

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

In the Matter of the Appeal of

HARRISON DENNY COMMUNITY COUNCIL

FILE NO. MUP-89-048(W)
APPLICATION NO. 8902875

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

INTRODUCTION

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 October 12, 1989. The record was left open until October 20, 1989 for supplemental information from Gerry Adams for appellant and for DCLU reply.

Parties to the proceedings were: Jerry Sussman, pro se, representing the Harrison Denny Community Council. The Director of DCLU was represented by Corbett Loch, land use specialist. Applicant did not appear.

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 subsequent to a visual inspection of the site and vicinity, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

FINDINGS OF FACT

1. The applicant proposes to construct a 1,709 sq. ft. single family residence and attached garage on property addressed as 126 32nd Avenue East. Because the project site is in an environmentally sensitive area, the application is not exempt but is subject to State Environmental Policy Act (SEPA) review.
2. The proposal site is legally described as "Lot 6, Block 2, Waddell's Park Addition." It is located on the east side of 32nd Avenue East between East Denny Way to the south and East John Street to the north.
3. The proposal site is vacant and overgrown with indigenous trees, brambles and understory. The property lies within the Harrison Ridge "Greenbelt." (Note: the question of whether limits on greenbelt sites are valid had been resolved adverse to the City's position in at least one Supreme Court case.)
4. Subject lot area is 4,000 sq. ft.
5. The lot has a steep downslope from east to west. In fact there is a 38 ft. change in grade from the highest to the lowest corners of the lot. The toe of the hillside, at 32nd Avenue East, is retained by a wall constructed of railroad ties and concrete slabs.
6. Because of the steep slopes the site is designated as environmentally sensitive. The site has been designated as a potential land slide area.
7. According to the soils report of record, exposed soil consists of slope wash. Regarding subsurface conditions,

The site may be described as consisting of a core comprised of a sequence of overconsolidated sand, silt, and clay layers, overlain by a unit of slope wash whose thickness is approximately 10 ft.

Per the report, groundwater was encountered in most of the site's sand layers.

8. A "number of years prior to 1928" a slide involved the present site, Lot 6, as well as all of Lots 3, 4, 5, 7, 8, 12 and 13 and parts of Lots 2, 9, 10, 11, 14 and 15. When the slide material was removed from the (32nd Avenue East) toe of the hillside, the slide reactivated. This led to placement of a timber retaining wall which in 1942 or 1943 was replaced with the present concrete retaining wall.

9. The soils engineers concluded, per the report of record, that the pre-1928 slide primarily involved the slope wash or upper 10 ft. and that the core was sufficiently stable to residentially develop the site.

10. Applicant's proposal is for a two level house stepped back into the hillside and for a single car garage at street level. The cut for the garage will be 15-18 ft. in height and 20 ft. wide while cuts for the dwelling's upper levels will be 6-8 ft.

11. Although the soils engineers recognized the slide history and the groundwater, they concluded that so long as specific care was directed to the excavation, drainage and construction "the development...can be accomplished...subject to the conditions stated with minimal risk of instability on the site." Exhibit 11.

12. As a caveat, the report noted in the following:

10. We point out that improvements located on hillsides require considerable vigilance on the part of the inhabitants to insure that the stabilizing cuts and fills are not made, that drainage features are maintained, and that accidental leakages (e.g., water services, sewers, sprinklers systems, swimming pools etc.) are promptly reported and repaired. An unavoidable price of living on a hillside is the impact on neighboring properties which would occur from an accidental discharge or malfunction not reported in a timely manner (emphasis added).

13. DCLU concluded that compliance with the geotechnical report and Rule 2-87 "will provide adequate mitigation regarding land slippage." DCLU also opined that with the on-site retention and channeling that will be required for construction, the slope stability will enhanced.

14. DCLU also addressed the site's natural habitat by requiring that at least 30 percent of the lot remain in natural vegetation or landscaped in accord with a DCLU-approved landscape plan. "Retention of the existing landscaping on undeveloped portions of the lot will provide significant natural areas for wild life." DCLU Analysis and Decision, p.4. The 30 percent could be anywhere on site.

15. The closed cover and undergrowth is protection for a variety of birds. Fragmentation and interruption of the habitat, which will occur by the development proposed, will cause the number of rare birds to decrease.

16. In fact, the "greenbelt" provides a sanctuary for species currently in decline in Seattle including the band-tailed pigeon, Wilson's Warbler and the Turkey Vulture, which includes the greenbelt in its migrating route.

17. In addition, the "greenbelt" hosts feeding, roosting or nesting of many other varieties including the bald eagle, the black-capped chickadee, the Downy woodpecker, the house finch and the great horned owl. The environmental checklist, Exhibit 9, lists songbirds as the birds found to be "on or near the site;" and that no threatened or endangered species are on or near the site. Exhibit 9, p.6.

18. In its undeveloped state, the site provides a natural barrier or edge. This defined edge affects the amount of penetrating sunlight, the amount of standing water, (and by inference) the habitat for mosquitoes and their availability for consumption by the Wilson Warbler and other birds. Development of the site could impact the habitat in other ways. A layer of himalayan blackberries tends to protect the nesting habitat from housecats. The foliage also assists in maintaining wet soils in the habitat which is useful in protecting seeds for growth or consumption by animals.

19. Appellant group is concerned that the project will be the first of many projects to develop the private lots; and that a demand for road access through and around the "greenbelt" will soon follow. The Hearing Examiner cannot find from the record, however, that other development proposals for the "greenbelt" are of pending.

CONCLUSIONS

1. The Hearing Examiner has jurisdiction of this appeal pursuant to Chapter 23.76, Seattle Municipal Code.

2. In making a threshold determination, the responsible official (DCLU) shall consider that a proposal may, to a significant degree, adversely affect "endangered or threatened species or their habitat." Seattle Municipal Code Section 25.05.330.

3. The responsible official shall also independently evaluate the environmental checklist. Based on review of the proposed action, the checklist information and other information, the responsible official shall determine whether the proposal is "likely to have a probable significant adverse environmental impact." Seattle Municipal Code Section 25.05.330A.1.2.

4. An environmental impact is "significant" if there is a reasonable likelihood of more than a moderate adverse impact on environmental quality. Seattle Municipal Code Section 25.05.794. "Probable" means likely or reasonably likely to occur. Seattle Municipal Code Section 25.05.782.

5. Although the lot is relatively small, 4,000 sq. ft., and one single family dwelling is proposed, the record discloses that it will present a significant adverse impact on the physical environment.

6. Two environmental elements will be so impacted. The first, earth, concerns the stability of the slope and the impact of ground water. Applicant's soils report of record suggests minimal risk to instability, but cautions against accidental discharges (leakages) or discharges. The slide activity of record preceded 1928, but involved a large segment of lots within this "block". The soil on site is restrained by a retaining wall. Groundwater is present in the core area of the site and will require special caution for the subject site and for other lots in the vicinity. The 10 ft. of soil wash, loosened or otherwise affected by construction, could create a hazardous impact on the soils stability of adjacent lots. The presentation to the Hearing Examiner of a single soils report and conclusion, without supporting information, is inadequate on this record to foreclose the conclusion that the likely earth impacts will be significant; or that reasonable (protective) schemes have been considered.

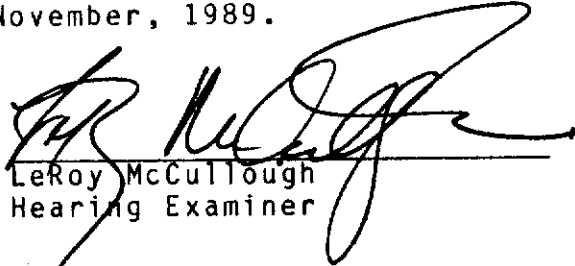
7. The second environmental element concerns animal life and habitat. The environmental checklist fails to mention the species of birds observed in the subject area. It fails to report that several of the species, such as the band-tailed pigeon, are on the decline in the Seattle area. The ensuing report failed to note any connection between the construction-related invasion of the environment and the viability of this animal life. Nor does the report address the presence of a vegetation cover/screen, the food chain connection relevant to the subject area, nor the proposal site's specific impact.

8. It is clear from the record that the proposal will fragment a hitherto well-contained ecosystem with impacts that have not been adequately examined or reconciled. An EIS is required. The EIS may be limited to the elements identified herein.

DECISION

The Declaration of Non-Significance is reversed.

Entered this 10th day of November, 1989.


LeRoy McCullough
Hearing Examiner

CONCERNING FURTHER REVIEW

The decision of the Hearing Examiner in this case is final 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 of the decision must be by application for writ of review filed in King County Superior Court within fifteen days of the date of this decision. Seattle Municipal Code Section 23.76.22(C)(12)(c).

Judicial review under SEPA shall without exception be of the decision on the underlying governmental action together with its accompanying environmental determinations. RCW 43.21C.075(6)(c). SEPA issues may be added to the request for review within 30 days after the date of the decision on the underlying governmental action if a notice of intent to seek judicial review of SEPA issues is filed with the Director of the Department of Construction and Land Use, 408 Seattle Municipal Building, Seattle, Washington 98104, within fifteen days of the date of this decision. Seattle Municipal Code Section 25.05.680(D)(4).

If the Superior Court orders a review of the decision, the person seeking review must arrange for and bear the cost for preparing a verbatim written transcript of the hearing but will be reimbursed if successful in court. Instruction for preparation of the transcript are available in the Office of Hearing Examiner, 1320 Alaska Building, 618 Second Avenue, Seattle, Washington 98104. In the alternative, RCW 43.21C.075(6)(b) provides that a tape may be used for court review. If a taped transcript is to be reviewed by the court the record shall identify the location on the taped transcript of testimony and evidence to be reviewed. Parties are encouraged to designate only those portions of the testimony necessary to present the issues raised on review, but if a party alleges that a finding of fact is not supported by evidence, the party should include in the record all evidence relevant to the disputed finding. Any other party may designate additional portions of taped transcript relating to issues on review.