

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

WESTWOOD BY THE SOUND
NEIGHBORHOOD ASSOCIATION

FILE NO. MUP-88-073(W,P)
APPLICATION NO. 8707443

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

Introduction

Appellant, Westwood by the Sound Neighborhood Association, appeals the decisions by the Director, Department of Construction and Land Use, to issue a determination of nonsignificance and conditionally approve a short subdivision of property at 10401 47th Avenue S.W.

The appellant exercised the 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 November 30, 1988. The record remained open for submission of photographs of the roadway. One of Appellants' members, Peter A. Pitell requested on December 2, 1988, that evidence in the form of a letter from him be considered or that the hearing be reconvened for presentation of evidence. The Director's representative advised that he does not object so long as there is an opportunity for rebuttal. Since the only evidence as to width of the roadway was to be accepted and no adequate basis for reopening was shown, the evidence submitted cannot be considered.

Parties to the proceedings were: appellant group, represented by one of its members, Grant Bailey; the Director, Department of Construction and Land Use, represented by Arthur Ward, land use specialist; and the applicant, David Tomlinson, 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 of record, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. David Tomlinson ("applicant") filed an application for a master use permit to subdivide property at 10401 47th Avenue S.W. The Director, Department of Construction and Land Use ("Director") issued a determination of nonsignificance and approved the short plat subject to conditions. Westwood by the Sound Neighborhood Association ("Westwood") appealed.

2. Applicant proposes to divide the 28,444 sq. ft. lot into two. The existing single family residence would remain on one lot and the second lot would be available for single family development.

3. The subject property drops steeply down to the southwest at an average slope of 58 percent.

4. The subject parcel has frontage on two streets, 47th Avenue S.W. and Maplewood Place S.W., a private right of way. The existing house utilizes 47th S.W. for access.

5. The whole area is designated as environmentally sensitive because of steep slopes and unstable land. There is an ex-

tensive history of slides along 47th Avenue S.W. including slides in 1987 involving the subject property and that to its north. Conclusions drawn by the geotechnical consultant after studying the slide were that it was a small part in a much larger slide area and that the area was highly unstable. Water saturated soils undermined sewer and water lines and caused breakage resulting in the slide.

6. Extensive repairs and improvements to the drainage system in the immediate area were made costing in excess of \$2,000,000. A horizontal trench drain was placed in the 47th Avenue right of way so that surface water flowing down the slope would be intercepted and taken to the new storm drain. The repairs and improvements increased the stability of the slope.

7. The Director found that to serve the public use and interest, development of Parcel B would have to be in accord with the geotechnical engineer's recommendations and meet Director's Rule 2-87 including the provision of a debris barrier uphill of the building. In his SEPA analysis he recognized that slope instability could result from increased impervious surfaces and runoff from development. Requirements were imposed as a condition of approval of the short plat and to mitigate the impacts:

*3. The owner(s) and/or responsible party(s) shall submit construction plans based upon an accompanying soils report meeting Director's Rule 2-87. Said plan at the discretion of the Land Use Specialist shall meet or exceed the geotechnical report of Altinay and Associates, July 7, 1988, including, but limited to: (1) providing a pressure treated timber debris barrier about 30 ft. uphill from a single family residence constructed on said lot; and (2) access for removal of debris which may accumulate behind the barrier.

Exhibit 3.

8. The Altinay and Associates report concludes with regard to site stability that the property as of July 7, 1988, is in a stable condition but the report recognizes that the general area has been "involved with instability for an indefinite length of time." The report states that the present stability should remain unchanged after the development if the recommendations that the report offers are followed. Those recommendations include that cuts be limited to 4 ft., that the conceptual design be reviewed by geotechnical engineers prior to detailed house design, that building loads be supported by piling, that soil retaining walls not be higher than 4 ft., that a detailed drainage plan be prepared, that runoff from all impervious surfaces be carried in tight lines to the drainage facilities below the property, that removal of vegetation be limited to the building area, that all work be limited to non-rainy periods, that flexible couplings be used for buried utility lines, that a debris barrier uphill of the building be constructed, etc.

9. David Cotton, a geotechnical engineer who was consultant to the City on this slide and has worked with the City on development of the Director's rule has reviewed the Altinay and Associates report and agrees with the recommendations but suggests in addition that the City impose a condition that no fill be placed on the slope, recommends that the non-rainy season be defined as May through September, that the utilities be required to be buried below the colluvium, that a qualified geotechnical consultant be on-site during construction, that covenants be attached to the title stating that the property is a "landslide hazardous area" and describing the requirements which affect the design of construction to alert future purchasers to the additional requirements and cost.

10. Appellant points out that Condition No. 3 is not clear as to what is intended when it states that the design shall "meet or exceed the geotechnical report".

11. The Director found the proposed new lots conform to the Land Use Code and policy provisions.

12. The Director found that access to the new lot would be adequate if it is provided from Maplewood Place S.W. and required that access as a condition of approval and pursuant to SEPA.

13. The Director found that an adequate water supply is available in 47th Avenue S.W., there is adequate capacity for sanitary sewage disposal and an adequate drainage system on-site can be developed to drain into an 18 in. drain in Maplewood Place S.W.

14. Maplewood Place S.W. serves 12 to 14 houses. The hard-surfaced street is flanked by a drainage ditch on its east side in some places and retaining walls at others, and a drop-off on its west side. Pavement width varies but is as narrow as 10 ft. in places with some shoulder, 12 ft. at another place with no shoulder (retaining walls on both sides). The street Maplewood Place S.W. connects to by a 180° curve, 47th Avenue S.W., is as narrow as 10 ft. in places in a 16 ft. wide right of way. Two cars can pass on some portions of the road. Where the road cannot accommodate two, one car must wait at a wider place. If they meet, for instance on one of the turns, one car has to back to a wider spot.

15. The roadway at the subject property appears to be at least 30 ft. wide but includes private property surfaced for parking for the abutting property.

16. There have been few reported accidents on Maplewood Place S.W. and none in the last five years. Accidents involving property have occurred but have not been reported.

17. Applications for three building permits have been filed for the lots south of the subject property so the traffic on the street will be increased.

18. The land use specialist believed, when preparing the analysis and decision, that the width of Maplewood Place S.W. is 16 ft.

19. The Department of Construction and Land Use has no standard for determining when an easement is too narrow to allow additional traffic.

20. Other short plats or building permits have required that extra off-street parking be provided since there is no shoulder on the narrow street. Westwood requests that a condition be imposed requiring this property to provide additional off-street parking.

21. The Engineering Department recommended to the Director that the last two proposed developments on Maplewood Place S.W. be denied because of the length and narrowness of the easement roadway.

22. The land use specialist testified that a requirement should be imposed for a covenant to inform future purchasers of the condition that vegetation is to be maintained on the site.

23. Enforcement of continuing conditions such as maintenance of landscaping is dependent on complaints from neighbors and others.

Conclusions

1. The Hearing Examiner has jurisdiction over these parties and this subject matter pursuant to Section 23.76.022C.

2. The Hearing Examiner is required to give the decision made by the Director substantial weight. Section 23.76.022C.7. Under that standard of review the appellant must prove the de-

cision to be clearly erroneous. Brown v. Tacoma, 30 Wn.App. 762, 637 P.2d 1005 (1981).

3. Appellant seeks to have the Director's decision reversed on the bases that the access for vehicles is inadequate and the public use and interest would not be served by the further division of the property because of the narrow roadway and the unstable slope condition. If the short plat is to be approved appellant seeks imposition of additional conditions and clarification of existing conditions.

4. Appellant attempted to show that a substantial development permit would be required for the driveway on the site under the Seattle Shoreline Master Program. As the decision addresses only the short plat, a substantial development permit would not be needed at this time.

5. Appellant has not shown any error as to conformance with the Land Use Code and policies.

6. The proposed division must provide adequate access to the new lots as provided in Section 23.54.010. For residential uses, Section 23.54.010A requires that "at least ten feet (10') of a lot line shall abut on a street meeting the standards of subsection A3 or on a permanent access easement to a street meeting the standards of subsection B; or the provisions of subsection B7 shall be met." The street, 47th Avenue S.W., on which the lot abuts does not meet the standards of A3.a. The Director may authorize exceptions to those standards under a set of conditions described in the provision, several of which could apply to this site. While there is no evidence that the Director considered those exceptions, several are applicable such as "(1) Proposed development contains less than 10 units, "(3) Full street improvements would not be practical due to topography and/or location in an environmentally sensitive area," or the Director may have decided that "(7) The street is not improved to standard, but is adequate for anticipated current and future needs." The Director has this discretion and the evidence does not show the decision to be clearly erroneous.

7. Since access is actually to be gained from Maplewood Place S.W., a permanent access easement, appellant urges that the standards for easements should apply. Easements serving ten or more residential units are required to be at least 32 ft. wide and provide a surfaced roadway of at least 24 ft. in width, among other requirements not met by this easement. Section 23.54.010B. The Director interprets the access requirement to be satisfied as long as the property abuts on a street meeting the standards, or is excepted from the standards. Therefore, under his interpretation, access is adequate whether it is actually gained from that street or not. Since the code provisions are capable of that reading, the standard of review does not permit a different reading by the examiner.

8. The evidence that there is no shoulder for parking and the width of the street is quite restricted in places is sufficient to determine that a condition should have been imposed to require that the site design include parking for at least three vehicles on-site.

9. The evidence adduced shows that site instability is directly related to drainage and that with the improvements made by the City and with conditions and geotechnical oversight, the drainage can be made adequate and the risk of instability lowered to an acceptable level.

10. With the addition of some of the conditions proposed by appellant and clarification of others, creation of another lot for single family development would serve the public use and interest unless the additional traffic would increase the hazard on the substandard street to an unacceptable level. With no technical evidence as to volumes or capacity or any expert opinion as to the risk involved from the addition of traffic in the record, the examiner cannot conclude that the determination

of the Director is clearly erroneous.


11. Appellant addressed only the short plat decision so the determination of significance should be affirmed.

Decision

The SEPA decision of the Director is affirmed and the short plat decision is affirmed with the following modifications:

- 1) Condition No. 3 shall read: The owner(s) and/or responsible party(s) shall submit construction plans based upon an accompanying soils report meeting Director's Rule 2-87. The plan shall meet or exceed the recommendations found in the geotechnical report of Altinay and Associates dated July 7, 1988, including, but not limited to: (1) providing a pressure-treated timber debris barrier about 30 ft. uphill from any single family residence constructed on the lot; (2) providing access for removal of debris which may accumulate behind the barrier, and shall also include (3) prohibiting placement of fill on the site and (4) requiring that the installation of utility lines be below the colluvium to avoid stress from creeping of that material;
- 2) The design for development of the site shall include off-street parking for at least three vehicles;
- 3) The owner shall record a covenant stating that the City of Seattle has required, as a condition of approval of the short plat, that removal of ground cover and trees be limited to the building and landscaping area and that vegetation on site be maintained according to the approved plan on file with the Department of Construction and Land Use; and
- 4) To give notice to potential purchasers, the owner shall record a document stating that the property is in a "landslide hazardous area."

Entered this 16th day of December, 1988.


M. Margaret Klockars
Deputy Hearing Examiner

CONCERNING FURTHER REVIEW

Pursuant to Seattle Municipal Code Section 23.76.024, a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the fifteenth day after the date of the decision appealed from is filed with the SEPA Public Information Center, 5th Floor Municipal Building, 684-8322. The appeal statement must be filed with the City Clerk on the first floor of the Municipal Building. The City Council's review on appeal shall be limited to the issue of compliance with Section 25.05.660. The City Council Land Use Committee should be consulted regarding further appeal specifics.

If an appeal is taken pursuant to Section 23.76.024, the time for filing a request for judicial review of the underlying governmental action and/or other SEPA issues is stayed until the City Council renders a final decision on this City Council appeal.

If no appeal is taken to the City Council, 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 on the underlying governmental action must be filed in King County Superior Court within fifteen days of the date of this Hearing Examiner decision. Seattle Municipal Code Section 23.76.22.(C)(12)(c). Judicial review under SEPA shall without exception be of the decision on the

underlying governmental action together with its accompanying environmental determinations. SEPA issues may be added to the request for review within 30 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 fifteen days of the date of this decision. See Chapter 43.21C, RCW and Chapter 25.05, Seattle Municipal Code.

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, 5th Floor, Seattle, Washington 98104. As an alternative to the written transcript, RCW 43.21C.075(6)(b) provides that a tape may be used for court review. If a taped transcript is to be reviewed by the court the record shall identify the location on the taped transcript of testimony and evidence to be reviewed. Parties are encouraged to present the issues raised on review, but if a party alleges that a finding of fact is not supported by evidence, the party should include in the record all evidence relevant to the disputed finding. Any other party may designate additional portions of the taped transcript relating to issues raised on review.