

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

In the Matter of the Appeal of

R/L ASSOCIATES, INC.

FILE NO. S-88-003

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

Introduction

R/L Associates, Inc., appeals the interpretation of the Land Use Code by the Director, Department of Construction and Land, as it applies to property at 8900 Fremont Avenue North.

The appellant exercised the right to appeal pursuant to the Seattle Municipal Code, Section 23.88.020, as amended.

Parties to the proceedings were: appellant, R/L Associates, Inc., by Richard B. Sanders, attorney at law, and the Director, Construction and Land Use by Andrew McKim, land use specialist.

This matter was heard before the Hearing Examiner on April 22, 1988. The record was reopened by examiner for additional information from the parties.

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 and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. R/L Associates, Inc., submitted applications for two permits to construct two residences, one on the south 59.7 ft. of Lots 5 and 6, Block 12, West Greenlake Addition and one on the south 59.7 ft. of Lots 7 and 8.

2. The Department of Construction and Land Use notified the applicant that the lots are not legal building sites and that variances from the lot area requirement or a redesign for a single house would be necessary.

3. Robert Hale requested an interpretation of the Land Use Code as it relates to the subject property and whether it may be developed with two single family residences.

4. The Director, Department of Construction and Land Use, issued the interpretation deciding that the property does not qualify for any of the code exceptions to lot area requirements so neither parcel may be developed as a separate building site without a variance.

5. Lots 5, 6, 7 and 8 were platted in 1906 as 25 ft. by 102 ft. lots. Sometime prior to 1957, the four lots were divided by a horizontal property line and the north 42 ft. of the four lots was conveyed as a single parcel and the south 59.7 ft. of the four lots was conveyed as a single parcel on one or more occasions.

6. The area of the subject property was part of unincor-

porated King County until 1950 when it was annexed to the City.

7. The minimum lot area for the zone is 5,000 sq. ft.

8. Section 23.44.010B provides exceptions to the minimum lot area requirement.

9. The subject property, the southern 59.7 ft. of Lots 5, 6, 7 and 8 has been developed with one single family residence which is sited on Lots 5 and 6 and an accessory shed is located on Lots 7 and 8.

10. Construction of two residences has been approved for similar property with similar history at another location. That property is zoned as lowrise and had been developed with two principal structures at one time.

Conclusions

1. The Hearing Examiner has jurisdiction over these parties and this subject matter pursuant to Section 23.88.020E.

2. Appellant challenges the Director's decision that without a variance from the minimum lot area requirement, neither the southern portion of Lots 5 and 6 nor the southern portion of Lots 7 and 8 may be developed as a separate building site. The Director's decision is based on her conclusion that the parcels have not been established as "building sites" to utilize the lot area exceptions in Section 23.44.010.B.4. That exception to minimum lot area is for lots

...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....

There are additional requirements for the exception which the Director did not examine because of her threshold determination that the property does not qualify for the exception.

3. The Hearing Examiner is required to give the decision by the Director substantial weight. Section 23.88.020.E.5.


4. Since, by rule of statutory construction, a legislative body is presumed not to have used superfluous words, every word must be accorded some meaning. Hayes v. Yount, 87 Wn.2d 280, 552 P.2d 1038 (1976). The language of the exception is not as required by appellant's interpretation which would be "the lot was established in the public records...prior to July 24, 1957..." but, "the lot was established as a separate building site in the public records...prior to July 24, 1957...." (emphasis added). The City Council, by the use of the underscored words, intended that for a lot to be established as a "building site" requires something further or different from establishment merely as a lot.

5. The Director has interpreted those words to require definition of the specific area which is now claimed as a separate building site. That means that, in this case, Lots 5, 6, 7 and 8 were defined as individual lots by the platting and have been, therefore, established as separate building sites. The deeds define the boundaries of two lots or parcels, the north 42 ft. of Lots 5, 6, 7 and 8 and the south 59.7 ft. of Lots 5, 6, 7 and 8 and each has been, therefore, established as a separate building site. There has been, however, no definition by any of the described methods of the specific proposed building sites as building sites separate from any others. The Director's interpretation ascribes meaning to all the words in the provision, is reasonable, and was not shown to be clearly erroneous.

Decision

The decision of the Director on the interpretation is affirmed.

Entered this 22nd day of June, 1988.


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 a 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.