

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

In the Matter of the Appeal of

LEON AND EDITH VANDENBERG
DR. WILLIAM P. MULLIGAN

FILE NO. MUP-83-006
FILE NO. MUP-83-007
APPLICATION NO. 83-522

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

Introduction

Appellants Vandenberg and Mulligan, neighbors to a site proposed for development at 8488 Tillicum Road S.W., challenge the project's short subdivision and environmental approval issued by the Director of the Department of Construction and Land Use (DCLU).

The appellants exercised their 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 March 2, 1984.

Parties to the proceedings were: appellants Vandenberg by Ms. Edith Vandenberg, pro se; appellant Mulligan by Mrs. William Mulligan, pro se; project applicant Frank Feeney, pro se; and the DCLU Director by Arthur Ward, land use specialist.

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

Findings of Fact

1. The subject property, located in the Single Family 7200 (SF 7200) zone, is addressed as 8488 Tillicum Road S.W. The eastern margin of the site abuts an unopened portion of California Avenue S.W.
2. The subject property consists of an irregularly shaped 1.5 acre hillside tract that declines westerly and southerly to the direction of Tillicum Road S.W.
3. Applicant proposes to subdivide the property into three lots as illustrated by Exhibit 2. The northernmost (most elevated) parcel would be designated as B and would have 16,575 sq. ft. of area. Connecting to the south-southeast would be 21,000 sq. ft. area Parcel C, which is composed of some fill of 30 years prior. Located west of Parcel C and south of B, Parcel A would offer 20,000 sq. ft. of area. While Parcel A is developed with a single family residence, proposed Parcels B and C are vacant. B and C are covered with grass and/or berry brush and scattered trees.

4. Vehicular access to Parcel A is from Tillicum Road. Proposed Parcel B is expected to have access by an easement located along the west margin of Parcel A. California Avenue S.W. is proposed as access to the most easterly Parcel C. California Avenue S.W. has a 40 ft. right-of-way with a brick surfaced roadway extending approximately 17 ft. into the proposed Parcel C.

5. The DCLU Director conditionally approved the proposed short subdivision on several conditions, including:

Prior to Recording

- The soils engineer's report of Altinay and Associates shall be recorded with this short subdivision.

Prior to Issuance of a Building Permit

- A "building grade sheet" shall be provided for Parcel C. (This condition was imposed to ensure proper grading between Parcel C driveways and California Avenue S.W.)
- Building plans are to be submitted with a soils report for Parcels B and C by a recognized Washington State licensed civil engineer with experience in soils engineering indicating that the plans are in accord with his/her recommendations.

DCLU also required that two off-street parking spaces be provided for the Parcel C residence in recognition of the narrow 21 ft. east adjacent roadway.

6. Under the environmental analysis, the Director observed:

Adverse environmental impacts associated with reduced air quality and existing foliage/fauna, increased vehicular movement and demand for parking may be anticipated during construction and/or after the project is completed...

The DCLU Director issued a declaration of non-significance (DNS), concluding that the impacts were expected to be of limited scope and/or duration.

7. The two appeals submitted by neighborhood residents were heard together..

8. Appellants Vandenberg own and reside at the property north adjacent to Feeney's proposed Parcel B. The Vandenberg property is at a higher elevation, and as described by the appellant descends rather sharply to proposed Parcel B. The Vandenberg principal concern is that construction on Parcel B could disturb the stability of the slope, and subject their property to a slide catastrophe.

9. Appellants Mulligan own and reside at property east of proposed B and north of proposed C. Also at a higher elevation, the Mulligan property is separated from the Feeney property by an intervening parcel also developed with a single family residence. Adopting by reference the soils stability-slide concerns of the Vandenberg appeal, witness Mulligan also challenged whether "crowded deadended California Avenue S.W." should take the proposed development's results. Unlike her neighbor, Mulligan urged that an environmental impact statement should have been required.

10. No slides have been reported for the site although property some 600 ft. north was the location of a 1941 slide. No on-site slide activity is apparent from the vegetation. However, according to the DCLU witness, because the subject property was designated as being located in an environmentally sensitive area, DCLU required a site specific soils report.

11. The soils report of record, Exhibit 7, was prepared by Altinay and Associates; and focused on proposed Parcels B and C. The report concluded that both lots were "underlain by sandy materials of high shear strength and low compressibility." "Therefore," conclusion 1 continued, "we expect stability if our recommendations are followed." Those recommendations included use of a vibratory compactor to address irregularities found in the density of sandy material. Altinay's test borings were done at the northeast sector of proposed Parcel C and near the northwest extreme of proposed Parcel A, in the easement.

12. No evidence of record showed that the soils conditions varied between proposed parcels.

13. Although the higher elevation may be desirable from a view standpoint, Feeney proposed that Parcel B construction would be located as far south as possible where the topography is most level and where the home would be nearest (and oriented) to the road. To allay part of the appellants' concerns with Parcel B construction Feeney testified that he had no objection to restricting construction to a minimum north setback of 30 - 35 ft. and an east setback of 25 ft.

14. The Hearing Examiner finds in accord with the DCLU witness, trained in geology, that assuming a 50 ft. setback from Parcel B's south property line (20 ft. front yard, 30 ft. house depth) 16 ft. of depth for foundation-construction would not affect the stability of north properties, since the soils are competent and the grade is not to the excess (70% or better) where the sand and gravels could not withstand the construction.

Conclusions

1. The Hearing Examiner has jurisdiction of this matter pursuant to Chapter 23.76, Seattle Municipal Code. Section 23.76.36 B.7 provides that in appeals to the Hearing Examiner the Director's decision on environmental and short subdivision matters shall be accorded substantial weight.

2. A declaration of non-significance (DNS) will be upheld on review unless it is shown to be clearly erroneous. Brown v. Tacoma, 30 Wn.App. 762 (1981). The more detailed environmental impact statement is required where the proposed action would have a significant adverse impact on the environment, that is, where more than a moderate effect on the quality of the environment is a reasonable probability. Norway Hill Preservation and Preservation Association v. King County Council, 87 Wn.2d 267 (1976).

3. Pursuant to the foregoing the Director's decision to issue the DNS must be affirmed. The impacts of the proposal were not shown to be significantly adverse. In recognition of the narrow adjacent roadway two off-street parking spaces are required for Parcel C development. Single family construction is proposed for the three lots, each of which is two or three times the minimum lot size for the zone. A site specific soils analysis shows that slope stability is not a major concern. DCLU has imposed several conditions specifically incorporating the soils engineer's analysis. Further, appellants' cases could have been strengthened by direct testimony or evidence that for proper assessment a boring was required on all three

proposed sites. The evidence of record, however, does not suggest that the mere configuration of lot lines for proposed lots A, B, and C is significant to the determination of the subject site's geological characteristics. No EIS is required for this project.

4. Further, the criteria for short subdivisions, found at Seattle Municipal Code Section 23.24.40, are met by this proposal. Appellants have not challenged the Director's conclusion that the proposed division into lots of 20,000, 16,575 and 21,000 sq. ft. in the SF 7200 zone conforms to Land Use Code Policies and Provisions. Nor have appellants' made a specific challenge to the Director's conclusion of adequate access, drainage and related issues. The Hearing Examiner does note that the proposed additions in and of themselves should not aggravate existing traffic conditions to the point where an EIS is required or where the proposal should be denied.


5. The gist of appellants' challenge goes to soils stability. Were it proved that the proposal would likely precipitate significant land instability for neighboring properties, clearly the public use and interests would not be served by the proposal and denial of the application would be appropriate. Such is not the case here, however. Appellants showed that no test boring was done on proposed Parcel B. Restated, there is insufficient evidence that the site's geological composition changes from Parcel A - to B - to - C. The Director's representative gave credible testimony that in his opinion construction on the slope in question with the site soil composition would cause no instability, i.e., that the appellants' properties should not be adversely affected. The DCLU approval requires that the soils engineer's report be recorded; and that building plans be in accord with recommendations of a licensed civil engineer experienced in soils engineering. Considering the weight to be accorded the Director's decision, the short subdivision may be approved as specifically conditioned by the Director's decision.

6. Project applicant's "agreement" to north and east building construction setbacks lends further support for approval of the short plat, and could be submitted as an arrangement between the parties.

Decision

The Director's decision is Affirmed.

Entered this 9th day of March, 1984.


Leroy McCullough
Hearing Examiner

Concerning Further Review

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any request for court review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418(1977); JCR 73 (1981). 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.