

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

In the Matter of the Appeal of

JACK JOURDEN

FILE NO. MUP-85-035(P)
APPLICATION NO. 8501582

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

Introduction

The appellant exercised the 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 August 13, 1985. The record was extended to August 21, 1985, for a Department of Construction and Land Use exhibit clarification and parties' response thereto.

Parties to the proceedings were: applicant by Randall Spaan, pro se; appellant, Jack Jourden, pro se and the Department of Construction and Land Use Director (DCLU) by Malli Anderson.

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. DCLU conditionally granted applicant's master use permit application to subdivide a current three lot parcel into four parcels. Appellant, owner of property directly across from the subject site, submitted this appeal.
2. The basic facts are undisputed. The subject property is addressed as 2600 3rd Avenue North. The parcel is single family zoned (SF 5000) and located between a vacated portion of Raye Street to the south and Newell Street to the north. The general location is the northeast side of Queen Anne Hill.
3. The site is basically level at its western portion but has a steep, approximately 30 ft. slope toward the rear. Many large trees decorate the lot and hillside. The Seattle Country Day School building rests atop the subject property's eastern embankment. Because of the slope and due to land movement known to have occurred on the lot, the site is designated as environmentally sensitive.
4. The ground water on the site is from higher elevation runoff. Additionally, a stream runs through the western portion of the lot. Drainage, water and soils stability issues are of major concern to appellant.
5. Other than the east adjacent Seattle Country Day School, vicinity development is single family. Neighborhood children often play in the dead end street portion adjacent to the subject site. Because of this, appellant would like to see traffic to the area minimized.
6. Applicant proposes to alter the configuration of the subject three rectangular lots to make four lots. The three lots presently have 6,000 or more square feet of area.

7. Two of the resulting four residences would be built at least to the toe of the rear slope. Each dwelling would offer 3-bedrooms and double garages. The two front (west) lots would each have 59.53 ft. of frontage on west abutting 3rd Avenue North and extend east for approximately 72 ft. The two more easterly lots would also be approximately 72 ft. deep and 60 ft. wide.

8. Vehicular access to the rear lots would be via a 20 ft. wide easement over the front lots.

9. Appellant suggested that the lot sizes proposed are not in keeping with the SF 5000 zoning. Two of the proposed parcels will be at 4,344 sq. ft. and the remaining two at 4,336 sq. ft. Further, since the plot plan of record shows the two easternmost lots to be within contour lines and into the slope, appellant questioned whether specifically the rear yard area, and hence the development, would be functional for the proposed single family developments.

10. The lots along the east side of 3rd Avenue North between Newell Street and vacated Raye Street (Block 12, Exhibit 7) have lot sizes as follows:

Lots 1 and 2	3,750
Lot 3	4,250
Lot 4	4,000
Lot 5	4,000
Lot 6	5,288.62
Lot 7	5,221.08
Lot 8	5,794.80
Lot 9	6,520.18

These lots total 83,324.682 sq. ft. Since lots 1 and 2 are combined, the mean or average lot size along the east side is 4,853.085 sq. ft.

11. Applicant's preliminary report on the site and proposal recommends installation of "finger drains" for a distance of 15 ft. into the hillside with the drain line ultimately extending to the 3rd Avenue North storm sewer system. This would "dewater the slope" prior to construction. (Exhibit 8.) Underpinning of the adjacent gym foundation wall was also recommended to the Seattle Country Day School, to be accomplished with construction and design assistance of a "structural engineer". The Day School was the addressee of the soils report and apparently had prior plans to develop at least part of the subject site.

12. The Department of Engineering commented that a drainage control plan "including detention" would be required. DCLU subsequently imposed as a condition that

All development on site, including drainage, shall be done under the design guidance and supervision of a Washington State licensed civil engineer with experience in soil mechanics and in accordance with Director's Rule 7-84.

13. Rule 7-84 outlines DCLU "Procedures for Permitting Construction in Potential Slide Areas", Exhibit 10, and

...sets forth minimum guidelines for site... evaluation...and recommendations on stabilizing measures to be made and submitted to the Department by a qualified geotechnical consultant retained by the owner...

14. In the opinion of applicant's witness on soils, the proposed development will enhance stability by facilitating drainage from the slope, by providing lateral structured support/butressing, and by offering more homes, indicating more residents' monitoring of slope or soils activity.

15. Appellant concurs in the belief that the slope and drainage issues may be addressed by proper construction activity.

16. The Seattle Water, Fire, Engineering and City Light Departments comments on the proposal are of record. Exhibit 9. No department objected. City Light, however, requested an easement for electrical facilities, which resulted in one condition that was imposed by the DCLU project approval. Engineering commented that 3rd Avenue should be "improved with a standard cul-de-sac...at the south end of the street". DCLU included the street and other Engineering recommendations as conditions of approval.

17. With regard to the State Environmental Policy Act of 1971 (SEPA) and Chapter 25.05, Seattle Municipal Code, the action proposed in this subject application has been determined by the responsible official to be categorically exempt pursuant to the provisions of WAC Chapter 197-11.

Conclusions

1. The criteria for short subdivision approval are found at Chapter 23.24, Seattle Municipal Code. The DCLU decision approving the short plat is accorded substantial weight, Seattle Municipal Code 23.76.36(B)(11), and it is appellant's burden to show that the DCLU decision was clearly erroneous. A review of the specific criteria and record shows that the appellant has not overcome the weight accorded the DCLU decision.

2. Concerning lot size, applicant is proposing four lots, two at 4,336 sq. ft. and two at 4,344 sq. ft. The zone is SF 5000, which means that absent special provision, the minimum lot size for the zone is 5,000 sq. ft. Seattle Municipal Code 23.44.10(B)(3) provides that

A lot below the minimum lot area may be created by short subdivision...when the lot to be created will be at least seventy-five percent of the minimum required lot area and be at least eighty percent of the mean lot area of the lots on the same block face within which the lot will be located and within the same zone.

3. To determine which lots are "on the same block face" the inquirer should refer to the definitional provisions of the Land Use Code. At Section 23.84.04 "block face" and "block front" are defined as

the frontage of property along one side of a street bound on three sides by the center line of platted streets and on the fourth side by an alley or rear property lines...

4. The "same block face within which the lot will be located", Section 23.44.10(B)(3), is the block face along the east side of 3rd Avenue North. The proposed lots will be "at least seventy-five percent" of the 5,000 sq. ft. minimum lot size, i.e., the lots will exceed 3,750 sq. ft.; and will also be "at least eighty percent of the mean lot area of the lots" on the east block face of 3rd Avenue. The mean or average lot area for the block face is 4,853.085 sq. ft. Eighty percent of 4,853.085 is 3,882.468 sq. ft. The proposed lots exceed 3882.468 sq. ft. Thus, the Code requirements for a lot of less than 5,000 sq. ft. are met.

5. With the stipulations for utility and vehicular easements, adequacy of access for vehicles, utilities and fire protection is sufficiently shown. After review, no City department stated objection to the proposal.

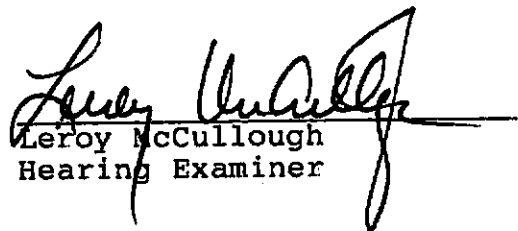
6. Concerning issues of water and drainage, all site development, including that for drainage, is to be done under the "design, guidance and supervision" of a licensed civil engineer "with experience in soil mechanics" and in accordance with Director's Rule 7-84 which requires the participation of a geotechnical consultant. It was not alleged that the site's water/drain problem could not be addressed through appropriate development mechanics as conditioned by the DCLU approval. Further, it was not established that the approved development would create or exacerbate the present water or slide problem. To the contrary, the record suggests that the development's drainage of the slope and installation of drainage systems will operate to enhance stability and thereby benefit the public use and interest. Special attention should be given in the ensuing review to the adjoining school building foundation. Adequacy of water supply and sewage disposal, not pursued as an issue, is considered sufficient.

7. The public use and interest will be further served by permitting more in-fill, regulated development such as that which will be required of the development by the terms of the DCLU decision.

Decision

The Department of Construction and Land Use decision is AFFIRMED.

Entered this 28th day of August, 1985.


Leroy McCullough
Hearing Examiner

CONCERNING FURTHER REVIEW OF HEARING EXAMINER FINAL DECISIONS ON MASTER USE PERMITS

The decision of the Hearing Examiner in this case is final and is not subject to reconsideration except to correct errors on the ground of fraud, mistake, or irregularity in vital matters. Any request for judicial review of the decision must be filed in King County Superior Court within fourteen days of the date of this decision. Seattle Municipal Code Section 23.76.36(B)(11).

If the Superior Court orders a review of the decision the person seeking review must arrange for and bear the cost of preparing a verbatim transcript of the hearing, but will be reimbursed if successful in court. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104.