

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

JOHN R. BECK

FILE NO. MUP-82-021(P)
APPLICATION NO. 82-0042

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

Introduction

John R. Beck, appellant, appealed the decision of the Director of the Department of Construction and Land Use (DCLU) (Director) to conditionally approve a short subdivision of property at 5000-50th Avenue N.E.

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

Parties to the proceedings were: appellant, pro se; applicant, Laurel Park Development, represented by Richard R. Wilson, Hillis, Phillips, Cairncross, Clark and Martin, P.S.; and the Director represented by Ed Somers, environmental specialist.

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 April 20, 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 City Council approved the St. Briget's Place Residential Planned Unit Development (PUD) in 1981 for the subject property at 5000-50th Avenue N.E. The PUD plans provide for an existing church which may be expanded in the future, a rectory, 24 townhouse condominiums, seven basement apartments in the townhouses and an 18 unit apartment building.

2. The applicant applied for a short plat to divide the property into three parcels, separating the church from the other proposed developments, in order to obtain financing. The Director approved the short plat with certain conditions. This appeal followed.

3. Appellants contentions were that:

1. the PUD applicant represented that the entire tract would remain under church ownership and control and the change in ownership allowed by the short plat would affect the way the development is operated and its impacts on the neighborhood;
2. the church parking lot may not be available for the residents' use if the parcels are under separate ownership;

3. density on the non-church parcels could greatly exceed that permitted by the underlying zoning; and
 4. the condition of the Director that the property use shall revert to the underlying zoning if the individual property owners do not comply with the PUD restrictions could result in a situation analogous to spot zoning.
4. Applicant filed a Motion to Dismiss Appeal on the grounds that the appeal is frivolous and without merit on its face.
5. At appellant's request for clarification of Conditions of Approval Prior to Recording No. 2, which relates to contention No. 2, the Director and applicant stipulated that the condition should be amended by the hearing examiner to clarify the Director's intent regarding easements for access and parking.
6. On applicant's motion, appellant's contention No. 3 was dismissed as a collateral attack on the PUD decision over which the hearing examiner has no jurisdiction.
7. Appellant withdrew his contention No. 4 being satisfied with the explanation in the Affidavit of Richard R. Wilson in support of the Motion to Dismiss Appeal.
8. Evidence in support of appellant's contention that the change in ownership would have an effect contrary to the public interest was presented by appellant and consisted of his testimony that he and other members of the community believe that the motives of the different owners would be different. With a church as the owner the motive would be service where private developer-owners would be seeking to profit. He perceives, and believes others to perceive, the latter to be likely to result in a residents with different characteristics than contemplated which could mean more impact on the community.
9. The church initially intended, as was represented in the environmental impact statement, to retain ownership and lease portions of the property to developers on a long term basis. More recently the church determined that the division was necessary for financing.
10. In the Director's approval of the short plat his concern was that the maintenance of the property be as a unit. The ownership was not considered a critical factor.
11. The appeal was not frivolous and was brought by the appellant in good faith.

Conclusions

1. On review by the hearing examiner the decision of the Director on a master use permit application is to be given substantial weight. Section 24.84.170. The evidence offered as to the possible effects of a change in ownership which would be permitted by the short plat is not sufficient to overcome that weight.
2. As stipulated, the decision should be modified to clarify the Director's intent regarding easement.


Decision

Condition of Approval Prior to Recording No. 2 is modified to read:

Easements for access from Parcel B across Parcel A to N.E. 50th Street and 50th Avenue N.E. and for parking and common pedestrian walkways shall be shown on the plat maps and be indicated in the legal descriptions.

The decision of the Director is AFFIRMED, as modified.

Entered this 3rd day of ^{May}~~April~~, 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.