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

In the Matter of the Appeal of	Hearing Examiner Files:
	MUP-16-019(SE)
LISA PARRIOTT, ET AL.	**S-16-007**
from a Decision and Interpretation issued by the Director, Department of Construction and Inspections	Department References: **3024037** **3026248**

Introduction

The Director issued a decision approving a special exception to allow development of a substandard lot. Ms. Parriott and others appealed the decision and also appealed the Director's interpretation that the subject property qualified for a historic lot exception from minimum lot size. The special exception appeal was dismissed prior to the hearing.

The interpretation appeal hearing was held on January 12, 2017 before the Hearing Examiner. The Appellants were represented by Peter Goldman, attorney-at-law, and Alex Sidles, Rule 9 Intern. The Applicant, Nehem Properties, LLC, was represented by Branden S. Gribben, attorney-at-law, and the Director, Department of Construction and Inspections ("Department"), was represented by William K. Mills, Senior Land Use Planner. The record was held open until January 19, 2016 for the Examiner's site visit and submission of the parties' written closing arguments.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code ("SMC" or "Code") unless otherwise indicated. Having considered the evidence in the record, the Examiner enters the following findings of fact, conclusions, and decision on the appeal.

Findings of Fact

Background

1. The subject property is addressed as 3038 39th Avenue SW and is owned by the Applicant. It is zoned Single-family 5000, with a minimum lot size of 5000 square feet. The property is composed of two parcels, referred to by the parties as "Parcel A" and "Parcel B." Parcel B is directly north of Parcel A. "Parcel C" refers to the property directly north of Parcel B, addressed as 3030 39th Avenue SW.

2. Parcel A is legally described as the South 8 1/3 feet of Lot 15, and Lot, 16, Block 1, J. Walther Hainsworth's 1st Addition to West Seattle. Parcel B is legally described as the South 16 2/3 feet of Lot 14 and the North 16 2/3 feet of Lot 15, Block 1, J. Walther Hainsworth's 1st Addition to West Seattle. Parcel C is legally described as Lot 13 and the North 8 1/3 feet of Lot 14, Block 1, J. Walther Hainsworth's 1st Addition to West Seattle.

3. Lots, 13, 14, 15 and 16 were established by the J. Walther Hainsworth's 1st Addition to West Seattle in 1906. Each lot was 25 feet wide and 95 feet long, with a total area of 2, 375 square feet.

4. Prior to July 15, 1930, Lots 13, 14, 15 and 16 were owned by Robert and Mary Alice Coulthard. On that date, the Coulthards received a building permit to construct a residence on "Lot, 16 and the South 8 1/3 feet of Lot 15," i.e., on the southern one-third of the Coulthard property, Parcel A.[1]

5. In December of 1930, the Coulthards conveyed Lot 13 and the North 8 1/3 feet of Lot 14 to Sadie Arkell, who subsequently received a building permit to construct a residence on the property, which is Parcel C and addressed as 3030 39th Avenue SW.[2]

6. Parcels A and B, the subject property, have been held as separately described parcels under common ownership since at least 1930. The Department's permit history shows that Parcel B has never been included as part of the site description for any permits issued for Parcel A.

7. A 1928 City sewer card and a 1931 City sewer plat each show Parcel A and Parcel B as separate building sites.

8. The City's first minimum lot area standards for single-family zones were adopted in 1952 and included an exception for historic lots of record.[3]

9. The City first adopted a process for dividing land via the short subdivision process in 1972.[4]

10. On November 15, 2015, the Applicant requested a legal building site letter from the Department confirming the status of Parcel A and Parcel B as separate building sites. The Department issued the letter on January 5, 2016, confirming that under the Code's Historic Lot Exception to minimum lot size, Parcels A and B are separate legal building sites.[5]

11. When the Department issued a decision approving a special exception to allow development of Parcel B, the Appellants requested an interpretation of the application of the Historic Lot Exception to the property. As noted, they appealed the special exception decision and the requested interpretation, and the special exception appeal was dismissed.

12. The Department issued its interpretation on December 9, 2016.[6] The interpretation reviews the conveyance history of the property and the evolution of the City's regulatory scheme for property division and treatment of historic lots. It also examines the adopted Comprehensive Plan, which includes Land Use Policy ("LU") 67. LU67 states that exceptions to minimum lot size requirements should be permitted "to recognize building sites created in the public records under

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[1] Exhibit 5.
[2] Exhibit 6. *See* Exhibit 2 at 2.
[3] *See* Exhibit 13 at 2.
[4] *See* Exhibit 12.
[5] Exhibit 4.
[6] Exhibit 1

previous codes ... to provide housing opportunity through the creation of additional buildable sites which are compatible with surrounding lots and do not result in the demolition of existing housing."

13. The Department concluded that Parcel B had been "carved out" as a separate building lot in 1930 when the Coulthards secured a permit to build a residence on only Parcel A and in the same year, sold the northern third of their property, Parcel C, to a different owner. The Department noted that in 1930, there was no formal process for short subdividing land, and that the Coulthards had used the processes available at that time: a building permit that included Parcel A but not Parcel B; and a deed for Parcel C that also did not include Parcel B.[7] The Department considered the 1928 sewer card and 1931 sewer plat merely as confirmation that the City had long recognized Parcels A and B as separate building sites.

14. At hearing, the Department offered several examples of Historic Lot Exception building site opinion letters from 2013 and 2014 that were consistent with its interpretation in this case.[8] The senior planners and the land use planner supervisor who testified on behalf of the Department confirmed that these opinion letters, as well as the interpretation at issue here, were consistent with the Department's longstanding position on the meaning and application of the Historic Lot Exception.

Applicable Law

15. The Historic Lot Exception to minimum lot size is found in SMC 23.44.010.B.1.d and reads as follows:

> B. Exceptions to minimum lot area requirements. The following exceptions to minimum lot area requirements are allowed, subject to the requirements in subsection 23.44.010.B.2, and further subject to the requirements in subsection 23.44.010.B.3 for any lot less than 3,200 square feet in area:
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> 1. A lot that does not satisfy the minimum lot area requirements of its zone may be developed or redeveloped under one of the following circumstances:
>
> . . . .
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> d. The Historic Lot Exception. The historic lot exception may be applied to allow separate development of lots already in existence if the lot has an area of at least 2,500 square feet, and was established as a separate building site in the public records of the county or City prior to July 24, 1957, by deed, platting, or building permit.

The remainder of this subsection includes additional refinement of the criteria for the Historic Lot Exception. For example, if two contiguous lots are developed together such that a principal structure extends over or onto both lots, neither lot qualifies for the exception. But if "minor features that do not contain enclosed interior space, including but

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[7] Exhibit 39.
[8] Exhibits 21, 22 and 23.

not limited to eaves and unenclosed decks," are removed from the principal structure, the abutting lot will again qualify for the exception. SMC 23.44.010.B.1.d.3.

Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant to Chapter 23.88 SMC. Appeals of interpretations are "considered de novo, and the Examiner's decision is to be made upon the same basis as was required of the Director." However, the Director's interpretation, an interpretation of law, is to be given substantial weight, and "the burden of establishing the contrary shall be upon the appellant." SMC 23.88.020.G.5. Thus, the Appellant bears the burden of proving that the Director's interpretation was "clearly erroneous." *Brown v. Tacoma*, 30 Wn. App. 762, 637 P.2d 1005 (1981). This is a deferential standard of review, under which the Director's decision may be reversed only if the Examiner, on review of the entire record, is left with the definite and firm conviction that a mistake has been made. *Moss v. Bellingham*, 109 Wn. App. 6, 13, 31 P.3d 703 (2001).

2. The Appellants contend that the phrase, "established as a separate building site in the public records" in SMC 23.44.010.B.1.d means that "there must be some affirmative evidence in the record showing unequivocally that a building owner intended to establish a separate building site and this establishment is affirmatively documented and clear in the historical record."[9] But there is no evidence in the record, or in the Code itself, that the City Council intended to set such a high bar for the recognition of historic lots. Further, the Appellants' suggested definition for "establish" disregards the fact that the Code has included an accommodation for historic lots since 1952, and contravenes the statement in Comprehensive Plan Policy LU67, that exceptions to minimum lot size requirements should be permitted "to recognize building sites *created in the public records* under previous codes."[10]

3. Local ordinances are interpreted in the same manner as statutes,[11] and the objective in interpreting both is to determine the legislative body's intent.[12] When an ordinance or code does not define a term, it is to be given its usual and ordinary meaning.[13] A word's usual and ordinary meaning can be found in a standard dictionary.[14] The Merriam Webster New International Dictionary defines "establish" as "to institute (as a law) permanently by enactment or agreement;" "to make firm or stable;" "to introduce and cause to grow and multiply;" "*to bring into existence (as to found or bring about)*; "to put on a firm basis;" "to make (as a church or national or state institution);" and "to put beyond doubt (as to prove innocence)."[15]

4. The dictionary definition of "establish" that aligns most closely with both the City's recognized accommodation of historic lots and the legislative intent expressed in Policy LU67 is "to bring

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[9] Appellant Parriott's Posthearing Brief at 4.
[10] Emphasis added.
[11] *Sleasman v. City of Lacey*, 159 Wn.2d 639, 643, 151 P.3d 990 (2007)
[12] *Department of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002).
[13] *Christensen v. Ellsworth,* 162 Wn. 2d 365, 173 P.3d 228 (2007).
[14] *Guest v. Lange*, 195 Wn. App. 330, 335-36, 381 P.3d 130 (2016) (court "may use an ordinary dictionary to discern the meaning of a non-technical term.")
[15] Emphasis added.

into existence". This conclusion is reinforced by the Department's longstanding interpretation of the Historic Lot Exception. Contrary to the Appellants' claim, the Department demonstrated with past opinion letters that its interpretation of "establish" in this case is "part of a pattern of past enforcement, not a by-product of current litigation."[16]

5. The Appellants assert that the Department's interpretation conflicts with a 2015 legal building site letter issued to Thor Sunde.[17] Nonetheless, the Department's analysis in that case was consistent with its analysis here. The different outcome was the result of different facts. In that Sunde case, building permits were issued prior to July 24, 1957, for parcels to the north and south of a third parcel. With that configuration, the Department could have considered the third parcel to be a legal building site established by permit. However, a portion of the third parcel was then sold to the owner of the north parcel, and Mr. Sunde, the owner of the remainder of the third parcel, sought legal building site status for it. Because it was not established by historic permits, the remainder did not qualify as a legal building site under that option.[18]

6. The Appellants also argue that in determining whether Parcel B met the requirements for a historic lot exception, the Department should have considered tax records for Parcels A and B, the common ownership of the two parcels, and the potential market price of each parcel. But none of these factors are listed in SMC 23.44.010.B.1.d as criteria to be used in determining historic lot status. Finally, the Appellants suggest that because a retaining wall and part of the porch that is attached to the residence on Parcel A extend across the property line and onto Parcel B, the Department should assume that the owner who constructed them considered the two parcels as one lot. Again, the Code does not require that the Department speculate about a prior owner's intent. Instead, it expressly provides that this type of minor structural features may be removed to allow a property to qualify for a Historic Lot Exception.[19]

7. The Appellants have not met their burden of proving that the Department's interpretation was clearly erroneous, and it should therefore be affirmed.

Decision

The Director's interpretation is **AFFIRMED**.

Entered this 25th day of January, 2017.

Sue A. Tanner
Hearing Examiner

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[16] *Sleasman v. City of Lacey supra* at 646.
[17] Exhibit 17.
[18] The opinion letter also addresses the remainder's potential for historic lot status by deed and by platting.
[19] SMC 23.44.010.B.1.d.3.

Concerning Further Review

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources, to determine applicable rights and responsibilities.

The decision of the Hearing Examiner in this case is the final decision for the City of Seattle. In accordance with RCW 36.70C.040, a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the decision is issued unless a motion for reconsideration is filed, in which case a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the order on the motion for reconsideration is issued.

The person seeking review must arrange for and initially bear the cost of preparing a verbatim transcript of the hearing. Instructions for preparation of the transcript are available from the Office of Hearing Examiner. Please direct all mail to: PO Box 94729, Seattle, Washington 98124-4729. Office address: 700 Fifth Avenue, Suite 4000. Telephone: (206) 684-0521.

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BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Findings and Decision** to each person listed below, or on the attached mailing list, in the matter of **Lisa Parriott et al.** Hearing Examiner Files: **MUP-16-019 (SE) & S-16-007** in the manner indicated.

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Dated: January 25, 2017

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