

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

In the Matter of the Appeal of

JEFF AND ANNE GIRVIN

FILE NO. S-85-003

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

Introduction

Appellants, Jeff and Anne Girvin, appeal the interpretation by the Director, Department of Construction and Land Use, of the Land Use Code as applied to property at 10337 36th Avenue N.E.

Parties to the proceedings were: appellants, pro se; the Director represented by Judy Talman, senior land use specialist; and the property owner, Mike Robinson, pro se.

This matter was heard before the Hearing Examiner on October 15, 1985.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 23, as amended, 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. Appellants requested an interpretation of the Land Use Code as to its access requirements and standards for property at 10337 36th Avenue N.E. The Director issued a decision which states

...it is decided that a walkway across the unopened portion of 36th Avenue Northeast is the equivalent of an improved pedestrian access easement and that the alley is not subject to the improvement standards for vehicular easements.

2. Appellants filed this appeal raising two issues: 1. Whether an easement providing pedestrian access to a street from the lot may be located in a street right-of-way and, if it may, whether public or private development standards apply; and 2. What improvements are required for an alley providing vehicular access to a lot.

3. The property which is the subject of the interpretation is a lot located at 10337 36th Avenue N.E. in an SF 7200 zone.

4. The subject lot has frontage on an unopened portion of 36th Avenue N.E. A portion of the rear lot line abuts a 16 ft. wide alley.

5. The alley is unpaved and is now used for access to three residences.

6. The Director concluded, in her interpretation, that:

When an alley abuts a proposed building site which is zoned single family, vehicular access by means of that alley is required if the alley is improved according to the standards promulgated by the Director.

7. The Seattle Street Design Manual was adopted as a Director's rule September 24, 1985. Prior to the adoption of the rule, the draft rule was used as a guideline for street design standards. The Director's representative testified that prior to this rule no code provision or rule established formal street standards. This testimony was uncontroverted.

8. The property owner applied for the permit in April, 1985. The interpretation was issued in August, 1985.

9. The Seattle Street Design Manual provides that an improved alley in a single family zone must be 12 ft. wide and surfaced with 6 inches of crushed rock. An alley is excepted from the improvement requirement if it is in common usage by existing residences, is more than 60 percent developed along the alley and the proposed development is not more than four units.

10. A public sidewalk is required to be at least 5 ft. wide, provide special surface finish and meet other specifications. A private easement must be at least 10 ft. wide with at least a 3 ft. wide paved area. Surfacing requirements, slope limitations and other standards applying to a public sidewalk do not apply. Exhibit 3.

#### Conclusions

1. The Hearing Examiner is required to give substantial weight to the interpretation by the Director and the burden of establishing that the interpretation is in error is on the party appealing. Section 23.88.20.E.4.

2. Appellants urge that the Seattle Street Design Manual does not establish the design requirements for the alley serving the subject site because the effective date of the rule adopting those standards was subsequent to the date of the permit application and the interpretation decision. Even if appellants are technically correct, they have not shown that there was any requirement for alley improvement prior to the adoption of the standards by Director's rule. The Director's decision that the alley need not be improved, then, must stand.

3. Section 23.54.10.B.5 provides:

Where a lot proposed for residential use abuts an alley but does not abut a street and the provisions of the zone require access by vehicles from the alley,...an easement providing pedestrian access to a street from the lot shall be provided meeting the following standards: a. Easement width shall be a minimum of ten feet; b. Easements serving one or two dwelling units shall provide a paved sidewalk at least three feet wide;... d. Easements over one hundred feet in length shall provide lighting at intervals not to exceed 50 feet. Lighting placement shall not exceed fifteen feet in height; e. Easements shall not exceed two hundred feet in length.

4. The Director decided that a walkway in the unopened street right-of-way could be substituted for the pedestrian access easement. Appellants argue that if private use is to be made of the public right-of-way the street must be vacated but if not, the walkway is public and must meet improvement standards for a public sidewalk. Section 15.04.010 makes it unlawful for anyone to use a public place for private purposes without a permit. The issuance of the permit would make the private use lawful so a private walkway could be established in the street right-of-way if a street use permit is obtained.


5. The Director's decision that the walkway in the street right-of-way is equivalent to a pedestrian access easement implicitly includes the decision that the improvement standards for the private walkway apply for Land Use Code purposes. Appellants, urging that the use would be public, would require improvements to public sidewalk standards. Since the use would be private if a street use permit is obtained, appellants' argument fails. In issuing the street use permit, the Board of Public Works could determine, however, that additional improvements may be warranted, though not required for Land Use Code access purposes.

6. Appellants have not sustained their burden of proving that the Director's decision is erroneous. The decision, then, must be affirmed.

Decision

The Director's decision is affirmed.

Entered this 29<sup>th</sup> day of October, 1985.

  
M. Margaret Klockars  
Deputy Hearing Examiner

Concerning Further Review

The decision of the Hearing Examiner in this case is the final administrative determination by the City, 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 must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within fourteen days of the date of this decision. Should such request 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. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104.