

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

NORMAN SMITH

FILE NO. MUP-85-003(P)
APPLICATION NO. 8403521

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

Introduction

Appellant, Norman Smith, appeals certain conditions imposed by the Director, Department of Construction and Land Use, on the approval of a short subdivision of property at 1925 South Orcas Street.

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 March 11, 1985.

Parties to the proceedings were: appellant, pro se, and the Director represented by Arthur Ward, land use specialist.

For purposes of the 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. Appellant applied for a master use permit to divide one lot at 1925 South Orcas Street into eight lots. The Director granted the application subject to a series of conditions. Appellant has appealed, challenging the stages at which the conditions must be satisfied.

2. The property extends from South Orcas Street to South Juneau Street. South Orcas has a 40 ft. wide right-of-way but is developed to approximately 20 ft. The South Juneau right-of-way extends across only about 2/3 of the south side of the property.

3. The division proposed would create eight lots, two, Parcels A and B, with frontage on the improved Orcas right-of-way and two, Parcels G and H, with at least some frontage on the South Juneau right-of-way. An access easement roadway would extend from South Orcas through the middle of the property to a T at the north edge of the lots with Juneau frontage.

4. An existing single family residence is located on proposed Parcel G.

5. The proposed lots would all exceed the 5,000 sq. ft. minimum lot area required in the SF 5000 zone.

6. The Director imposed the following conditions on his approval of the short plat:

CONDITIONS OF APPROVAL PRIOR TO RECORDING

1. Final recording forms and fee must be submitted and approved. Remove the sheds with an approved permit, provide evidence that they have been removed, and submit the plat showing they have been removed.
2. Additional right-of-way (10 ft. on S. Orcas St. and 20 ft. on S. Juneau St.) as shown on the revised plan shall be quit claimed to the City for nominal consideration. The applicant shall have the City Engineer confirm in a memorandum to DCLU when this has been accomplished.
3. S. Orcas St. shall be improved as shown on Figure II attached "All weather surface improvement". The applicant shall have the City Engineer confirm this in a memorandum to DCLU when this has been done.
4. Provide an electrical easement satisfactory to the City (City Light). Add to face of plat the following: "An easement is granted to Seattle City Light as shown on page ____." Check with Ray Rosen (625-3394) for change in the legal description.
5. Provide a "Building Grade Sheet" to be recorded with the plat which shows future grading necessary to Juneau Avenue S. (prior to issuance of a building permit for Parcel H).
6. Water mains shall be provided to the satisfaction of the Seattle Water Department. The applicant shall have the Water Department confirm this to DCLU when this has been done by approval of a Water Availability Certificate.
7. A sewer main shall be provided to the satisfaction of the City Engineer to serve the proposed parcels, except Parcels A, B and G, and the applicant shall have the City Engineer notify DCLU when this has been accomplished.
8. Construct a storm water drainage facility to serve all increases in impervious surfaces including the easement roadway/turnaround based upon soil testing, design and supervision of a Washington State licensed civil engineer. The above facility may be changed to on-site infiltration facilities, if this is determined to be satisfactory to DCLU, based upon a soils report percolation test by a Washington State licensed civil engineer.
9. Add all of the following conditions of approval to the face of the plat; attach additional pages as necessary and recalculate the recording fee based on the resulting package.

CONDITION OF APPROVAL PRIOR TO ISSUANCE OF A BUILDING PERMIT FOR PARCEL H

- . The plans submitted for a building permit shall show that the street right-of-way in front of said parcel shall be graded in accord with the "Building Grade Sheet".

CONDITION OF APPROVAL AFTER RECORDING BUT PRIOR TO THE
ISSUANCE OF BUILDING PERMITS FOR PARCELS C, D, E, F AND
H

- . The easement roadway for a minimum 16 feet in width, and the turnaround, shall be graded, compacted and covered with six inches of crushed rock.

CONDITION OF APPROVAL AFTER RECORDING BUT PRIOR TO A
FRAMING/COVER INSPECTION FOR PARCELS C, D, E, F AND H

- . All the turnaround and easement roadway shall be improved to a minimum width of 16 feet with asphalt or concrete pavement so as to be capable of supporting 30,000 lbs. of fire vehicles and/or equipment.

CONDITION OF APPROVAL AFTER RECORDING BUT PRIOR TO
INSPECTION DIVISION FINAL APPROVAL OF ISSUED BUILDING
PERMITS

- . A Joint Use Maintenance Agreement for the access roadway is to be made applicable to the Parcel(s) A through H through the medium of deeds from the plattor and common grantor to the purchaser(s) of said Parcel(s) A through H; the agreement(s) shall be so worded as to constitute covenants running with the land.

CONDITION OF APPROVAL AFTER RECORDING

- . If on-site development must provide a storm water control facility in accordance with SMC Chapter 22.800, the Grading and Drainage Control Ordinance, maintenance of this facility will be the responsibility of the owner(s) of said property. If the facility serves more than one property it will be maintained based upon a Joint Use Maintenance Agreement in the format noted above for the roadway/turnaround.

7. Appellant objects to the conditions that Orcas Street be hard-surfaced, water mains and sewer mains and storm drainage facility be installed prior to recording and that the easement roadway be hard-surfaced prior to a framing/cover inspection for Parcels C, D, E, F and H.

8. Appellant contends that it is a better development practice to finish the roadways after the heavy equipment use is over and that it is nearly impossible for any but rich or large builders to do the major improvements prior to recording since financing is not available at that point.

9. Art Ward opines that road surfaces can withstand heavy equipment if built properly and that the \$60,000 is not an unreasonable amount of equity for a builder to have to borrow against.

10. The reason for the times of satisfaction required by the Director, according to the testimony of Art Ward, is so the City can assure that a purchaser will not buy the lot expecting improvements which are never done. Mr. Ward cited the one example he knows of where J and B development sold lots and filed for bankruptcy without completing the improvements. He feels there may be problems the City is not involved with or aware of.

11. The City has power to enforce conditions requiring

improvements by denying occupancy permits for houses constructed on lots without the required improvements. Where a residence has been occupied illegally without an occupancy permit the City's recourse then is to use the courts to enforce the requirements.

12. Appellant proposes a condition he believes would give the City the assurance it requires while allowing him to obtain financing and begin construction. The condition would be recorded on the plat and therefore its existence would be reported in the title insurance report. The condition would provide that until the improvements listed on the plat were completed title could not be transferred. The City would certify that the improvements were completed before transfer.

13. The mortgage company would provide a further safeguard since that portion of the construction loan for the improvements would be held back for those improvements.

14. The conditions, as written, require the developer/builder to expend considerable monies before the plat can be recorded subjecting the builder to the risk that the market may change in a way that the builder would not find it feasible to go ahead with the project.

15. Water and sewer lines are in Orcas Street and available to Parcels A and B.

16. Appellant has been a builder for 35 years and has never been cited or sued for failing to complete improvements.

17. Mr. Ward testified that the City does not want to accept bonding as a way to ensure completion of improvements.

18. Similar conditions were imposed on a recent short plat to the southeast of the subject site without objection.

Conclusions

1. In this case, the examiner is presented with differing opinions on two issues. On one hand the Director's representative says the conditions address a serious problem that needs solution and offers but one instance to support that conclusion. On the other hand appellant opines the problem is not far reaching and has shown he has not contributed to it and will not in this instance. As to the solution, requiring that improvements occur early in the development process, Mr. Ward urges that the costs involved are not unreasonable and the timing required would be consistent with good building practice. Mr. Smith says that the timing creates serious cash flow and financing difficulty and is not good building practice.

2. On review of a master use permit decision by the Director regarding a short plat, the hearing examiner is to give that decision substantial weight. Section 23.76.36B(7). When the testimony shows that the Director and appellant disagree about building practice and reasonableness of conditions and each shows equal support for his opinion, but appellant does not present evidence to show the Director's position is clearly erroneous, and where the same conditions have been applied to other properties, the appellant has not overcome that weight. In that case the decision must be affirmed.

Decision

The decision of the Director is affirmed.

Entered this 25th day of March, 1985.

M. Margaret Klockars
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Deputy 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.