

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

MARGARET COUGHLIN et al.

FILE NO. MUP 83-043(P,W)
APPLICATION NO. 83-338

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

Introduction

The Director of the Department of Construction and Land Use (Director) issued a declaration of non-significance (DNS) and conditionally approved a short subdivision to create four lots at 4820 - 40th Avenue W. Appellants submitted this appeal.

The appellants exercised their 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 September 6, 1983. The record remained open to September 9, 1983, for appellants' reply to additional materials supplied by the Director.

Parties to the proceedings were: appellants by Margaret Coughlin and Maurice Oaksmith, pro se; the project applicant by Michael Prittie; and the Director by Rosemary Horwood.

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. The subject property is located in the Single Family (SF) 7200 zone at 4820 40th Avenue W. The site is bordered on the west by 40th Avenue and on the south by the dirt and gravelly W. Lawton Street right-of-way. Discovery Park is to the site's west and south. W. Commodore Way is north parallel to W. Lawton Street and is separated from the subject site by two lots.

2. The W. Lawton and 40th Avenue rights-of-way are 30 ft. wide. W. Lawton is closed some three lots east of the subject site. Appellants' contend that the 40th Avenue is one of two public accesses to Discovery Park; that four tour buses use the street four and five times per day; and that on-street parking is at a premium.

3. Applicant proposes to subdivide the site into four lots and develop them with single family dwellings "in the \$230,000 range." Access would be via a cul-de-sac opening to 40th Avenue W. The new lots would be 8,159; 9600; 9710; and 9831 sq. ft. in area.

4. The Director issued a declaration of non-significance for the project, meaning that no environmental impact statement (EIS) was required. The Director also conditionally approved the short subdivision. Appellants, vicinity residents, submitted this appeal. In hearing an appellants' representative explained that they were not contending that a "full scale EIS" be ordered but essentially that further information should have been required for proposed development in such a sensitive, progressive area.

5. The subject property is in an environmentally sensitive area.

6. Topographically there is a break between the west side of the subject property and west adjacent 40th Avenue. The site also drops sharply from the southwest to the northwest.

7. Appellants urge that because of the topography, residents' access to 40th will be difficult; and that guest provisions are inadequate. Accordingly, they recommend that ingress and egress be to the "safer" W. Lawton Street. Further, per the appeal letter, that the development be limited preferably to two homes fronting on W. Lawton Street. Strategically placed, they suggest, the two homes would have desirable views and would enhance the new homes' value and complement the neighbors' growing pride of ownership. Issues of drainage, sewer connections, and soil stability completed the appeal presentation. As of the hearing date appellants' representatives were not aware of the Director's three page decision on the subject application.

8. The Director's decision requires as one of two conditions of approval prior to recording that all grading and construction be done "under the direction of a licensed Soils Engineer." The decision continues that after recording, maintenance of any required storm water control facility pursuant to Chapter 22.800 is to be the responsibility of the individual owners.

9. The Director also imposed access easement specifications, including a requirement for a Joint Use Maintenance Agreement worded so as to constitute a covenant running with the land." A condition of approval "after recording but prior to issuance of a building permit" is that:

380 ft. of 12 in. main shall be provided in
40th Avenue W. and 160 ft. of 8 in. main shall
be provided in W. Lawton Street.

10. The Director's decision finally noted that as the noise, earth disruption and similar construction impacts would be temporary or of minor degree, the proposal would not have a significant adverse impact on the environment.

11. No evidence of record shows that the proposed development will result in unstable earth conditions or in changes in geologic substructures.

12. Prior to issuing the decision the Director referred the proposal to other departments for review. The Seattle Fire Department replied "no objections." The Seattle Water Department required the water main conditions imposed by the Director in the decision here at issue. The Director also adopted response specifications for the easement.

Conclusions

1. In hearings before the Hearing Examiner environmental and subdivision decisions of the Director are accorded substantial weight. Section 23.76.36 B. 7. Challengers must prove that the Director's decision was clearly erroneous.

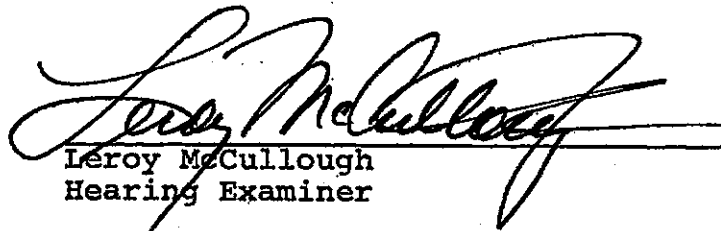
2. The Director's decision incorporates recommendations of the Water Department and makes a reasonable response to input from others. The decision specifically requires grading and construction under the direction of a soils engineer; and water main construction per the recommendation of the Water Department. Although the site is in an environmentally sensitive area, the record does not show that the proposal will result in unstable earth conditions. Suitable fire protection, access, and land use code requirements are proposed.

3. Appellants have expressed with precision their preference for a less intense, "more suitable" proposal. However, the same does not constitute evidence of the degree required to overcome the weight given the Director's decision. Accordingly, the decision of the Director is affirmed.

Decision

The decision of the Director is Affirmed.

Entered this 23rd of September, 1983.


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.

Notice of Right to Appeal

Pursuant to Section 25.04.210, Seattle Municipal Code, a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the 14th day after the date the decision appealed from is filed with the SEPA Public Information Center. The appeal must be filed with the City Clerk on the 1st floor of the Municipal Building. Rules have been adopted by the City Council governing the appeal procedure and should be reviewed prior to filing an appeal.