

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

WALLACE DRAYTON, ET AL.

FILE NO. S-86-005

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

Introduction

DCLU issued an interpretation concerning whether certain parcels addressed as 2810 Cascadia Avenue South could be considered as separate legal building sites. Appellant Drayton, an adjacent property owner, and other neighbors contested DCLU's decision that one of the parcels could be so considered.

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

This matter was heard before the Hearing Examiner on July 1, 1986.

Parties to the proceedings were: appellants Wallace Drayton and David Eitelbach, pro se; property owner James Fleagle, pro se; and the DCLU Director by Guy Fletcher.

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 findings of fact shall constitute the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The subject property is located between Cascadia Avenue South to the west and Lake Washington to the east. The eastern portion of the site slopes steeply down to Lake Washington Boulevard which separates the site from Lake Washington. The property is owned by the Fleagles.

2. The subject property consists of Parcel A, described as "the northerly 39.26 ft. of Lot 3, Block 69, Mount Baker Park"; and Parcel B. Parcel A's lot area is given as approximately 12,993 sq. ft.

3. Parcel B is the more southerly of the two parcels. It is a trapezoidal-shaped area of some 7,338 sq. ft. located to the eastern edge of Lot 4, Block 69, Mount Baker Park. Parcel B's legal description is in the interpretation of record and is incorporated herein by reference.

4. Geoffrey Martin, interested in purchasing the subject site, wished first to secure an interpretation as to whether the north 39.26 ft. of Lot 3 could be developed as a separate legal building site and "whether the easterly portion of Lot 4, together with a portion of Lot 3, may also be developed as a separate legal site."

5. The DCLU Interpretation was that the easterly portion of Lot 4, Block 69, Mount Baker Park (Parcel B), together with a portion of Lot 3, could be developed as a separate legal building site, but that the north 39.26 ft. of Lot 3 could not be developed as a separate site.

6. In addition to owning the property that was the subject of the interpretation, the Fleagles also own the more northerly Lots 1 and 2 of Block 69. The Fleagle home is sited on Lots 1 and 2 and a portion extends into Lot 3. DCLU concluded in part that "...Parcel A may not be developed as a separate legal site as it is already occupied by a portion of the Fleagle's resi-

dence..." Conclusion 5, DCLU Interpretation.

7. The more westerly segment of Block 69's Lot 4 is owned by Wallace Drayton, an appellant herein. Drayton and other neighbors contested the DCLU conclusion that Parcel B constitutes a legal "buildable" site.

8. Appellants assert that Parcel B is without access, Seattle Municipal Code Sections 23.84.024, 23.54.010A; and is subject to Drayton's claim of adverse possession. Appellants also assert that permitting a building on Parcel B would violate the covenant to allow no more than one house on Lot 4, and would violate the public use and interests because of slide, drainage, fire and other safety issues that would be presented by development of the site.

9. Martin, the potential vendee of Parcels A and B, had submitted plans to DCLU for a proposed 22 ft. wide access easement through Parcel A from Cascadia and down to Parcel B. Martin has discontinued pursuit of the purchase and the proposed easement has not been approved.

10. Concerning the access, Drayton was apprehensive that the combination of a 220 ft. long driveway and inclement winter weather would result in Parcel B's occupants and guests parking on street in violation of the community pattern of little or no on-street parking. Concerning the adverse possession, Drayton's claim is that some 75% of Parcel B's western area and a portion of Parcel A has been topped, maintained and otherwise "overtaken" by Drayton and predecessor-in-interest for some 15 continuous years. Fleagle denies that Drayton has any ownership interest in either Parcel A or B.

11. No court or similar formal determination has been issued concerning Drayton's adverse possession claim, nor on whether the covenant restriction precludes consideration of Parcel B as a separate building site.

12. The Hearing Examiner in P-78-009 denied the Fleagles 1978 application to short plat the Fleagles property into east-west segments. That Examiner's concerns with the public use and interests are in the decision which is a part of this record.

13. In approximately 1950 the Lot 3-4 unit, then held in common ownership, was divided into eastern and western portions. Drayton ultimately became the owner of the western portion and Fleagle the eastern portion.

14. Appellants' witness Curry testified that Parcel B has never had access and was never taxed (or considered) a separate building lot. Seattle's short plat ordinance and procedure date from 1972.

Conclusions

1. The Hearing Examiner has jurisdiction over this matter pursuant to Chapter 23.88, Seattle Municipal Code. The code requires that the Hearing Examiner give substantial weight to the Director's decision, and dictates that the appellant has the burden of establishing a position contrary to that of the DCLU Director. Seattle Municipal Code 23.88.020(E)(5). The Hearing Examiner may affirm, reverse, modify or remand the DCLU Director's Interpretation. Seattle Municipal Code Section 23.88.20(E)(7).

2. The short plat decision P-78-009 concerned a proposed 1978 division of the property. The then-Hearing Examiner concluded that the proposal, to configure new lots, was contrary to the public use and interests. The current issue before the Hearing Examiner, framed by the appeal, is whether the DCLU interpretation is correct. This Hearing Examiner must therefore decide whether a parcel (B) was properly segregated and whether any such segregated parcel meets the contemporary definition of a SF 7200 zoned lot.

3. The term "lot" is defined at Seattle Municipal Code Section 23.84.024 as:

a platted or unplatted parcel or parcels of land abutting upon and accessible from a private or public street sufficiently improved for vehicle travel or abutting upon and accessible from an exclusive, unobstructed permanent access easement...

4. It is sufficiently clear that "Parcel B" is a "platted or unplatted parcel" of land created prior to the effective date of current short plat requirements.

5. Drayton's claim to portions of Parcels A and B has been neither formalized nor approved by any agency with jurisdiction over the matter. The Hearing Examiner cannot decide on that claim and cannot deduct the amount of land adversely claimed by Drayton from the square footage of Parcel A or B. Therefore, Parcels A and B both have the minimum 7200 sq. ft. of area required for the zone. It is also noted that a parcel is not required to be "buildable" in total or in part in order for the parcel's area to be included in its square footage.

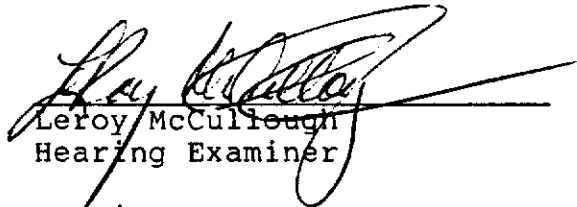
6. As of the hearing date, Parcel B abutted no easement or other access although it is noted that a potential contract purchaser proposed access via an extensive easement from Cascadia Avenue across the more northerly "Parcel A". That contract purchaser has discontinued pursuit of the purchase of the property. Therefore, "Parcel B" is presently without defined approved access, Seattle Municipal Code Section 23.84.024, Seattle Municipal Code Section 23.54.010A, and does not meet the code definition of a lot. The DCLU interpretation is modified to so state. See also Exhibit 7, proposed modification of DCLU decision.

7. The drainage, utility and other variables involved in developing a site are relevant to whether and how a site should be developed. Similarly, alleged violation of a private covenant to develop a parcel in a certain manner is not an element included in the question of whether a parcel meets the municipality's technical definition of a lot.

Decision

The Director's Interpretation is modified as stated in Conclusion 6 above.

Entered this 8th day of July, 1986.


Leroy McCullough
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.