

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

JAMES AND IRIS BROWN

FILE NO. MUP-90-017(P)
APPLICATION NO. 8902691

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

Introduction

Appellants appeal the manner in which the Director conditioned the approval of appellants' short plat application for property located at 3515 S.W. 110th Street.

The 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 Hearing Examiner on May 30, 1990.

Parties to the proceedings were: for the appellants James Brown, pro se; the DCLU Director, represented by Art Ward, land use specialist.

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

After due consideration of the evidence elicited at 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 appellants propose to divide the 21,110 square foot parcel into two parcels (Parcel A = 13,334 square feet, and Parcel B = 7,776 square feet).

2. The Director approved the proposed short plat with five (5) conditions. The only issue before the Hearing Examiner is Condition No. 3, it reads as follows:

Provide vehicle access easement and maintenance/ agreements between the owners using the driveway on proposed Parcel A and abutting area to the east to the satisfaction of DCLU.

3. Appellants contend the Director erred in requiring Condition No. 3 because it unnecessary and inappropriate as there exists proper access, through ownership or easement, physically and legally, to both of the proposed parcels.

4. The Director maintains that Condition No. 3 is necessary because without it there may be possible future problems in obtaining financing for Parcel B due to the fact that access to the parcel is adjacent to a driveway used by one or more other properties. (The Browns' 20 ft. driveway is adjacent to a 12 ft. driveway held and used by adjacent property owners.)

5. One of the requirements of Section 32.24.40, the code provision that governs short plat approval, is that the public use and interest be served by permitting the proposed division of land. The Director's representative contends that the public use and interest would not be served in this instance because he believes that some leading institutions might be reluctant to lend on Parcel B without agreements regarding easements and maintenance.

6. Parties agree that the subject property has a twenty (20) ft. wide driveway which provides access by extending 150 ft. from the property to the street (S.W. 110th Street). Parties further agree that this driveway would be used for ingress, egress, and utilities by both proposed Parcel A and proposed Parcel B. As part of this division, Parcel B would receive an easement over the driveway for those purposes.


Conclusions

1. The Hearing Examiner has jurisdiction of this appeal pursuant to Chapter 23.76, Seattle Municipal Code.
2. The Hearing Examiner must give "substantial weight" to the DCLU Director's decision. Section 23.76.022.C.7. The burden is on an appellant to overcome this weight by proving that the decision is "clearly erroneous." Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981.)
3. Appellants/applicant have provided legal and physical access for both the proposed parcels.
4. The claimed detriment to the public use and interest is unsupported and unpersuasive.
5. The Director erred in requiring an easement where an easement and fee ownership already exists. Condition No. 3 is unnecessary and inappropriate and should be eliminated from the Director's decision.

Decision

The Director's decision is MODIFIED as to Condition No. 3 which is herewith eliminated as a condition and shall have no force and effect.

Entered this 6th day of June, 1990.


Meredith A. Getches
Hearing Examiner

CONCERNING FURTHER REVIEW OF HEARING EXAMINER FINAL DECISIONS ON MASTER USE PERMITS

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 23.76.22(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, 1320 Alaska Building, 618 Second Avenue, Seattle, Washington 98104, (206) 684-0521.