

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

D.T. POWELL, JR. and  
MARY G. POWELL

FILE NO. MUP-85-012(P)  
APPLICATION NO. 8500230

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

#### Introduction

Appellants challenged approval of a short subdivision of property addressed as 11743 - 9th Avenue N.W.

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 April 25, 1985.

Parties to the proceedings were: Ted Gathe, attorney at law, for appellants; Joel Hall, property owner, pro se; and the DCLU Director by Leslie Lloyd, land use specialist.

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 and after the personal inspection of the subject property and surrounding area by the Hearing Examiner, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

#### Findings of Fact

1. The subject property is located in a Single Family 9600 zone immediately west of the N.W. 118th Street termination at 9th Avenue N.W. From west to east the 38,617 sq. ft. area subject parcel fans out so that its widest point appears to be at 9th Avenue N.W.

2. Although the eastern half (approximation) of the site is fairly level at a 9 percent slope, the remaining western portion drops at an approximately 60% slope to a heavily wooded ravine. The subject site is designated "environmentally sensitive" because of the slope pattern.

3. Applicant proposes to subdivide the site into three parcels. The most northerly Parcel A would have 10,937 sq. ft. of area; center Parcel B 15,890 sq. ft.; and Parcel C, the most southerly, 11,790 sq. ft. The proposed Parcel B site is developed with a single family structure. Per the proposal, the detached garage which straddles the Parcel B-C lot line would be removed and parking for Parcel B located elsewhere. Applicant proposes "no disturbance" of the western area's "natural state." Environmental checklist, p.2.

4. The proposal address is 11743 - 9th Avenue N.W. The site is legally described as in the

S.E. 1/4 of the N.W. 1/4 of Section 25,  
Township 26 North, Range 3, E.W.M.,  
in King County Washington.

5. Although a 60 ft. right-of-way, 9th Avenue is improved to a width of only 16-20 ft. and is bounded by open drainage ditches. Neighbors of the proposal site assert that existing traffic on 9th Avenue and other vicinity streets is already excessive, especially during drivers' summer search for nearby Carkeek Park. No specific traffic data was submitted by the witnesses, however. Neighbors also questioned whether fire and other emergency vehicles have present sufficient access to the subject vicinity properties.

6. The subject zone is generally developed with single family homes on large lots. A DCLU sample of 21 nearby lots indicated an average lot size of 15,260 sq. ft.

7. Ninth Avenue offers an 8 in. sanitary sewer main and a domestic water supply line.

8. With the stated interest of satisfying the requirements of the State Environmental Policy Act (SEPA), the DCLU Director issued on March 11, 1985, a declaration of non-significance (DNS) for the proposal. The DNS reflected the DCLU Director's view that the proposal would not have a "significant adverse impact upon the environment" so that no environmental impact statement (EIS) was required. Issuance of the DNS was not appealed.

9. The conditions imposed on the DNS included limits on construction equipment usage and noise. Conditions 2 and 3 provided that:

2. Applicable provisions of the Building Code, Director's Rule 7-84 and the Grading and Drainage Control Code shall be satisfied on site for any new construction.

3. Construction debris shall be monitored and disposed of properly by all construction personnel to avoid debris in ditches or storm sewers.

10. Director's Rule 7-84 states as its purpose the safeguarding of the general welfare by providing minimum standards for evaluation of sites within potential slide areas. Evaluation and monitoring are required by a geotechnical consultant or other "qualified professional." The rule purpose further states:

By authority in the Building Code and Grading and Drainage Ordinance, applications shall be denied if the Director of Construction and Land Use finds that the risks to persons or property from earth slides are unacceptable.

Exhibit 10.

11. According to the DCLU Director's SEPA analysis, clearing of the more level portion of the site is expected to have a minimal impact on erosion and slope stability of the ravine area, and compliance with the Building Code, Rule 7-84 and the Grading and Drainage Control Codes "will reduce or control erosion and slope stability impacts."

12. By decision of March 11, 1985, the DCLU Director also conditionally approved the short plat. One of the four DCLU Conditions of Approval Prior to Recording requires that an easement be provided to Seattle City Light for electrical facilities. Another requires that "all of the following conditions of approval and the conditions of approval for the SEPA review" be added to the face of the plat.

13. The Condition of Approval After Recording states:

If on-site development must provide a storm water control facility in accordance with Seattle Municipal Code 22.800, the Grading

and Drainage Control Ordinance, maintenance of this facility will be the responsibility of the owner(s) of said property.

14. After Recording But Prior To a framing/cover inspection, DCLU required grading "from existing pavement on 9th Avenue N.W. to property lines for all parcels."

15. The Engineering Department, Street Use Division, commented regarding the proposed division that "no street improvements required...a drainage control plan including detention is required for improvement of Parcels A, B and/or C." The Seattle Fire Department also reviewed the proposal, as did the Seattle Water Department. Seattle Water Department's Water Availability Certificate noted that water service would be provided by metered connection to a standard watermain in 9th Avenue N.W., and that a standard fire hydrant was located 90 ft. from the east property line at N.W. 118th Street.

16. A neighbor to the subject site submitted this challenge to approval of the short subdivision. Appellant expressed particular concern with issues of traffic, emergency vehicle access, drainage, functional lot size, and slide potential.

#### Conclusions

1. The Hearing Examiner has jurisdiction of this proceeding pursuant to Seattle Municipal Code Chapter 23.76, the Master Use Permit Ordinance of Seattle. Seattle Municipal Code Section 23.76.36(B)(7) provides that in appeals of a DCLU Director's short plat decision, the decision shall be given "substantial weight."

2. Based on the Hearing Examiner's review of this record, appellants did not overcome the "substantial weight" accorded the Director's decision. The Director's decision is therefore affirmed.

3. The substantive criteria for short subdivision approval, at Seattle Municipal Code Section 23.24.40, essentially call for conformance to Land Use Policies and Code provisions; adequacy of access for vehicles, utilities and fire protection; adequacy of drainage, water supply and sanitary sewage disposal; and service of the public use and interests by the proposed division of the land.

4. The proposed divisions into lots of 10,937, 11,790 and 15,890 sq. ft. conform to the provisions of the Land Use Code. The SF 9600 zone, in which the subject site is found, is the least intensive zone in the City of Seattle. SF 9600 zoning requires that lots be at least 9600 sq. ft. in area. The Code does not specify that a certain area of the lot be buildable area in order to be included in the 9600 sq. ft. Therefore, the ravine area cannot be excluded.

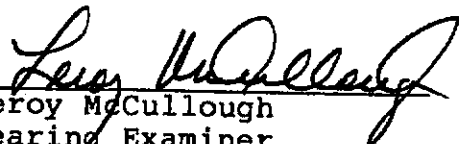
5. City Fire and other department comments support this conclusion that there is adequacy of access, utilities and fire protection. Protection of the new structures is facilitated by the requirement of grading the property to existing 9th Avenue pavement. The Engineering Department commented that a drainage control plan, including detention, was required. Watermains and an 8 in. sewer line are located within abutting 9th Avenue N.W.

6. In more general terms, the public use and interest will be served by the proposed division. Two additional lots will be available to enhance Seattle's housing stock without sacrificing the SF 9600 protective scheme. Grading, drainage and other controls will be utilized in the development. Specifically, if construction is proposed in a potential slide area, the geotechnical supervision and other safeguards of Director's Rule 7-84 will be triggered. And, the SEPA decision requires proper monitoring and disposal of construction debris so as to avoid impacts on the drainage ditches and sewers.

Decision

The DCLU Director's decision is AFFIRMED.

Entered this 9th day of May, 1985.

  
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.