

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

DWIGHT PICKETT

FILE NO. MUP-84-046(P)  
APPLICATION NO. 8402248

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

#### Introduction

Appellant, Dwight Pickett, filed an appeal of the decision of the Director, Department of Construction and Land Use, to deny a short subdivision of property at 13320 - 31st Avenue N.E.

The appellant exercised his 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 August 2, 1984.

Parties to the proceedings were: appellant represented by Chris Hanson, Construction Development Services, Inc., and the Director represented by Hermia Ip, land use specialist.

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. Dwight Pickett applied for a master use permit to subdivide a lot at 13320 - 31st Avenue N.E. into three lots. The Director denied the application and the applicant appealed.

2. The lot contains close to 30,000 sq. ft., is approximately 300 ft. deep and has 100 ft. of frontage on 31st Avenue N.E. One single family residence is located on the lot.

3. The use and division of the lot is complicated by a zone line running through the lot approximately at the half way point. The western portion of the lot is zoned SF 7200. The eastern portion is in the General Commercial (CG) zone which flanks Lake City Way.

4. The lot has been the subject of an earlier subdivision attempt proposing three lots, two residential and one commercial with a dedicated street from 31st N.E. to the interior commercial lot. The hearing examiner affirmed the Director's denial of that subdivision. The access proposed was inadequate and would have provided for commercial traffic through residential streets.

5. The applicant now proposes three lots, two parcels B and C each with 40 ft. of street frontage containing 5,840 sq. ft., and one Parcel A, ell shaped with 20 ft. of street frontage and a total of 18,178.5 sq. ft. of area. Access for all lots is now proposed from 31st N.E. The leg of Parcel A would be in the residential zone.

6. The Director adopted his previous reasoning and that of the hearing examiner in denying this application, i.e., the commercial traffic in residential neighborhoods violates the intent of the land use policies to protect single family areas from incompatible uses. All other code requirements for division are met, according to the Director.

7. Stuart Lorimer, DCLU, building plans examiner, testified that Parcel A can be used only for uses permitted outright in single family residential zones and then only with Council Conditional Use authorization under the current zoning. No commercial building could be placed on Parcel A as now proposed because of the access across the single family zone, according to Lorimer. Hermia Ip did not disagree. She conceded that the basis for denial was fallacious.

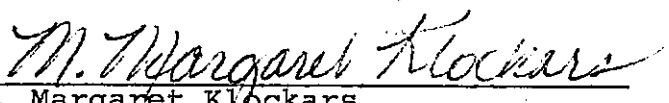
#### Conclusions

1. The determination of the Director is to be accorded substantial weight. Section 23.76.36(B)(7). Here, however, where the sole basis for the decision is shown, through the Director's staff, to be in error and his agent does not controvert that showing, the appellant's burden to overcome that weight has been sustained. Since no use other than permitted single family uses could be made of Parcel A with the proposed access, the subdivision would not conflict with the intent of the policies to protect the neighborhood from incompatible uses.

#### Decision

The hearing examiner reverses the decision of the Director and remands the matter for imposition of such standard conditions as are necessary.

Entered this 16th day of August, 1984.

  
M. Margaret Klockars  
Deputy 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. 2 Am. Jur. 2d., Admin. Law Section 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 v. Park 12-01 Corporation, 37 Wn. App. 221 (1984); JCR 73.

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, 400 Yesler Building, Seattle, Washington 98104.