

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

McCALLUM ENVELOPE COMPANY

FILE NO. MUP-86-001(W)
APPLICATION NO. 8502586

from a decision of the Director of
the Department of Construction and
Land Use 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 March 31, 1986.

Parties to the proceedings were: appellant by Mark Quigley and Thomas Malone of Treece, Richdale, Malone and Corning, Inc., P.S.; and the Department of Construction and Land Use (DCLU) Director by Patrick Doherty, land use specialist.

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, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The subject 68,967 sq. ft. area property is located between N.W. 48th and N.W. 47th Streets at 8th Avenue N.W. This segment of N.W. 47th is described as a "messy, no-curb" street. Northwest 48th has sidewalks and is 32 ft. wide curb to curb.

2. While the land east, across 8th N.W., is single family zoned, the subject site is part of a well developed General Industrial (IG) zone.

3. The subject site is currently used by appellant-applicant McCallum Envelope Company. McCallum buys and prints paper. Its 42 employees are dispersed between the printing and marketing company, the ticketing company and the envelope company.

4. Applicant's site is developed with a single-story building that was formerly used by Pacific Northwest Bell as a garage-dispatching office for 64 vehicles. This matter came to DCLU for environmental review on the change to the present use. DCLU issued a declaration of non-significance (DNS) conditioned on removal and relocation of an existing dock. The applicant submitted this challenge to the DNS condition.

5. West adjacent to the McCallum building is a loading ramp that accesses N.W. 48th Street. The curbcut is 27 ft. 6 in. wide. The ramp itself slopes down from N.W. 48th for its depth of 36 ft. There it meets a loading dock-platform. Semis and other trucks typically back down this ramp to the dock where unloading from the trailers is facilitated.

6. Directly across N.W. 48th, north, is a mini-storage facility. Its driveway directly faces the McCallum loading driveway and has been used by McCallum-bound trucks as they attempt to maneuver into the McCallum ramp. This practice has caused some temporary blockage of N.W. 48th and friction between the mini-storage and the envelope company uses.

7. Upon learning of specifically the north neighbor's concern with this practice, DCLU and McCallum Envelope agreed for the company to test the effectiveness of a large sign to be located near the loading dock. The sign would warn truckers against using the north neighbor's driveway and direct trucks in excess of 30 ft. to McCallum's south parking lot. DCLU reported that during the 30 day test period, which expired November 30, 1985, "11 incidents of trucks pulling into the ministorage driveway and/or trucks over 30 feet long using the loading dock were reported." DCLU Analysis and Decision, p. 1. The ensuing DCLU decision which required removal of the loading dock was entered December 23, 1985.

8. The subject sign is posted near roof level facing N.W. 48th Sreet. See Photo 3, Director's Exhibit 7A. Applicant has taken additional measures, such as notifying dispatchers, to reduce or eliminate use of the mini-storage driveway. One of applicant's witnesses also recommended re-location of the large sign and adding another sign to the west bordering chain link fence.

9. The exact number of occasions for McCallum-destined trucks to jut out into the street, use the mini-storage driveway or cause similar concerns is not clear. However, the record provided by appellant does show that from February 3, through March 27, 1986, 37 days, carriers used the loading dock approximately 8.7 times per day. It was acknowledged that this estimate may be low because some more fleeting stops may not have been noted.

10. The larger trucks access the lot with their bulk of heavy paper and similar materials from the southeast corner of the building where a 16 ft. wide loading bay is located. One company delivers its heavy load each Friday, and a second company three days per month. Applicant estimates that heavy paper deliveries are made to the site roughly twice weekly.

11. Smaller delivery vehicles park on the street and deliveries to the site are by hand.

12. Applicant's Exhibit 5 is an undisputed report of traffic activity. It indicates and the Hearing Examiner finds that on February 28, 1986, the traffic volume on this N.W. 48th segment was 2,130 vehicles; and that

...the capacity for a two lane Minor Arterial street such as this has been identified by the Seattle Engineering Department as approximately 10,800 vehicles per day as a generalized number when operating at an approximate Level of Service C...acceptable design level.

Page 2. The Hearing Examiner also finds in accord with the undisputed report that "there are no recorded accidents in a 22 month period starting January 1984..." Page 3.

Conclusions

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

2. The DCLU Director's environmental determination is accorded substantial weight, Seattle Municipal Code 23.76.022(C)(7). It is appellant's burden to establish a position contrary to that of DCLU.

3. Seattle Municipal Code Section 25.05.660 requires that SEPA mitigation measures or denials be based on formally designated policies, plans or rules. Seattle Municipal Code Section 25.05.660(A)(1). Further, the decisionmaker is to cite the SEPA policy that is the basis of any condition designed to address "specific, adverse environmental impacts..." Seattle Municipal Code Section 25.05.660(A)(2). In hearing, DCLU stated as the SEPA Policy at issue the one that refers to traffic, circulation and parking.

4. Although not significantly adverse, and not quantified, the maneuvers of McCallum-bound truck traffic along N.W. 48th were shown to have negative impacts on N.W. 48th traffic and access. However, the DCLU measure to mitigate the impacts is not "reasonable and capable of being accomplished". Seattle Municipal Code Section 25.05.660(A)(3). First, N.W. 48th is capable of carrying a substantial increase in traffic. No accidents have been reported for the subject segment for the preceding 22 month period. Truck use of the ramp-dock has averaged less than 10 per day. A secondary access is available for trucks that cannot be accommodated by the N.W. 48th access. The record provides insufficient information on which to support the relocation of the ramp-dock on an environmental basis.

5. Rather, the DCLU condition should be revised to require the following pursuant to the authority of Seattle Municipal Code Section 25.05.902(4):

(a) At least one cautionary sign shall be placed at truck drivers' eye level on the west side of the building and a second on the chain link fence gate located at the western edge of the property. The size and content of the sign shall be approved by DCLU.

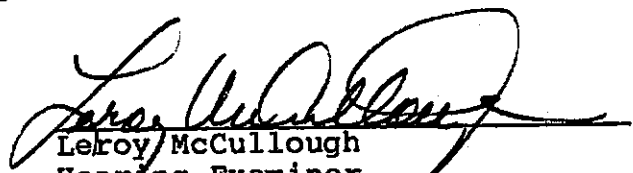
(b) Applicant shall not knowingly permit any truck that exceeds 36 feet in length, front to rear bumper or trailer end, to use the N.W. 48th ramp.

Vicinity neighbors are encouraged to report violations of these conditions to DCLU. The Hearing Examiner specifically declines to prohibit use of the mini-storage driveway as a condition of this DNS. While applicant should diligently discourage such practice, the adverse environmental impacts at issue flow from public street blockage, and not as much from public use of a curb cut to a private property.

Decision

As revised herein, the DCLU decision is AFFIRMED.

Entered this 15th day of April, 1986.


Leroy McCullough
Hearing Examiner

Concerning Further Review

Pursuant to Seattle Municipal Code Section 25.05.680(C), a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the fifteenth day after the date of the decision appealed from is filed with the SEPA Public Information Center. The appeal statement must be filed with the City Clerk on the first floor of the Municipal Building. The City Council's review on appeal shall be limited to the issue of compliance with Section 25.05.660. The City Council Land Use Committee should be consulted regarding further appeal specifics.

If an appeal is taken pursuant to Section 25.05.680(C), 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(C) appeal.

If no appeal is taken pursuant to Section 25.05.680(C), 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 fifteen days of the date of this Hearing Examiner 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 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 fifteen days of the date of this decision. 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 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.