

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of

JAMES S. KILLINGSWORTH

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

FILE NO. MUP-88-053(W)
APPLICATION NO. 8800152

ORDER OF ADMINISTRATIVE
DISMISSAL

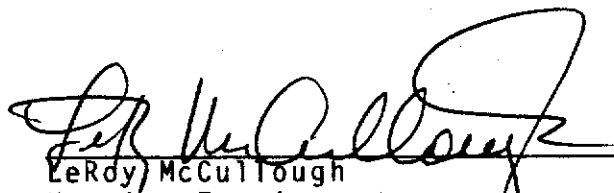
This matter, concerning property addressed as 2444 Wickstrom Place S.W., came on for hearing before the Hearing Examiner on September 12, 1988.

By decision therein issued September 22, 1988, the Hearing Examiner remanded the application to DCLU.

By letter received in the Office of Hearing Examiner September 19, 1989, from the DCLU, the Office of Hearing Examiner was apprised that the project was cancelled September 1, 1989 for reasons stated therein.

It is therefore ordered: This appeal is Administratively Dismissed.

Entered this 19th day of September, 1989.


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

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Introduction

James S. Killingsworth appeals the decision of the Director, Department of Construction and Land Use, on a master use permit application for a 6-unit building at 2444 Wickstrom Place S.W.

The appellant exercised the 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 September 12, 1988.

Parties to the proceedings were: appellant, represented by Sandran Rasmussen, Franklin & Bersin; the Director, Department of Construction and Land Use, by Faith Lumsden, land use specialist; and the applicant, Ken McBride, by Tom Sheldon, architect.

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 demolish a single family residence and construct a 6-unit apartment building 2444 Wickstrom Place S.W. The Director issued a determination of nonsignificance (DNS) for the proposal and imposed conditions including the dedication of property to widen the street. Appellant filed a timely appeal of the decision.

2. One of appellant's bases of the appeal was potential hazard due to inadequate setback where the building is closest to the building on the adjoining property. The setback dimension was clarified to appellant's satisfaction and that issue was dropped.

3. Wickstrom Place is a short, dead end street with a right-of-way 30 ft. wide and pavement 22 ft. wide. Parking is permitted only on one side.

4. No parking study of the area was done by any party. The DCLU report, Exhibit 8, states that during the evening and at night on-street utilization is well under capacity. This statement was unchallenged.

5. Appellant's evidence showed that, because of its proximity to Alki Beach, the street is heavily used during special events and, presumably, warm days.

6. The decision imposed a condition of approval requiring the dedication of a 5 ft. wide strip of property along the front of the lot for street right-of-way.

7. The proposed building would provide seven on-street

parking spaces which meets the code requirement.

8. The Director's decision shows that the parking provided would result in a spillover of two vehicles onto the street for parking.

9. Most residences on the street provide two on-site parking spaces per dwelling unit.

10. A bank begins immediately behind the subject property as part of the bluff some 300 ft. high to the top of the West Seattle hill.

11. The proposed design involves a 16 ft. cut with the slope restored to its original condition at the end of construction. The Grading and Drainage Ordinance will apply during construction requiring that precautions be taken to assure slope stability.

12. No soils study has been done for the site. The land use specialist did not require one because there was no record of instability on the site or on adjacent properties; the site is not classified as environmentally sensitive; and the slope is well under the 50 percent trigger.

13. The Engineering Department staff found no record of landslides on properties on Wickstrom Place. Landslides were shown in the greenbelt area.

14. The land use specialist found that the City records showed slope instability to the south and west of the site in the greenbelt area and near S.W. 56th Street and Lander S.W. but no record of slides on the subject site, itself.

15. The Tubb's map (Exhibit 1) which has dots and circles marking locations of landslides shows several dots which appear to be near Wickstrom Place.

16. Residents of Wickstrom Place reported to appellant occurrence of a slide in 1959 behind the subject property and the lot to the south which filled in the backyards of both properties; two slides in the 1970's; and one slide three years ago which deposited silt on the property three lots north of the subject site and filled the basement on the lot next to that lot.

Conclusions

1. The Hearing Examiner has jurisdiction over these parties and this subject matter pursuant to Section 23.76.020.

2. The Director is to issue a DNS for a proposal if she determines there will be no probable significant adverse impacts from the proposal. Section 25.05.340. The threshold determination is to be based upon information which is reasonably sufficient to evaluate the impacts. Section 25.05.335. Based on the information provided the department, the conclusion not to require any soils stability study was not erroneous. However, the information was shown by appellant to be incomplete. While the Engineering Department had no record of instability on the subject site or adjacent properties, Mr. Killingsworth has shown that there had been landslides on the greenbelt area adjacent to the subject site which have affected the subject property. This showing is sufficient to overcome the substantial weight given to the Director's decision. The proposal should be remanded to allow the Director to consider whether the history of landslides alters her assessment of the need for soils reports and of the impacts of the proposal on earth stability.

3. The Director has authority pursuant to SEPA to impose conditions of approval to mitigate adverse environmental impacts which have been identified in the environmental documents, which are based on adopted policies designated in Section 25.05.902 as bases of substantive authority, which are reasonable and capable of being accomplished and for which responsibility is proportional to the impact attributable to the proposal. Section

25.05.660A.

4. Appellant seeks a condition requiring two on-site parking spaces per dwelling unit as other development on the street provides. The adverse impact of demand for two on-street parking spaces is identified in the DNS decision but there is no policy authority to require mitigation of the impact. Resolution 22708, amending the policies for SEPA purposes, specifically states that if the parking ratio required by the Land Use Code is met, no additional mitigation of parking impacts may be required. Since the Director had no policy basis for such a condition her decision not to mitigate the impact was not error.

Decision

The matter is remanded to the Director for further consideration of earth stability impacts. The Hearing Examiner retains jurisdiction to consider any objections (to the extent allowed pursuant to SEPA) to the Director's decision after further consideration. If appellant has objection to the Director's decision after further consideration, he shall file written objection within ten (10) days of the date of that decision. The Hearing Examiner will then resolve the issues, with or without further hearing as deemed appropriate by her, and issue a final, appealable decision.

Entered this 22nd day of September, 1988.

M. Margaret Klockars
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Deputy Hearing Examiner