

BEFORE THE HEARING EXAMINER

CITY OF SEATTLE

In the Matter of the Appeal of

JOHN E. SPERRY

FILE NO. MUP-89-009(V)
APPLICATION NO. 8801116

from a decision by the Director
of the Department of Construction
and Land Use

FINDINGS AND ORDER OF
DISMISSAL

Introduction

Applicants, Daniel and Frederica Hiatt, applied for a permit to subdivide land known as 1025 California Lane S.W. into two parcels. They submitted the short plat application to the Department of Construction and Land Use (DCLU).

Procedural Review and Synopsis

1. In a decision entered October 10, 1988, the DCLU Director, by land use specialist Susan Kunimatsu, denied applicant's short plat based on DCLU's denial of the auxiliary variance. The variance would have allowed an easement access less than the width normally required by the Land Use Code.
2. Applicants appealed to the Hearing Examiner. After an appeal hearing of December 7, 1988, the Hearing Examiner approved the variance but affirmed denial of the short plat. The lack of Seattle Fire Department (SFD) access was essential to the Hearing Examiner's denial of the short plat. Hearing Examiner File No. MUP-88-071(P,V), entered December 22, 1988. John Sperry, a neighboring property owner, was present and testified at the December 7, 1988 hearing. He therefore was mailed a copy of the December 22, 1988 decision on December 22, 1988.
3. On December 30, 1988, the Office of Hearing Examiner received applicant's request for reconsideration of the short plat denial. The consideration request was based on the SFD's anticipated reevaluation and conceptual approval of an alternative fire protection plan.
4. By letter of January 3, 1989, DCLU was apprised of a January 10, 1989 deadline for any reply to the applicant's request for reconsideration.
5. By letter dated January 10, 1989, the Office of Hearing Examiner was advised that DCLU had no objection to the reconsideration.
6. On January 12, 1989 the Office of Hearing Examiner received a copy of a letter from Fire Chief Harris to the applicants. The letter stated that the request for an alternate fire safety system would be granted "based on the existing conditions at the site."
7. On January 12, 1989, the Hearing Examiner approved reconsideration of the December 22, 1988 decision and remanded the application to DCLU for review of SFD information and for their issuance of a supplemental decision on the short plat.
8. On February 14, 1989, DCLU issued a second Notice and Decision concerning the subject property. The Notice of Decision stated that appealable decisions had been made to 1) conditionally grant the access easement variance and to 2) conditionally grant the short subdivision.
9. The Notice of Decision gave March 1, 1989 as the deadline for appeals of the DCLU decision to the Hearing Examiner.
10. On February 24, 1989, appellant, John E. Sperry, submitted this appeal to the Hearing Examiner of the February 14, 1989 DCLU decision.

11. The essence of the appeal letter is stated in the letter:

We appeal this revised decision to allow street access variance because of errors and omissions in the (DCLU)...decision referenced above...

12. The appeal letter was directed to the question of access and submitted that litigation on access via the easement (as distinguished from the question of the easement width and adequacy for DCLU purposes) was pending. The request for relief was succinctly stated:

In view of this litigation, and the fact that the applicant does not have legal access to his proposed short plat, we ask the City of Seattle to reverse their decision and reverse their street access variance...

13. The Hearing Examiner then scheduled the matter for appeal hearing date of April 10, 1989. Following an agreed-upon continuance, the Hearing Examiner set the matter for hearing date of April 20, 1989 and notice thereof was issued by DCLU.

14. On March 7, 1989, the Office of Hearing Examiner received applicants' letter requesting that the Sperry appeal be dismissed. In essence, applicants urged that the issue of the variance for the road was previously decided. Applicants' letter also disputed certain points of the appeal letter.

15. The Hearing Examiner allowed responses to be held until the hearing of April 20, 1989.

16. In said hearing, applicant reiterated his motion to dismiss.

17. Appellant restated his position in the hearing, i.e. that he was concerned with the question of the legality of the access. Appellant submitted to the Hearing Examiner copies of King County Superior Court documents relating to the litigation about the access. In response to a Hearing Examiner inquiry, appellant stated that to his knowledge, no injunction had been issued regarding this case.

18. Also in said hearing, the DCLU representative stated that the access variance information was included in February 14, 1989 only as background information and that there was no intent to issue a second decision on the variance.

Conclusions

1. All appeals of master use permit decisions
...shall be in writing and shall clearly identify each component of a Master Use Permit being appealed...Specific objections to the Director's decision and the relief sought shall be stated in the written appeal.
Seattle Municipal Code 23.76.022C.3.a.
2. Appellant's letter challenged the variance component of the master use permit. Appellant restated specific objection to that component in the appeal hearing. The relief sought by appellant was reversal of the street access variance.
3. No jurisdiction was granted by the DCLU February 14, 1989 decision to relitigate the access variance. The variance was approved by the Hearing Examiner in MUP-88-071. The Hearing Examiner has not been enjoined by Superior Court from acting on the appeal or the dismissal.
4. Regarding the short plat, the DCLU decision of February 14, 1989 must be given substantial weight, Seattle Municipal Code 23.76.022(C)(7), and the appellant's burden is to show that deci-

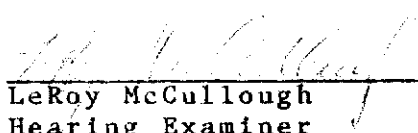
sion to be clearly erroneous. Brown v. Tacoma 30 Wn. App. 762, 637 P.2d 1005 (1981).

Order

After a review of this matter; of the respective DCLU decisions and notices thereof; of the content of this appeal letter and of the appellant's intent with respect to that letter as indicated by presentation to the Hearing Examiner; and after a review of relevant code sections and principles of law, it is hereby ordered:

The appeal is dismissed.

Entered this 21st day of April, 1989.


LeRoy McCullough
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 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, Room 320, Arctic Building, 700 Third Avenue, Seattle, Washington 98104, (206) 684-0521.