

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeals of

SCOTT DeVRY, et al. and
WILLIAM B. BEYERS, et al.

FILE NO. MUP-86-003(P)
FILE NO. MUP-86-002(P)
APPLICATION NO. 8406336

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

ORDER OF DISMISSAL

1. Martin Castaneda applied to subdivide a parcel addressed as 4921 S. W. Othello Street into four lots. The application number is 8406336.

2. On January 2, 1986, the Department of Construction and Land Use Director issued an Analysis and Decision which approved the application, Chapter 23.54, Seattle Municipal Code, subject to six conditions "Prior to Recording" and two conditions "After Recording."

3. On January 16, 1986, the Office of Hearing Examiner received an appeal letter stating in relevant part as follows:

We wish to appeal the decision granting conditional approval for a short subdivision, as requested in project number 8406336...The condition...which we wish to appeal is the requirement for street improvements on S. W. Othello and Beach Drive S. W...We support the granting of an exception to this condition...In addition to the fact that this is functionally an unnecessary requirement, we are concerned about the adverse environmental and visual impacts of any widening of Beach Drive S. W...Completion of the unimproved section of S. W. Othello Street would...lead to adverse environmental impacts of the neighborhood...For these reasons, we request that the conditions of approval prior to recording be modified to exclude or except the street improvements called for in Condition 2.

The appeal letter, signed by William B. Beyers and others, resulted in assembly of Hearing Examiner File No. MUP-86-002(P).

4. Also on January 16, 1986, the Office of Hearing Examiner received an appeal letter signed by Scott and Mary Anne deVry, Helen and Jake Levin and others, stating in relevant part as follows:

We...are hereby appealing the decision of the Department of Construction and Land use...The specific condition which is being appealed is the requirement to improve the undeveloped section of S. W. Othello Street...contained in paragraph 2, Conditions of Approval Prior to Recording...We request an exception to this condition be granted to allow S. W. Othello to remain in its present condition...for the following reasons: 1. There is no need for the road improvements...2. Improving the undeveloped portion of S. W. Othello would create a slide hazard potential for lots on the east side of S. W. Othello...

This appeal letter was assembled with Hearing Examiner File No. MUP-86-003(P).

5. Martin Castaneda also submitted an appeal letter received in the Office of Hearing Examiner, January 16, 1986, which concurrently requested a Seattle Engineering Department exemption from the

requirement that S. W. Othello Street be improved. That appeal was assigned Hearing Examiner File No. MUP-86-004(P).

6. The State Environmental Policy Act determination of non-significance (DNS), which was not appealed, included the following as a condition:

All future development i.e., sewers, drainage systems and residences are to be done under the direction and supervision of a geotechnical consultant and meet the requirements of the soils engineer and be in accord with Director's Rule 7-84. (This will include all grading and clearing of vegetation.)

7. By letter dated January 29, 1986, received in the Office of Hearing Examiner February 5, 1986 and distributed to hearing attendees at the public hearing of February 20, 1986, the Seattle Engineering Department stated as follows:

Because vehicular access to all four lots is available from currently improved streets and because of the potential for slides in and around the subject property, we approve your special exemption request...

The Seattle Engineering Department letter further noted regarding sewers that construction would be required through a private contract. The letter continued that:

Because the proposed lots are in a designated environmentally sensitive area, construction of sewers, drainage systems and new residences must take place under the direction and supervision of a geotechnical engineer.

8. By letter received in the Office of Hearing Examiner February 10, 1986, based on the approved Seattle Engineering Department exemption, appellant Castaneda withdrew the appeal of MUP-86-004(P). The Order of Dismissal thereon was entered February 13, 1986.

9. On February 18, 1986, the Office of Hearing Examiner received a letter from Scott DeVry and Larry Kirchner requesting withdrawal of the appeal of MUP-86-003(P). Mr. DeVry made no claim that his withdrawal request was approved by all MUP-86-003(P) signatories. The Kirchner and DeVry letter did request return of the \$25.00 appeal fee.

10. Because it was uncertain whether all MUP-86-002(P) and MUP-86-003(P) appellants were in agreement on dismissal of the appeals, the matter came on for hearing before the undersigned on February 20, 1986. At that hearing, the Department of Construction and Land Use Director was represented by Arthur Ward, William B. Beyers appeared pro se for appeal of MUP-86-002(P) and Jake Levin appeared pro se for MUP-86-003(P).

11. Mr. Levin, Mr. Beyers and many others expressed strenuous objections to the proposal. The objections went beyond the issue of widening S. W. Othello. Recurring concerns were stated with:

- a. The reliability of the applicant's soils testing
- b. Stability and erosion of the hillside, whether for construction of the street improvement, sewers or actual residences
- c. The overloaded present systems
- d. The impact of the proposed division and resulting construction on drainage patterns
- e. Liability for accidents or negligence

12. Comment letters from the community, which raised similar issues, were considered by the Department of Construction and Land Use prior to issuing the decision appealed.

13. Based on the Seattle Engineering Department exception of record, the Department of Construction and Land Use requested dismissal of the remaining appeals.

Conclusions of Law

1. The Hearing Examiner has jurisdiction of this matter pursuant to Chapter 23.76, Seattle Municipal Code, reference, Chapter 23.24, Seattle Municipal Code.

2. Seattle Municipal Code, Section 23.76.036, Procedures for Filing Appeals, provides that appeals of master use permit decisions, including short plats:

shall be in writing and clearly identify the approval(s) being appealed...Specific objections to the Director's decision and the relief sought shall be stated. In form and content, the appeal shall conform with the rules of the Hearing Examiner.

3. Hearing Examiner Appeal Rule 1.2 requires that an appeal contain a brief statement stating explicit exceptions, objections and requested relief. See also Hearing Examiner Appeal Rule 2.8.

4. The appeal letters for MUP-86-002(P), MUP-86-003(P) and MUP-86-004(P) explicitly objected to the Department of Construction and Land Use requirement that S. W. Othello Street be improved. Other concerns stated within those letters related directly to the consequences of the street improvement. Since the requirement for the street improvement has been deleted by the Seattle Engineering Department exception, the stated issue for the appeals has been resolved.

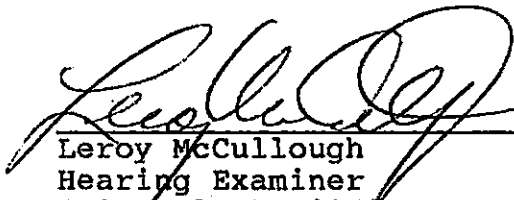
5. The Hearing Examiner also notes that conditions attached to the determination of non-significance and the short plat speak directly to soils stability, sewer construction and other general issues which, although not raised in the letters of appeal, were raised in the public hearing.

6. The Department of Construction and Land Use, the Seattle Engineering Department and appeal letter signatories shall be provided a copy of this Order. The Seattle Engineering Department and the Department of Construction and Land use are requested to give particular attention to the soils and drainage issues raised by the various appellants and witnesses.

7. The request of Mr. DeVry and Mr. Kirchner for refund of the MUP-86-003(P) \$25.00 appeal fee is denied.

8. Remaining appeals MUP-86-002(P) and MUP-86-003(P) are hereby dismissed.

Entered this 25th day of February, 1986.


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