

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

In the Matter of the Appeals of

EMMOGENE SILVER  
AND  
CAMILLE STEEN

FILE NO. MUP-042(W)  
FILE NO. MUP-89-043(W)  
APPLICATION NO. 8901553

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

Introduction

Neighboring property owners appeal the decision of the DCLU Director to approve a master use permit application, with conditions, for construction of a single family residence in an environmentally sensitive area. The project address is 3801 Chilberg Avenue S.W.

The appellants 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 September 5, 1989.

Parties to the proceedings were the appellants, pro se; the DCLU Director by Faith Lumsden, land use specialist; and applicant Daniel Mallove by architect Garrett Larsen.

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 construct a single family residence in an area designated as environmentally sensitive. The Department of Construction and Land Use (DCLU) approved the master use permit and issued a determination of nonsignificance, (DNS). Construction-related conditions were attached to the permit pursuant to the State Environmental Policy Act. Appellants, neighbors to the proposal site, object to the project as currently approved by DCLU.
2. The proposal site consists of a through lot parcel that is bordered on the west by Boyd Place S.W. and on the east by Chilberg Avenue S.W. The street address is 3801 Chilberg Avenue S.W. The site is legally described as "Lots 1-3, Block 4, S.M. Boyd's 1st Addition..."
3. The site is located within the Single Family (SF) 7200 zone.
4. The total lot area approximates 28,000 sq. ft.
5. Consistent with the vicinity, the subject lot slopes steeply down to the west (toward Boyd Place S.W.). Because of the slope, the site offers westward views over Puget Sound to the Olympic Mountains and Peninsula.
6. The lot has groundwater springs on and near it. Consequently, water flows down and across the proposal site to Boyd Place S.W. and beyond.

7. At Boyd Place the groundwater puddles and/or slowly makes its way to a ditch. Ultimately the water finds its way to the City drainage system. In freezing weather, standing water in Boyd Place has frozen, creating a safety hazard. The phenomenon of standing water in Boyd Place is partially because ditch and other drainage components need cleaning.

8. Vicinity properties show signs of soil creep and structure settlement. The area of the proposal has seen several landslides, including a 1970 slide near the hairpin curve of Boyd Place and Chilberg Avenue S.W.

9. Although some of the slides were due to cut and fill operations, others were due to basic slope instability. Key elements include area sites' steepness, the presence of groundwater, and the soil (sand over clay) composition.

10. Access to the proposal site is proposed from Chilberg S.W. via a short access easement across the northeast corner of the neighboring property. Chilberg is a narrow residential access street. Adjacent to the site, Chilberg is approximately 10 ft. wide, effectively a one-lane street at this location.

11. Roadways with "one lane functions" are not uncommon in Seattle.

12. The Chilberg right-of-way is 20 ft. wide. The paved portion of Chilberg is not centered in this right-of-way. In fact, a paved portion of the right-of-way extends approximately 3.5 ft. onto the subject site. Because of this and the rather extreme topography across the street, the Seattle Engineering Department has exempted the subject proposal from a requirement of further dedication or widening and has generally decided against widening of this street segment.

13. Boyd Place is also a narrow residential access street. It appears from the projection of a sewer column presently above the street surface that Boyd Place is also settling.

14. Although applicant's lot area is sufficient to allow more than one residence, he proposes to construct only one single family residence on site. The new structure would have two stories, a daylight basement and an attached two car garage. It would be sited in the northeast sector of the lot, toward Chilberg S.W.

15. In response to the unstable layers of soil, the structure would be built on a lot "bench" and rest on concrete piers that would extend down through the bearing soil. Construction would need to accord with DCLU Director's Rule 2-87 and with the City's Grading and Drainage Ordinance. The latter requires that applicant produce an approved drainage control plan prior to issuance of a building permit. The concept of applicant's present plan has been approved by SED and DCLU approval is pending.

16. Director's Rule 2-87 governs development in potential slide areas. It requires submission of a geotechnical soils report prior to construction. Applicant has submitted new and updated reports for the site. The reports generally recommend that the house be constructed on augercast concrete piers "extending at least" 15 ft. into the hard silts. Applicant intends to exceed the recommendation of the report and provide pier lengths of 25 ft. such that "the vertical capacity of the piers will exceed...20...tons." Exhibit 6, letter of December 5, 1988, p.2.

17. Compliance with Director's Rule 2-87 also requires special inspections during construction; and further, that all recommendations of the soils engineer be followed.

18. The small dilapidated structure presently located near the center of the site would be demolished.

19. Approximately 15 percent of the site would, after construction, be covered with impervious surfaces. Compliance with the Grading and Drainage Ordinance, however, will require imposition of measures to intercept, route and release on-site drainage at a rate not to exceed the pre-construction rate. Accordingly, an on-site detention facility is proposed with a catch basin and screen to prevent silt and other foreign substances from being released into the existing drainage system. Specific plans include a north-south drainage trench across the site and a "tightline" to the existing (Boyd Place to 59th) drainage system. Applicant is also proposing to de-water the hillside. Per SED, applicant will be required to ensure that the drainage ditch is operational prior to occupancy.

20. Several project neighbors expressed concern with the impact of construction vehicles on emergency access and on the condition of the local roadways. The SED street use permit would require that the developer return the street to, at minimum, its pre-construction condition.

21. Primary vegetation removal will be to accommodate building construction and siting. Some replacement landscaping is proposed. Appellants' concerns with loss of on-site vegetation is related to the impact on drainage and slope stability.

22. The increase in traffic to the vicinity resulting from the completed proposal will be of insubstantial impact on neighborhood access and traffic flow.

23. In addition to restricting construction activity to 7:30 a.m.-6:00 p.m. on non-holiday weekdays, DCLU conditions address construction vehicle impacts as follows:

2. The owner(s) and/or responsible party(s) shall ensure that Chilberg Avenue SW is not blocked to through traffic during construction by equipment or construction vehicles. No equipment or materials staging shall be permitted in any traffic lane of surrounding area streets. Construction workers shall be provided onsite parking at all feasible times determined by the Construction Inspector.

#### Conclusions

1. The Hearing Examiner has jurisdiction of this appeal pursuant to Chapter 23.76, Seattle Municipal Code.

2. The Hearing Examiner must give "substantial weight" to the DCLU decision on this environmental matter. Seattle Municipal Code Section 23.76.022C.7. To overcome this deference, the appellants must show that the DCLU decision is "clearly erroneous." Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981).

3. In essence, appellants challenge adequacy of the mitigation imposed by DCLU. Specifically appellant Silver is concerned with issues affecting drainage, water release and widening of the street segment. Appellant Steen is more concerned with the impact of construction equipment and vehicles on an already deteriorating street system.

4. Mitigation measures under SEPA must be based on policies, plans, rules or regulations designated in Seattle Municipal Code Section 25.05.665, 25.05.670 or 25.01.675. Section 25.05.660A.1. The measures must be "related to specific, adverse environmental impacts clearly identified in an environmental document on the proposal." Section 25.05.660A.2. The mitigation measures must be "reasonable" in consideration of the adverse impact sought to be mitigated. In re Appeals of Queen Anne Community Council et al., C.F. 293623 (1985).

5. In addition,

...mitigation measures may be imposed upon an applicant only to the extent attributable to the identified adverse impacts of its proposal.

Seattle Municipal Code Section 25.05.660A.4. Voluntary mitigation is permitted.

6. The impacts of the proposal were not shown to be probable, significant, adverse impacts. Therefore, the Hearing Examiner may not require an environmental impact statement (EIS). Seattle Municipal Code Section 25.05.340.

7. In the absence of an EIS and its disclosures, the Hearing Examiner may not deny the project. Seattle Municipal Code Section 25.05.665A.2. However, the project may be conditioned to mitigate impacts that are adverse but which do not present as "significant" adverse impacts.

8. The specific environmental policies of Seattle Municipal Code Section 25.05.675 include such categories as air quality, construction impacts, drainage, earth, energy, height, bulk and scale, parking, public services and facilities, water quality and others. As a general proposition, the DCLU analysis and conditions adequately address these components.

9. Regarding the precise issues presented by the appeal, however, DCLU has imposed a condition designed to avoid blockage of Chilberg S.W. by construction vehicles, equipment or materials. Seattle Municipal Code Section 15.22.080, "Street and Sidewalk Use," requires repair of damage to "public facilities" and that the owner, agent or contractor bear the cost of the repair. Based on the representation from the Seattle Engineering Department that this requirement would apply to the particular proposal's impacts on street use, the Hearing Examiner declines to impose the same as a condition pursuant to SEPA. Seattle Municipal Code Section 25.05.665D; Seattle Municipal Code Section 25.05.675B.

10. Regarding drainage, the Hearing Examiner concludes that compliance with the Grading and Drainage Control Ordinance will, in the main, sufficiently mitigate impacts of the proposal. Seattle Municipal Code Section 25.05.675C; Section 25.05.665D.

11. The proposed development will improve the existing drainage pattern. Among other items, a drainage control plan is required. Per the present plan, water across the site will be intercepted, stored, filtered and then released at a pre-construction rate or less to the present system. Applicant should be required as a SEPA condition, however, to improve the efficient operation of the drainage ditch and path prior to issuance of a building permit or occupancy. By this specific condition, the occasions for build-up of standing water in Boyd Place will be reduced. Seattle Municipal Code Section 25.05.675C.2b,c.

12. It is not appropriate to require applicant to mitigate the more general vicinity drainage problem. Mitigating measures may be imposed only to the extent of a proposal's adverse impacts. Seattle Municipal Code Section 25.05.660A.4. Further, mitigation must be reasonable in consideration of the impacts. Seattle Municipal Code Section 25.05.660A.3. Applicant's project has been conditioned so that the impacts attributable to his project are reasonably mitigated.

13. Regarding earth and soil stability, the evidence of record shows that the proposed structure will be positioned on a flat area of this steep site. The evidence further shows that the structure will be built on 25 ft. long augercast concrete pilings that will extend through the hard layer of soil. Construction will be governed by Director's Rule 2-87. Pursuant to Director's Rule 2-87 special inspections during construction

are required as is a site specific geotechnical soils report. The proposal calls for dewatering of the hillside which will improve slope stability.

14. Vegetation will be removed to facilitate construction. However, replacement landscaping will augment the undisturbed vegetation.

15. Some 3.5 feet of the Chilberg Avenue pavement encroaches the subject site on the site's east. It would not be reasonable or appropriate to require further dedication of the site for a public right-of-way function.

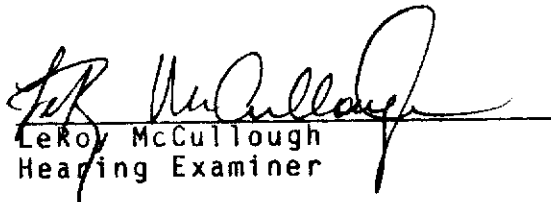
16. In light of the foregoing, the substantial weight accorded the DCLU decision, i.e. to approve the application contingent on street use, grading, drainage, and construction provisos (except as modified by Conclusion 11 above) has not been overcome. The DCLU Director's decision is therefore affirmed.

17. The Hearing Examiner would note that DCLU and SED should make every reasonable effort to keep the community apprised of any extraordinary slope stability or other project issues. Further, those departments should facilitate a community-wide effort to implement and maintain an effective drainage system for the vicinity.

#### Decision

The DCLU decision as modified is AFFIRMED.

Entered this 20th day of September, 1989.

  
Leroy McCullough  
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.