

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeals of

JERRY AND DEBBIE PETERSON,
J. HENRY BROCKHAUS,
JEROME L. RUBIN and
MARY ANN SHUMATE

FILES NO. MUP-83-060
MUP-83-061
MUP-83-062 and
MUP-83-067

APPLICATION NO. 83-284

from a decision of the Director
of the Department of Constuction
and Land Use on a master use
permit application

Introduction

The appellants named above appeal the decisions of the Director, Department of Construction and Land Use, to issue a declaration of non-significance and to conditionally approve the short subdivision of property at 12066 Lakeside Place N.E.

The appellants exercised their 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 October 21, 1983.

Parties to the proceedings were: appellants by J. Henry Brockhaus and Mary Ann Shumate, the applicant, Peter Martynovych, by James Martynovych, and the Director by Ed Somers.

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 these appeals.

Findings of Fact

1. An application for a master use permit to subdivide property at 12066 Lakeside Place N.E. into six lots was filed by the applicant. The application was later amended to provide for five lots. The Director issued a declaration of non-significance (DNS) and conditionally approved the short plat. Four appeals, consolidated in this decision, were filed.
2. The property to be divided comprises an ell-shaped parcel of five lots with frontage on Lakeside Place N.E. and on the unimproved N.E. 124th Street right-of-way. The most easterly lot, proposed lot No. 2, drops off some 90 ft. to the Burke Gilman Trail as does the corner of the adjoining lot, proposed lot No. 3. Proposed lot No. 1 slopes approximately 5 degrees, proposed lots 4 and 5 descend at an angle of approximately 20 degrees to the north.
3. The property is zoned SF 7200. Only a lot line adjustment is requested for one lot. All will meet the lot size requirements of the zone.
4. Access to the lots would be from Lakeside Place N.E. over an easement. No access from N.E. 124th is proposed.

5. The area has experienced frequent earth movement including a slide in 1981 directly below the subject property. Neighbors have observed continual sloughing off of the bank and slides over the years. The angle of trees on the slope show slope movement.

6. The Director was required to make a threshold determination pursuant to SEPA because the property has been designated environmentally sensitive due to the steep topography and unstable soils.

7. The Director required the applicant to provide a soils report because the greatest potential adverse impact of the division and subsequent development is due to soils problems. The property was inspected and the application and soils report were reviewed by Dave Walton, the department's expert.

8. The soils report was a preliminary study of the general soil conditions by ICW Associates, Inc. The report concludes that the soils will provide adequate support but recommends further study of the stability of the drop-off at proposed lot No. 2 and special foundation approaches and drainage controls.

9. Applicant's consulting engineer testified that the additional weight of houses on the hillside would not affect the stability of the grade.

10. The environmental checklist recognizes that potential unstable earth conditions, disruption and overcovering of the soil and change in topography require imposition of conditions on development. A DNS was issued. The DNS incorporates the conditions imposed on the short plat approval. Those conditions relating to soils are as follows:

Conditions of Approval after Recording Prior to Issuance of a Building Permit

(The permit drawings and documents for each lot will be required to include the following:)

2. A soil report by a licensed civil engineer who is a recognized soil engineer. A general discussion must be made in the report of soil, foundation, excavation and drainage requirements needed. A soil profile supported by test borings will be required for Lot # 2. A statement will also be required in the soil report addressing the existing slide condition potential and the increase or decrease in earthslide potential of the site as a result of the proposed construction. The development conditions of the soils report must be implemented along with development of the site.
3. A topography map of the site.
4. An overall drainage plan (roof, surface, and subsurface) for the entire site which shall be followed during all construction.

On-site development must provide a storm water control facility in accordance with SMC Chapter 22.800, the Grading and Drainage Control Ordinance. Maintenance of this facility will be the responsibility of the owner(s) of said property.

5. A special inspection letter, addressed to the City, nominating the soil engineer who wrote the soil report. The letter must state that the soil engineer shall be present during all excavation, backfill, foundation and drainage systems installation. Foundations shall involve minimal disruption; excavation and backfill for foundations shall not be permitted.

The letter may also be required to nominate a test laboratory for such items as reinforced concrete, steel, and reinforced masonry.

6. Vegetation removal/replacement plan, provided that the plan show no vegetation removal on the slope and the plan must be followed during construction.

11. A drainage plan is required which must comply with the Drainage Ordinance. The preliminary soils report recommends control of run-off from the entire site. With the imposition of the conditions for soils report and drainage, it is reasonable to conclude that subdivision and development of the site will not increase soil instability.

12. The applicant has cut trees on the hillside and hedges and trees along the cliff to within a few feet of the ground. His agent reports the cutting was recommended by soils experts to reduce the pressure on the hillside.

13. The Director's representative testified that the Director has no authority to enforce the condition that there be no removal of vegetation until after the plat is recorded. In response to cross-examination by the applicant he agreed that cutting the trees probably would not violate the condition.

14. A stand of maples is located in part in the area to be used for the easement roadway. One appellant urges that applicant be required to preserve the trees for their beauty and water absorption. Their location was not shown so it cannot be determined how they relate to the slope.

15. The subject site is located approximately 100 ft. south of a 90 degree curve in the street which is actually the intersection of N.E. 123rd and Lakeside Place N.E. Visibility of oncoming or entering vehicles is restricted because of the sharp turn. Mr. Brockhaus, an appellant, opined that it would be safer to have the access to the site closer to or at the intersection where visibility is better and vehicles may be travelling at a slower speed.

16. When cars are parked on Lakeside Place they are partially in the lane of travel forcing passing cars into the other lane. Cars parked near the intersection of N.E. 123rd and Lakeside Place N.E. may constitute a hazard.

17. Lakeside Place has no sidewalk.

18. Each proposed lot would have two standard parking spaces plus room for up to eight more cars per house in the driveway, etc. Overflow might park on the 20 ft. wide easement roadway or on Lakeside Place N.E. The incidence of parking on the street should be low because of the available space on site and distance from the street of several of the lots.

19. While development of the site will eventually increase the number of vehicles in the immediate area the proposed subdivision would add only vehicles associated with one extra lot over the number already platted.

20. Conditions were imposed on the subdivision approval to assure the access and fire safety improvements would meet the requirements of the Fire and Engineering Departments. The 20 ft. easement roadway must be improved to a 16 ft. width to support 30,000 lbs., a standard turn radius is required, and a fire hydrant within 600 ft. of the most remote corner of any house must be installed.

Conclusions

1. An environmental impact statement is required where a proposal would have a significant impact on the environment, i.e. more than a moderate effect is a reasonable probability. Norway Hill v. King County Council, 87 Wn.2d 267 (1976). Otherwise a declaration of non-significance is appropriate. WAC 197-10-340(1).

2. Section 23.76.36 requires that the Hearing Examiner give substantial weight to the decisions made by the Director. The burden of overcoming that weight is upon the appellants.

3. While the record shows that some increase in traffic and parking demand is likely, the magnitude of the increase is not enough to cause a significant impact. Given the ability of the lots to accommodate cars and the distance from the street for the easterly ones, the additional demand for on-street parking should be slight.

4. As to impact on slope stability, the record shows that the conditions imposed provide reasonable assurance that development on the proposed short plat will not cause more than a moderate adverse impact. Therefore, appellants have not proved that the Director erred in issuing a declaration of non-significance.

5. As to the short plat approval, appellants urge variously that the number of lots should be reduced along the northeastly portion from the proposed three to two, that the point of ingress and egress from the site be at the intersection, that parking be prohibited on Lakeside Place N.E. and N.E. 123rd at or near their intersection, that a stand of maple trees be preserved and that drainage control requirements be made more stringent.

6. Giving the Director's decision on the short plat application substantial weight, as required, the examiner cannot find that appellants have proven that the Director erred by not imposing the conditions they propose. The access plan and conditions were approved by the Engineering Department. The development of three houses instead of two was not shown to increase the instability of the slope or add to the risk of earth movement. While it is generally considered desirable to retain trees there appears to be no basis for imposing the retention of the particular stand as a condition and no specific additional drainage measures were proposed or are apparent to the examiner. A condition on this application for restriction of parking near the intersection would not be justified since the problem does not relate solely to the subject property. Requests can be made, however, to the Engineering Department for such action.

Decision

The decisions of the Director are Affirmed.

Entered this 4th day of November, 1983.

M. Margaret Klockars
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. Any request for court review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981). 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.