

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

In the Matter of the Appeals of  
GERALD SCHMIEDER, ET AL.

FILE NOS. MUP-87-053(P) and

AND

CONSTRUCTION AND DEVELOPMENT  
SERVICES, INC.

MUP-87-055(P)

APPLICATION NO. 8607292

Introduction

Gerald Schmieder, et al., and Construction Development Services, Inc., appeal the decision of the Director, Department of Construction and Land Use (DCLU), conditionally granting a short subdivision to create three parcels of property addressed as 6746 21st Avenue S.W. in Seattle.

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 December 9, 1987.

Parties to the proceedings were: <sup>Michael E. Bergstrom</sup> Robert E. Selk, for the applicant and the DCLU Director, represented by Art Ward.

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. Applicant proposes to reconfigure one lot by subdivision to create three lots. Parcel A, containing the existing residence, would measure 57 ft. by 95 ft. (lot area 5,415 sq. ft.); Parcel B would measure 57 ft. by 72 ft. and have a 95 ft. by 15 ft. dogleg access to 21st Avenue S.W. (lot area of 5,385 sq. ft.); Parcel C would measure 92 ft. by 87 ft. and have an 87 ft. frontage on 19th Avenue S.W. and a 15 ft. frontage on 21st Avenue S.W. where access is proposed by a 150 ft. by 15 ft. dogleg access to 21st Avenue S.W. (lot area of 8,400 sq. ft.).

2. The subject site is a half acre SF 5000 zoned through lot that is located 432 ft. south of S.W. Holly Street and which extends from unimproved 19th Avenue S.W. to improved 21st Avenue S.W. Development on the site consists of a single-family residence located in the northwest quadrant of the lot and a shed in the lot's northeast quadrant. The west half of the lot is level and the east half has an average ten percent easterly declivity.

3. Properties in the area are SF 5000 zoned and predominantly single-family developed where the lots abut improved and unimproved streets. No lots in the vicinity have vehicle access from easements. The majority of lots in the subject block and in the block to the east are through lots, with one frontage having an improved roadway and the other frontage being unimproved. Lot areas in these blocks average 15,756 sq. ft. The 19th Avenue S.W. right-of-way dead ends south of the subject property. Sanisilo Elementary School abuts south of the subject property. The properties may be subplatted in the future.

4. A petition bearing 11 signatures opposes the short plat, contending it would devalue their properties.

5. The applicant seeks to divide his lot so all lots have access to the existing improved street. Approval of this proposal would not require any street improvements of unimproved 19th S.W./S.W. Holly Street. The conditions imposed by the Director would require construction of 610 ft. of eight inch watermains plus hydrants on unimproved 19th Avenue S.W. and over 800 ft. of additional roadway.

6. The Director has revised the short plat dividing one lot into three lots as follows:

Parcel A. The westerly 96 ft. of the property measuring 95 ft. by 87 ft. with a lot area of 8,265 sq. ft.;

Parcel B. The middle portion of the lot, measuring 73 1/2 ft. by 87 ft. with a 10 ft. by 95 ft. access easement to 21st Avenue S.W.;

Parcel C. The easterly 73 1/2 ft. of the property measuring 73 1/2 ft. by 87 ft. with a lot area of 6,394 sq. ft. and with access to unimproved 19th Avenue S.W.

7. The Director's revised plat purportedly provides for adequate access for vehicles, utilities and fire protection, requires a City Light easement, and purports that adequate drainage, water supply and sanitary sewage disposal would be better facilitated as well.

8. Applicant presented evidence indicating that the proposed revised plat to Parcel C would cost over \$30,000 to implement which would be a substantial financial burden to the property owner.

9. The Director testified that although the proposal meets all land use ordinance and requirements, the Director has sole authority and discretion to grant public right-of-ways instead of easements. The Director argues that since no easements were allowed for prior properties to be subplatted in the immediate area, no easement should be allowed for this proposal.

10. Applicant only challenges the conditions of approval prior to issuance of a building permit for Parcel C, number 2 which states:

The owner(s) and/or responsible party(s) shall:

(a) grade along property line according to the "Building Grade Sheet" for 19th Avenue S.W.

(b) Improve 19th Avenue S.W. and S.W. Holly Street (to a developed roadway) to attached Fig. VI adjacent to Parcel C to provide access to Parcel C. Provide turnaround according to attached Exhibit IX.

11. 19th Avenue S.W. directly south of the site property is occupied by a elementary school with their own private sewage system. Nineteenth Avenue S.W. north of the proposed site to S.W. Holly Street are predominantly large undeveloped lots with single-family residences.

#### Conclusions

1. The Hearing Examiner has jurisdiction of this matter pursuant to Chapter 23.76. Seattle Municipal Code Section 23.76.022(C)(7) provides that on review the Hearing Examiner shall give the Director's determination substantial weight.

2. The criteria for short plat approval are at Seattle Municipal Code Section 23.24.40(A) which states as follows:

1. Conformance to the applicable Land Use Policies and Zoning Code or with Land Use Code provisions;
2. Adequacy of access for vehicles, utilities and fire protection as provided in Section 23.54.10;
3. Adequacy of drainage, water supply and sanitary sewage disposal;
4. Whether the public use and interest are served by permitting the proposed division of land.

3. Seattle Municipal Code Section 23.54.010A.(1) provides a street abutment requirement as follows:

- a. For residential uses, at least 10 ft. of a lot line shall abut on a street meeting the standards of subsection A3 where on a permanent access easement to the street meeting the standards of subsection B; or the provisions of subsection B7 shall be met.

4. Seattle Municipal Code Section 23.54.010(2) pertains to access to new lots as follows:

When new lots are created or new easements are proposed, access by a street may be required by the Director when one or more of the following conditions exist:

- a. Where access by easement would compromise the goals of the Land Use Code to provide for adequate light, air and usable open space between structures.

- b. If the improvement of a dedicated street is necessary or desirable to facilitate adequate water supply for domestic water purposes or for fire protection, or to facilitate adequate storm drainage.

- c. If improvement of a dedicated street is necessary or desirable in order to provide on-street parking for overflow conditions.

- d. Where it is demonstrated that potential safety hazards would result from multiple access points between existing and future developments onto a roadway without curbs and with limited sight lines.

- e. If the dedication and improvement of a street would provide better and/or more identifiable access for the public or for emergency vehicles.

- f. Where potential exists for extending the street system.

5. It is undisputed that the proposed project conforms to applicable land use policies, zoning codes or land use code provisions.

6. The proposal provides for adequate access for vehicles, utilities, and fire protection.

7. The proposal provides adequate drainage, water supply

and sanitary sewage disposal.

8. Public use and interests are served by permitting the proposed division of land.

9. Adequate light, air, and usable open space exists between structures under the proposal.

10. Improvement of a dedicated street is not necessary or desirable to facilitate adequate water supply or for fire protection, or to facilitate adequate storm drainage in this instance.

11. Improvement of a dedicated street is not necessary or desirable in order to provide on-street parking for overflow conditions.

12. Potential safety hazards do not exist pertaining to this project.

13. Dedication and improvement of a street would not provide for better and/or more identifiable access for the public or for emergency vehicles.

14. No potential exists for extending the street system.

15. The condition appealed is inequitable in that it imposes an unfair economic burden on the applicant.

16. A prior decision by this office related to subplatting of property located at 6550 - 21st Avenue S.W. (File No. P-80-001). Although one of the Director's conditions served the public interest, it was modified so as to avoid an unfair economic burden on the applicant. The condition requiring the applicant to improve more than 100 ft. of unimproved S.W. Holly Street and 177 ft. of 19th Avenue S.W. was modified to eliminate improvements on 19th Avenue S.W.

17. Since 19th Avenue S.W. between the Sanisilo Elementary School and S.W. Holly Street is unimproved and abuts large, undeveloped lots with single-family residences that may be subplatted in the future, a more equitable condition would require subjecting the property to future improvements proportionate to other property owners abutting the unimproved street.

#### Decision

The appeal by the applicant is GRANTED and the Director's Condition No. 2 for Parcel C is modified as follows:

The owner(s), responsible party(s) and subsequent owners, shall be subject to any future local improvement district proposals or similar community developments of 19th Avenue S.W. between the Sanisilo Elementary School and S.W. Holly Street.

Entered this 15<sup>th</sup> day of December, 1987.

  
Alberto Velarde  
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.