

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

In the Matter of the Appeal of

JAMES P. BEATHEA, ET AL.

FILE NO. MUP-82-074(P)
APPLICATION NO. 82-0388

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

Introduction

Project applicant proposes subdivision of a parcel addressed 9624-35th Avenue N.E. Appellants filed this appeal from the approval by the Department of Construction and Land Use Director because certain conditions were not imposed by the Director.

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

Parties to the proceedings were: appellants by Shirley King, pro se; the project applicant by Ruskin Fisher, agent; the Director by Arthur Ward.

No correspondence or testimony was received in opposition to the application.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 23 (Ordinance 86300, as amended) unless otherwise indicated.

This matter was heard before the Hearing Examiner on November 22, 1982.

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 subject property is located in the Single Family (SF) 7200 zone at 9624-35th Avenue N.E.
2. The rectangular shaped site, 41,832 sq. ft. in area, is located just south of N.E. 97th Street, a 30 ft. wide right-of-way.
3. Applicant proposes to divide the subject tract into parcels A, B and C, west to east, respectively. Proposed parcel A, currently developed with a single family residence, would have a lot area of 21,912 sq. ft. It's northern margin is marked by a row of evergreen trees that appellant, some neighbors, would like to see removed as part of the short plat approval.
4. Proposed parcels B and C are both vacant and would have lot areas of 9,960 sq. ft.
5. The tract measures roughly 252 ft. east to west and 166 ft. north to south. North adjacent N.E. 97th Street abuts the westerly 216 ft. of the lot. An 18 ft. wide gravel/asphalt roadway occupies the southerly portion of N.E. 97th Street and is used for access to seven residences and a vacant lot. Access for proposed lots B and C would be from an easement along the northerly 16 ft. of the lot proposed for subdivision.

6. The site is divided near its center by a spring fed stream and ravine oriented in an east-west fashion. There is a relatively level area 70-80 ft. in width just north of the bank.

7. The stream's north bank is nearest the north lot line of the undivided tract at proposed lot C; and the distance gradually increases east to west. Thus, the area between the north lot line and the north bank is least at lot C, more at lot B and greatest at lot A.

8. The Director approved the short plat application on four conditions including the following:

- a. That applicant quit claim the north 20 ft. of the tract to the City, this in recognition of the limited width and extension of N.E. 97th Street, the number of lots served from the street and the assessed need for street (as opposed to easement) access.
- b. That applicant provide an 8-inch water main and hydrant per the indications and approval of the Seattle Water Department.

9. Appellants did not oppose the approval of the subdivision but requested modification of conditions, e.g., that applicant quit claim 30 ft. to the City; that the north row of evergreen trees be removed; that applicant agree with intended local improvement district (LID) street improvement efforts; and that applicant share a cost of the existing sanitary sewer which was "provided through assessment to the current property owners on the north portion of N.E. 97th".

10. An adjacent tract, short subdivision Master Use Permit Number 81224-0259, was required to deed 30 ft. to the City as a condition of approval. That topography, north of the subject property, is less dramatic than that of the subject property.

11. Applicant's 30 ft. deed to the City would provide a 42 ft. distance from the north lot line of lot C to the north bank. Assuming a 20 ft. front yard minimum setback, 22 ft. would remain for construction north of the drainage stream. For lot B, 25 ft. would remain for construction.

12. The Director's representative testified that 50 ft. of width was standard for a through street while a 60 ft. width was standard for a cul-de-sac; that 50 ft. was adequate for street improvements; and that pertaining to the trees they should remain to enhance the environment.

13. The property owner's representative testified that the proponent has agreed to support the LID efforts and to share the cost of water main and other utility expenses.

Conclusions

1. The criteria for approval of short subdivisions are found in Section 23.24.40, Seattle Municipal Code. There is no perceived challenge by appellants to the Director's conclusion that the proposed short plat conforms to "applicable Land Use Policies and Land Use Code provisions", Section 23.24.40A.1; nor to the Director's conclusion that there is adequate "drainage, water supply and sanitary sewage disposal", Section 23.24.40A.3. In this regard it is noted that the three proposed lots exceed 9,600 sq. ft. of area and that the Director has conditioned the approval on proponent's providing an 8 in. water main and hydrant to the satisfaction of the Seattle Water Department.

2. It appears that appellants' challenges relate to the two remaining criteria, (a) requiring adequate access for vehicles, utilities and fire protection, Section 23.24.40A.2, and (b) that the public use and interest be served by the proposed division of land, Section 23.24.40A.4.

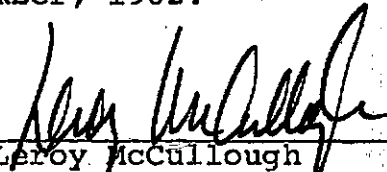
3. It is appellants' burden to show error in the Director's decision sufficient to overcome the substantial weight accorded the Director's determination on short plat applications. Section 23.76.36.B.7. The right-of-way proposed per the Director's decision will prove adequate for access although it is acknowledged that a 60 ft. wide right-of-way may be more desirable than a 50 ft. right-of-way. Further, as opposed to a north adjacent site which was required to deed 30 ft. for right-of-way, the subject site is divided near center by a stream and bank which will affect the development and construction potential on-site. Accordingly, requiring applicant to deed 30 ft. for the right-of-way would not prove to be in the best public interest since consideration should be given to the issue of setbacks. Nor will the removal of the evergreen trees via this decision serve the public use and interest.

4. As to the LID proposal and utility cost sharing, proponent has not disagreed with appellants' suggestion. Nevertheless, to ensure that the public use and interest related to vehicle access for the subject and other sites will be served, proponent shall execute an agreement, on behalf of himself, his heirs, assigns or other transferees that no protest shall be made to the formation of a local improvement district for street improvements to N.E. 97th Street. The form and execution of the agreement shall be approved by the City Law Department.

Decision

The decision of the Director of the Department of Construction and Land Use is AFFIRMED as modified by Conclusion 4, above.

Entered this 6th day of December, 1982.


Leroy McCullough
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.