

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

Karl and Irene Miles

FILE NO. MUP-85-064(P)  
APPLICATION NO. 8503318

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

#### Introduction

Karl and Irene Miles appeal the decision of the Director, Department of Construction and Land Use (DCLU), to conditionally approve the short subdivision of property at 5926 Upland Terrace South.

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 October 30, 1985.

Parties to the proceedings were: appellants, pro se; the Director by Arthur Ward, land use specialist; and the applicant, John Orr, pro se.

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. A master use permit application was filed by the applicant to subdivide two lots at 5926 Upland Terrace South into six lots. The Director granted the subdivision subject to twelve conditions. Appellants appeal that decision.

2. The subject property is two lots, Lots 2 and 3, Block 1, Vista Mountain, comprising over 78,000 sq. ft. extending between Upland Terrace South and Upland Road South. The lots are zoned SF 9600.

3. The proposal is to divide the two lots into six ranging in size from 10,416 sq. ft. to 16,170 sq. ft. Two lots, proposed Parcels A and D, are developed with single family residences and would have direct access to Upland Terrace South. The other four lots would be served by an access easement roadway from Upland Terrace South.

4. The two lots in the westerly third of the site near Upland Terrace are fairly level. The easterly portion drops down toward Upland Road at a rate of 50-60 feet over 140-180 feet of horizontal distance.

5. Upland Road is a 20 ft. wide platted service road which appears to be an extension of 54th Avenue South. Sanitary and storm sewers are available in the right of way.

6. The proposed easement roadway would extend along the northerly edge of proposed Parcel A and then turn to the south along the westerly margin of the four lower lots ending in a turnaround on proposed Parcel F. The easement width would be 20 feet with a 16 ft. wide roadway.

7. The southerly lot line of the Miles' property is the northerly lot line of Lot 3, proposed Parcels A and B, along which the easement roadway would be constructed.

8. Two sides of the Miles' property abut travelled roadways, Upland Terrace South and South Juneau Street. The easement roadway would cause the Miles' essentially triangular lot to be almost completely surrounded by roadways.

9. Provision of a roadway for travel via Upland Road South would require street improvement along 54th Avenue South to South Orcas, some 600 feet north, in addition to Upland Road, or a similar distance south. Extensive excavation and retaining walls or rockeries would be required to widen the one-lane service roadway.

10. Lots on the easterly side of Upland Road are smaller, most are developed, and all have frontage on Wilson Avenue South.

11. Lots south of the subject property are large and many could be divided if topography allows further development. Each has frontage on Upland Terrace so could provide access by easement from that roadway.

12. A roadway between the houses on the subject property would require a substantial amount of excavation, up to 10 feet, with retaining walls or rockeries. The roadway surface would be sloped at approximately 17 percent.

13. The proposed roadway would require some excavation and construction of retaining walls or rockeries along one side of 4-8 feet in height. The resulting slope would be approximately 14%. Applicant's engineering consultants recommend this location because it offers greater stability.

14. Appellants urge that the benefiting properties should bear the effect of the roadway construction and traffic rather than they.

#### Conclusions

1. The decision of the Director is to be given substantial weight by the Hearing Examiner. Section 23.76.36.B.7. To overcome that weight the appellants bear the burden of proving clear error in the Director's decision. Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981).


2. In making her decision the Director must consider criteria set out in Section 23.24.40. The evidence adduced by appellants did not show that the access would not be adequate, criterion No. 2. They do urge that the public interest, criterion No. 4, would not be served by subjecting their property to the impacts of the roadway.

3. The record shows that a valid public interest, greater stability, would be served by the proposed location of the roadway. The degree of the impact on applicant's property was not shown at hearing, except that the third side of their lot would be bounded by a roadway. The record shows competing interests without a clear demonstration of which is greater. In that case, appellants have not met their burden to overcome the substantial weight given to the Director's decision, so the decision should be affirmed.

Decision

The Director's decision is affirmed.

Entered this 13<sup>th</sup> day of November, 1985.

  
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. 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).

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.