

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

In the Matter of the Appeal of

R/L ASSOCIATES, INC.,

FILE NO. S-86-009

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

Introduction

Appellant challenges the interpretation of the Land Use Code by the Director, Department of Construction and Land Use regarding the lot boundary adjustment provision as it applies to 9058 Burke Avenue North.

Parties to the proceedings were: Appellant represented by Robert Hale and the Director represented by Guy Fletcher, land use specialist.

The appellant exercised the right to appeal pursuant to the Seattle Municipal Code, Section 23.88.020.

This matter was heard before the Hearing Examiner on October 15, 1986.

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 findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. Robert Hale requested an interpretation of the Land Use Code concerning the application of the lot boundary adjustment provisions to property at 9058 Burke Avenue North. The Director, Department of Construction and Land Use, issued her interpretation deciding that the lot boundary adjustment provisions are not available to alter the lot boundary at 9058 Burke Avenue North. This appeal followed.

2. The property at 9058 Burke Avenue North is described as: Lots 1 and 2 Block 2, Davis Improved Addition, Volume 13, page 13, King County, Washington. Exhibit 1.

3. The subject property is a corner lot with frontage on Burke Avenue North and North 92nd Street. It contains some 7,800 sq. ft. of area. The platted lot line between Lots 1 and 2 runs east-west. A single family house is located in the middle of the lot toward the rear and straddles that lot line.

4. Appellant proposes to use the lot boundary adjustment provisions to adjust the east-west boundary to a north-south boundary thereby creating Parcel "A" and Parcel "B". The existing house would be located on Parcel "B" and Parcel "A" would be available for the construction of a new residence.

5. Both new parcels would be smaller than the minimum lot size for the zone.

6. The reversing of the lot line would leave the house with a rear yard which does not meet setback requirements.

7. The Director treats the two platted lots as "merged" into one building lot from the time they were combined for development. The Director acknowledges that if the house did not exist,

i.e., was demolished or removed, there would be two lots both of which could be building sites and to which lot boundary adjustment provisions could be applied.

8. Prior to 1982, the Land Use Code did not have provision for exceptions from the minimum lot area for pre-existing lots.

Conclusions

1. The lot boundary adjustment provisions which are the subject of the interpretation are Sections 23.28.010 and 23.28.030.

The purpose of this chapter is to provide a method for summary approval of lot boundary adjustments which do not create any additional lot, tract, parcel, site or division, while insuring that such lot boundary adjustment satisfies public concerns of health, safety, and welfare.

Section 23.28.010.

The Director shall approve an application for a lot boundary adjustment if it is determined that:

1. No additional lot, tract, parcel, site or division will be created by the proposed adjustment;
2. No lot is created which contains insufficient area and dimensions to meet the minimum requirements of the zone in which the lots affected are situated, except as provided in Section 23.44.010;
3. No lot is created which does not have adequate drainage, water supply and sanitary sewage disposal, and access for vehicles, utilities and fire protection;
4. The lot boundary adjustment is consistent with applicable provisions of the Land Use Code.

Section 23.28.030.

2. The exceptions to minimum lot area requirements are set out at Section 23.44.010(B):

1. The lot was established as a separate building site in the public records of the county or City prior to July 24, 1957 by deed, contract of sale, mortgage, property tax segregation, platting or building permit.
2. The lot area deficit was the result of a dedication or sale of a portion of the lot to the City or State for street or highway purposes and payment was received only for that portion of the lot, and the lot area remaining is at least fifty percent (50%) of the minimum required in the zone.
3. A lot below the minimum lot area may be created by short subdivision, subdivision or lot boundary adjustment when the lot to be created will be at least seventy-five percent (75%) of the minimum required lot area and be at least eighty percent (80%) of the mean lot

area of the lots on the same block face within which the lot will be located and within the same zone.

3. The Director concluded that an additional building site would be created by the lot boundary adjustment. Appellant maintains that the proposed lot boundary adjustment would not create an additional lot. Appellant looks to the definition of "lot" in the state statute, RCW 58.17.020(a). There the term "lot" specifically includes "tracts" or "parcels." He then looks to the use of the terms "site" and "division" in the statutes for their meaning.

4. The Land Use Code provides a definition of "lot" different from that in the state statute and, unlike the state statute, does not mention "tract" or "parcel" within the definition. "Lot" is defined as:

... a platted or unplatted parcel or parcels of land abutting upon and accessible from a private or public street sufficiently improved for vehicle travel or abutting upon and accessible from an exclusive, unobstructed permanent access easement. A lot may not be divided by a street or alley. (Exhibit 23.84.024A).

Section 23.84.024. No definition of "tract," "parcel," "site" or "division" is provided in the Land Use Code.

5. Appellant contends that since the term "lot" is defined in the Land Use Code and "tract", "parcel", "site" and "division" are not, no meaning other than that of "lot" can be ascribed to them.

6. Rules of construction can be helpful in ascertaining the intent of the provisions relating to lot boundary adjustments. First, as the Director contends, the legislative body may not be presumed to have used superfluous words so meaning must be accorded every word. Automobile Drivers v. Department of Retirement Systems, 92 Wn.2d 415, 598 P.2d 379 (1979). The presumption that each word has a separate meaning is supported by the use of different terms throughout the Land Use Code, e.g., Section 23.44.010(B)(1) "building site", Section 23.24.020(4) "lots or divisions", Section 23.84.024 "parcel or parcels." When words are not defined in the zoning ordinance they are to be given their ordinary meaning. Wiggers v. Skagit County, 23 Wn. App. 207, 596 P.2d 1345 (1979). Resort to a dictionary shows a different meaning for each. For instance, "site" is defined in Webster's New World Dictionary, Second College Edition (1978) as "1. a piece of land considered from the standpoint of its use for some specified purpose" (emphasis added) and "parcel" is "4. a piece, as of land, usually a specific part of a large acreage or estate." The Director may, then, reasonably conclude that an additional "site" would be created by the adjustment even if there are already two platted "lots," thereby disqualifying the "lots" from use of the lot boundary adjustment provisions.

7. Appellant argues that treating the two platted lots as one building site because it was developed as such is an unconstitutional "taking." Under the law at the time of the development of the lots there was no provision for use of substandard lots. By combining the two platted lots into one building site the owner acquired the right to develop the property. That use continues. Appellant cites no authority for the argument that the change in the law to give owners of undeveloped, substandard platted lots greater development rights results in a taking of rights from property developed under prior law.

8. Appellant also argues that the interpretation of the Director contravenes City policy to encourage retention of existing housing and to provide additional housing because the effect of the interpretation would be to encourage the demolition of the existing house in order to return the two lots to two building

sites. Other City policy, however, addresses open space, lot size, streetscape, etc., factors that can be reviewed in the course of a short subdivision which could be requested instead of the lot boundary adjustment. Therefore, the interpretation is not truly in contravention of City policy.

9. The Hearing Examiner is required to accord substantial weight to the interpretation by the Director. Section 23.88.020(E)(5). Since the appellant has not shown the interpretation to be clearly erroneous the interpretation must be affirmed.

Decision

The interpretation by the Director is affirmed.

Entered this 30th day of October, 1986.

M. Margaret Klockars
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Deputy Hearing Examiner

Concerning Further Review

The decision of the Hearing Examiner in this case is the final administrative determination by the City, 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 must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within fourteen days of the date of this decision. Should such request 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. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104.