

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeals of

THE PALATINE SINGLE FAMILY ASSOCIATION
DANIEL S. GOTTLIEB ET AL.
JOHN LINKS

FILE NO. MUP-86-083(W)
FILE NO. MUP-86-084(W)
FILE NO. MUP-86-086(W)
APPLICATION NO. 8604062

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

Introduction

Appellants filed separate challenges to the DCLU Director's issuance of a declaration of non-significance for two-16 unit apartment structures proposed for 4421 Greenwood Avenue North.

The appellants exercised the right to appeal pursuant to Chapters 23.76 and 25.05, Seattle Municipal Code.

The appeals were heard together before the Hearing Examiner on December 17 and December 18, 1986. The record remained open to December 22, 1986 for briefs.

Parties to the proceedings were: Palatine Single Family Association by Stan Macklow, pro se; Daniel Gottlieb, Esq. et al. by Robert Heller, Riddell, Williams, Bullitt and Walkinshaw; applicant John Links by Jay Derr and Amy Kosterlitz, Buck and Gordon, P.S.; and the DCLU Director by land use specialist Julia Gibb.

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 following a visual 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. Applicant John Links proposes to demolish two single family structures and construct on-site two four-story apartment buildings, 32 units, and basement parking for 32 vehicles. Applicant intends to include the parking fee within the rent. The DCLU Director issued a determination of non-significance (DNS) conditioned on several items, including a prohibition on vehicular access to the single family zoned area west of the site.

2. In this appeal applicant sought to have the access condition deleted. MUP-86-086(W).

3. Daniel Gottlieb and other vicinity residents challenged the DNS and requested the Hearing Examiner to deny the master use permit or require additional mitigating measures pursuant to the provisions of the State Environmental Protection Act (SEPA). MUP-86-084(W).

4. The Palatine Single Family Association also filed an appeal, MUP-86-083(W), and requested an EIS or further bulk, scale and landscaping mitigation.

5. Following a prehearing conference on this matter, the three appeals were heard together. At the conference, the Hearing Examiner denied appellants Gottlieb's request to suspend the SEPA hearing pending a Seattle Municipal Code Chapter 23.88 interpretation. Other rulings are of that record.

6. The subject site is a 13,000 sq. ft. area "through" parcel roughly 100 ft. deep. The site has 130 ft. of frontage on east adjacent Greenwood Avenue North and 130 ft. of frontage on west adjacent Palatine Avenue North. The site consists of three lots and is developed with two single family structures described by one appellant witness as "trashy."

7. Topographically, the site slopes moderately from east to west, at least to the rear (west) of the two dwellings. From this point to Palatine there is a steeply declining slope that is covered with berry vines, bushes and other wild vegetation. The site's steepest grade, 50 percent, is in the southwest corner.

8. Geographically, the site begins some two lots south of North 45th Street. Phinney Avenue North is one block east of Greenwood, and 1st Avenue N.W. is one block west of Palatine. North 46th Street, described as a busy east-west arterial, is one block north. It connects Ballard, Aurora and the (I-5) freeway.

9. The vicinity street configuration is somewhat irregular. The west end of North 45th dead ends at 1st N.W., and the west ends of North 44th and North 43rd Streets generally discontinue at Greenwood Avenue North. With the exception of a connecting stairway near North 43rd Street the block within which the site is located extends in uninterrupted fashion from North 45th Street south to North 42nd Street.

10. There is a portion of Palatine near the North 43rd reconnect which has limited visibility due to the rise of the street segment. Appellants' Photo Exhibit 5. Near the proposal site, Greenwood Avenue tends to slope steadily south. There is also a 7-10 ft. grade difference between the lower (west) and higher (east) sides of Greenwood.

11. Palatine, Phinney and Greenwood Avenues North measure approximately 25 ft. wide curb-to-curb. Parking is prohibited along the east side of Greenwood at least from North 46th Street to North 42nd. Parking is also prohibited on the west side of Palatine Avenue. Parking is allowed on both sides of North 45th at Greenwood. However, the curvature at Palatine and 45th increases the risk of damage to cars parked on both sides of 45th. In response residents attempt to avoid parking along this block front.

12. The subject site is within the western edge of a large Lowrise 3 (L-3), multi-family zone that continues some 4.5 blocks east, and south to North 42nd Street. The L-3 zone is developed with a mix of 2-story, single family homes as well as multifamily development. Directly east of the subject site is a 3-story apartment building. One of the stories is for open parking. A 4-story apartment building is located near 44th and Greenwood, approximately 1 block from the subject site. West of the site, down the slope to Palatine's west side and beyond is a large Single Family 5000 (SF 5000) zone developed with modest single family structures. This single family development would suffer from vehicular exhaust, noise, light and other effects of the proposed multi-family development if the proposal's vehicular access were permitted to this street.

13. The two 16-unit apartment buildings proposed for the site would be generally separated by a 10 ft. middle "slot." Both buildings would front to Greenwood North, would measure roughly 37 ft. from grade, would be 4-stories, and would be extensively modulated. The elevator penthouse will extend vertically to 40 ft. The more southerly building proposed is 51 ft. wide and 75 ft. deep; the more northerly 47 ft. wide and 78 ft. deep. Front and rear setbacks would be the 10 ft. required. South and north sideyard setbacks would be 6 and 5 ft. respectively.

14. The buildings would be stepped down north to south,

somewhat congruent with the Greenwood street grade.

15. Applicant proposes 5281 sq. ft. of open space between and around the buildings, exclusive of driveway or rooftop areas. Minimum required landscaping on 3250 sq. ft. As a condition of the DNS, DCLU required installation of landscaping "per approved plan" prior to occupancy and maintenance of landscaping by the owner.

16. One-story, approximately 20 ft. high, pitched roof dwellings predominate along the west side of Greenwood. The structures on the east side of Greenwood are principally 2-story dwellings that look over the single-story dwellings to Ballard and to the Sound. With this pattern in mind, appellants argue that applicant's proposed flat-roof structures will be grossly out of scale with existing development. One illustrative modification to applicant's design shows a single 2-story building with a sloped roof. Applicant rejected the design as infeasible.

17. The more elevated properties on the east side of Greenwood would suffer a loss of canal, mountain range and other private, westerly views with the construction of the proposed buildings. Many residents therefore feel that the structures proposed will drastically reduce realty values. There is also evidence in the record, however, that multi-family zoning and development enhance the subject land values.

18. The Hearing Examiner finds that the view from Palatine of the subject proposal would be marginal because of the steep, intervening slope and vegetation that would remain. Palatine pedestrians would, for example, still perceive a hillside unless they made a specific effort to engage a vertical view of the project site. The new buildings will also increase the length and frequency of shadows on nearby properties. No public property will be shaded by the proposal.

19. Applicant's Exhibit 16 is a Seattle Engineering Department accident data report. It records that from January 1, 1981 to August 26, 1986 the unsignaled North 45th-Greenwood Avenue North intersection was the site of 3 collisions in 1981, 1 in 1982, 3 in 1983, 2 in 1984, 1 in 1985 and none in 1986. The 1985 accident, per the legend, involved a parked car. Appellants' more general testimony on this subject was that the corner has been the site of 7 accidents in "the past 5 years."

20. Where there are more than 3 accidents in 12 months or more than 2 per year in a three year period at a specific site, SED begins to examine whether a traffic circle or other device is needed. The SED witness testified that no exceptional need was presented for the subject intersection.

21. The Seattle Engineering Department (SED) projected parking spillover for the project is provided at p. 3 of the DCLU analysis and decision:

Estimated Peak Parking Spillover	
13-2 bedroom units x 2 spaces/unit	= 26 spaces
19-1 bedroom units x 1 space/unit	19 spaces
Total parking demand	45 spaces
less on-site provided	32 spaces
Total peak spillover	13 spaces

22. The Department of Construction and Land Use adopted the SED conclusion that with 66-109 available spaces within the study area, the street parking availability could accommodate the spillover. See Exhibit 20, SED Memorandum to DCLU. SED typically considers arterial or topographical breaks, stairs and other items in establishing a parking study area, and considers 2 1/2 - 3 blocks (no more than 800 ft. from the project) a reasonable distance from site to parked vehicle.

23. DCLU and SED estimate a projected multi-family parking demand at 1.5 vehicles per proposed unit. This differs from the 1.5 cars/-bedroom unit 1.9 cars/2-bedroom units employed by DCLU in Application 8601980, Hearing Examiner File No. MUP-86-056(W). According to DCLU and SED testimony, the 1.5 figure includes guest parking.

24. Regarding drainage, applicant's engineer explained that storm drainage would be routed to a Palatine curb opening, and to the proper sewer. No specific drainage plan was prepared, continued the witness, because SED waived the requirement for the plan. See Exhibit 25.

25. Although the subject site is underlain by extremely dense glacial till, sufficient to bear the construction proposed, there is an upper unit of fill material 2-12 ft. in thickness. For construction proposed, the fill would be removed and excavation done so that the "native, competent soil" would be exposed for foundation and footing. The glacial till is "virtually incompressible," generally will not absorb water and is considered as the ideal base for a structure. No proof was presented that the excavation or construction would affect adjacent properties because of soil or subsurface conditions present. The subject site is not considered as a "slide area." The evidence failed to show that foundations of vicinity residences were built on glacial till or that cracked foundations resulted in movement or instability of the till.

26. One recommendation by Geotech consultants, Exhibit 11, is that a survey of adjacent properties be undertaken to "document existing conditions of houses and foundations." to facilitate resolution of construction damage claims that may follow construction proposed.

27. It is reasonably estimated that 192 vehicular trips per day would be generated by the completed project (6 x 32 units). The peak traffic at 8-12 percent is estimated at 15-24 vehicular trips. Environmental Checklist Exhibit 46.

28. No change is expected in the P.M. peak Level of Service (L)(S)(B) at the Phinney - 46th signalized intersection as a result of new traffic generated by the proposal.

29. Appellant's witness determined that 219 parking spaces existed within a study area which extended generally south to North 42nd Street; west to the east side of 1st Avenue N.W; north to the south side of North 45th Street; and east to the west side of Francis Avenue North. Exhibit 3. This witness continued, and the Hearing Examiner finds, that there are periods of shortages of on-street parking. Vehicles are parked on planting strips, curbs and across driveways. The block within which the subject property is located was shown to be 99 percent occupied, and the west adjacent block 73 percent occupied per the Friday, Sunday and Monday counts by the witness. The parking shortage intensifies as one proceeds east of Greenwood through the L-3 zone. Several nearby projects are also expected to add to the parking and traffic environment.

30. Applicant's witness' parking traffic study area extended generally to Phinney Avenue North. Applicant's results showed a parking supply of 162 spaces, 131 of which were occupied. The applicant's witness did not count autos parked on Greenwood planting strips between North 43rd and North 45th (16 used). Four of the spaces (1 used) were presented as directly north of the site between Palatine and Greenwood Avenue North.

31. Based on the lot area the approximate area per unit is 406.25 sq. ft. The L-3 projected density was 654 sq. ft./unit. Exhibit 32.

Conclusions

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

2. Seattle Municipal Code Section 23.76.22(C)(7) requires that the Director's environmental determination be accorded substantial weight. See also Seattle Municipal Code Section 25.05.680(1)(c). Therefore, respective appellants must show that the DCLU decision was clearly erroneous.

3. If a proposal may have probable adverse environmental impacts that are significant, a declaration of significance and an EIS are required. Seattle Municipal Code Section 25.05.360(1). If not, a DNS is appropriate. Seattle Municipal Code Section 25.05.340. The term "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. In this context, the Hearing Examiner has no jurisdiction to determine whether the particular zoning (L-3) is appropriate. Rather, the specific questions relate to the anticipated impact on the environment of the proposal.

5. The various adverse impacts must be acknowledged. The proposed structures would block private views from the east. The structures proposed would be strikingly different in architectural style, intensity and density from adjacent properties that are principally 1-story, peaked roof structures. And, parking and traffic will be intensified.

6. On the other hand, the subject site is zoned L-3, for multi-family use. It is separated from the west adjacent single family zone by a substantial vegetated hillside. Proposed height, bulk and scale were not shown to be in discord with L-3 development standards. Extensive modulation and landscaping are proposed. No public views will be impacted, and such shading that will occur will be of private properties. The building is designed to slope north to south along with the Greenwood Street grade. Directly east of the project site, at a higher elevation per vicinity topography, is a 3-story apartment building. Also nearby (to the east) is a 4-story apartment structure at 44th and Greenwood.

7. Under these circumstances, DCLU's decision to issue a DNS cannot be ruled as clearly erroneous. No EIS is required for this project.

8. Although the impacts were not shown to be significantly adverse, the proposal will have some negative impacts on the vicinity. Consequently the proposal may be conditioned under SEPA to mitigate the specific, clearly identified environmental impacts. Seattle Municipal Code Section 25.05.660.

9. One particularized negative impact on the west adjoining single family zone expected from the project was identified and addressed by the DCLU prohibition against Palatine Avenue vehicular access. The prohibition protects the edge of this single family zone from the exhaust, noise and other impacts of the proposed east adjacent use. Seattle Municipal Code Section 23.16.02(A), and the condition was not shown to be unreasonable. Seattle Municipal Code Section 25.05.660(A)(3). The condition is therefore affirmed.

10. Utilizing the Weintraub MUP-86-056(W) figures, the projected parking spillover will be 21.2 vehicles. Utilizing the more recent SED 1.5 ratio adopted by DCLU, the spillover is 13 vehicles. Appellants' figures show the west adjacent block to

have had 73 percent of on-street parking spaces utilized and the proposal site's block as 99 percent occupied. It is recognized that available parking decreases as one proceeds east. If one assumes that the project spillover parking will be east, it would seriously exacerbate that parking circumstance. However, on-street parking is available within the project site block and on the west adjacent block. Although there are identified traffic risks, parking on-street is also available along North 45th Street. Given the burden of proof in this case the Hearing Examiner cannot assume that all planting strip, driveway and other aberrational parking is totally due to non-availability of parking. The Hearing Examiner therefore concludes that no mitigation is required to address the anticipated spillover.

11. The evidence fails to document any adverse impact to soils or subsurface conditions. Applicant proposes to excavate past the more unstable fill material to reach the level of glacial till that will withstand the bearing pressure. The till will generally not absorb moisture. (In addition, DCLU has required a complete soils report and the presence of a licensed geotechnical engineer on site during excavation and construction.) Based on the foregoing it would be unreasonable to require a foundation assessment of nearby properties at this juncture.

12. As to height, bulk and scale, the City Council decision of In re Oden specifies that it is "inappropriate to require a reduction in scale merely because the surrounding buildings in the same...zone are developed to a lower height." C.F. No. 293557. Oden then specified that the project must be shown to be on an edge where the zoning fails to address the transition or the project must present unusual, unanticipated circumstances in order to justify "a reduction in height below the zoned maximum."

13. The Oden stipulations are not met here. The project site is separated from the single family zone by a street and a significant, vegetated slope. The project site is within the western edge of the L-3 zone that is already developed with 3 and 4-story multi-family dwellings. There is marginal evidence on which to conclude that unusual, noncontemplated zoning circumstances are present here. Again, the structures and their aesthetic impacts on the L-3 zoned development can be viewed as unfortunate. Nevertheless, SEPA mitigation is an overlay to the legislated zoning, and not a substitution therefor. Further, SEPA provides no protection of private views.

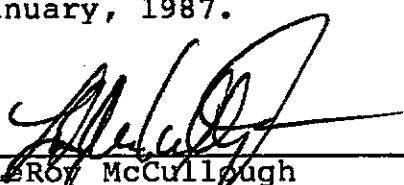
14. As to grading and drainage, applicant understood that an exemption had been granted from the requirement of a drainage control plan. No SED specific exemption is of record. There is no indication from the Code language that any such exemption is authorized.

15. Nevertheless, the Hearing Examiner is not persuaded that he has jurisdiction in the context of SEPA to require a drainage control plan as a condition of SEPA approval.

Decision

The DCLU determination is therefore AFFIRMED.

Entered this 6th day of January, 1987.


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 an 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 20.05.680(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.