

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

DAVE CRAWFORD

FILE NO. MUP-89-027(W)
APPLICATION NO. 8707231

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

Introduction

Appellant, Dave Crawford, appeals the decision of the Director, Department of Construction and Land Use, to issue a determination of nonsignificance on a master use permit application for a proposal to construct a 12-unit apartment building at 1922 - 12th Avenue West.

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 July 12, 1989.

Parties to the proceedings were: appellant, Dave Crawford, pro se; the Director, Department of Construction and Land Use, represented by Susan Kunimatsu, land use specialist; and the applicant, Robert K.K. Chan, by his attorney, Jordan Hecker, Longley and Hecker.

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. The applicant filed a master use permit application to construct a four-story, 12-unit apartment building at 1922 12th Avenue West. The Director, Department of Construction and Land Use ("Director"), issued a determination of nonsignificance (DNS) for the proposal and imposed conditions pursuant to SEPA and other authority. This appeal challenges those determinations.

2. The subject site is designated environmentally sensitive due to steep slopes and history of landslides. At the time of an earlier construction attempt on this site, the City required the contractor to place rock to preserve the stability of the apartment building behind the site after a slope failure or washout occurred. Then, with a new proposal, a 10 ft. high, concrete, soldier pile rock with tiebacks was constructed across the width of the site. The project was abandoned along with construction materials left in the street right-of-way which appellant was forced to clear.

3. When appellant constructed his 12-unit apartment building south of the subject property, underground water encountered during construction undermined the slope damaging the triplex on the neighboring lot south of that slope resulting in a settlement for \$160,000. Appellant paid temporary housing and relocation costs for the tenants of that building out-of-pocket.

4. The Department of Construction and Land Use required the applicant to submit a geotechnical report prepared by a geotech-

nical expert conforming to the requirements of the Director's Rule 2-87. The report, by Cascade Geotechnical, provides recommendations for site preparation, slope stability, retaining and/or shoring walls, structural support of the building and drainage requirements. It is nonspecific awaiting further development of building plans.

5. Director's Rule 2-87, Requirements for Permitting Construction in Potential Slide Areas, contains requirements associated with grading or building permits for work in a slide area. Reports, plans, covenants, bonds, liability insurance, monitoring, etc., are required. Conditions may be imposed to address specific problems or the permit may be denied under this rule if the risk is deemed too great.

6. In the SEPA review, the Director identified potential increased erosion and/or slope instability as adverse environmental impacts. The requirements of the drainage ordinance and the recommendations in the geotechnical report which the Director's Rule will require be implemented were expected to assure that the impacts would not be significant.

7. Conditions pursuant to SEPA, Section 25.05.675D, were imposed to mitigate any erosion or instability impacts.

8. Appellant's concerns are with potential abandonment of the project leaving problems for neighboring property owners as occurred in the past, heavy construction equipment inhibiting access to his property to the south, availability of funds for immediate costs of tenants and to maintain his property in case of slope failure, lack of clarity and detail in plans regarding the retaining wall, tiebacks, existing pilings, handling groundwater and pipes, and contractor competency.

9. The street ends in a dead end at appellant's building south of the subject site.

10. The plan review at the master use permit stage is conceptual. The staff concluded that there are no obvious technical problems that cannot be dealt with and overcome at the next level of review.

11. The final reviews required under the Director's Rule have not taken place for this project but certain conditions pursuant to both SEPA and the Director's Rule have been imposed based on the conceptual plans and the geotechnical report including those requiring a revised soils report with a statement of the degree of risk, an excavation plan, structural plan consistent with the geotechnical report, insurance coverage and posting of a bond.

12. A drainage plan is required for the proposal to be submitted with the building permit application.

13. Street use permits are required to use street right-of-way for construction staging. Since there is no other access to the property to the south, total obstruction of the street would not be allowed.

14. The amount of bond required will be determined when the full scope of the proposal and risk is known.

15. The decisionmaker was aware of the history of construction attempts and slide and drainage problems on the subject site.

Conclusions

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

2. The Director is to require an environmental impact statement if the proposal may have a probable significant adverse environmental impact. Section 25.05.360. If there will be no

probable significant adverse impact, the Director is to issue a DNS. Section 25.05.335. The Director's determination is to be accorded substantial weight by the Hearing Examiner on appeal. Section 23.76.022C.7. The burden is upon appellant to overcome that weight by proving the decision to be clearly erroneous. Brown v. Tacoma, 30 Wn.App. 762, 637 P.2d 1005 (1981).

3. Appellant urges that the Director's error has been in having insufficient or inadequate information and detail to judge the potential for earth and drainage problems. The record shows that the history of this site was known and that knowledge, combined with the geotechnical report, would have alerted the Director to the potential for adverse impact. Appellant did not present any information about the potential which was unknown to the Director. The level of detail was not shown to be insufficient for review of necessary conditions where the chief authority is through the Drainage Ordinance and Director's Rule to condition or deny the grading or building permit and would occur at a later stage.


4. No further conditioning pursuant to SEPA was shown to be appropriate under the circumstances and SEPA policy involved.

5. The Director's decision, not being shown to be clearly erroneous, should be affirmed.

Decision

The Director's determination is affirmed.

Entered this 26th day of July, 1989.


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, Room 1320 Alaska Building, 618 Second Avenue, 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.