

71294-2

71294.2

No. 71294-2-I

(King County Superior Court
No. 13-2-24020-3 SEA)

COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

DANIEL DUFFUS,

Appellant,

vs.

CITY OF SEATTLE,

Respondent.

APPELLANT'S REPLY BRIEF

John M. Groen, WSBA # 20864
GROEN STEPHENS & KLINGE LLP
10900 NE 8th Street, Suite 1325
Bellevue, WA 98004
Telephone: (425) 453-6206
Attorneys for Appellants

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2014 JUN 24 PM 12:44

TABLE OF CONTENTS

INTRODUCTION1

ARGUMENT1

I. THE WEST ½ OF LOT 7 SHOULD BE RECOGNIZED AS
A SEPARATE BUILDING SITE UNDER SMC 23.44.010
B.1.D.1

CONCLUSION.....7

TABLE OF AUTHORITIES

Seattle Municipal Codes

SMC 23.44.010 B.1.d. 1, 5, 7

INTRODUCTION

This is a simple case where the Appellant, Dan Duffus, makes a straightforward and easy to understand application of the code provision to the facts of this property. In response, the City of Seattle makes convoluted arguments that fail to meet the plain language of the code provision. Given the strained position of the City, it is not a surprise that the City begs for deference. Deference, however, cannot overcome the plain meaning of the words.

ARGUMENT

I.

THE WEST ½ OF LOT 7 SHOULD BE RECOGNIZED AS A SEPARATE BUILDING SITE UNDER SMC 23.44.010 B.1.D.

The plain meaning of SMC 23.44.010 B.1.d. establishes an exception to the modern minimum lot size requirements when, prior to 1957, a lot was established as a separate building site by deed, contract of sale, mortgage, platting or building permit. Here, there was a 1907 deed conveying the east ½ of Lot 7 to Remer. The west ½ of Lot 7 was retained by Baird. Accordingly, Lot 7 was split in two **by deed**.

The question then is whether the two halves of Lot 7 were each available as separate building sites. If so, the plain meaning of the code is met.

The relevant portion of the code provision states:

B. ... The following exceptions to minimum lot area requirements are allowed...

1. A lot that does not satisfy the minimum lot area requirements may be developed or redeveloped separately under one of the following circumstances:

d. The lot has an area at least 50 percent of the minimum required ... and was established as a **separate building site** in the public records of the county or City prior to July 24, 1957, **by deed**, contract of sale, mortgage, platting or building permit ...

SMC 23.44.010 B.1.d. (emphasis added). This straightforward language is all that is written in the code.

Obviously, under the code language the historic lot could have been established “by deed.” This seems plain enough. To satisfy this language, Appellant Duffus showed that in 1904, Baird conveyed “by deed” to Remer the east ½ of Lot 7. The City does not dispute this. Nor does the City dispute that this was a lawful division of land. As shown in Appellant’s Opening Brief, there were no laws in place regulating the division of land and private parties could freely divide their property by conveying a portion by deed to another person.

The City responds that this 1904 deed is insufficient because the west ½ of Lot 7 was not conveyed separately “from all the abutting

properties.” The City points out that Baird’s deed conveyed other properties as well, specifically the east ½ of Lot 8, and also Lot 6.

The problem with the City’s position is nothing in the code provision states anything about requiring that the deed convey only a single parcel to the grantee. This is a requirement that the City has just made up. It **does not appear** in the language of the code. What we are left with is Seattle is simply trying to add words to its code provision that are not there. Nothing in the code provision requires, or even hints, that the “by deed” exception requires that only the one parcel was conveyed to the new buyer. The fact that Baird’s deed conveying the east ½ of Lot 7 to Remer, and also conveyed Lot 6, and also the east ½ of Lot 8, makes no difference.

It should be pointed out the term “separate” does **NOT** modify the term “by deed.” Rather, it modifies the term “building site.” There must be a separate building site established by deed. Nothing in the plain language requires that there be a separate deed for just the east ½ of Lot 7.

Nor would such a requirement be consistent with the law or practice. Washington law does not require separate deeds for each parcel conveyed to another person. Often a single deed is used to convey many parcels to a buyer. Seattle does not argue otherwise. Indeed, Seattle effectively **concedes** that that the division of Lot 7 by deed was a lawful

division of land under the laws in place at the time.¹ The fact that the deed also conveyed two other parcels to Remer is of no consequence.

Most significantly, Seattle **does not deny** that Baird could have constructed a house on the west ½ of Lot 7. Just as the City granted a building permit to Remer to construct a house on the east ½ of Lot 7, so also Baird could have secured a permit to build a house on the west ½ of Lot 7. Accordingly, the west ½ of Lot 7 was a separate building site from the east ½ of Lot 7. This is precisely the type of situation to which the code provision applies.

Seattle grasps for a response by pointing out that the Remer 1907 building permit also included listing the east ½ of Lot 8 on the permit. However, this does not mean that the east ½ of Lot 7 was not a separate building site from **both** the west ½ of Lot 7, and also the east ½ of Lot 8. Significantly, Seattle omits informing the Court that the east ½ of Lot 8 was issued **its own** building permit for a separate house on that parcel. In 1908, Remer applied for and received a separate building permit for another house on the east ½ of Lot 8.

¹ At page 12 of the City's brief, the City argues that it is irrelevant that the 1904 deed lawfully divided Lot 7 into two separate halves, each owned by a different person. The City does not take issue with the fact that land could be lawfully divided by deed, thereby conceding that point. The relevance of course is to show that the west ½ of Lot 7 and the east ½ of Lot 7 were established "by deed." The second step is to show that each parcel was also a separate building site. Again, the City cannot, and does not, deny that Baird could have also built a house on his west ½ of Lot 7, just as Remer did on the east ½ of Lot 7. The relevance of the lawful division of Lot 7 is clear.

Finding of Fact No. 8 by the Hearing Examiner states:

8. In 1908, Remer obtained a building permit for what was described in the application as “E ½ of 8.” The house under this permit was originally addressed as 3809 East Jefferson, but is currently using the address of 418 Erie Street.

Obviously, the east ½ of Lot 8 was considered by Seattle to be a separate building site from the east ½ of Lot 7. These parcels were developed separately, at different times, and with different building permits.

Seattle also argues that the west ½ of Lot 7 had to be owned separately from any other abutting land. Again, nothing in the code provides that the ownership of lots must be in different people. What is required is that the lots be separate building sites. The same person can own both building sites, or own other properties in the area too. Moreover, the west ½ of Lot 7 and the east ½ of Lot 7 **were owned by different people**. Baird and Remer each owned their own half. Remer secured a building permit for her half. Baird’s half remains undeveloped today and qualifies for the historic exception set forth in SMC 23.44.010 B.1.d.

Finally, the City makes some very convoluted argument that misconstrues Duffus’ position. Seattle argues at page 11 of its brief that Duffus has “layered over” the 1907 deed with preexisting lot lines. It is unclear just what Seattle’s point is. The original Yesler plat obviously

created numerous parcels including Lot 7 of Block 36. The owner of Lot 7 was Baird. Baird then conveyed by deed the east ½ of Lot 7 to Remer. Under the law at the time, there was nothing illegal about that division of land and conveyance to Remer. Seattle has conceded this point. Nevertheless, Seattle argues that Duffus' position somehow removes the phrase "separate building site" from the code. How Seattle reaches that conclusion is unclear.

To answer, Duffus simply does not attempt to remove the "separate building site" phrase from the code. Rather, Duffus has shown that this phrase is satisfied because the 1904 deed split the parcel into two halves, and each half was buildable as a separate site. Remer built on her half. Seattle does not deny that Baird could have secured a permit and built a house on his half too. Duffus is therefore not eliminating the "separate building site" requirement; rather, he is showing that the requirement is fully satisfied.

Under the record here, both halves of Lot 7 were clearly and indisputably available sites for construction of a house. Indeed, as predicted, the City does not even attempt to argue that the west ½ of Lot 7, retained by Baird, could not be the site of a separate house in 1904.

The City does not dispute that this was a lawful division of land. Moreover, a building permit was issued for the east ½ of Lot 7. The

building permit did not include the west ½ of Lot 7 which was separately owned by Baird.

There is no need to apply deference of any sort when the plain language of the code is apparent. Here, the language is straightforward. Duffus must show that prior to 1957, the west ½ of Lot 7 was a separate building site that was established by deed. This has been satisfied. Seattle is hamstrung because it just cannot deny that the 1904 deed was a lawful division of Lot 7 into two halves with separate ownership. Likewise, Seattle just cannot deny that the west ½ of Lot 7 qualified as a building site just as the east ½ of Lot 7 qualified as a building site. The Hearing Examiner's contrary conclusion is not supported by any evidence and is a clearly erroneous application of the law to the facts. RCW 36.70C.130. Accordingly, the decision below should be reversed and the west ½ of Lot 7 recognized as meeting the criteria of SMC 23.44.010 B.1.d.

CONCLUSION

Seattle's arguments make no sense and are contrary to the plain meaning of the code language. Duffus has applied a straightforward, no games or sleight of hand interpretation, to the simple language of the code. Seattle's attempt to read new and additional requirements into the code should be rejected.

RESPECTFULLY submitted this 23rd day of June, 2014.

GROEN STEPHENS & KLINGE LLP
WSBA #41156
By: Forrest Fischer for John M. Groen
John M. Groen, WSBA #20864
10900 NE 8th Street, Suite 1325
Bellevue, WA 98004
(425) 453-6206
Attorneys for Appellants

DECLARATION OF SERVICE

I, Linda Hall, declare:

I am a citizen of the United States, a resident of the State of Washington, and an employee of Groen Stephens & Klinge LLP. I am over twenty-one years of age, not a party to this action, and am competent to be a witness herein.

On June 23, 2014, I caused a true and correct copy of the foregoing document to be served on the following person via the following means:

Jeffrey S. Weber, Esq.
Seattle City Attorney's Office
600 4th Avenue, Floor 4
Seattle, WA 98104-1850

- Legal Messenger
- First Class U.S. Mail
- Federal Express Overnight
- E-Mail: jeff.weber@seattle.gov

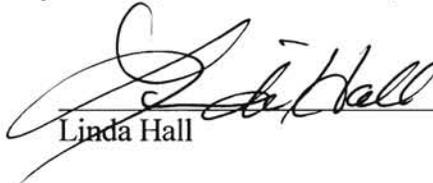
Mark A. Clausen
Morgan R. Blackburn
Clausen Law Firm PLLC
701 Fifth Avenue, Suite 7230
Seattle, WA 98104

- Legal Messenger
- First Class U.S. Mail
- Federal Express Overnight
- E-Mail:
Mclausen@clausenlawfirm.com
mblackbourn@clausenlawfirm.com
lisav@clausenlawfirm.com

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2014 JUN 24 PM 12:44

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed this 23rd day of June, 2014 at Bellevue, Washington.


Linda Hall