

FINDINGS AND DECISION

OFFICE OF THE HEARING EXAMINER

in the Matter of the Appeal of

PHILIP THIEL

FILE NO. MUP-86-072(W)
APPLICATION NO. 8601057

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

Procedural Synopsis

The Procedural Synopsis in the Hearing Examiner's Decision dated April 17, 1987, is incorporated herein by this reference as though fully set forth in this decision.

On April 27, 1987, the Hearing Examiner received from Mr. Baronsky, attorney for the applicant, a letter urging reconsideration and reversal of the Decision dated April 17, 1987. Mr. Baronsky commented that the Hearing Examiner's April 17, 1987 Decision is: (1) inconsistent with the findings and bases for the Examiner's remand decision entered December 1, 1986; (2) based on findings and conclusions that are in contravention of the land use code provisions for the conduct of administrative appeals because it subjects the applicants to matters which are not and cannot be a part of the record and subjects the applicants to environmental issues based upon factual allegations as to conditions coming into existence after the date of the Director's decision and the close of the record; and (3) in violation of the applicant's vested rights to a decision based on the proper record of the case and rights under the appearance of fairness doctrine and under state and federal constitutional requirements of due process.

On May 1, 1987, the Hearing Examiner received DCLU's second supplemental decision, which contained the results of its further evaluation of the cumulative effects of the Revised Proposal, with others in the vicinity, on congestion parking and streets. The second supplemental DCLU decision also provided information about the development status of commercial developments identified as applications 8607074, 8701484, 8701389 and 8506102; and of a residential development identified as application 8601005.

On May 11, 1987, the Hearing Examiner received from the appellant two letters dated May 7, 1987 and May 8, 1987. The letter dated May 7, 1987 contained comments in response to Mr. Baronsky's letter to the Hearing Examiner dated April 27, 1987. The letter dated May 8, 1987 requested further review of the second DCLU supplemental decision dated May 1, 1987 on grounds that : (a) the "no overflow parking" condition recommended by DCLU is "unsatisfactory in that it makes no specification of the parking ratios that are to be used;" (b) the analysis of cumulative effects required by Seattle Municipal Code 25.05.902(c)(1), (2)(a) and (d) is not limited to projects "already in the application pipeline"; (c) DCLU has failed to require additional programs and appropriate measures to reduce non-university generated traffic impacts and volumes.

The record on further review of DCLU's second supplemental decision consists of the above referenced documents.

Introduction

The Introduction in the Hearing Examiner's Decision dated April 17, 1987 is incorporated herein by this reference as though fully set forth in this decision.

After due consideration of the evidence elicited during the public hearing and the record on further review of DCLU's supplemental decision and second supplemental decision, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal and second remand.

Findings of Fact

1. The Findings of Fact in the Hearing Examiner's Decisions dated December 1, 1986 and April 17, 1987 are incorporated herein by this reference as though fully set forth in this decision.

2. The Hearing Examiner does not maintain files about pending or proposed projects which are indexed by development application number. The information requested from DCLU in the Hearing Examiner's decision dated April 17, 1987 was required in order to fully understand the evidentiary factors considered by DCLU in its evaluation of environmental impacts and effects. The Hearing Examiner has considered only the evidence about commercial and residential developments which forced the bases of DCLU's analysis. For the reasons stated above the Hearing Examiner believes that the April 17, 1987 decision was consistent with the findings and bases of its decision dated December 1, 1986, was not in contravention of the land use code provision for the conduct of administrative appeals, and does not violate the applicant's rights to a decision based upon a proper record or the applicant's rights under the appearance of fairness or due process doctrines.

3. According to DCLU, Commercial Applications 8607074, 8701484 and 8701389 were filed after the preparation of the Director's original decision of September 18, 1986, and after the Hearing Examiner's December 1, 1986 decision (Second Supplemental Decision).

4. DCLU reports that the Master Use Permit for Commercial Application 850612 was filed on November 15, 1985 and issued on March 10, 1986. According to DCLU, this application is Phase I of a proposal to convert the northwest portion of an existing auto dealership structure into 10 theaters with a restaurant, lobby area and office space along 9th Avenue N.E. DCLU reports that parking for 95 cars would be provided on-site and that 85 spaces would be provided across the street; that the traffic and parking study prepared for this project determined much of its traffic impact would occur at non-peak times and that traffic impacts are not expected to be significant. Parking overflow of 90 spaces was not considered to be a significant impact because peak operation times would occur in the evenings and because pay parking lots in the near vicinity of this project, implicitly could accommodate the excess demand. Conditions of approval of this application were designed to mitigate existing potential and future parking impacts, (Second Supplemental Decision).

5. DCLU reports that the Master Use Permit for Commercial Application 8601263 was filed on March 10, 1986 and issued on April 28, 1986. According to DCLU, this application sought to convert an existing auto showroom to retail sales use. As a condition of the decision, this project's hours of operation were limited to avoid weekend and evening hours of the theater's peak times (Second Supplemental Decision).

6. According to DCLU, Residential Application 8601005 is the 40-unit apartment proposal located in the block north of the Revised Proposal. The potential impacts of this study have been discussed in previous decisions of the Hearing Examiner on this appeal and will not be repeated here. DCLU now reports that it is likely that the decision on this project will need to include conditions to improve the alley and possibly decrease the number of units to reduce the anticipated impacts of this project on traffic and parking.

7. Commercial development applications 8506102 and 8601263 were filed and Master Use Permits for those projects were issued prior to the Director's Decision dated September 18, 1986, and were not considered in DCLU's evaluation of cumulative effects and impacts on streets and parking of new development in the vicinity of the Revised Project.

8. There will be an increase in noise levels and a decrease in air quality during demolition, site preparation and construction of the Revised project. However, those impacts are temporary in nature and limiting the hours of construction will lessen the impacts. A slight increase in ambient and nuisance noise levels over the long term can be anticipated due to increased activity on the site and additional vehicular movement.

9. There will be some erosion potential during demolition, site preparation and construction. An increase in impervious surfaces will increase the rate and amount of storm water runoff. Compliance with the Grading and Drainage Ordinance will mitigate the impacts of erosion and storm water runoff.

10. There will be increased lighting levels due to normal building lighting and light emanating from window areas and headlight glare may also be visible to nearby residents. However, no adverse impacts related to lighting conditions have been identified.

11. The impacts associated with vegetation removal during demolition, site preparation and construction can be mitigated through landscaping according to a landscape plan, approved prior to final occupancy of the building.

12. The Revised Project meets all development standards for Midrise zone.

13. The revised Project's contribution to the cumulative effects and impacts of new development in the area on traffic congestion is not significant due to its size, proximity to freeway on/off ramps and Metro bus lines and due to its proximity, within walking or bicycle distance, to the University of Washington and commercial shopping opportunities. Since there will be negative impacts due to the added traffic and parking demand, it is desirable to encourage tenants of new residential developments in the University District to use public transit, or bicycles when they are unable to walk to their destination.

14. The Revised Project's contribution to the cumulative effects and impacts of new development in the area on parking and streets is the subject of considerable controversy and dispute. DCLU and the applicant believe that a ratio of 1.3 to 1.5 vehicles per dwelling unit is a correct and reasonable ratio for evaluating spill-over parking which new development will generate. The appellant believes that a ratio of 2.0 vehicles per dwelling unit is the correct and reasonable ratio. The land use code does not permit DCLU or the Hearing Examiner to require more than a 1 to 1 ratio of off-street parking to dwelling units in residential developments such as this.

15. In its reports dated September 18, 1986 and through testimony at the Public Hearing, DCLU concluded that overall, the impacts of the Revised project on parking and streets are not considered significant because: one offstreet parking space will be provided for each dwelling unit, a survey of available on-street parking spaces in the vicinity, provided by the applicant, indicates that there are more than enough spaces to handle any parking spill-over and because as mitigation measures, all potential residents will be informed that only one resident parking space is available on-site and tenants may not be charged a fee in addition to rent to park on-site.

16. In its first supplemental decision dated March 4, 1987, DCLU reports that the cumulative effects and impacts of the Revised Proposal and a proposed 40 unit apartment building to be constructed one block north of the Revised Proposal result in a combined spill-over demand from the two projects of 15 to 25 spaces. DCLU concluded and the applicant agrees that a combined spill-over demand of 15 to 25 spaces does not represent more than a moderate adverse impact because the total spaces available in the study area ranges from 19 to 45; and because on-street parking in the 4500 block of 7th Avenue N.E., estimated by DCLU to be 6 to 20 spaces, is sufficient to handle the anticipated parking overflow of 3 to 5 spaces related to the Revised Project.

17. In its second supplemental decision dated May 1, 1987, DCLU further interpreted the findings of its re-evaluation following the initial remand. DCLU reported that although on-street parking in the area of the Revised Project and the proposed 40-unit apartment building had reached effective capacity (80%), 10 different parking surveys revealed that no less than 6 and an average of 11 on-street parking spaces were available. DCLU noted further that the low range of projected overflow demand of this project combined with that of the proposed 40 unit apartment building (15 to 25 combined overflow spaces) would exceed the available supply in the 4500 block of 7th Avenue N.E.; and that if the impacts of newer projects at greater distance are considered to be part of the cumulative context for this proposal, parking demand in this area could reasonably be expected to exceed on-street supply.

18. Based on the re-evaluation summarized above, DCLU advised that it is not possible to provide the specific numbers necessary for a thorough evaluation of the cumulative effects of this project and all others within its vicinity. DCLU further advised that a likely scenario, given the list of projects known today, is one of on-street parking at capacity and increasing traffic congestion.

19. DCLU concluded and this examiner agrees, that even a small project in the University District, like the Revised Proposal (this project) should take steps to reduce its impacts.

20. DCLU concluded further that no mitigation is appropriate for this project's very small incremental contribution to traffic flow impacts.

21. Furthermore, DCLU concluded that because the area has generally reached capacity for on-street parking, new developments in the area should be mitigated to result in no overflow demand.

22. As an additional condition of approval, DCLU recommended that the Revised Proposal have no overflow parking demand for on-street space and that this be achieved through changes in the design, re-configuring the parking arrangement or other applicant selected approach.

23. Other than mentioned in the above Synopsis, the Hearing Examiner received no response from the parties to DCLU's second supplemental decision.

Conclusions

1. The Hearing Examiner has jurisdiction over the parties and the subject matter of this appeal and request for further review. (Chapter 23.76, Seattle Municipal Code.)

2. DCLU's decision must be given substantial weight by the Hearing Examiner. Section 23.76.022(C)(7). Consequently, appellant must show that the Director's decision is clearly erroneous. Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981).

3. The appellant has not shown that Director's decision to issue a DNS with conditions was clearly erroneous.

4. The conditions recommended by the DCLU Director in her decision dated September 18, 1986 are generally reasonable and appropriate steps to mitigate some of this project's relatively small contribution to on-street parking impacts. The DCLU conditions are in line with the requirements of SEPA and other environmentally related policies adopted by the City Council.

5. DCLU and the Hearing Examiner lack the legislative authority to use SEPA policies to require the applicant to provide off-street parking in excess of the 1 to 1 ratio of parking spaces to dwelling units defined in the Seattle Land Use Code, (Chapter 23.45 Seattle Municipal Code); In re Elmer, C.F. No. 293040, Mup-83-077, In re Appeal of Oden Investment and Kinnear Park Condominium Association, File Nos. MUP-84-057(W), MUP-84-058(W).

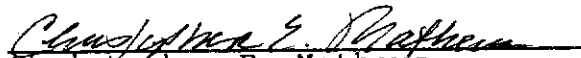
6. It is inappropriate in this case to require the applicant to further reduce the number of dwelling units in the Revised Project. If however, the applicant voluntarily elects to provide additional off-street parking by changing the design, re-configuring the parking arrangement or adding 3-5 parking spaces in the area adjacent to the alley, such an act would clearly reflect his civic consciousness and would be in the public interest.

7. As further conditions of approval and as an incentive to residents and non-residents of the building not to use automobiles in their travel to and from the Revised Project, the applicant shall: (a) offer a one month metro transit pass per unit for a period of three months each time a unit is leased or sold. A covenant stating this provision shall be provided to the Land Use Review Section for approval and recording with the property; (b) provide a ride-sharing information center message board in the building where it is easily accessible and visible to residents and non-residents; and (c) provide an appropriate number of spaces for bicycle parking in a safe and convenient location at the building.

Decision

The decision of the Director, Department of Construction and Land Use, to issue a DNS with conditions and as modified by Conclusion 7, above, is AFFIRMED.

Entered this 15th day of May, 1987.


Christopher E. Mathews
Hearing Examiner Pro Tempore

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 fifteen 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 fifteen 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 fifteen 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.

FINDINGS AND DECISION

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In the Matter of the Appeal of

PHILIP THIEL

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from a decision of the Director,
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Procedural Synopsis

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This matter was heard before the Hearing Examiner on November 13, 1986 and the record remained open until November 14, 1986. By Decision dated December 1, 1986, the Hearing Examiner remanded the application of Ronald Jones to DCLU for further evaluation of the cumulative effects of the Revised Proposal and others on congestion, parking and streets; and if appropriate, for revision of its decision imposing conditions to mitigate such cumulative effects.

The December 1, 1986, Decision of the Hearing Examiner provided that following the supplemental DCLU decision, applicant could appeal conditions imposed by submitting written objections to the Hearing Examiner within 7 business days of the DCLU mailing date, along with a \$25 appeal fee, payable to the City Treasurer. The December 1, 1986 Decision provided further that the appellant could request further review of the DCLU supplemental decision by submitting written objections to the Hearing Examiner within 7 business days from the date of DCLU's mailing, without additional fee. If such a request for review of DCLU's supplemental decision was received, the December 1, 1986 decision provided that the Hearing Examiner would issue a decision based upon the written submittals and responses thereto.

On December 18, 1986, the Hearing Examiner received from the appellant a Motion for Reconsideration of Finding of Fact No. 22 of the December 1, 1986 decision. A response to the motion was received from the applicant on December 29, 1986. The Hearing Examiner deemed the appellant's motion to have been timely and received no objections from the parties to the timeliness of appellant's motion.

On January 14, 1987, in response to the motion, the Hearing Examiner entered an Order amending Finding of Fact No. 22 and directing DCLU to incorporate the amended finding into its review during its evaluation pursuant to the December 1, 1986 remand order.

On March 6, 1987, the Hearing Examiner received a Supplemental Decision from DCLU dated March 4, 1987, which contained the results of its further evaluation of the cumulative effects of the Revised Proposal and others on congestion, parking and streets. A subsequent DCLU affidavit showed a mailing date to appellant of March 11, 1987.

On Thursday, March 19, 1987, the Hearing Examiner received from the appellant a request for further review of the DCLU Supplemental Decision dated March 4, 1987; and on March 20, 1987, the Hearing Examiner received a single-page correction sheet dated March 20, 1987, from the appellant. Appellant's request for further review was received within 7 business days of the DCLU mailing and was therefore timely.

On March 24, 1987, the Hearing Examiner provided copies of appellant's March 19, 1987 request for further review and the single-page correction sheet dated March 20, 1987, to the applicant, attorney for applicant and DCLU. The Hearing Examiner invited those parties to respond to appellant's correspondence by 5:00 p.m., Friday, April 3, 1987.

On March 25, 1987, the Hearing Examiner received from Mr. Baronsky, attorney for the applicant, a timely response to the appellant's request for further review.

On April 3, 1987, the Hearing Examiner received from the appellant a "rebuttal letter" responding to various points raised by Mr. Baronsky in his letter referenced in the proceeding paragraph.

The record on further review of DCLU's supplemental decision consists of the above referenced documents.

Introduction

Philip Thiel appealed the decisions of the Director, Department of Construction and Land Use ("DCLU") to issue a determination of non-significance and to approve, with conditions, a proposal by the applicant, Mr. Ronald Jones, to demolish a single family residence and construct a three (3) story, nine (9) unit apartment with basement parking at 4550 7th Avenue N.E. in Seattle. (Herein the "Revised Proposal"). Parties to the proceeding were Philip Thiel, appellant; Clay Leming, associate land use specialist for the DCLU Director; and Ronald Jones, applicant, who was represented by Robert Baronsky, Esq.

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

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 the record on further review of DCLU's supplemental decision, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal, remand and request for further review.

Findings of Fact

1. The Findings of Fact in the Hearing Examiner's Decision dated December 1, 1986 are incorporated herein by this reference as though fully set forth in this decision.

2. The Order on Motion for Reconsideration dated January 14, 1986, is incorporated herein by this reference as though fully set forth in this decision.

3. According to DCLU, the cumulative impacts of the anticipated parking overflow for the applicant's Revised Proposal is 3 to 5 spaces and 12 to 20 spaces for a proposed 40-unit apartment building. (Supplemental Decision at p.2).

4. DCLU apparently adopts findings of two transportation studies which conclude that the total number of on-street parking spaces available in the area of the Revised Proposal range from 19 to 45 on 7th Avenue N.E. between N.E. 47th Street and N.E. 50th Street; and range from 6 to 20 spaces on 7th Avenue N.E. between N.E. 45th Street and N.E. 47th Avenue N.E. (Supplemental Decision, at pp. 1-2)

5. Based upon the statistics adopted by DCLU, above, DCLU concluded that on-street parking in the 4500 block (of 7th Avenue N.E.) would be available to handle the anticipated parking overflow of 3 to 5 spaces related to the Revised Proposal. (Supplemental Decision, at P.2). DCLU further concluded that a combined spillover of 15 to 25 spaces does not represent more than a moderate adverse impact since the total spaces available in the study area range from 19 to 45. (Supplemental Decision, at p.4.).

6. DCLU contends that the redesign and reduction in the number of bedrooms from applicant's Revised Proposal, the mitigating measures which will be imposed on the proposed 40-unit apartment building, together with the mitigating measures imposed as conditions in the DNS dated September 18, 1986, for applicant's proposal meet the requirements of SEPA and the City commitments in the City-University agreement. (Supplemental Decision at p.4).

7. The appellant objected to and requested further review of the DCLU supplemental decision. Appellant requested the Hearing Examiner to remand the matter to DCLU a second time with instructions to provide an EIS or to "deny the permit." Appellant contends that the DCLU supplemental decision is not in compliance with the Seattle SEPA ordinance and all applicable City policies for the following reasons: DCLU (a) relied upon defective and insufficient parking data; (b) relied upon inappropriate and irrelevant parking ratios; (c) neglected to consider the cumulative effect of all the adjacent new development approved or proposed in the area; (d) failed to consider the cumulative effects of existing severe problems in traffic volumes, levels of service, safety, noise and pollution; and (e) failed to require additional programs and mitigation. (Appellant's Request for Further Review).

8. In addition to the reasons stated above for remanding or denying the permit, the appellant argued that DCLU's March 4, 1987 decision is defective because it is concerned only with parking and makes no reference to the cumulative impacts of the Revised Proposal on traffic volumes, levels of service, safety, noise and pollution.

9. Mr. Baronsky, on behalf of applicant, responded to the appellant's request for further review and requested the Hearing Examiner to affirm the DCLU determination because DCLU has (a) carefully considered the parking study admitted into evidence at the November 13, 1986, hearing (Exhibit 25) and concluded that the combined potential spillover of the Revised Proposal and the proposed 40 unit project to the north (as the two proposed new multi-residential projects within the relevant area) will not represent more than a moderate adverse impact on congestion, parking and streets; (b) correctly interpreted the City-University of Washington Agreement and reviewed and evaluated the Revised Proposal in light of the entire agreement (including Section E, entitled "Housing Policies"); and (c) acted within its discretion in directing that mitigating conditions imposed in its initial decision appropriately meet the requirements of relevant policies.

10. Mr. Baronsky defended DCLU's supplemental decision by pointing out that Exhibit 25 was admitted into evidence as a relevant study and properly considered by DCLU in its further analysis. According to Mr. Baronsky, a different study offered by appellant for its more pertinent and relevant data (Multi-Family Parking Study by the Seattle Engineering Department of June, 1986) "relates to an area outside of the area relevant for consideration." Baronsky claims that other large commercial projects on main thoroughfares in the University District should not be included in DCLU's evaluation of cumulative impacts. Finally, Mr. Baronsky argued that DCLU should not be required to consider a letter from the Puget Sound Air Pollution Control Agency stating and describing the extent of carbon monoxide problems in the University District in its evaluation pursuant to the remand.

Conclusions

1. The Hearing Examiner has jurisdiction over the parties and the subject matter of this appeal and request for further review. (Chapter 23.76, Seattle Municipal Code.)

2. DCLU's decision must be given substantial weight by the Hearing Examiner. (Section 23.76.022(C)(7).) Consequently, appellant must show that the Director's decision is clearly erroneous. Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981.)

3. In the Decision dated December 1, 1986, the Hearing Examiner clearly concluded that the analysis of cumulative effects "shall include" a reasonable assessment of the present and planned capacity of such public facilities as streets and parking areas, to serve the area affected by the proposal. It was not the Hearing Examiner's intent that the analysis be limited to such an assessment. Moreover, it was not the Hearing Examiner's intent that the Transportation Study (Exhibit 25) be the only data considered in performing the analysis. Indeed, DCLU also considered both the 1982 Institute of Transportation Engineers Informational Report and a City Engineering Department's Multi-family Parking Study in defining anticipated overflow parking for the purpose of analyzing anticipated impacts.

4. The Examiner does find it very curious that DCLU did not mention the 1986 Multi-Family Parking Study for the University District inasmuch as it seems to be the most recent study addressing many of the very issues which are raised by the appeal and within the scope of the remand. If it is true, as the appellant contends, that the Multi-Family Parking Study which was considered by DCLU to define anticipated overflow parking is a City-wide study, DCLU reasonably would be expected to utilize the 1986 University District Study or explain why it was not considered or relied upon.

5. DCLU's supplemental decision reflects its further evaluation of the cumulative effects of the Revised Proposal and the 40 unit apartment building to be constructed nearby on congestion, parking and streets. DCLU did not respond to the appellant's letter criticizing its consideration and resolution of the cumulative impacts of parking and describing its analysis as "inaccurate", possibly "illegal" and "grossly incomplete."

6. Based upon the record now before him, the Hearing Examiner is left with the distinct impression that DCLU has not properly and completely evaluated the cumulative effects of this project and others within the same general area of the Revised Proposal, including proposed residential and commercial developments whose presence would contribute to the cumulative impacts on congestion, parking and streets.

Decision

1. This application is remanded to the Department of Construction and Land Use for a thorough evaluation of the cumulative effects of the Revised Proposal (this project), and all others within the vicinity of the Revised Proposal on congestion, parking and streets. The "vicinity" review shall include the area from Roosevelt Way N.E. to 7th N.E. and between 45th and 50th N.E., and specifically commercial development Applications No. 8607074, No. 8701484, No. 8701389, No. 8506102; and residential development Application No. 8601005. The DCLU review shall specifically address the development status of those projects and shall be completed and mailed within 2 weeks of this order.

2. Following the second supplemental DCLU decision, applicant may appeal conditions imposed by submitting written objections to the Hearing Examiner within 7 business days of the DCLU mailing. No appeal fee will be required.

3. Appellant may request further review of the second DCLU supplemental decision by submitting written objections to the Hearing Examiner within 7 business days from the date of DCLU's mailing. No additional appeal fee will be required of appellant.

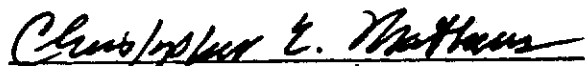
4. If a request for review of DCLU's second supplemental decision is received, the Hearing Examiner will issue a decision based upon the written submittals and responses thereto.

5. If no request for review of DCLU's second supplemental decision is received, the Hearing Examiner will issue a decision based upon the written submittals and responses thereto.

6. If no request for review is received, per items 3 and 4 directly above, the DCLU decision shall be considered as the Hearing Examiner's decision on this application.

7. The Hearing Examiner retains jurisdiction of this matter in accordance with the foregoing.

Entered this 17th day of April, 1987.


Christopher E. Mathews
Hearing Examiner Pro Tempore

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

Introduction

Philip Thiel appeals the decisions of the Director, Department of Construction and Land Use ("DCLU") to issue a determination of non-significance and to approve, with conditions, a proposal by the applicant, Mr. Donald Jones, to demolish a single family residence and construct a three (3) story, nine (9) unit apartment with basement parking at 4550 7th Avenue Northeast in Seattle. Parties to the proceeding were Philip Thiel, Appellant; Clay Lemming, DCLU; and Ronald Jones, Applicant, who was represented by Robert Baronsky, Esq.

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 November 13, 1986. The Hearing Examiner allowed the record to remain open through November 14, 1986 to allow:

- (1) the DCLU representative to provide the information relied upon in estimating trip generation at the proposed site; and
- (2) the appellant to provide a copy of the Joint City and University Goals and Policies.

The DCLU representative provided, in a timely manner, a copy of an Institute of Transportation Engineers Informational Report entitled "Trip Generation, Third Edition, 1982" written by Carl H. Burke, Chairman of Institute's Committees 6A-B, 6A-17 and 6A-25. The report shall be admitted into evidence and numbered Exhibit 33.

The appellant provided, in a timely manner, a copy of the "Joint Statement of Goals and Policies of the City of Seattle and the University of Washington", adopted by the University of Washington Board of Regents on May 13, 1977 and by the Seattle City Council on May 23, 1977. The joint statement shall be admitted into evidence and marked Exhibit 34.

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 prior to the close of the record, 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 is located on the east side of 7th Avenue N.E., approximately 60 ft. South of N.E. 47th Street. The property has 40 ft. of frontage on 7th Avenue N.E. and is 107 ft. in depth. A 16 ft. wide alley abuts the property on the east. The site is presently developed with a single family residence (Exhibit 21).

2. The site is located in a mid-rise (MR) zone which extends generally between 7th Avenue N.E. and 9th Avenue N.E.; and from 47th Street to a point approximately 90 ft. north of N.E. 45th Street. The MR zone is developed with 19 single family residences, 2 duplexes and 7 apartment buildings. The largest apartment buildings in the MR zone contains 136 units. An existing 114-unit apartment building abuts the subject property on the south. (Exhibit 21).

3. Property north of N.E. 47th Street is zoned L-2 and developed with a mixture of single family, duplex and triplex uses and several apartment buildings. The University Playground occupies a large portion of the property bordered by N.E. 47th Street and N.E. 50th Street and by 7th Avenue N.E. and 9th Avenue N.E. (Exhibit 21).

4. There is pending, an application, No. 8601005, to demolish five single family residences and to construct two apartment buildings, totaling 40 units, with a common underground parking garage, at the northeast corner of N.E. 47th Street and 7th Avenue N.E. (Exhibit 21).

5. The applicant originally proposed to construct a 3-story, 5-unit apartment containing a total of 20 bedrooms, with 5 parking spaces located adjacent to the alley. DCLU considered the proposed design to be a rooming house and advised the applicant that additional parking would be required. (Exhibit 21).

6. The applicant redesigned the structure and is now proposing a 3-story, 9-unit apartment containing a total of 18 bedrooms, with 9 parking spaces located in a basement garage, as well as an unspecified number of surface parking spaces adjacent to the alley. (Herein the "Revised Proposal").

7. The applicant's Revised Proposal is the subject of this public hearing.

8. After reviewing the Revised Proposal, DCLU found in its analysis and decision (Exhibit 21) that:

8.1 There will be an increase in noise levels and a decrease in air quality during demolition, site preparation and construction.

8.2 The noise and air quality impacts will be temporary and can be mitigated by limiting the hours of construction.

8.3 A slight increase in ambient noise levels over the long term can be anticipated due to increased activity on the site and additional vehicular movement.

8.4 There is potential for erosion during demolition, site preparation and construction; and an increase in impervious surfaces will increase the rate and amount of storm water runoff.

8.5 The impact of stormwater runoff can be mitigated by compliance with the Grading and Drainage Ordinance.

8.6 Increased levels of light due to normal building lighting and light from window areas can be expected. Additionally, some headlight glare may be visible to nearby residents.

8.7 There will be no adverse impacts due to the increased levels of light generated by the Revised Proposal

8.8 Landscaping, as required, will be placed on the site in accordance with an approved landscape plan, prior to final occupancy of the building.

8.9 Parking will be provided on site, with some increases in on-street parking demand.

8.10 The minimum parking requirements, Seattle Municipal Code Section 23.45.060(A)(1), "(1) off-street parking space per dwelling unit..." are satisfied by the Revised Proposal.

8.11 Transit ridership may increase, however no adverse (parking) impact has been identified.

8.12 A survey (taken during the school year) of available on-street parking spaces in the vicinity provided by the applicant, indicates that there are more than enough spaces to handle any parking spillover.

8.13 To minimize parking shortfalls, the Revised Proposal should be conditionally approved. The condition recommended by DCLU is that all potential residents be informed that only one resident parking space is available on-site and that tenants may not be charged a fee, in addition to the rent, to park on-site.

9. Based upon its findings and after review of a completed environmental checklist and other information on file, DCLU made a threshold determination as required by the State Environmental Policy Act (RCW 43.21C).

10. DCLU concluded that the revised project would not have a significant impact upon the environment, and that an EIS is not required. (RCW 43.21C.030(2)(C)).

11. DCLU approved the Revised Proposal subject to the following conditions:

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CONDITIONS

Conditions of Approval After Issuance of a Building Permit

1. Loud equipment including, but not limited to, pavement breakers, pile drivers, jackhammers, sandblasting tools, crawlers, tractors, compactors, drills, graders, compressors and other similar equipment is strictly limited to normal working hours (7:30 a.m. to 6:00 p.m.) on nonholiday weekdays.
2. The owner and/or contractor shall take the necessary steps on a daily basis to keep the alley and the street free from mud and/or construction debris.

Conditions of approval Prior to Final Occupancy of the Building

1. Landscaping shall be provided per approved plan prior to final occupancy of the building. Maintenance of the landscaping shall be the responsibility of the owner(s).
2. Any lighting of the building and/or parking area shall be shielded and directed downward and away from adjoining residential uses.

Conditions - Permanent

1. The applicant and/or owner (s) of the property shall inform potential residents in lease and/or sale agreements that only one resident parking space is available on-site, and that the tenants shall not be charged a fee in addition to the rent, to park on-site.
2. Maintenance of the landscaping shall be the responsibility of the owner(s).
12. The applicant concurred with the DCLU decision, as conditioned.
13. The appellant objected to the decision, and alleged that DCLU failed to:
 - 13.1 "require a focused EIS and/or a comprehensive and rigorous traffic study of local parking problems and the related impact on University District traffic problems..."
 - 13.2 "recognize and deal with the cumulative impact of this project in combination with those of the other projects pending in this neighborhood..."
 - 13.3 "impose adequate and effective mitigating measures as conditions of this project..."
 - 13.4 "... take into account the joint University-City agreement signed in April. 1983 regarding the impact of all new construction in the University District ..." and,
 - 13.5 "... give proper effect to city policies, including but not limited to those established in the Seattle SEPA Policies Ordinance. (Exhibits 1,2,3, and 34 and appeal letter dated October 3, 1986).

14. The Seattle SEPA Ordinance provides that subject to certain limitations any governmental action or public or private proposals that are not exempt may be conditioned or denied under S.E.P.A. to mitigate environmental impact. (Section 25.05.660(1), Exhibit 1)

15. One such limitation is that conditions or denials must be based upon policies, plans, rules or regulations formally designated in 25.05.902, as a basis for the exercise of substantive authority; and must be in effect when the DNS or DEIS is issued. (Section 25.05.660(1)(a), (Exhibit 1)

16. The Seattle S.E.P.A. Ordinance provides, in relevant part that ... "2. Policies. In assessing the environmental impacts of a proposal and in determining the need for conditioning or denial, pursuant to Section 25.05.660, the city official or authorizing agency shall utilize S.E.P.A., and shall use other environmentally related policies adopted by the City Council in the form of resolutions, codes, ordinances, regulations or plans identified in appendix A" (emphasis added) (Section 25.05.902(B)(2)(Exhibit 1)

17. The Seattle S.E.P.A. Ordinance further provides in relevant part that ... "C. cumulative effects ... 1. Policy intent. Recognizing that: (a) Comprehensive land use controls and other regulations cannot always anticipate or eliminate adverse impacts upon public facilities and services, natural systems or the surrounding area; and (b) A single development, use or modification, though otherwise consistent with zoning regulations, may create adverse impacts upon facilities and services (etc)... and a single development may induce, due to a causal relationship, other developments, which ultimately will adversely affect public facilities and services (etc) ... It is the policy of the city to condition or deny proposals to minimize or prevent such adverse environmental impacts from occurring;... 2. Policies ... (a) The analysis of cumulative effect shall include a reasonable assessment of the present and planned capacity of such public facilities as ... streets ... and parking areas to serve the area affected by the proposal ... (d). Based in part upon such analysis, a project may be modified to lessen its demand for support services or facilities or its impact on natural systems. Modifications may also be required to provide for subsequent projects which can be expected to share the need for support services and facilities or use of the natural systems' capacity." (Emphasis added) (Section 25.05.902(c)(1), (2)(a) and (d) (exhibit 1).

18. Among the Environmentally related policies adopted by the City Council and identified in Exhibit A of the Seattle S.E.P.A. Ordinance, is Resolution R.25532, referred to as City and University of Washington Joint Statement of Goals. (Exhibit 1).

19. The City and the University agreed, among other things, to cooperatively manage and plan their resources in order to minimize the adverse impact of transportation on campus and adjacent areas; and to take steps to minimize adverse parking impacts on communities surrounding the University. (Exhibit 34, pp/ 1-E4 to 1-E5)

20. The Joint Statement establishes a "city-community advisory structure" to advise the city and participate in the planning process. (Exhibit 34, pp. 1-E-6 to 1-E-7)

21. Based upon the testimony, the Hearing Examiner finds that DCLU did not properly consider the policies of the Joint Statement in reaching its decision.

22. The appellant offered an additional agreement between the City and the University dated April, 1983, (Exhibits 2 and 3). The Hearing Examiner finds that the April 1983, agreement was entered with the express intent of resolving certain specific concerns identified in the process of reviewing the University's then, proposed expansion of the University Hospital. Consequently, the agreement is inapplicable (Exhibit 3, p. A-1, recitals paragraph 4).

23. It is the City's policy to balance the need for new developments to meet approximate parking demand against the counterveiling need to minimize the costs of housing associated with required off street parking. It is also the city's policy to encourage the use of public transit and discourage the use of automobiles. In recognition of the City's Policies and counterveiling needs, the minimum city wide parking ratio is one off-street space per housing unit. (Exhibit 4. Section 23.45.060(A)).

24. There is conflicting evidence about parking utilization patterns and the availability of off street parking in the immediate vicinity of the Revised Project. (Exhibits 5,6,7,8,9,10,11,12,14,15,16,17,18,19,21,25,26,27,& 31). DCLU and the applicant contend adequate that parking exists. The appellant and other community residents contend that there is a serious shortage of parking in the vicinity of the revised project, which leads to illegal parking inconvenience and reduced safety.

25. All parties agree that residents of housing located in the vicinity of the revised project and their visitors, park in alleys and on their property during certain time periods. (Exhibits 15,16,17,25,26, and 27).

26. Comment letters received from community members echo the appellants concern about parking problems and the failure of DCLU to consider the cumulative effect of the revised project and other proposed developments on neighborhood congestion, traffic, parking, air quality, noise, lighting conditions and safety (Exhibits 9,10,11,12,13,14 and miscellaneous letters contained in the Hearing Examiner's files).

27. A transportation study for a proposed 40 unit, 68 bedroom apartment project located across the street from the Revised Project, at 4700 7th Avenue, was completed after publication of the DCLU decision in this case. (Exhibit 25). The study reviewed and analyzed numerous other studies which have dealt with the issue of parking demand generated by apartments in the city and in the University District. (Exhibit 25, pp. 6-7). DCLU did not have the benefit of the study and therefore could not have fully evaluated the cumulative effects of the Revised Project in selecting mitigating measures.

28. According to its representative, DCLU relied upon experience, the Institute of Transportation Engineers Informational Report (Exhibit 33), other traffic information (Exhibit 29), and the city land use code (Section 23.45.060, Exhibit 20) in arriving at its decision.

29. The applicant testified that the scale of the Revised Project is consistent with applicable zoning requirements and compatible with existing and other planned developments in the vicinity (Exhibit 30).

Conclusion

1. THE Hearing Examiner has jurisdiction over the parties and the subject matter of this appeal. (Section 23.76.022)
2. DCLU's decision must be given substantial weight by the Hearing Examiner. (Section 23.76.022(c)(7)). Consequently, the appellant must show that the Director's decision is clearly erroneous. Brown v. Tacoma, 30 Wn. app -762, 637 p.2d 1005 (1981).
3. The Seattle S.E.P.A. Ordinance requires DCLU to utilize S.E.P.A. and other environmentally related policies adopted by the City Council in assessing the environmental impacts of a proposal and in determining the need for the imposition of conditions. (Section 25.05.902). The Joint Statement should be utilized by DCLU in assessing the environmental impacts of the Revised Project.
4. It is the policy of the City of Seattle to condition proposals to prevent or minimize the cumulative effects of a single development on public facilities and services, natural systems or the surrounding area. The analysis of cumulative effects shall include a reasonable assessment of the present and planned capacity of such public facilities as streets and parking areas, to serve the area affected by the proposal. (Section 25.05.902). The Transportation Study (Exhibit 25) may be of value to the city in evaluating the cumulative effects of the Revised Project and the 40 unit apartment building to be constructed nearby, on parking, streets and congestion.
5. For the reasons set forth above, the Hearing Examiner holds that the Director's decision, issuing a declaration of nonsignificance and conditionally approving the Revised Project, was not made in compliance with the Seattle S.E.P.A. Ordinance and all applicable city policies.

Decision

1. This application is remanded to the Department of Construction and Land Use for further evaluation of the cumulative effects of this project and others on congestion, parking and streets; and, if appropriate, for revision of its decision imposing conditions to mitigate such cumulative effects.
2. Following the supplemental DCLU decision applicant may appeal conditions imposed on submitting written objections to the Hearing Examiner within 7 business days of the DCLU mailing date. The objections must be accompanied by a \$25.00 appeal fee payable to the City Treasurer.
3. Appellant may request further review of the DCLU supplemental decision by submitting written objections to the Hearing Examiner within 7 business days from the date of DCLU's mailing. No additional appeal fee will be required of appellant.
4. If a request for review of DCLU's supplemental decision is received, the Hearing Examiner will issue a decision based upon the written submittals and responses thereto.
5. If no request for review is received, per items 2 and 3 directly above, the DCLU decision shall be considered as the Hearing Examiner's decision on this application.
6. The Hearing Examiner retains jurisdiction of this matter in accordance with the foregoing.

Entered this 1st day of ~~November~~^{December}, 1986

Christopher E. Mathews
Christopher E. Mathews
Hearing Examiner Pro Tempore