

BEFORE THE HEARING EXAMINER

CITY OF SEATTLE

In the Matter of the Appeal of

SANDERS P. TAYLOR

FILE NO. S-86-010

from an interpretation of the
Director, Department of Con-
struction and Land Use

Introduction

The appellant challenges an interpretation of the Land Use Code issued by the Director of the Department of Construction and Land Use that N.E. 124th Street cannot be considered an alley for purposes of determining the location of required yards.

The appellant exercised the right to appeal pursuant to Chapter 23.88, Seattle Municipal Code.

Parties to the proceeding were the appellant, pro se and the Department of Construction and Land Use Director by John Doan.

This matter was heard before the Hearing Examiner on November 25, 1986.

The purpose of this decision all section numbers refer to the Seattle Municipal Code, Title 23, as amended, unless otherwise indicated.

After due consideration of the evidence elicited during the public hearing, the following shall constitute the findings fact, conclusions and the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. On October 16, 1986 the Department of Construction and Land Use Director entered an interpretation which concluded that N.E. 124th Street should be treated as a street rather than an alley for purposes of determining the location of required yards at abutting 12068 Lakeside Place N.E.

2. Sanders P. Taylor, property owner of 12068 Lakeside Place N.E., appealed the interpretation. At the public hearing the appellant and the Department of Construction and Land Use stipulated to the 12 findings of fact included in the Department of Construction and Land Use interpretation with the exceptions noted in findings 3 through 5 below.

3. The Department of Construction and Land Use finding five indicates that the relevant segment of N.E. 124th Street, adjacent to the northwest property line of the subject property, has an 18.6 percent slope. This figure was deduced by computing the difference in elevation between the points designated as manholes 314 and 312.

4. Manhole 312 is at the northernmost end of the street segment, some 60 ft.-plus from appellant's lot. Manhole 313 is in the N.E. 124th right-of-way directly across from the northwest corner of appellant's lot. Manhole 314 is at the southerly end of the subject N.E. 124th Street segment and approximately one lot away from appellant's property. Appellant used the elevation between manholes 313 and 314 and concluded that the 55.6 ft. difference in elevation between those two manholes over a distance of 261.9 ft. provided a slope of 21.22 percent. According to appellant this segment of N.E. 124th would need to be regraded before it would be developed. This is because of Seattle Engineering Department prohibitions or restrictions against developing any street in excess of a 20 percent grade. In DCLU's view, development of the street would more than likely involve the entire segment, and not the portion addressed by appellant's figures.

5. The Department of Construction and Land Use finding five also describes as intermittent the stream flow along the center of N.E. 124th Street. Appellant testified that the stream has a year-round flow. DCLU agreed with the appellant's descriptive and the Hearing Examiner finds in accord therewith.

6. As noted above, the subject property is addressed as 12068 Lakeside Place N.E. The legal description appears in the Department of Construction and Land Use Finding number one and is incorporated herein by reference.

7. The second sentence of DCLU's second finding is amended to state that "... a second access easement, 50 ft. long and 15 ft. wide, crosses over the property adjacent to the northeast property line." The description of the easement as a utility easement was corrected at the hearing before the Hearing Examiner.

8. The right of way for N.E. 124th Street is 60 ft. wide and was dedicated for public use in 1910.

9. The undeveloped portion of N.E. 124th does not provide vehicular access to any lot and there are no plans at this point to open or improve the segment of N.E. 124th adjacent to the subject property. Vehicular access to appellant's property would be via an extensive easement across the east adjacent lots and south to Lakeside Place N.E. Per the credible testimony of appellant's witness, who pursued the subject short platting, City Light has advised that electrical power will be via Lakeside Place N.E., and not via N.E. 124th.

10. If N.E. 124th is considered as a street and not an alley, appellant will be required to have a front setback from N.E. 124th. This will mean that the driveway access will have a slope of more than 20 percent. A variance will therefore be required. If, however, the northeast side of the lot is considered as the front yard, appellant submits that the garage could be in the rear setback and the building footprint would be more compatible with the severe lot topography.

11. Neighbors generally support appellant's request to have the front of the building oriented away from N.E. 124th. The letters also support appellant's contention that N.E. 124th should not be developed.

12. Although an amendment was proposed which would have given some flexibility to the characterization of an undeveloped street, i.e. whether it could be considered under certain circumstances to be an alley, DCLU's present position is that absent a new code provision the dedication of N.E. 124th requires that it be considered as a street and not as an alley. The DCLU representation cites a law department memorandum of June 23, 1986, exhibit 9, and a subsequent draft definition of street which precludes alternative considerations of a "street" "regardless of whether the street has been developed." Exhibit 10.

Conclusions

1. The Hearing Examiner has jurisdiction of this matter pursuant to Chapter 23.88, Seattle Municipal Code. Seattle Municipal Code Section 23.88.020 provides that substantial weight is given to the interpretation of the Department of Construction and Land Use Director and that it is the appellant's burden to establish a contrary position.

2. Seattle Municipal Code Section 23.84.036(S) defines a street as:

A public or private right of way which is intended to provide or which provides a roadway for general vehicular circulation or principal means of vehicular access to abutting properties and which includes space for utilities, pedestrian walkways and drainage.

3. Seattle Municipal Code Section 23.84.002(A) defines an alley as:

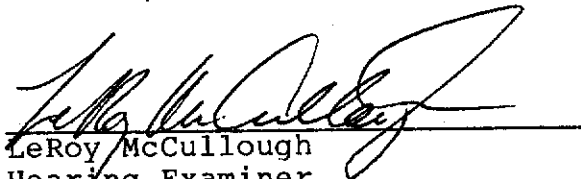
A public or private right of way which is intended to provide or which provides a roadway for vehicular and pedestrian access to abutting properties and is generally located to the rear or side of those properties.

4. The subject portion of N.E. 124th should be treated as an alley for purposes of the Seattle Land Use Code. Cf. In re the Use of Property at 2209 Minor Avenue (August 13, 1985). It is presumed that by dedication N.E. 124th was "intended to provide" a roadway for general vehicular circulation. The presumption in this case is confronted by intense topography, vehicular access to the adjacent property via an extensive easement to another roadway, and the lack of present or planned utility or access use of the street segment. Further, the proposed amendment to the Land Use Code definition of "street" suggests a desired resolution of some present ambiguity in terminology. The Hearing Examiner would further note the absence of community concern with consideration of N.E. 124th as an alley.

Decision

The Department of Construction and Land Use Director's decision is reversed.

Entered this 10th day of December, 1986.


LeRoy McCullough
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.