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FINDINGS AND DECISION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

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In the Matter of the Appeal of

WILLIAM SAFSTROM

FILE NO. MUP-89-053(P,W)
APPLICATION NO. 8903192

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

Introduction

Appellant, William Safstrom, appeals the decision of the Director of the Department of Construction and Land Use (Director): (1) to conditionally grant a short subdivision of one parcel into seven parcels of land in an environmentally sensitive area; and (2) to issue a determination of non-significance (DNS) with conditions for the property located at 10839 8th Avenue Northwest. Appellant claims that the criteria for a short subdivision are not satisfied and that the Director did not adequately mitigate the proposal's adverse environmental impacts on streets, traffic, parks, soils, fish and wildlife. Initially, he claimed also that the Director failed to consult with public agencies in reviewing environmental impacts as required by RCW 43.21C.030; however, that claim was withdrawn at the hearing. Applicant requests that the Hearing Examiner reverse or modify the Director's decision or remand it for further proceedings.

Appellant exercised the right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

This matter was heard before the undersigned Hearing Examiner on November 6, 1989, and the record was kept open through November 8, 1989, to allow for a site inspection by the Hearing Examiner.

Parties to the proceedings were: appellant, represented by Calvin Rule; the Director, represented by Jan Mulder, Land Use Specialist; and the Applicant, Lucille Flanagan, appearing pro se.

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, and the site visit made and conditions thereof noted, the following shall constitute the findings of fact, conclusions, and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The applicant applied for a master use permit to subdivide property in an environmentally sensitive area into seven parcels for the purpose of future residential development. The Director conditionally granted that application and issued a DNS with conditions (Ex. 5). This appeal by an affected neighbor followed.

2. The proposed site is located on the far north end of Eighth Northwest in the vicinity of Carkeek Park and within the Pipers Creek Watershed in northwest Seattle. It is a large estate of approximately 3.5 acres (or 154,717 square feet) with ravines and dense woods and vegetation surrounding it on three sides. It is presently developed with a spreading one-story single family residence, detached tool shed, and paved driveway. The short subdivision of this tract will create seven lots of the following square footage:

Lot 1 - 10,083.6 square feet
Lot 2 - 7,765 square feet
Lot 3 - 10,302.1 square feet
Lot 4 - 88,616.7 square feet
Lot 5 - 12,849.8 square feet
Lot 6 - 12,899.7 square feet
Lot 7 - 13,737.2 square feet

3. The largest parcel (Lot 4) will take up the northern half of the site, roughly, and includes the existing residence. The other lots and future homes are to be located to the south of Lot 4, three on each side of a new relocated private roadway. Lots 1, 2, and 3 will be on the east side of the roadway; Lots 5, 6 and 7 will be on the west side of the roadway. The homes will be built on the level portions of each of the lots, with each facing the new roadway.

4. Approximately one-third of the site is level, including the area occupied by the existing home, the present driveway, and a broad lawn area extending from the home to the site's entrance at the tract's south property line. The level area is a ridge which protrudes northward and narrows from south to north. The level portion of the site is surrounded on the east, west and north sides by moderate to steep slopes which are densely covered with mature alder and maple trees and with considerable undergrowth. A line of trees and other vegetation on the south property line shield the site from the residential area to the south. The trees in the ravine on the west shield the site from residential development to the west. Carkeek Park and Pipers Creek are contiguous on the north and east sides of the tract.

5. The west slopes of the site are convex, ranging from 15 to 20 degrees near the top to 30 to 35 degrees at the bottom. A small unnamed creek about 10 ft. wide flows northward at the toe of the west slope, cutting across the base of what has been designated as Lots 5 and 6. The east slopes are concave, ranging from 35 to 45 degrees near the top, to near level on a mid-slope terrace before dropping down again to the east at about 30 to 40 degrees. Beyond the property line, at the toe of the east slope is a gravel road and Pipers Creek, which is about 200 to 300 ft. east of the east property line of the tract. Numerous springs exist on the lower slope, just above the gravel road.

6. Carkeek Park and Pipers Creek are heavily wooded and provide a refuge for many birds and wildlife. Trails and walks are maintained by the City along the creek and in the park for public use and enjoyment. Different varieties of fish, including salmon, inhabit the creek.

7. The site is within a SF 7200 zone. Property to the south and west of the site within that zone is developed with single family homes on differing lot sizes and shapes. For instance, between the site and Northwest 105th to the south from 8th Avenue Northwest to the ravine on the west, there are 23 lots, two of which are under 6,000 sq. ft., 14 of which range from 6,000 to 7,000 sq. ft., and 2 of which are about 22,000 sq. ft. each. The other five lot sizes are somewhere in between. The lot sizes of the property immediately to the west of the site across the ravine are generally larger and more irregularly shaped than those to the south. They range from about 12,000 sq. ft. to about 50,000 sq. ft. The backyards of those lots slope steeply into the ravine, so the size of those lots is not readily apparent on viewing them. Residentially zoned property (SF 9600) exists to the north, however, that area is physically separated from the site by Carkeek Park and Pipers Creek.

8. Access for the subdivision will be along a new 20 ft. wide easement paved to 16 ft. wide. This access will extend from the existing home southward down the center of the level portion of the tract before curving eastward as it approaches the south property line. The access road connects with 8th Avenue Northwest at the

southeast corner of the tract. As a condition of this proposal, the area north of Northwest 108th Street on 8th Avenue Northwest will be improved to driveway standards by widening of the pavement.

9. Eighth Avenue Northwest is the only public street accessing the site. Its right-of-way is 60 ft. wide. However, at present it is a two-lane road paved with asphalt to a width of 21 ft. from the site south to Northwest 106th, then it widens to 32 ft. south to Northwest 104th. The road has gravel shoulders. There are no curbs or sidewalks in the site vicinity. Eighth Avenue Northwest is a planned arterial south of Northwest 105th Street to Northwest 100th Street, where it become a collector arterial. Duplexes with no garages line the east side of the road. Cars from those residences crowd the road at certain points, making passage width sometimes no more than 18 ft.

10. The preliminary access and utility layout for the subdivision (Exhibit 9) indicates that utilities will be routed north and south along the new private access roadway. All homes on the tract, including the existing home, will connect to an 8" sanitary sewer line routed along the access road to a new 8" connection laid to a new grade in 8th Avenue Northwest. Water service is available from 8th Northwest also, but will require extension of the 6 in. water main to the property line. Storm waters will be collected in a single detention tightline system to service all lots and the access easement. The storm drain will run south along the easement, then westward on another easement between Lots 6 and 7 and down the west side slope, where it will discharge into the unnamed creek there. It has been designed to prevent erosion and keep sediment out of the waters. Standard fire hydrants will be installed near the entrance on the site. An electric utility easement is required and will be provided.

11. The City departments responsible have reviewed available access and services, as well as the applicant's plans for access and utilities for future development. They have given preliminary approval to such plans, including the plan for drainage of the property, with required improvements noted. These requirements have been incorporated as conditions by the Director in his approval of the short plat and have been incorporated in the utility plan. (Exhibit 9.)

12. Development proposed for the property is of one-story single family residences which will be limited to the level portions of the property. These homes are planned to be unobtrusive and probably will not be visible from the public street. They will be built on slabs, not basements. There will be no changes in grade. The applicant has indicated that no building will be done on the side slopes, that the slopes' springs would not be touched, and that the trees on the side slopes or surrounding ravines will not be disturbed for construction of the residences. Specific plans for these homes are underway, but are not yet final. No construction permits have been applied for as yet. At the hearing, the applicant indicated her commitment to protecting the environment surrounding the site from adverse impact by the planned development.

13. The Director's representative indicated that each of the proposed residences will be required to meet all setbacks and development standards of the land use code. She further indicated that all future residential development would be subjected to separate and independent environmental review under the Master Use Permit process prior to approval of construction permits.

14. A previous application to subdivide this property into five lots was approved by the Director in May of 1988; this approval, however, was not recorded.

15. Two preliminary geotechnical evaluations (Exhibit 10) were done by Shannon and Wilson, Inc., for the subdivision and proposed development of the site. One was done for the earlier planned sub-

division; another was done as an update for the present subdivision. For these, professional geotechnical engineers examined the site on two occasions, reviewed published geological conditions for the site, and researched vicinity slide records of the Seattle Engineering Department and Shannon and Wilson files.

16. The updated report indicates that site conditions were essentially unchanged from the first report one and one-half years earlier and that the conclusions reached in the earlier report were still valid. These engineers indicated that the underlying soils of the site were dense and relatively stable vis-a-vis deep-seated landslides; that there had been minor surficial sliding of loosened colluvial soil along the banks of the unnamed creek and lower slopes of Pipers Creek, and that the loose rind of soil on the slide slopes continued to exhibit steady slow movement. They indicated that research of files revealed no cases of slope instability on the subject property, but did disclose a slide on the northeast side of Pipers Creek ravine which was related to minor slides from public road projects.

17. The professional conclusions reached in the evaluations were that "residences for the proposed short plat could be suitably planned and constructed, if prudent design and construction practices were employed." Further, that "the risk of damage to the proposed development, or to adjacent properties, from soil instability was minimal" and that "the proposed development would not increase the potential for soil movement on the hillsides." (Exhibit 10.) These professionals advised that the homes and utilities should be set back 10 ft. from the slopes on the west side and 15 ft. on the east side, with confirmation and adjustments of this to be verified later with test borings of the site.

18. The Pipers Creek Watershed has a management committee whose prime objective is to monitor and enhance water quality. The Committee's representative expressed concern that the development would disturb the natural beauty of the ravines and could adversely affect the water quality or volume of water in the creek through lack of controls on nonpoint source pollution, from storm line and sewer line failures, by removing vegetation from the grounds and side slopes, or from slides. She indicated such conditions could also harm the salmon enhancement project of Pipers Creek and disturb the wildlife and public use of the parks.

19. The site is within an area designated by Metro as one of high erosion or high erosion potential; it is just east of an area of significant bank sloughing in the watershed. (Exhibit 3, Document 3.) In January of 1989, there had been what appeared to be septic tank leakage on the subject property with sewage flowing down the hillside (Exhibit 3, Document 5).

20. There was a large slide in 1986 at 105th Northwest and Alderbrook Place due to heavy storm waters draining from the Greenwood district which broke an 8 in. sewer line and poured sand, silt and sewage into Pipers Creek. (Exhibit 3, Document 8.)

21. Thirty-five neighbors signed a petition opposing the development. (Exhibit 4) They are concerned that the subdivision will increase the density of the neighborhood too much, disturb the birds and wildlife in the ravines, result in increased noise pollution and increased traffic, all of which would make conditions in the neighborhood much less peaceful and serene.

22. Each single family residence in the proposed development is expected to generate ten vehicle trips per day. This means that 60 vehicle trips per day will be generated on an average for the additional development planned for the site.

23. The utility and drainage plan for the short plat was done by a licensed and experienced civil engineer whose speciality is

drainage. She has also had considerable experience and responsibility for salmon protection. In her opinion, with drainage planned and required, there will not be increased runoff to the creeks, no aggravation of slide problems, nor water impairment as a result of the project. She indicated that the storm waters will be contained in a drain pipe constructed down the slope; any outflow would be controlled and filtered, and resulting waters should not negatively affect the salmon enhancement program of Pipers Creek.

24. No sewage will be discharged into either creek; all will be piped to a connection on 8th Northwest for further removal there.

25. No storm waters from the proposal will be discharged into Pipers Creek.

26. As a condition of approval of the short plan, DCLU required that applicant make certain improvements and meet certain conditions, all of which would have further review for compliance with City ordinance requirements and Seattle Engineering Department standards. These conditions were, in part:

- A. That street improvements to 8th Avenue Northwest be made as planned and according to Seattle Engineering Department and the City's drainage ordinance;
- B. That sanitary sewer lines be constructed to serve all lots using City main-line standards;
- C. That storm drainage improvements and the roadway turnaround be constructed based on the recommendations of a geotechnical engineer and/or civil engineer and supervised and certified to by such professionals;
- D. That erosion control plans for road and utility construction be provided;
- E. That easements be provided and improvements made for necessary utilities and power services;
- F. That documents and filings clearly reflect the soils reports and indicate that SEPA review is required for future development on the subdivision.

Conclusions

1. The Hearing Examiner has jurisdiction of this appeal pursuant to Chapter 23.76 of the Seattle Municipal Code.

2. The Hearing Examiner is required to give "substantial weight" to DCLU decisions on short plats and environmental matters. Section 23.76.022C.7. The burden of proof in this appeal is on the appellant to show that the decisions appealed were clearly erroneous. Brown v. Tacoma, 30 Wn.App. 762 (1981).

3. In this case, the Director issued a determination of non-significance (DNS) with conditions. A DNS is appropriate under SEPA if the responsible official reviewing a proposal determines there will be no probable significant adverse environmental impacts from the proposal. Section 25.05.340A. Significant means "a reasonable likelihood of more than a moderate adverse impact on environmental quality." Section 25.05.794A.

4. In this matter, environmental review was conducted of the short plat proposal because it was in an environmentally sensitive area due to the steepness of its slopes and its location within the Pipers Creek Watershed. Had it not been in an environmentally sensitive area, this short plat would have been categorically exempt from environmental review under SEPA. See Section 25.05.800F.1. Therefore, more attention was given the impacts of this project than

would have been given a similar project in another area. Further attention and additional environmental review will be conducted when permits for construction of the single family residences are applied for.

5. It is fundamental under SEPA and recognized by City laws that the natural environment is a precious commodity. That environment may be damaged for generations, and perhaps permanently, by inadequate attention to environmental impacts of certain activities. The dangers to public health, to lands, and to fish and wildlife by water pollution or plant destruction are well documented, are noted by the Hearing Examiner, and need no elaboration here. Appellant has eloquently and fittingly presented his concerns in this respect.

6. Unfortunately, environmental review can only guard against, not prevent, natural calamities causing damage to the environment, such as what occurred in the 1986 slide and subsequent pollution of Pipers Creek due to excessive storm waters and the sewer line break. Government can only assess what adverse environmental impacts are likely from some activity, how probable it is those impacts will be significant, and do what it can to mitigate those probable adverse impacts. There is no authority to deny a project under SEPA unless an EIS has been prepared which discloses significant adverse impacts which cannot be mitigated by reasonable measures. Section 25.05.660A.6.

7. Those environmental assessments have been made by the Director in this case, with particular attention paid to the environmentally sensitive nature of the property and its surroundings. Although the Director's threshold determination was that the adverse environmental impacts on the short plat were not sufficiently significant to trigger an EIS, he did decide that they were sufficiently adverse to require mitigation. Accordingly, numerous conditions were imposed which are designed to eliminate, or at least reduce, the proposal's impact on the environment. Appellant has not established that the DNS with conditions as imposed is clearly erroneous.

8. The Hearing Examiner finds the concerns expressed by appellant's witnesses to be genuine and important. All witnesses were credible. That testimony, however, does not establish that the short plat of this property will have a significant environmental impact. Traffic and noise expected to be generated from the residential development in the future are within acceptable limits for single family 7200 zones. With the widening of 8th Avenue Northwest and other improvements required for access, traffic on the public streets should be improved in ease and safety over that presently existing. The additional traffic projected from further residential development is not excessive or of such a volume as to affect the stability, safety or character of the neighborhood or its streets, even with the narrowed areas on 8th Northwest at some points. No additional mitigation for these impacts is warranted at this point.

9. Also, appellant has not established that soil erosion, and impacts on water quality, parks, fish and wildlife at this stage of the property's development are probable, or sufficiently adverse to require reversal of the Director's decision or additional mitigating conditions beyond those imposed by the Director. There will be no disturbance of the side slopes or the woods and ravines for residential construction. Preliminary soils evaluations by professional geotechnical engineers reveal underlying soil stability at the site. Another separate environmental review and further soils testing and analysis will be required and completed prior to actual construction and development of the residences. Applicant, in her testimony, has evidenced genuine concern for and commitment to appellant's environmental concerns. She has further evidenced a commitment to preserving the woods, wildlife and fish resources, and the serenity and beauty of the environment. There was no evidence which indicated that the applicant would renege on these assurances.

10. Sewage will not drain into the creek; it will be routed to 8th Avenue Northwest and discharged into lines there. Although storm waters will drain into the unnamed creek, they will do so by means of a pipe channeled down the slope. Those drains will be filtered and have a controlled discharge. If constructed according to the plans and City requirements, there should be no significant adverse impact on water quality or aquatic life. Storm water impacts should not be significantly aggravated by six new houses as opposed to the two proposed by appellant. The new system of drainage and utilities proposed for the short plat should be an improvement over what is presently there for the existing house. Additionally, all drainage, utility, water service systems, and road improvements will have to meet City codes and requirements. They will also be planned, supervised and certified by professionals who are experts in these matters, including those within the Seattle Engineering Department.

11. The Hearing Examiner notes the natural beauty and serenity of the tract from the site visit made by her. Some of that beauty and serenity will undoubtedly be diminished with future development of the site. However, the time for environmental assessment of the impacts of such development has not yet arrived. The Director determined and the Hearing Examiner concurs that environmental analysis relating to such future development is more useful and appropriate in a future Master Use Permit process, once plans for those residences are complete and application is made for construction.

12. Actual platting activities should be accomplished with no disturbance to the site or environment. In sum, while construction and grading activities for access, utilities and services will have some adverse environmental impacts, these should be adequately controlled and alleviated by the requirements imposed by the City's drainage and grading ordinance and by the conditions imposed by the Director. Where City regulations have been adopted to address an environmental impact, it is presumed such regulations are adequate to achieve sufficient mitigation of a development. Section 23.05.665D. Appellant has not established that the Director's judgment in these matters is clearly erroneous.

13. The Director also conditionally approved a short plat in this case under the provision of Chapter 23.24, of the Seattle Municipal Code. This Chapter applies to division of property into nine (9) or fewer parcels. Section 23.24.010.

14. The criteria for granting, denying or conditioning short subdivisions are located in Section 23.24.040. Those criterion are:

- Conformance of applicable land use policies and Zoning Code provisions;
- Adequacy of access for vehicles, utilities and fire protection as provided in Section 23.54.010;
- Adequacy of drainage, water supply and sanitary sewer disposal; and
- Whether the public use and interests are served by permitting the proposed division of land.

15. The proposed short plat meets the criteria for short platting identified above. As such, appellant has not established that the Director's decision on the short plat application is clearly erroneous.

16. As to the first criteria, zoning for the proposed site is SF 7200. This means the minimum lot size for the area is 7,200 sq. ft. The applicant has one of the largest, mainly undeveloped tracts of land in the area. The proposed lot sizes of the short plat all exceed the minimum square footage for the zone. Most of the parcels

are much larger than the minimum. Most are also larger than the majority of lots to the south; they are comparable to those on the west. In this short plat, the applicant will only be dividing her property in a size and manner comparable to what has been done in the rest of the residential community.

17. Vicinity development of single family residences is similar to that planned for the proposed site as well. Most properties near the site back onto the ravines, with homes being located on the more level portions of the lots, away from the more sensitive environmental areas. The proposed future development is of single family residences on the more level area of the lots. They will be set back from the slopes at least 10 to 15 ft., depending on the site and what is found in later soils analysis. This development, in any event, will be controlled by land use codes in subsequent permit processes.

18. The second and third criteria relating to the adequacy of access for vehicles, utilities and services, as well as adequacy of drainage, water, and sewage disposal, have also been met. The area streets, although not fully improved, provide adequate access. There are water mains and sanitary sewer hookups available on 8th Northwest. The improvements required of applicant for these should upgrade present facilities and conditions. Drainage improvements and facilities will be controlled by standards of the City's drainage ordinance and Seattle Engineering Department's personnel, and will be controlled by standards imposed by professional engineers supervising the construction thereof. Lastly, the departments responsible for City services and infrastructures have attested to the adequacy of applicant's plans by providing preliminary approval of them.

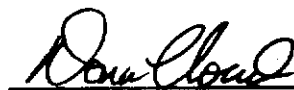
19. The criteria that public use and interest be served are met also. The proposal will ultimately supply six additional single family residences to the area on large lots with ravines and woods protected and undisturbed. Such development maintains the park-like atmosphere presently existing on two sides, while preserving and maintaining the existing single family character of the neighborhood to the south and west. Such development also adds to housing opportunities for the community. In short, there will be greater benefit than detriment to the public.

20. From the foregoing, the Hearing Examiner concludes that the Director's decision on both matters appealed should be AFFIRMED.

Decision

The Director's environmental determination and decision to conditionally approve the short plat are affirmed.

Entered this 27th day of November, 1989.



Dona Cloud
Hearing Examiner Pro Tempore

CONCERNING FURTHER REVIEW OF HEARING EXAMINER FINAL DECISION ON THE SHORT PLAT

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 party's request for judicial review of the decision must be by application to King County Superior Court for a writ of review within fifteen calendar days of the date of this decision. Seattle Municipal Code Section 23.76.022(C)(12)(c).

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, Room 1320 Alaska Building, 618 Second Avenue, Seattle, Washington 98104, (206) 684-0521.

CONCERNING FURTHER REVIEW
ON SEPA CONDITIONS IMPOSED ON MASTER USE PERMIT

Pursuant to Seattle Municipal Code Section 23.76.024, a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the fifteenth day after the date of the decision appealed from is filed with the SEPA Public Information Center, 5th Floor Municipal Building, 684-8322. The appeal statement must be filed with the City Clerk on the first floor of the Municipal Building. The City Council's review on appeal shall be limited to the issue of compliance with Section 25.05.660. The City Council Land Use Committee should be consulted regarding further appeal specifics.

If an appeal is taken pursuant to Section 23.76.024, the time for filing a request for judicial review of the underlying governmental action and/or other SEPA issues is stayed until the City Council renders a final decision on this City Council appeal.

If no appeal is taken to the City Council, 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 on the underlying governmental action must be filed in King County Superior Court within fifteen days of the date of this Hearing Examiner decision. Seattle Municipal Code Section 23.76.22.(C)(12)(c). Judicial review under SEPA shall without exception be of the decision on the underlying governmental action together with its accompanying environmental determinations. SEPA issues may be added to the request for review within 30 days after the date of this decision if a notice of intent to seek judicial review of SEPA issues is filed with the Director of the Department of Construction and Land Use, 400 Seattle Municipal Building, Seattle, Washington 98104, within fifteen days of the date of this decision. See Chapter 43.21C, RCW and Chapter 25.05, Seattle Municipal Code.

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, Room 1320 Alaska Building, 618 Second Avenue, Seattle, Washington 98104. As an alternative to the written transcript, RCW 43.21C.075(6)(b) provides that a tape may be used for court review. If a taped transcript is to be reviewed by the court the record shall identify the location on the taped transcript of testimony and evidence to be reviewed. Parties are encouraged to present the issues raised on review, but if a party alleges that a finding of fact is not supported by evidence, the party should include in the record all evidence relevant to the disputed finding. Any other party may designate additional portions of the taped transcript relating to issues raised on review.