

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

GILBERT MANDEVILLE

FILE NO. S-82-007

from an interpretation of the Director,  
Department of Construction and Land Use

#### Introduction

The appellant filed an appeal from an interpretation by the Director of the Department of Construction and Land Use (DCLU), Interpretation No. 82-004, concerning property at 13055-42nd Avenue Northeast.

The appellant exercised his right to appeal pursuant to Chapter 23.88, Seattle Municipal Code.

Parties to the proceedings were: appellant, pro se; the DCLU Director by Greg Borba; and the project applicant by Scott Baltzell.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 23, unless otherwise indicated.

This matter was heard before the Hearing Examiner on November 4, 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 legally described as Lot 7, Block 1, Cedar Park Number Three Addition to the City of Seattle. The street address is 13055-42nd Avenue N.E.

2. The site, 42,181 sq. ft. in area and vacant, is zoned Single Family 9600 (SF 9600).

3. The east property line of the parcel is adjacent to 42nd Avenue N.E., a street that the record shows has not been paved for approximately 30 years. The section by the subject property is without catchbasins or sidewalks. However, the adjacent street portion is sufficient for two-lane vehicle travel unless cars are parked on the street, reducing the number of passable lanes to one.

4. By application submitted July 18, 1982, applicant proposes to subdivide the existing parcel into four lots. From the westernmost of the segments to the easternmost, bordering 42nd Avenue N.E., the lots would be designated A-D, respectively. Construction of individual homes on lots A, B, C and D is anticipated.

5. Parcel A would have a width (north-south dimension) of 100.02 ft. and a depth (east-west dimension) of 132.43-134.69 ft. Parcels B and C would both have widths of 100.02 ft. and depths of 96 ft. Parcel D would have a 102.79 frontage on 42nd Avenue N.E., and a depth of 84.33 ft. to 108 ft., the variance apparently due to the angle of the adjoining right-of-way.

6. Applicant proposes use of the northern 20 ft. of parcels B, C and D for vehicle and utility access. Proposed for the north-east approximate quarter of Parcel A is a turn-around terminus.

7. On September 24, 1982, the DCLU Director entered an interpretation, No. 82-004, that

the proposed access easement for the short subdivision Master Use Permit Application #82-0335, meets the requirements of the Land Use Code; an access easement may serve more than two lots; an access easement may be properly considered as a part of a lot; and the Title 23 definition of "lot" applies to the proposed short subdivision.

8. Appellant submitted this appeal, consolidated for purpose of public hearing with the appellant's challenge to the short subdivision conditionally approved by DCLU.

9. As revealed in the hearing, a primary emphasis of the interpretation appeal, taken to all of the Director's conclusions, is that the Director should exclude from lot calculations the areas of the proposed lot designated as easements; that proposed Lots A, B, C and D do not abut, i.e., border upon, the easement portions of those lots.

10. Inclusive of the contested easement areas, proposed lot sizes are as follows: A, 13,309 sq. ft.; B, 9,602 sq. ft.; C, 9,602 sq. ft. and D, 9,618 sq. ft. Per appellant's calculations, (excluding the easement areas) proposed Lots B and C would each be 7,862 sq. ft. in area and Lot D, 9,410 sq. ft. Lot A would approximate 13,476 sq. ft. Appellant cites Section 23.84.24L, the definition of Lot in the Land Use Code, for the proposition that the "Lot" is to abut upon the easement.

11. Further, applicant cites Section 24.08.130(L)(3). There "lot" is defined as

a platted or unplatted parcel of land...together with such yards and open spaces as are required by this subtitle and abutting by not less than twenty feet upon a street sufficiently improved for automotive travel or having an exclusive, unobstructed permanent access easement serving not more than two principal uses and jointly owned by the two property owners served and at least 20 ft. wide and not exceeding 150 ft. in length to such street...

### Conclusions

1. The Hearing Examiner shall consider de novo appeals from interpretations rendered by the Director of the Department of Construction and Land Use. The Hearing Examiner's decision shall be made on the same basis as was required by the Director and shall afford the interpretation substantial weight. The burden of establishing a position contrary to the Director is the appellant's. Section 23.88.020(E).

2. The date of application controls whether Title 24 or Title 23 provisions apply to the application at issue. The subject application was dated July 15, 1982, after the effective date of the Land Use Code, Title 23.

3. Section 23.04.10(A) provides that provisions of Title 24, the Zoning Ordinance, not specifically repealed, are to continue to have "full force and effect" until the Land Use Code is adopted in its entirety. The Section continues:

If, during the transition period, the application of a provision of the Land Use Code and a retained provision of Title 24 creates, in the Director's judgment, an irreconcilable conflict, the provisions of the Land Use Code shall control.

4. One section of Title 24 specifically superseded by Title 23 is the definitional portion, which results in some differences, including the definition of lot, as will be discussed subsequently herein. Assuming for the sake of argument, however, that the Title 24 definition of lot had not been superseded, and that the definition of lot in Title 24 irreconcilably conflicted with the definition of lot in Title 23, Section 23.04.10 suggests that the Title 23 definition would control.

5. Appellant correctly states the sense of the Title 24 definition of "lot", restricting easement length to 150 ft. and the principal uses served to two. Section 24.08.130(L)(3). However, the Land Use Code definition of Lot follows:

A platted or unplatted parcel or parcels or land abutting upon or accessible from a private or public street sufficiently improved for vehicle travel or abutting upon and accessible from an exclusive, unobstructed, permanent access easement...

The Title 23 definition of "lot" includes no prohibition on length or the number of principal uses served by an abutting easement. Section 23.84.24L. We conclude, therefore, that in compliance with the Land Use Code, the easement in this case may serve more than two lots.

6. The remaining question is whether the proposed lots abut upon either an improved street or access easement, or phrased per the appeal, whether the area designated as "access easement area" borders upon the particular lots such that the access easement lot area should be excluded from lot area calculations.

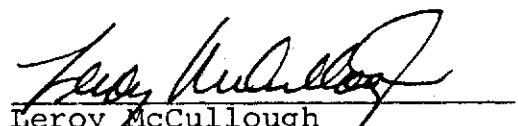
7. Lot area is defined as "the total area of the horizontal plane within the lot lines of a lot". A "lot line" is a property line "bounding the lots". Section 23.84.24L.

8. Proposed lot D abuts upon 42nd Avenue N.E., a street while not improved to maximum standards is "sufficiently improved for vehicle travel". Lot C abuts or borders upon the 20 ft. wide designated easement section of east adjacent Lot D. Lot B borders upon the 20 ft. wide easement segment of Lot C and Lot A upon the easement segment of Lot B. See illustration, Appellant Exhibit 2. Thus, all lots abut a street or easement. An easement is defined as "a grant by a property owner to specific persons or to the public to use land for a specific purpose or purposes". All lots proposed abut a street or easements per code requirements. The areas dubbed as "easement" for Lots A through D clearly constitute part of the "total area" within the property lines "bounding the lot" and are therefore properly included in lot calculations. The Director's interpretation is affirmed.

#### Decision

The Director's Interpretation Number 82-004 is AFFIRMED.

Entered this 18th day of November, 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, instruction 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 of the appellant is successful in court.