

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

In the Matter of the Appeal of

R/L ASSOCIATES

FILE NO. S-83-009
DCLU NO. 83-015

from an interpretation of the Director,
Department of Construction and Land Use

Introduction

The Department of Construction and Land Use (DCLU) Director determined that one legal building site existed on the site addressed as 8029-1st Avenue N.E. Project applicant, R/L Associates submitted this appeal.

The appellant exercised the right to appeal pursuant to Chapter 23.88, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on January 17, 1984.

Parties to the proceedings were: appellant by Robert L. Hale; and the DCLU Director by assistant City Attorney Judith Barbour. Derrill T. Bastian, Esq. appeared on behalf of neighbors to the proposed development.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 23 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 parties were in substantial agreement with the following findings of fact, recited from the DCLU interpretation at issue. Parenthetic and other designated statements are specific Hearing Examiner additional findings.

2. The subject property, zoned SF 5000, is located at 8029-1st Avenue Northeast. The legal description is:

Those portions of Lots 4-10 inclusive, Block 4, Pitner's Division of Green Lake, as recorded in Vol. 3, page 173, Records of King County, Washington, lying southwesterly of a line drawn parallel with and 70 feet southwesterly, when measured at right angles and/or radially, from the N.E. 85th-80th connection line of SR 5 (PSH No. 1) Seattle Freeway; N.E. 75th Street to N.E. 14th Street.

3. The subject property was platted in 1889 as Lots 4-10, Block 4, of Pitner's Green Lake Division, each lot being 30 feet by 124 feet and having frontage on 1st Avenue Northeast. These lots existed in their full platted size as of July 24, 1957. The DCLU witness testified and the Hearing Examiner finds that a 5,000 sq. ft. minimum lot size was adopted in 1957.

4. In 1961 these lots, along with any structures on them, were purchased in their entirety by the State for purposes of constructing the I-5 freeway. The property owners of record at that time were fully compensated for the whole of their properties. (Reference confirming testimony of J. Pestinger, Seattle Engineering Department, that warranty deeds showed a conveyance in lieu of a condemnation; and Director's Exhibit 7a-d, copies of warranty deeds.)

The State purchased these properties as four building sites:

- Lots 9 and 10 from Clarence and Grace Cornwall
- Lot 8 and the south 5 ft. of Lot 7 from William Harrison
- The south 20 ft. of Lot 5, all of Lot 6, and the north 25 ft. of Lot 7 from Robert and Lucille Bollinger
- Lot 4 and the north 10 ft. of Lot 5 from Herman and Beathe Taylor.

5. In 1973, those portions of Lots 4-10 not required for highway use were sold by the State. The property was offered for sale as a single triangular tract containing portions of the seven platted lots legally described as in (Finding 2) above. The minimum acceptable bid was listed as \$350.

6. The tract was purchased by (quit claimed to) Shirley-Anne Darnell for approximately \$2,000. (See Exhibit 8, Governor's deed.) This tract of land then changed hands several times before being purchased by the present owners, R/L Associates.

7. The subject property is a triangular parcel of land containing approximately 10,000 sq. ft. in area. A survey will be required to determine the precise area. The State's description at time of sale states its area as 9,270 square feet; the owner believes it contains approximately 10,450 square feet.

8. Each of the existing portions of Lots 4-10 contains the square footage listed below. The figures are based on dimensions scaled from a drawing provided by the owner and they are only approximate. Only by means of a survey can the precise area of each lot be accurately determined (emphasis in DCLU original).

Lot 10	3,090 square feet
Lot 9	2,550 square feet
Lot 8	2,010 square feet
Lot 7	1,470 square feet
Lot 6	930 square feet
Lot 5	390 square feet
Lot 4	20 square feet
Total	10,460 square feet approximately

9. The plats of Lots 4-10 were not vacated and still exist.

10. The subject property does not front on a street or permanent access easement.

11. The property abuts a 16 ft. alley.

12. On July 17, 1983, the owner requested a variance to provide access by means of an alley for future construction of three dwelling units, per plan. The variance for access was conditionally granted August 12, 1983, and upheld on appeal to the Hearing Examiner. The Hearing Examiner refused consideration of the question of number of legal building sites on the property because the variance at issue was alley access and not number of dwelling units.

13. The Hearing Examiner finds that the hearing before him on the variance application occurred September 23, 1983, when D. Bastian, an attorney for some neighbors to the development, raised the question of site acquisition and the number of allowable building sites that could be built on site. On October 27, 1983, the assigned DCLU Land Use specialist inquired of the Law Department whether Mr. Bastian could be given an interpretation on the issue since Section 23.88.20.B prohibited requests for interpretations beyond a specified point.

14. Assistant City Attorney Crandall responded that the draft interpretation was "initiated by the Director" and that therefore there was no need to determine whether anyone could request an interpretation. Appellant disagreed with Crandall's conclusions--the DCLU position that the interpretation was "initiated" by the DCLU Director. Appellant maintains that the interpretation was solely at the behest of Bastian and was therefore untimely.

15. The DCLU analyst testified that this interpretation, concluding that only one building site existed on the property, was done to see if a potential error had been made.

Conclusions

1. The Hearing Examiner has jurisdiction of this matter pursuant to Chapter 23.88, Seattle Municipal Code. Section 23.88.20 provides that in Hearing Examiner appeal hearings the Director's interpretation is to be given substantial weight, and the burden of establishing a contrary position rests with the appellant. Further, the Hearing Examiner decision is to be made upon the same basis "as was required of the Director".

2. An interpretation "may be requested in writing by any person or may be initiated by the Director". Section 23.88.20.A. Subsection B provides that

If there is public notice of a project, the request for an interpretation concerning a specific project shall be made before the expiration of any applicable appeal period. When a project requires no public notice, a request for interpretation may be made at any time.

3. It is clear that public notice of the appellant's "project", although not of the specific issues, was provided prior to the public hearing of September, 1983. The interpretation at issue, concluding that only one legal building site exists on the subject property, was not entered until December 2, 1983. Whether this interpretation was untimely is the threshold question before the Hearing Examiner.

4. Appellant's posture is that Section 23.88.20.B precludes the Director's issuance of this interpretation. The Director urges that while "outsiders" have a time limit, no such limit applies to the Director. Given the weight to be accorded the Director's decision, coupled with our reading of the code language and intent, the Director's position is affirmed.

5. Section 23.88.20.A provides that an interpretation may be "requested in writing by any person or...initiated by the Director". The ordinance language use of the disjunctive "or" suggests that certain (written) interpretation requests are to be distinguished from those "initiated by the Director". Section 23.88.20.B continues the distinction. It provides that if there is public notice of a project "the request for an interpretation"

is to be made by a time certain (emphasis added). The "request" per Section 23.88.20.B is properly read to refer to the written request mentioned in Section 23.88.20.A. The Director need not make a "request", but may simply initiate an interpretation. Subsection B does not state that the Director's initiation is to be made by a time certain, although it certainly could have. Further, the Hearing Examiner must acknowledge that pursuant to Chapter 23.90, Enforcement of the Land Use Code, the Director must enforce the Land Use Code and investigate structures or uses which may fail to comply with Code standards or requirements. The Hearing Examiner would note that clarifying legislation could avoid any future misunderstanding of the issue.

6. It is acknowledged that the interpretation at issue was prompted to more than a moderate degree by the inquiries of attorney Bastian. This does not, however, convert the interpretation at issue to one "requested in writing" by Bastian. The testimony and other evidence of record are adequate to support a conclusion that the interpretation was initiated by the Director per Chapter 23.88, Seattle Municipal Code.

7. The next inquiry is whether the Director's conclusion as to the number of legal building sites is correct.

8. The minimum lot area in the single family 5,000 zone is 5,000 sq. ft. Section 23.44.10.A. Exceptions appear at 23.44.10.B, as follows:

A single-family dwelling unit may be established on a lot which does not satisfy the minimum lot area requirements of its zone, if:

1. The lot was established as a separate building site in the public records of the County or City prior to July 24, 1957, by deed, contract of sale, mortgage, property tax segregation, platting or building permit.
2. The lot area deficit was the result of a dedication or sale of a portion of the lot to the City or State for street or highway purposes and payment was received for only that portion of the lot, and the lot area remaining is at least fifty percent of the minimum required in the zone.
3. A lot below the minimum lot area may be created by short subdivision, subdivision or lot boundary adjustment when the lot to be created will be at least seventy-five percent of the minimum required lot area and be at least eighty percent of the mean lot area of the lots on the same block face within which the lot will be located and within the same zone.

9. Exception B.1. requires that "the lot" have been established as a "separate building site" by, inter alia, platting on building permit prior to July 24, 1957, (the effective date of Ordinance 86300 and its minimum lot size provisions). The lots in issue (4-10) were in full 30 by 124 ft. size as of July 24, 1957. They were purchased by the State in 1961 for freeway construction, and the unused portion sold in 1973. The remaining lot portions range from 20 sq. ft., Lot 4 to 3,090 sq. ft., Lot 10. Lots 5 and 6 offer approximately 390 and 930 sq. ft. of area respectively.

10. If Section 23.44.10.B.1 were read to mean that simply by pre-1957 existence, a platted lot can be a contemporary building site, without regard to whether that pre-1957 lot was truncated or otherwise altered, we would be presented with a building site of 20 ft. (Lot 4). The Code language specifies that the lot

be established prior to 1957. The lot should reasonably be read to mean the non-altered lot. The Hearing Examiner must agree with the appellant that the language of 23.44.10.B.1 could well have required that the pre-1957 lot have retained its original lot area in order for the exception to apply. However, that observation does not overcome the weight accorded the Director's interpretation, nor the practical result that the interpretation embodies in this particular circumstance.


11. Nor does the 23.44.10.B.2 exception apply. The lot area deficit at issue resulted from the transfer of the entire lot to the State for highway purposes. An essential element of the Section 23.44.10.B.2. exception is that a "portion" of the lot be sold or dedicated. Since the entire lots were sold, it is not necessary to resolve whether sufficient payment was received or the other related matters of the code section. An argument could be made that the key point in time was when the State sold the unneeded portions (in 1973). Even so, however, the Code language is unambiguous in its requirement that the portion of the lot be sold or dedicated to the State; not that the State have sold a portion of the original lot to a purchaser. No dedication is here presented, Section 23.84.08.

12. Appellant did not challenge the Director's conclusions that the 23.44.10.B.3 exception was inapplicable. In view of the burden of persuasion the Director's position on that item is also affirmed. As indicated in the hearing on this cause, this case presents some unfortunate circumstances and possible matters of equity that are beyond the jurisdiction of the Hearing Examiner.

Decision

The interpretation is AFFIRMED.

Entered this 31st day of January, 1984.


Leroy McCullough
Hearing Examiner

Concerning Further Review

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981). Should an appeal be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court.