

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

KENNETH VAN DYKE

FILE NO. MUP-84-088(P)
APPLICATION NO. 8404107

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

Introduction

Appellant, Kenneth Van Dyke, appeals the decision of the Director, Department of Construction and Land Use to deny a master use permit for the short subdivision of property at 3608 East Schubert Place.

The appellant exercised his right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on January 16, 1985.

Parties to the proceedings were: appellant, Kenneth Van Dyke, and the Director represented by Art Ward, land use specialist.

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 applicant, appellant herein, applied for a master use permit to subdivide two lots located at 3608 East Schubert Place to create three lots. The Director issued his decision denying the permit and appellant filed this appeal.

2. The combined lots contain 15,180 sq. ft. of area and have frontage on East Schubert Place and on East Howell Street. The lots slope down from East Schubert to East Howell on the north. A house has been developed on the south end of each lot and each has access from East Schubert.

3. The property is within an SF 5000 zone. The area is largely single family developed, however, immediately to the north of the subject site is a part of the Epiphany church and school complex. Lots in the area appear, from Director's Exhibit No. 4, to range in size from considerably below 5,000 sq. ft. to considerably above 5,000 sq. ft.

4. The proposed division would create a lot from the lower elevation of the property with frontage only on East Howell Street. The lot would contain 5,105 sq. ft. and be irregular in shape in that the rear lot line would be at an angle generally following the contour of the hillside. The shape of the lot, given the sloping topography, is not likely to be apparent.

5. The change in elevation from south to north over the depth of parcel C is approximately 20 ft. The slope is much steeper in the west portion of the lot where the lot is only some

27 to 35 ft. deep. The estimates of the declivity of the buildable portion of the site range from Mr. Ward's 47 percent to John Crull's, appellant's expert, 30 to 40 percent.

6. A geotechnical evaluation done by Shannon and Wilson, Inc., consultants, concluded that a residence can be built on Parcel C. In the opinion of the soils consultant the risk of hillside instability could be made to be low with proper soils studies, adequate design and construction.

7. East Howell Street is improved with sidewalks, curbs, and an 18 ft. roadway. While there are other 18 ft. roadways in the City 24 ft. is standard. Some drivers use this two block stretch of East Howell as a route to 34th Avenue. Several houses on East Howell do not have off-street parking and use the street. Others park second cars there. While the street cannot validly be termed congested at this time there is concern that additional development will place more cars on the street creating a hazardous situation because of the street's narrow width.

8. The hillside continues to the west of the subject site with a slope similar to that on the western portion of the proposed new parcel. No single lot is sufficiently large to be subdivided. If ownerships were combined there would be sufficient area for up to three additional lots to be created.

9. The new lot when developed would be required to have one off-street parking space which could be provided through a terraced garage. If permitted a second space could be provided.

10. The infrastructure of drainage, water supply and sewers is adequate.

11. Adequate access for utilities and fire protection can be provided.

12. The area is designated as environmentally sensitive for the purpose of requiring SEPA analysis. A declaration of non-significance was issued by the Director who found no significant impacts because any development would be under the guidance and supervision of a Washington State licensed soils engineer.

13. While there are irregular-shaped lots in the area because of the pattern of the streets, the proposed rear lot line would be different from any other in the area.

14. Because of the shallowness of the lot the rear yard requirement would be reduced and because of the lot's steepness the required front yard setback would be near zero. Considerable open space would be provided, however, in the steeper westerly portion of the lot.

15. The slope is covered with vegetation. The westerly part of the lot is wooded with a mixture of old evergreen and deciduous trees according to the geotechnical report. The easterly portion, where any development is likely, is relatively clear of trees. The owner has been contacted previously by the City about removal of some of the vegetation on the site.

16. The Director's written decision indicates that his decision to deny the proposed short plat was based on the following conclusions: 1. "To encourage the irregular lots as proposed would be out of physical character with properties in the vicinity and would increase development potential, land use, population, traffic, parking congestion and encourage the removal of vegetation in the subject area"; 2. "It will be very expensive/difficult to develop the site"; 3. "Vehicle access is marginally adequate"; 4. "It will be more difficult to provide

space for on site vehicle parking than if the site were more level"; 5. "larger lots are more appropriate where lots are steep or in Environmentally Sensitive Areas in order to provide more room for development/parking and to discourage increased human activities and congestion"; 6. "Platting as proposed would give further encouragement to removal of natural vegetation and reduce the open space both on the subject site and City-wide and be out of character to development nearby."

17. Other bases for the decision were testified to by the Director's representative. He offered that the proposed lot was a "pathological case" for shape and topography; that the inherent risk of construction on a steep slope though low is too great; that development of the site would result in vegetation removal all along the slope to avoid liability; that there is hazard from the possibility of someone's putting fill on a steep slope; that the approved design might not be followed; and that homeowners do not necessarily maintain drainage systems.

Conclusions

1. Chapter 23.24.40 lists the criteria for approval of a short plat. Those considerations are:

1. Conformance to the applicable land use policies and zoning code or land use code provisions;
2. Adequacy of access for vehicles, utilities, and fire protection as provided in Section 23.54.10;
3. Adequacy of drainage, water supply and sanitary sewage disposal; and
4. Whether the public use and interests are served by permitting the proposed division of land.

2. As concluded by the Director, the land use code provisions would be met by the proposed division. The applicable policy is Section 23.16.02 which states:

The purpose of these single family land use policies is to provide and maintain the physical character of single family residential areas in a way that encourages rehabilitation and provides housing opportunities throughout the City for all residents.

The new lot would provide additional opportunity for creation of housing. The Director's position is, however, that the new lot would not maintain the physical character of the area because of its shape, the removal of some vegetation and reduction of open space.

3. The record shows that development could occur without extensive removal of vegetation since the majority of the trees are on the more steep, undevelopable of the lot. Moreover, the record shows that some vegetation may have to be removed whether this subdivision is approved or not. As found, because of the slope the shape of the lot is not likely to be apparent to any observer and will not reduce the total open space to less than would normally be provided because of the wide western portion of the site which would not be developed. Therefore, the proposed division and any development that should occur if any lot were created would not in itself alter the physical character of the

area in a way that discourages rehabilitation or housing opportunities.

4. The access for vehicles is adequate as is it for utilities and fire protection. The availability of utilities for drainage, water and sanitary sewage is adequate.


5. The bases for the Director's conclusion that the public use and interests would not be served by the proposed division, both stated in the written analysis and orally by his representative, were shown to be mostly generalizations which do not apply to this site, e.g. larger lot area needed because of slope, extensive removal of vegetation, or generalizations so broad that if they are relied upon no division or development of the City's slopes could be allowed. The facts of this case show that with conditions to assure appropriate safeguards, the division would be in the public use and interests.

6. Because the conditions for approval of a short plat are present, the short plat should be granted. Imposition of conditions is appropriate to assure that the risk of development on a steep location are minimized.

Decision

The Director's decision is reversed and the short plat granted subject to conditions to assure slope stability. The matter will be remanded to the Director for imposition of conditions requiring further geotechnical evaluation prior to development and supervision by a geotechnical expert of design and construction, protection for upslope lots and drainage maintenance on all three parcels with jurisdiction retained by the Hearing Examiner for fourteen days following the imposition of those conditions should appellant object to any condition as unreasonable. If no objection is filed, the decision will be final on the 14th day.

Entered this 30th day of January, 1985.


M. Margaret Klockars
Deputy Hearing Examiner