

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

In the Matter of the Appeal of

ANTON AND PETRA BJORKELO

FILE NO. MUP-85-037(P)
APPLICATION NO. 8501356

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

Introduction

Anton and Petra Bjorkelo appeal the decision of the Director, Department of Construction and Land Use (DCLU), to deny their master use permit application for the short subdivision of property at 8530 30th Avenue Northwest.

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 August 14, 1985.

Parties to the proceedings were: appellants, pro se, and the Director, represented by Clay Leming, 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, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. Appellants applied for master use permit approval to subdivide their lot at 8530 30th Avenue N.W. into two parcels. The approval was denied and this appeal was filed.

2. The subject lot is located midblock on the east side of 30th Avenue N.W. in an SF 7200 zone. The lot area is approximately 15,973 sq. ft. which includes a 20 ft. wide strip of vacated Edgewest Drive N.W. A single family house is located on the front half of the lot, set back approximately 69 ft. from the front property line. A garage is located 2.5 ft. from the north property line.

3. The proposal is to divide the lot into Parcel A, a rectangular lot with 7,564 sq. ft. of area, 61 ft. of street frontage and the existing house, and Parcel B, a lot with a 10 ft. wide "dogleg" to the street with 8,409.3 sq. ft. of area.

4. The eastern part of the subject lot is located in a ravine which descends from just north of N.W. 85th to Puget Sound. Parts of the ravine are designated environmentally sensitive by the City, however, the subject lot is outside of the area so designated, as the slope at the rear of the lot is slightly less than others to the north.

5. The ravine has various varieties of trees, berries, ferns and other low ground cover. This vegetation provides a natural wildlife habitat.

6. Water and electricity are available for the subject lot. A pump or lift station would be required for the sewer to Parcel B because the sewer line in 30th Avenue N.W. is at a higher elevation.

7. Drainage detention would be required for Parcel B.
8. The "dogleg" portion of Parcel B technically would provide the required front yard for the lot.
9. The vegetation at the back of the subject property is not as heavy as the vegetation at the rear of other lots on the ravine.
10. No development has occurred in the ravine itself. All houses have been placed at the top of the bank.
11. The Director denied the short plat because Parcel B's dogleg configuration is for the purpose of meeting lot area requirements and would not provide usable open space and because precedent would be set which could lead to further divisions substantially changing the natural character and platting pattern in the area.
12. A division of property, two lots to the north of the subject lot, was approved in 1980. The neighboring property owner bought the lot to prevent the subdivision from taking place. Other lots on the ravine contain sufficient area for division, however, there may be practical restrictions which would discourage such actions.
13. The creation of many lots with dogleg configurations has been approved by the Director in the past. Appellants' surveyor, Palmerton, has recorded a dozen or more such lots created in Seattle's north end.
14. Smaller lots have been created south of the subject site, all within the L-2 zone except for approximately 25 ft. of one lot.
15. Appellants based their decision to buy the property on representations by the Department of Construction and Land Use staff that there should be no problem with the division of the property if an easement for access to the back lot is given and the back property line is properly located.

Conclusions

1. The Hearing Examiner is required to give substantial weight to the decision of the Director on appeal. Section 23.76.26.B(7). To overcome that weight the appellant has the burden of proving the decision is clearly erroneous. Brown v. Tacoma, 30 Wn.App 762, 637 P.2d 1005 (1981).
2. The Director was required to use the criteria set forth in Section 23.24.40 to make her decision on the short plat. She found that the first three criteria were met or could be met. Her conclusion as to No. 4, "whether the public use and interest are served by permitting the proposed division of land", was that the division would not be in the public use and interest because of the potential effect on the character of the area. While appellants have shown that their property has some different characteristics from neighboring properties, i.e., lesser slope and vegetation, the degree of those differences was not shown to be sufficient to set their property apart from others. The result of the division would be the first development in the ravine which could lead to further development changing the character of the area. Appellants have not overcome the weight accorded the decision, therefore it must be affirmed.

Decision

The decision of the Director is AFFIRMED.

Entered this 28th day of August, 1985.

M. Margaret Klockars
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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 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, 5th Floor, Seattle, Washington 98104.