

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

In the Matter of the Appeal of

WILLIAM RICE

FILE NO. MUP-83-078
APPLICATION NO. 83-365

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

Introduction

Appellant, William Rice, appeals the decision of the Director, Department of Construction and Land Use, to approve the short subdivision of property at 4042 S.W. Myrtle Street.

The appellant exercised his 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 December 14, 1983.

Parties to the proceedings were: Appellant, the Director by Art Ward, and the applicant, Wayne Seminoff.

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 this appeal.

Findings of Fact

1. The applicant filed a master use permit application to adjust the boundary line between two parcels and to subdivide one parcel at 4042 S.W. Myrtle Street into two lots. The Director issued a declaration of non-significance and conditionally granted the short subdivision. Appellant filed a timely appeal.

2. Appellant challenges the Director's short subdivision approval for failure to require some form of retaining wall along the common property line to prevent erosion or slippage.

3. The property to be divided is a long narrow parcel varying in width from 26.45 ft. at the west end to 54 ft. at the east end. The property is relatively level along its Myrtle Street frontage but rises steeply farther back at some points reaching 55% grade.

4. Appellant's property abuts the westerly portion of the subject site and shares the sharp rise. The drop is approximately 20-25 ft. He has constructed a retaining wall to stabilize his property. Other lots share the property line and the steep slope.

5. The slope is covered with trees of various sizes and blackberry and other bushes.

6. Neighboring property owners have constructed bulkheads, planted hedges and taken other precautionary measures. Damp backyards in the summer and water in a basement suggest springs in the hillside. Some sloughing has been experienced but no slides have been recorded.

7. Appellant is concerned that the removal of the water-absorbing vegetation for construction will result in erosion and that any excavation could result in damage to properties above.

8. The Director imposed three conditions relating to slope stability:

...Prior to Issuing of a Building Permit
- All grading, structural improvements, drainage and retaining walls if any, in Parcels A and B are to be under the design and supervision of a recognized Washington State licensed civil engineer with experience in soils engineering.

... After Recording Bulk Prior to Inspection Division Final Approval of Issued Building Permit(s)
- The engineer noted above will sign, date and stamp the building plans for Parcels A and B confirming that condition noted above has been fully complied with.

...After Recording

1. If on-site development must provide a storm water 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.

9. At hearing, the Director's representative, with the agreement of the applicant, proposed additional conditions to address appellant's concerns. Those conditions, Exhibit 3, are that the soils report will describe the method of excavation and precautions to be taken to protect adjacent property and will address the risks of development to adjacent properties, that there will be a pre-construction meeting with the contractor DCLU, soils engineer and the owner to discuss requirements, that the statement "do not excavate or place soil other than that indicated on the permit plans" will be noted on the plans, and that a soils engineer or person under his or her supervision shall be present during all excavations for the foundations, inspect temporary shoring retaining structures and drainage system and certify that the work has been done in accord with the engineer's recommendation.

Conclusions

1. The Hearing Examiner is required to accord substantial weight to the decision of the Director. Section 23.76.36. Appellant bears the burden of proving the decision is clearly erroneous. Brown v. Tacoma, 30 Wn.App. 762 (1981). While appellant has questions which remain unanswered, his burden of proof as to the issues raised by those questions has not been sustained.

2. As to the requested condition, it is easy to understand why appellant is concerned given the degree of slope and the neighbors' relationship to the slope and subject property. The conditions, as modified, provide for a retaining structure if the soils expert determines one to be necessary. Appellant has not proven, however, that a retaining wall is, in fact, required. The cost of providing a retaining wall makes such a condition unreasonable merely as a precaution unless it is determined by experts to be reasonably necessary.

Decision

The decision of the Director is hereby modified to read:

The proposed action is approved subject to the following conditions:

CONDITIONS OF APPROVAL PRIOR TO RECORDING

1. Final recording forms and fee must be submitted and approved. See any suggested changes by the Department of Engineering.
2. Adjust Parcels A and B to provide for 5,899 sq. ft. of lot area on each parcel.
3. All property corners shall be set in the field and identified as prescribed by State statutes on the plat and attested to by the signature stamp and license number of the surveyor. All encroachments such as yards, fences or structures shall be clearly depicted on the plat. Indicate lot areas for each parcel.

CONDITION OF APPROVAL PRIOR TO ISSUING OF A BUILDING PERMIT

1. A soils report by a licensed civil engineer with experience in soils engineering shall be submitted to the Department. The report must include a description of the methods of excavation and precautions to be taken to protect adjacent, uphill properties and address the risks of development to these properties.
2. The statement, "Do not excavate or place soil other than that indicated on permit plans," shall be noted on the plans.
3. A pre-construction meeting with the contractor, Department, soils engineer and the owner to discuss the construction and inspection requirements shall be held.
4. All grading, structural improvements, drainage and retaining walls, if any, in Parcels A and B are to be under the design and supervision of a recognized Washington State licensed civil engineer with experience in soils engineering. The engineer or a person under his or her supervision shall be present during all excavations for the foundations and shall inspect the temporary shoring retaining structures and drainage system and shall certify that this work has been done in accord with the engineer's recommendations.


CONDITION OF APPROVAL AFTER RECORDING BUT PRIOR TO INSPECTION
DIVISION FINAL APPROVAL OF ISSUED BUILDING PERMIT(S)

The engineer noted above will sign, date and stamp the building plans for Parcels A and B confirming that conditions noted above have been fully complied with.

CONDITIONS OF APPROVAL AFTER RECORDING

If 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.

Entered this 23rd day of December, 1983.


M. Margaret Klockars
Deputy Hearing Examiner