

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

MR. AND MRS. DONALD RAMEY AND  
MR. AND MRS. LEE MCGONAGLE

FILE NO. MUP-84-034 (P,W)

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

#### Introduction

Appellants, Mr. and Mrs. Donald Ramey and Mr. and Mrs. Lee McGonagle, appeal the decision of the Director, Department of Construction and Land Use, to issue a declaration of non-significance and to conditionally approve a short subdivision for property at 9706 - 50th Avenue S.W.

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 June 4, 1984.

Parties to the proceedings were: appellants, represented by Mary Ellen Ramey; the Director represented by Art Ward, land use specialist; and the applicant, Russell Portteus, represented by Terrace Leahy, attorney at law.

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 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 divide property at 9706 - 50th Avenue S.W. into two lots. The Director issued a declaration of non-significance (DNS) pursuant to SEPA and Chapter 25.04, Seattle Municipal Code, and granted the short subdivision subject to a number of conditions. Appellants filed a timely appeal of these decisions.

2. The property, a 26,179 sq. ft. lot, is located in an SF 9600 zone. Lots in the area vary greatly in size from those as large as the subject property to those a third the size.

3. The property is designated as environmentally sensitive for SEPA purposes because of the steep slope at the rear of the property. Because of that designation an environmental checklist and threshold determination were required.

4. The proposed Lot A, which contains an existing residence, is relatively level to the rear of the residence and then slopes moderately upward. Proposed Lot B is steep, a vertical rise of 60-70 ft. over 146 ft. of horizontal distance.

5. In 1919 a slide occurred on the subject property which demolished the substantial house located there and killed two occupants. According to Henry Hanson, a neighbor, approximately a year later another slide 200 yards south took out a bulkhead and crossed 50th Avenue S.W. closing the road. Just north of that, at some unstated time, a slide knocked a house off its foundations and three years later another forced evacuation of a house. In March, 1956, a slide occurred which extensively damaged the house on the property immediately south of the subject property. There have been three other incidents of earth movement in the immediate area since that time, one last year according to Ms. McGonagle.

6. Property owners in the area have taken steps, such as digging ditches, to drain water from the hillside which has water running all during the year. They attribute the absence of major slide in recent years to these efforts.

7. Ms. McGonagle has determined that the soil on the bank on the subject site is very porous and loose for a considerable depth.

8. The Rameys who own the property abutting on the east side of the subject site purchased a lot between that their house sits on at the top of the slope and the subject site which is a shelf at the top of the steep slope, as a greenbelt to protect their property from instability that might occur if the slope were disturbed.

9. The bank extends north and south through the area. Minor slides occur frequently, some requiring hauling dirt and debris to re-open roads.

10. The houses in the immediate area were built 50 or more years ago.

11. A soils report by Altenay and Associates, consulting engineers, was provided to the Director which reported that minimal slide potential exists. Mr. Altenay testified that he inspected three test holes to verify that the soil was similar to the soil formation in the general area, one to two feet of loose topsoil and below that hard clay. In his opinion the proposed new lot is buildable provided special foundations are used and ground cover is maintained outside the perimeter of the site. The additional cost of development according to, and under the supervision of, a soils engineer would be 20-25% over the regular foundation cost.

12. The Director imposed the following conditions of the short plat approval to address slope stability:

CONDITIONS OF APPROVAL PRIOR TO ISSUANCE OF A  
BUILDING PERMIT ON PARCEL B

3. All development work (including any grading) shall be in accord with the recommendations of an approved building and/or grading plan prepared by a Washington State licensed professional engineer with experience in soil mechanics.

Said plan shall specifically address how lateral support and drainage are to be accommodated so as not to adversely affect slope stability on the abutting property to the south and east.

CONDITIONS OF APPROVAL AFTER RECORDING

1. If on-site development must provide a storm water control facility in accordance with Seattle Municipal Code Chapter 22.800, the Grading and Drainage Control Ordinance, maintenance of this facility will be the responsibility of the owner(s) of said property.
13. The Director's representative indicated that due to oversight certain language is missing from condition number 3 above and requested that it be modified to provide that the foundation work be under the supervision of the engineer.
14. Water to this area is supplied by a 2 in. watermain in 50th Avenue S.W. The supply is not adequate for additional houses and fire protection. Past attempts to form an LID or authorize a special tap charge for improvements to the system failed.
15. The Seattle Fire Department would oppose development of the new lot unless adequate water for fire protection is available.
16. The Director imposed the following conditions to assure that an adequate water supply is available:

CONDITIONS OF APPROVAL PRIOR TO THE ISSUANCE OF  
A BUILDING PERMIT ON PARCEL B

1. Water mains and fire hydrants shall be provided to the satisfaction of the Seattle Water Department (see attached Water Availability Certificate 84-118).
2. Obtain approval from the Seattle Fire Department that adequate fire protection will be provided to Lot B.
17. The Director determined that the public use and interests would be served by conditionally permitting this short subdivision based on the availability of an additional housing site in the City, the encouragement for water supply improvement, and improvement to the turnaround and ownership determination of the access easement.
18. Appellants are concerned that purchasers may not have adequate notice of the costs associated with fulfilling the conditions for water, foundations, etc.
19. Appellants believe that approval of this short plat may serve as a precedent for 4-16 more properties to be divided.
20. There are no sidewalks on 50th S.W. in the vicinity. The street curves, which reduces the distance that drivers can see pedestrians.
21. The new lot, if developed, would increase the traffic by that associated with it.

### Conclusions

1. The Director's threshold determination and short plat decision must be given substantial weight by the hearing examiner. Section 23.76.36.7. Appellants bear the burden of overcoming that weight.

2. Appellants urge that an environmental impact statement (EIS) is required because of the answers in the checklist about possible instability and changes in earth conditions and the history of slide activity. To prevail, appellants must show that the Director was wrong and that more than a moderate adverse impact on the environment is a reasonable probability. Norway Hill v. King County Council, 87 Wn.2d 267, 552 P.2d. 674(1976). While a major slide can certainly be considered more than a moderate adverse impact, there was no proof of the probability of more slides being caused by development of the lot. In fact, the expert opinion was that it is not likely. Though it is understandable that the slide history of the property and area causes alarm, that concern alone does not overcome the weight given the Director's decision. Further, the record does not show the cause of those slides and it cannot be presumed that development of the lot will cause a slide. Therefore, the Director's decision that more than a moderate adverse impact is not probable, to issue a DNS, must be affirmed.

3. As to the short subdivision approval, appellants contend that the public interest is not served by approving the division because it is subject to extensive and expensive conditions which may not be known to a purchaser; the small lots will alter the character of the area; increased traffic will pose a hazard; it will establish a precedent for other divisions; the disturbance caused by future development increases the risk of landslide and damage to other properties; and that the cost of the water will be borne by neighboring property owners in an LID.

4. Appellants urge that if the division is permitted additional conditions should be imposed, i.e., a bond be required during construction, a release from liability for all surrounding property owners be given, and the final plat register that the property owner is liable for damage from any earth movement.

5. Again, appellants have not overcome the substantial weight to be given the Director's decision. The applicant recognizes his duty to disclose the existence of development conditions to prospective purchasers. The increase in traffic by the amount generated by one additional lot was not shown to be more than negligible. Even if precedent is established by the division of the subject site, there is no basis for opinions offered that this would not be in the public interest. The opinion of the expert, which took in consideration the slide history, was that with construction done properly, there is minimal risk of disturbance. Finally, improvement of the water supply system is seen as desirable by the Director, and the cost is properly borne by those who benefit. The record does not show that the decision would not serve the public use and interests.

6. The protections desired by appellants through the conditions they requested are not appropriate as conditions in this case.

7. The decisions should be affirmed with the modification requested.

### Decision


The master use permit decisions are affirmed with the following modification as to the short subdivision approval:

#### CONDITIONS OF APPROVAL PRIOR TO ISSUANCE OF A BUILDING PERMIT ON PARCEL B

3. All development work (including any grading) shall be in accord with the recommendations of an approved building and/or grading plan prepared by a Washington State Licensed Professional Engineer with experience in soil mechanics. Any excavation, backfill, foundation or drainage system installation shall be done under the supervision of such engineer.

Said plan shall specifically address how lateral support and drainage are to be accommodated so as not to adversely affect slope stability on the abutting property to the south and east.

Entered this 18th day of June, 1984.

  
M. Margaret Lockars  
Deputy Hearing Examiner

#### APPEAL NOTICE FOR 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. 2 Am.Jur. 2d., Admin. Law 2d§ 524. Any request for judicial review of the decision must be filed in King County Superior Court within fourteen days of the date of this decision. Seattle Municipal Code Section 23.76.36 (B)(11); Akada vs. Park 12-01 Corporation, 37 Wn. App. 221 (1984); JCR 73.

Judicial review under SEPA shall without exception be of the decision on the Master Use Permit together with its accompanying environmental determinations. RCW 43.21C.075(6)(c). SEPA issues may be added to the request for review within thirty 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 fourteen days of the date of this decision. WAC 197-11-680(4)(d).

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 typewritten transcript of the hearing, but will be reimbursed if successful in court. Instructions for preparation of the transcript are available in the Office of the Hearing Examiner, 400 Yesler Building, Seattle Washington 98104.