1981, for \$31,000 or \$1.01 per sq. ft. Anderson sold the property to appellant in November, 1981, for \$49,000 for \$1.60 per sq. ft. with an agreement that the purchase may be rescinded if the property cannot be satisfactorily short platted.

22. Appellant expected his costs per lot to be the \$12,250 purchase price, \$750-1,000 access, \$200 water and \$475 short plat and survey.

23. Art Ward, representing the Director, testified that the value of the property and hence sales price, should be reduced to reflect the cost of providing access and utilities. With those costs the two lot's value would be close to nil.

24. Mr. Ward testified that the Director's position is that these areas will not be developed until the areas are subdivided so that the property must be obtained for nearly nothing and then the developer must get others to share the costs of improvements.

25. This property will not be developed under the conditions imposed.

26. Development of the property is in the public interest in that more housing is made available and the assessed valuation for taxing purposes is increased.

Conclusions

1. The Director in making the decision on a short plat is to determine whether:

1. The proposed lots conform to the comprehensive plan and Zoning Ordinance provisions;
2. The proposed lots are served with adequate means of access for vehicles, utilities, fire protection, drainage, water supply and means of sanitary sewerage disposal;

3. The public use and interest will be served by permitting the proposed division of land. Section 24.98.080A.

2. Evidence adduced at hearing showed, and the Director decided, that the proposed lots conform to the comprehensive plan and Zoning Ordinance provisions and that, as proposed, they are served with adequate means of access, etc. The Director further found that the public use and interest will be better served by requiring the appellant to improve S. 105th for access than by allowing access by means of the easement cul-de-sac. The ordinance does not require, however, that the Director find that the proposed division better serve the public interest. The record does not reflect any disagreement that division to allow development of residences on four lots would serve the public interest. Imposing the access condition when adequate access can be had, as proposed, and when that condition would make the division and development financially infeasible, would not serve the public interest.

3. The Director's decision should be modified to delete conditions Nos. 3 and 4 and substitute the following conditions:

3. A. Design and construction of the access easement shall be according to Engineering Department standards and a turnaround in accordance with Illustration 2 (Attachment) shall be provided; and

B. a Joint Use and Maintenance Agreement for the easement shall be supplied to the Director for recording as part of the short plat. The terms of the Agreement shall be incorporated in deeds from the platfor/grantor to the purchasers and shall constitute covenants running with the land.
4. A letter be obtained from the Water Department stating that:

A. satisfactory provisions have been made to provide water to Parcels "A" and "B" from the main in South 106th Street; and


B. standard water lines have been installed for connection to a future main in South 105th and a map showing the location of the lines filed and the Water Department; and

C. agreements whereby the owner of the property agrees on behalf of himself, his heirs, assigns, or other transferees that no protest shall be made to any future special tap charge or Local Improvement District created for watermain and paving improvements to Southwest 105th Street.

Decision

The decision of the Director is modified as provided in Conclusion No. 3.

Entered this 4th day of June, 1982.


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 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.