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FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

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In the Matter of Appeals of

JANET SCHUMACHER AND
MURRY G. SPRINGFILE NO. MUP-86-026(W)
MUP-86-024(W)from a decision of the Director
of the Department of Construction
and Land Use on a master use
permit application

APPLICATION NO. 8505685

Introduction

The Introduction in the Hearing Examiner's Decision dated June 19, 1986, is incorporated herein by this reference as though fully set forth in this decision.

Procedural Synopsis

An appeal hearing was held on this matter on June 4, 1987.

On June 19, 1987, the Hearing Examiner issued a decision reversing and remanding this matter to DCLU with instructions to take further steps to comply with SEPA procedural requirements in making its threshold decision, by: (a) conducting further environmental reviews; (b) giving more careful consideration to the likely direct and indirect environmental impacts, including their short-term and long-term effects and the likelihood that the present proposal will serve as a precedent for future actions; (c) securing additional information from the applicant, if necessary, making its own further study or consulting with other agencies to request information on the proposal's potential impacts; (d) requiring analysis of soil conditions and the impact of surface and percolated storm water runoff on environmentally sensitive areas and adjacent properties along the normal watercourse, under design conditions; and (e) requiring a landscape architect or the City Arborist to more specifically plan the most effective means of providing buffers and of preserving significant second growth trees at the site, in addition to the environmentally sensitive area.

DCLU was instructed to use the additional information to re-evaluate the proposed project and to make another threshold determination, including appropriate revised and/or new conditions to be met and mitigating measures to be taken. DCLU was instructed to reconsider the application based upon the new environmental information.

On October 5, 1987, the DCLU Director published a second Analysis and Decision based upon the above instructions. The Notice of Decision mailed along with the Decision to the parties correctly stated that "appeals of this decision may be submitted to the Hearing Examiner through October 20, 1987".

No appeals were received by the Hearing Examiner as of October 21, 1987.

Findings of Fact

1. The Findings of Fact in the Hearing Examiner's Decision dated June 19, 1986 are incorporated herein by this reference as though fully set forth, subject to the following.

2. The Findings of Fact contained in the SEPA Analysis section of the DCLU Analysis and Decision dated October 5, 1987 regarding Soils, Drainage, Landscaping, Traffic, Emergency Access and Impacts are adopted by the Hearing Examiner and incorporated herein by this reference as though fully set forth in this decision.

3. The Findings of Fact contained in the Short Plat Analysis

section of the DCLU Analysis and Decision dated October 5, 1987 are adopted by the Hearing Examiner and incorporated herein by this reference as though fully set forth in this decision.

Conclusions

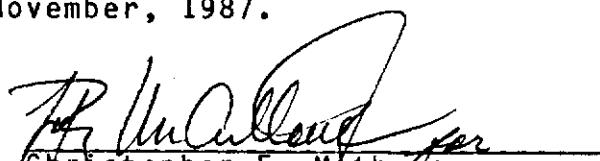
1. The threshold determination of non-significance made by DCLU and its decision dated October 5, 1987 to conditionally grant the short plat application are adopted by the Hearing Examiner and incorporated herein by this reference as though fully set forth in this decision.

2. The conditions for granting the short plat application which are set forth in detail in the DCLU decision dated October 5, 1987 are adopted by the Hearing Examiner and incorporated herein by this reference as though fully set forth in this decision.

Decision

The October 5, 1987 decision of the Director, Department of Construction and Land Use is affirmed.

Entered this 3rd day of November, 1987.


Christopher E. Mathews
Hearing Examiner Pro Tempore

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 party's request for judicial review of the decision must be by application to King County Superior Court for a writ of review within fifteen calendar days of the date of this decision. Seattle Municipal Code Section 23.76.22(C)(12)(c).

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, (206) 684-0521.

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In the Matter of the Appeals of

JANET SCHUMACHER

FILE NO. MUP-86-026(W)

AND

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

APPLICATION NO. 8505685

Introduction

Appellants, Janet Schumacher and Murry G. Spring appeal the decision of the Director of the Department of Construction and Land Use (DCLU), conditionally granting a proposed short subdivision of 4 existing parcels into 9 parcels (Chapter 23.24, Seattle Municipal Code (SMC)); (SMC 25.05) conditionally issuing a declaration of nonsignificance; and exercising DCLU's substantive authority and mitigation powers (SMC 25.05.660).

Appellants exercised their right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, SMC.

This matter was heard before the Hearing Examiner on June 4, 1986.

Parties to the proceeding were: appellant, Janet Schumacher, who was represented by Robert I. Heller, Esq.; appellant Murry G. Spring; the Director's representative, Malli Anderson; and the applicant, Jerome Greenway, who was represented by Greg Borba.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, unless otherwise indicated.

After due consideration of the evidence of record including 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. Jerome Greenway proposes to subdivide four existing parcels located at 13247 - 7th Avenue N.W. into nine parcels ("the site").

2. The site is located within a single family 7200 (SF 7200) zone, is 111,862 square feet (2,568 acres) and includes the vacated portion of 7th Avenue N.W. and according to the DCLU report the vacated portion of two alleys.

3. The site is heavily wooded, slopes gradually from a ridge near the center of the site to the southwest and steeply from that ridge to the north, at a slope in excess of 50% into an environmentally sensitive area, inclusive of a ravine. There are over 100 large second growth trees, extensive vegetation and some wildlife on the site.

4. The ravine located along the north side of the site runs through the neighborhood, serves as a natural watercourse for storm water runoff and constitutes a seasonal stream.

5. The site is currently developed with three single family residences and one storage cabin that is not habitable.

6. The applicant proposes to demolish the single family residence currently located partially on proposed Parcels B and C; the single family residence currently located on proposed Parcel D and the storage cabin located on Parcel C.

7. The single family residence located on Parcel E will not

be demolished and meets all land use code requirements, including but not limited to yard set backs, lot coverage and required parking.

8. All parcels, except proposed Parcel D and proposed Parcel I, are long and narrow and include as a part of their northernmost dimensions, the environmentally sensitive area.

9. All nine of the proposed parcels exceed the minimum 7200 sq. ft. required by the applicable zoning ordinance. The actual buildable areas of all parcels except proposed Parcels D and I are less due to the fact that proposed Parcels A, B, C, E, F, G, and H include environmentally sensitive areas.

10. Proposed Parcels A, B, C, and D will have vehicular access from a paved easement off 8th Avenue N.W. The paved portion of the easement will be at least 16 feet wide, but DCLU has not imposed a maximum width. Further, DCLU has not required or approved specific design requirements for the access easement.

11. Proposed Parcels E, F, G, H and I will have vehicular access from a cul-de-sac turnaround on the site at the north end of the vacated portion of 7th Avenue N.W. DCLU has not required or approved a specific design for the cul-de-sac.

12. The Seattle Fire Department and the Seattle Engineering Department have approved the paved easement and cul-de-sac for normal, emergency and fire vehicular access to the site.

13. The decision requires as a condition that Seattle City Light have an easement for electrical facilities to assure adequate utilities for power at each of the proposed parcels.

14. The decision requires as a condition that a 8 inch mainline sanitary sewer be extended from the sewer in 8th Avenue N.W. and/or 7th Avenue N.W. to provide adequate sanitary sewage disposal from the proposed parcels.

15. The decision requires as a condition that a fire service no protest agreement be filed with the Seattle Water Department and that 340 ft. of 4 inch watermain be constructed at the site to provide adequate water supply at each of the proposed parcels.

16. Many of the over 25 letters received from residents in the vicinity of the proposed short subdivision expressed concern about the proposed density and effects of development on neighborhood character, including, vehicular, drainage, and related environmental impacts.

17. The Drainage Control Provisions (Chapter 22.802., SMC.) of the Grading and Drainage Control Ordinance, require submission of a Drainage Control Plan with the application for a Master Use and Construction Permit.

18. The DCLU statements found in the short plat analysis and the condition related to stormwater control are general and preliminary in nature. They do not constitute approval of a Drainage Control Plan within the meaning of Section 22.802.030 of the Grading and Drainage Control Ordinance.

19. Based upon the testimony of witness Greer, the entire development, including construction of access easement, cul-de-sac and homes on each parcel must be considered when determining the amount of development with coverage in any application for new construction at the site.

20. Based upon the testimony of witness Greer, the proposed paved access easement and cul-de-sac (which together exceed 2000 sq. ft.) are within the meaning of "developmental coverage" for purposes of the Drainage Control Provisions (Section 22.802.020 A.1 and 2.)

21. Soils near the surface along 7th Avenue N.W. and 8th Avenue N.W. are sandy in character and allow some percolation.

22. There are no drainage ditches on 7th Avenue N.W. and 8th

Avenue N.W. and storm or surface water runoff will flow south along those streets to the drainage ditches and culverts on N.W. 132nd Street. Properties located west of 8th Avenue N.W., at the bottom of 132nd Avenue N.W. particularly at 12th Avenue N.W., are currently negatively effected by storm water runoff along the natural watercourse. (Eg. the natural stormwater course traverses witness Carlson's property on 12th Avenue N.W.).

23. Due to the sandy character of soils in those areas, some water runoff may percolate and re-emerge back at 132nd or may continue as ground water.

24. As part of its decision, DCLU has not computed the runoff at exit points from the site during design storm conditions. DCLU also did not require the applicant to provide a soils report. There is no evidence that the existing annual water table measurements were considered by DCLU or the Engineering Department in reaching its decision.

25. Department of Construction and Land Use's Director's Rule 7-84 (DR 7-84) sets forth minimum guidelines for site evaluation, investigation, evaluation and analysis. DR 7-84 also recommends stabilizing measures for proposed projects in potential slide areas for consideration by DCLU prior to issuance of any land use or construction permit.

26. Director's Rule 7-84 requires an approved soils report prior to issuance of a land use or construction permit.

27. It is the policy and practice of DCLU not to require an applicant for a Master Use Permit to provide a soils report for a project in an environmentally sensitive area, unless the applicant also requests a construction permit. DCLU testified that the policy is based on considerations of inconvenience, unnecessary expense and duplication of effort.

28. On the other hand, DCLU also testified that a soils report based upon known existing conditions and reasonable minimal assumptions about development at the project site would not be cumulative, and would limit the amount of information required in soils reports required prior to issuance of construction permits.

29. The project site is in an environmentally sensitive area and therefore is not exempt from the requirements of a threshold determination.

30. The applicant submitted an environmental checklist (Section 25.05.100(1)) and no additional information was requested of the applicant prior to evaluation of environmental impacts of the proposed short plat.

31. Some of the information contained in the environmental checklist was found to be inaccurate. For example, the slope of the ridge along the north side of the project site was found to be 50% rather than 25%; and there is evidence of a seasonal stream at the bottom of the ravine in the environmentally sensitive area which was not identified in the checklist.

32. DCLU took those inconsistencies into consideration during its evaluation and analysis leading to the threshold determination of non-significance (DNS).

33. DCLU required some mitigating measures as a condition of issuing the DNS and approving the short plat application.

34. DCLU testified that it considered all factors which were relevant to its DNS. However, DCLU did not offer evidence that it considered all information potentially available in imposing conditions and mitigating measures to protect the environmentally sensitive area and nearby properties.

35. Landscaping is not required by the Land Use Code for single family residences.

36. Single family housing policies and code provisions

require only one parking space per dwelling unit.

37. The proposed short subdivision will provide more housing inside the city in an existing single family residential area.

38. The notice of the proposed action was posted by DCLU on 8th Avenue N.W.

39. Copies of the notice of decision and notice of appeal issued by the Department of Construction and Land Use were sent to each person who expressed interest in or concern about the proposed action, including the appellants.

Conclusions

A. Approval of Short Plat

1. The notice given by the Department of Construction and Land Use complies with the requirements of Sections 23.76.14 and 23.76.32.

2. The proposed lots would be in conformance with applicable land use policies and land use code provisions.

3. There is adequate access for vehicles, utilities and fire protection, as provided in Section 23.54.10.

4. For purposes of subdividing the site into nine parcels, adequate drainage, water supply and sanitary sewage disposal are available to each of the nine proposed parcels on the site, under present conditions.

5. There is insufficient information to conclude that adequate drainage will be available when the access easement and cul-de-sac are constructed. For example, there is insufficient information to enable the measurement of possible impacts of construction at the site on the existing drainage system and nearby properties. Those impacts must be better understood before issuing a declaration of non-significance.

6. The public use and interest are not served by permitting the proposed division of land without proper analysis of possible environmental impacts and the imposition of appropriate conditions and mitigating measures.

7. Based upon the foregoing, all criteria for approval of a short plat have not been satisfied. The criteria for approval will not be met until a more thorough SEPA analysis is performed and additional appropriate conditions and mitigating measures are included in the DCLU decision.

B. SEPA

1. It is DCLU's responsibility to comply with SEPA's procedural requirements and to make a threshold decision (Chapter 25.05.050, SMC).

2. A major purpose of the environmental review process is to provide environmental information to governmental decision-makers to be considered prior to making their decision on any action. (Chapter 25.05.055 (B)(2)).

3. SEPA's procedural provisions require the consideration of "environmental" impacts with attention to impacts that are likely, not merely speculative. (Chapter 25.05.060(D)(1), SMC).

4. DCLU is required to carefully consider the range of probable impacts, including short-term and long-term effects. Impacts shall include those that are likely to arise or exist over the lifetime of a proposal or, depending on the particular proposal, longer. (Chapter 25.05.060(D)(3), SMC)).

5. A proposal's effects include direct and indirect impacts caused by a proposal. Impacts include those effects resulting from growth caused by a proposal, as well as the likelihood that

require only one parking space per dwelling unit.

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6. The public use and interest are not served by permitting the proposed division of land without proper analysis of possible environmental impacts and the imposition of appropriate conditions and mitigating measures.

7. Based upon the foregoing, all criteria for approval of a short plat have not been satisfied. The criteria for approval will not be met until a more thorough SEPA analysis is performed and additional appropriate conditions and mitigating measures are included in the DCLU decision.

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23. Due to the sandy character of soils in those areas, some water runoff may percolate and re-emerge back at 132nd or may continue as ground water.

24. As part of its decision, DCLU has not computed the runoff at exit points from the site during design storm conditions. DCLU also did not require the applicant to provide a soils report. There is no evidence that the existing annual water table measurements were considered by DCLU or the Engineering Department in reaching its decision.

25. Department of Construction and Land Use's Director's Rule 7-84 (DR 7-84) sets forth minimum guidelines for site evaluation, investigation, evaluation and analysis. DR 7-84 also recommends stabilizing measures for proposed projects in potential slide areas for consideration by DCLU prior to issuance of any land use or construction permit.

26. Director's Rule 7-84 requires an approved soils report prior to issuance of a land use or construction permit.

27. It is the policy and practice of DCLU not to require an applicant for a Master Use Permit to provide a soils report for a project in an environmentally sensitive area, unless the applicant also requests a construction permit. DCLU testified that the policy is based on considerations of inconvenience, unnecessary expense and duplication of effort.

28. On the other hand, DCLU also testified that a soils report based upon known existing conditions and reasonable minimal assumptions about development at the project site would not be cumulative, and would limit the amount of information required in soils reports required prior to issuance of construction permits.

29. The project site is in an environmentally sensitive area and therefore is not exempt from the requirements of a threshold determination.

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31. Some of the information contained in the environmental checklist was found to be inaccurate. For example, the slope of the ridge along the north side of the project site was found to be 50% rather than 25%; and there is evidence of a seasonal stream at the bottom of the ravine in the environmentally sensitive area which was not identified in the checklist.

32. DCLU took those inconsistencies into consideration during its evaluation and analysis leading to the threshold determination of non-significance (DNS).

33. DCLU required some mitigating measures as a condition of issuing the DNS and approving the short plat application.

34. DCLU testified that it considered all factors which were relevant to its DNS. However, DCLU did not offer evidence that it considered all information potentially available in imposing conditions and mitigating measures to protect the environmentally sensitive area and nearby properties.

35. Landscaping is not required by the Land Use Code for single family residences.

36. Single family housing policies and code provisions

the present proposal will serve as a precedent for future actions (Chapter 25.05.060(D)(4), SMC).

6. An applicant may be required to complete the environmental checklist in connection with filing an application. Additional information may be required at the applicant's expense after initial agency review of the checklist (Chapter 25.05.100(A), SMC).

7. DCLU is required to make its threshold determination based upon information reasonably sufficient to evaluate the environmental impact of a proposal and may take action including but not limited to requiring an applicant to submit more information on subjects in the checklist (Chapter 25.05.335(A), SMC)); making its own further study (Chapter 24.05.335(B), SMC)); or, consulting with other agencies to request information on the proposal's potential impacts which lie within the other agencies' jurisdiction or expertise (Chapter 25.05.335(C), SMC)).

8. DCLU should, based upon known conditions and minimal assumptions about construction and development at the site, require analysis of soil conditions and the impact of surface and percolated stormwater runoff on environmentally sensitive areas and adjacent properties along the normal watercourse (e.g. 7th Avenue N.W., 8th Avenue N.W., N.W. 132nd Avenue and 12th Avenue N.W.), under design storm conditions. The DCLU SEPA analysis did not consider this type of information.

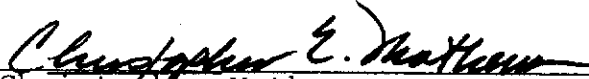
9. DCLU should require a landscape architect or the City Arborist to more specifically plan the most effective means of providing buffers and of preserving significant second growth trees at the site, in addition to the environmentally sensitive area. The plan should consider the needs of the property owners at the site as well as the desire of area residents to preserve as much of the natural setting as possible. The plan should specify the minimum caliper, height and type of pyramidalis and other trees to be planted in buffer zones or throughout the site to replace significant trees removal of which is unavoidable. The DCLU SEPA analysis does not adequately address those issues.

10. DCLU shall use the additional information described in paragraphs 8 and 9 above to re-evaluate the proposed project and to make another threshold determination. That determination shall include appropriate revised and/or new conditions to be met and mitigating measures to be taken. Based upon the new environmental information DCLU shall reconsider the application for short plat.

Decision

The Director's decision is reversed and remanded to DCLU with instructions to take the steps outlined under SEPA Conclusions 1 through 10, above.

Entered this 19th day of June, 1986.


Christopher Mathews
Hearing Examiner Pro Tempore