

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

In the Matter of the Appeal of

HARVEY CYR

FILE NO. G-89-002
DCLU #GD: 893453

from a notice of violation of
the Grading Ordinance issued
by the Director, Department of
Construction and Land Use

Introduction

Appellant, Harvey Cyr, appeals a notice of violation of the Grading Ordinance issued by the DCLU Director for work done at 8547 - 29th Avenue N.W.

The appellant exercised his right to appeal pursuant to Section 22.804.230, Seattle Municipal Code.

Parties to the proceeding were appellant, pro se, and the Director, Department of Construction and Land Use, by Mark Summers, assistant code compliance coordinator.

This matter was heard before the Hearing Examiner on August 17, 1989.

After due consideration of the evidence of record and following a visual inspection of the subject site and vicinity the Hearing Examiner enters the following findings of fact, conclusions and decision on this appeal.

Findings of Fact

1. The subject property is located in northwest Seattle at 8547 29th Avenue N.W. The property is owned by Harvey E. Cyr, appellant herein. The site is legally described as

Lot 3, Block 8, Edgewest Grove Addition (and portion of adjacent vacated street) as recorded at Page 38, Volume 29, Records of King County, Washington.

2. The lot has some 75 ft. of frontage to 29th N.W., to its east. To the rear, the south lot line extends some 180 ft. and the north lot line approximately 168 ft.

3. To the rear, the lot declines steeply to the western boundary which is marked by a ravine and a vacated, heavily vegetated, right-of-way (Edgewest Drive N.W.).

4. A Seattle Engineering Department Field Report dated June 5, 1989 indicated that appellant's request, for a street use permit, was granted "subject to condition on permit." Per that field report, the desired project was installation of a rock wall at the bottom of the ravine and approximately 50 cubic yards of fill. Exhibit 1. The Inspector for the field report was Mr. Gamet.

5. Street use permit number S 1012 was then granted appellant June 7, 1989 to:

...construct and maintain a rockery approx (sic) 4 ft. high and 71 ft. long, to place approx (sic) 50 cu yds (sic) of fill material behind this rockery all for the purpose of beautifying the abutting private property. Rockery and fill to be located in the easterly ten feet of unopened Edgewest Dr. N.W. abutting the above address.

Exhibit 2.

6. Appellant also wanted to extend the work to the north adjacent property but was advised by Inspector Gamet that the north property owner, Mr. Madden, would need his own permit. Inspector Gamet recalls appellant's projection that a bulldozer would be used for the project.

7. In fact, a pre-existing path on site led to the crest of the ravine area. The path crosses an area designated as environmentally sensitive.

8. Appellant bulldozed the material along the path to the work area.

9. An alternative method to move materials along the path is by use of a chute-type device to slide the materials down to the work area. Another method is the use of carts.

10. Appellant suggested that he was led by several City contacts to believe that the continued landscaping, pursuant to a 1988 settlement with DCLU (Exhibit 13) and the desired construction of the rockery could be accommodated by the method ultimately employed by appellant.

11. Several of the City contacts were unaware that a portion of the work area was environmentally sensitive. Inspector Gamet had not investigated the issue. Nor did the Manager of SED's Street Use Division know that the subject property included land that was environmentally sensitive. DCLU Building Inspector Martin visited the site approximately June 19, 1989 and, unaware that part of the site was environmentally sensitive, encouraged appellant in his plans notwithstanding visibility of a dump truck, the path and other items.

12. On June 17, 1989, appellant used a bulldozer to push dirt from the dump trucks along the path down to the ravine area. Appellant also rolled some of the rocks for construction across the site.

13. The Hearing Examiner finds that appellant was aware that a portion of his rear yard was designated environmentally sensitive. In the Findings and Decision of the Hearing Examiner entered August 11, 1988, concerning appellant's yard, it was stated as a finding that

The City's map of environmentally sensitive areas shows that approximately the western one-third is within an environmentally sensitive area.

Exhibit 17. Recognizing this, however, appellant cautioned his workers not to disturb the slope.

14. Appellant applied for no grading permit.

Conclusion

1. The Hearing Examiner has jurisdiction of this appeal pursuant to Seattle Municipal Code Section 22.804.230.

2. In an appeal of a grading violation, such as presented in this case,

Substantial weight shall be given to the notice of grading violation and the burden of establishing the contrary shall be upon the appealing party.

3. Pursuant to Seattle Municipal Code Section 22.804.030A, grading within an environmentally sensitive area requires a DCLU grading approval. Appellant has no permit.

4. Appellant's actions, i.e., bulldozing of the materials

across the site to the ravine without a grading permit, was in violation of Seattle Municipal Code Section 22.804.030. Grading was done within an environmentally sensitive area. The extenuating circumstances asserted have been considered. Nevertheless, the substantial weight accorded the DCLU Notice of Violation has not been overcome.

5. Seattle Municipal Code Section 22.800.080(28) defines grading as

...excavation or fill or any combination thereof, including the establishment of a grade following demolition of a structure (emphasis added)

A grade is a "ground surface contour." Therefore, grading includes modification of a ground contour, but is not, by definition, limited to that act.

6. By definition, grading includes excavation or fill. "Fill" is defined as

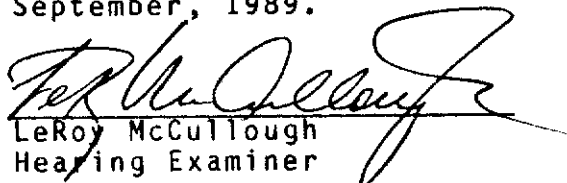
...any act by which earth, sand, gravel, rock or similar...materials are deposited, placed, pulled or transported to a place other than the place from which it is excavated and the materials so placed.

7. Appellant "deposited" and "pushed" rock and earth materials across and down his site, inclusive of an environmentally sensitive area, and moved the material to the ravine work site. Appellant's actions constituted grading. No permit for the activity was secured. The DCLU Notice of Violation is therefore affirmed.

Decision

The DCLU Notice of Violation is AFFIRMED.

Entered this 20th day of September, 1989.


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 a 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, Room 1320 Alaska Building, 618 Second Avenue, Seattle, Washington 98104.

BEFORE THE HEARING EXAMINER

CITY OF SEATTLE

In the Matter of the Appeal of

HARVEY E. CYR

FILE NO. G-89-002
DCLU NO. GD 893453

from a notice of violation of the
Grading Ordinance issued by the
Director of the Construction and
Land Use (DCLU)

ORDER ON RECONSIDERATION

This matter, concerning property addressed as 8547 - 29th Avenue N.W., came on for hearing before the undersigned on September 20, 1989.

Subsequent to hearing and a visual inspection of the site and vicinity, the undersigned issued a decision on September 20, 1989.

Appellant's request for reconsideration was received by the Office of Hearing Examiner on October 2, 1989, and DCLU's response thereto, in opposition to the motion, on October 6, 1989.

Having reviewed the record herein, inclusive of the motion and response, the Hearing Examiner enters the following order regarding the Findings, Conclusions and Decision referenced in the appellant's motion for reconsideration:

Finding No. 6: The Finding is based on testimony of record from witness Gamet, Reconsideration is denied.

Finding No. 11: Beginning at sentence 3, Finding 11 is revised to state as follows:

DCLU Building Inspection Martin visited the site approximately June 19, 1989 and, unaware of any impropriety of the proposed activity, encouraged appellant in his plans. Martin was aware that the slope was environmentally sensitive.

Finding No. 14: The Finding is based on the evidence of record. Reconsideration is Denied.

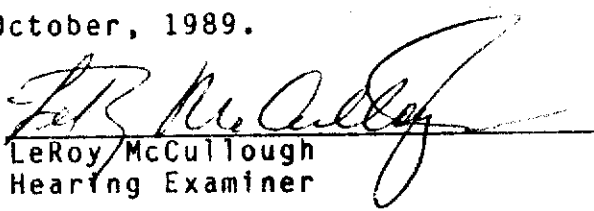
Conclusions 5, 6: The Conclusions are based on the applicable law. Reconsideration thereof is Denied.

Decision: The Decision is based on the evidence and the applicable law. Reconsideration is Denied.

Summary of Order

Finding 11 is modified as noted herein. In all other respects, the Hearing Examiner decision of September 20, 1989 is reaffirmed and reconsideration thereof is Denied.

Entered this 20th day of October, 1989.


LeRoy McCullough
Hearing Examiner