

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

In the Matter of the Appeal of

ELIZABETH & TED PALMER

FILE NO. MUP 85-070(W)  
APPLICATION NO. 8501890

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

Introduction

The appellants exercised the right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

This matter was set for hearing date of November 27, 1985, but was postponed to December 2, 1985, because of inclement weather. On December 2, 1985, the Hearing Examiner allowed the record to remain open until DCLU could locate and appellants respond to the annotated DNS. The record was to close December 6, 1985.

Parties to the proceedings were: appellants by Allan W. Munro, attorney; applicant by Dale Norsen, pro se; and the DCLU Director by Lloyd Skinner for analyst Malli Anderson.

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 the Hearing Examiner's inspection of the subject 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 subject property consists of a 77 ft. by 73.25 ft. lot that is developed with a single family residence addressed as 3142 Alki Avenue S.W. Applicant proposes to demolish the existing residence and construct on-site a 3-story 9-unit apartment building with 9 basement parking spaces accessed from Alki Avenue S.W. Compliance with Seattle's Housing Preservation Ordinance will be required. DCLU issued a declaration of nonsignificance (DNS) conditioned on approved landscaping and construction noise limitations. Appellants, neighbors of the subject site, challenged the DCLU environmental approval.

2. Appellants' property is directly east and rests some 40 ft. above the subject site. One of their specific concerns is whether proposed construction below will destabilize the hillside, hence affect their front yard. The evidence of record does not show that soils stability to be an issue. E.g. Exhibit 5, Soils Report.

3. The site is zoned Lowrise 3, multiple residence. West adjacent is an irregularly shaped Single Family 5000 zone.

4. The vicinity is a high density multi and single-family residential area. A Coast Guard property is directly across from the subject site. The Birthplace of Seattle monument and the Alki Point Lighthouse are also part of the general community. One witness describes the area as one unique for history and sightseeing tours.

5. The subject portion of Alki is not an arterial. On-street parking is sometimes at a premium in the vicinity from the vehicles of residents and guests. Parking congestion is also attributed to Alki Beach visitors, particularly during summer months. Vicinity residents have observed that cars sometimes double park near the subject site.

6. Appellants submitted as Exhibit 1 a list showing that between 3021 and 3204 Alki S.W. 39 units have been approved for the 9 sites. Of those 39, per the Exhibit, 21 have been constructed, and 13 of the constructed units are currently vacant. Appellants and other opponents fear that occupation of the vacant units, added to the occupancy of the subject proposal, will constitute an "environmental time bomb which will provide massive congestion in the area..." Appellants' Memorandum of Authorities, p.3.

7. In response to a question contained in the Environmental Checklist, applicant projected that  $\pm$  18 vehicular trips per day would be generated by the completed project with peak times 7:00 - 9:00 a.m. and 4:00 - 6:00 p.m. No DCLU annotation thereto is of record. Appellants' response to the checklist states without further citation that an additional  $\pm$  36 vehicular trips per day during peak hours is expected.

8. As to whether road or street improvements would be indicated, appellants recommended an annotation to the checklist that:

Existing roads will experience greater incidence of traffic and parking congestion. At least one experience of total blockage of Alki Avenue S.W. to emergency vehicle access has been experienced and testified to.

#### Conclusions

1. The Hearing Examiner has jurisdiction of this proceeding pursuant to Chapters 23.76 and 25.05, Seattle Municipal Code.

2. The Director's environmental determination is accorded substantial weight, Seattle Municipal Code 23.76.36(B)(7), and the burden of establishing the contrary is appellants'. Seattle Municipal Code 25.05.680(1)(c). Appellants must therefore show the DCLU determination here at issue to be "clearly erroneous".

3. If a proposal may have probable significant adverse environmental impacts a declaration of significance is required. Seattle Municipal Code Section 25.05.360(1). Otherwise, a declaration of non-significance (DNS) is appropriate. Seattle Municipal Code 25.05.340. Significant has been read to mean "of more than a moderate effect." Norway Hill Preservation and Protection Association v. King County Council, 87 Wn.2d 267, 552 P.2d 674 (1976).

4. The essential question then is whether the proposal for a nine unit structure will have more than a moderate effect on the quality of the environment. The environment includes several multifamily structures nearby; L-3 zoning; an accessway for Alki point; and further, per the unrefuted soils report of record, a slope which will not be destabilized by construction as proposed.

5. As to parking, it is acknowledged that many of the constructed multifamily units are unoccupied and do not presently contribute to the parking shortage. It would be improper speculation, however, for the Hearing Examiner to presume that (a) the majority or all of the presently vacant units will be filled; (b) that all or the majority of such new residents will own or operate one or several vehicles; and, (c) that no off-setting parking and traffic circumstances will have occurred by that occupation. Since these cannot be assumed, they should not be overly considered in the question of whether traffic from a new nine unit building will create an explosive environmental consequence. Such parking congestion that occurs presently is principally an evening or summertime phenomenon.

6. Under the circumstances, the burden of showing the DNS as clearly erroneous was not met. No more than a moderate effect on the quality of the environment was established. Therefore, no EIS is required.

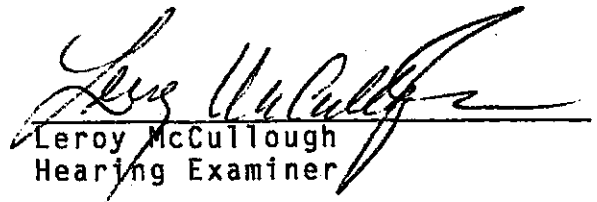
7. As to recognized impacts that are not significantly adverse, Seattle Municipal Code Section 25.05.660 requires that mitigation measures be based on specific, recognized policies. The litany of Policies, referenced at 23.05.902, includes a policy intent to modify off-street parking requirements or make other modifications "as necessary to assure reasonable access and flow". Seattle Municipal Code Section 25.05.902(4)(a). The mitigation measures referred to in Chapter 25.05, Seattle Municipal Code, have been incorporated into the Zoning Code specifications for off-street parking. City Council decision, In re Elmer, C.F. 293040, MUP-83-077 (1984). Based on the Elmer decision, DCLU had and the Hearing Examiner has no authority to require parking in excess of the 1:1 ratio that is proposed for the nine unit structure.

8. The other concerns raised have been considered and no modification to the DCLU decision is required.

#### Decision

The Department of Construction and Land Use decision is AFFIRMED.

Entered this 20th day of December, 1985.

  
Leroy McCullough  
Hearing Examiner

#### Concerning Further Review

Pursuant to Section 25.05.680(2), Seattle Municipal Code, a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the fourteenth day after the date of the decision appealed from is filed with the SEPA Public Information Center. The City Council's review on appeal shall be limited to the exercise of the City's substantive authority to condition or deny the proposal under SEPA as authorized by Section 25.05.660. The appeal statement must be filed with the City Clerk on the first floor of the Municipal Building. The City Council should be consulted regarding their appeal procedure.

If an appeal is taken pursuant to Section 25.05.680(2), the time for filing a request for judicial review of the underlying governmental action and/or other SEPA issues is stayed until the City Council renders a final decision on this Section 25.05.680(2) appeal.

If no appeal is taken pursuant to Section 25.05.680(2), 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 on the underlying governmental action must be filed in King County Superior Court within fourteen days of the date of this Hearing Examiner decision. Seattle Municipal Code Section 23.76.36(B)(11). 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 this decision 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, 400 Seattle Municipal Building, Seattle, Washington 98104, within fourteen days of the date of this decision. Section 25.05.680(3)(d).

If the Superior Court orders a review of the decision, the person seeking review must arrange for and bear the cost of preparing a verbatim written transcript of the hearing but will be reimbursed if successful in court. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, 5th Floor, Seattle, Washington 98104. As an alternative to the written transcript, 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 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 the taped transcript relating to issues raised on review.