

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

In the Matter of the Appeals of

ACKERLEY COMMUNICATIONS OF THE
NORTHWEST, INC., and

FILE NO. MUP-86-081(W)

FRANK R. CHESLEY

FILE NO. MUP-86-087(W)
APPLICATION NO. 8600347

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

Introduction

Ackerley Communications of the Northwest, Inc., appeals the decision of the Director, Department of the Construction and Land Use, to impose certain conditions of approval on the proposed billboard at 2707 Eastlake Avenue East. Frank R. Chesley challenged the failure of the Department of Construction and Land Use Director to require an environmental impact statement.

The appellants 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 December 1, 1986.

Parties to the proceedings were: appellant Ackerley Communications by Andrew Sutcliffe, director of communications; appellant Chesley, pro se and assisted by Jules James, Eastlake Community Council President; and the DCLU Director by Jay Laughlin, 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. Ackerley Communications proposes to erect and maintain a southerly facing illuminated billboard advertising sign at 2707 Eastlake Avenue E. As proposed the structure will measure 44 ft. from grade to sign top, 12 ft. in width and 25 ft. high. It will rest on one steel support column.

2. The essentially flat site is located in the Eastlake community within what was denoted as a CG (General Commercial) zone at the time of application. As of June 9, 1986, the site's zoning is NC2-40'. The immediate site is developed with a single story deli - grocery and accessory parking. South adjacent is an 18 ft. plus high, flat - roofed building. See Exhibit 10. Directly north is Daly's Drive-In and an auto service station.

3. Other vicinity development generally includes 1 - 2 story office buildings and stores along Eastlake's west side and a mix of single family and two and three - story multi - family structures along Eastlake's east side.

4. The Hearing Examiner adopts the Department of Construction and Land Use finding that the average structure height is approximately 20 ft. (roughly 1 1/2 - 2 stories).

5. The Department of Construction and Land Use (DCLU) issued a determination of nonsignificance with respect to the proposal and imposed three conditions. During construction, use of loud equipment "is strictly limited to normal working hours (7:30 a.m. to 6:00 p.m.) on non-holiday weekdays."

6. Permanent conditions were stated as follows:

1. Height of the billboard shall be restricted to 25 feet to conform to the prevailing heights of existing development. As the heights of the buildings adjacent to the sign increase, the sign at the subject site may also be permitted to be increased in height to remain complementary to and harmonious with the surrounding buildings, and a new SEPA application will be needed to allow for public comment and review of impacts of a higher sign at this location.

2. Hours of illumination shall be limited from dusk until 10:00 p.m. to mitigate light and glare impacts on adjacent residential properties.

7. Two appeals challenged the DCLU decision. In MUP-86-087(W) Frank Chesley requested that an environmental impact statement be issued. In Chesley's opinion, the approved sign would be out-of-scale, depress realty values and block views of Lake Union. Chesley's further opinion is that Eastlake already has an excessive number of eyesores (aka billboards) that spell contempt for the aesthetic and other elements of the environment. Chesley would like to see the billboard application denied.

8. Chesley's sentiments were echoed and supplemented by letters and petitions submitted to DCLU prior to the department's decision. Comments in one letter envisioned the sign as "a distraction to motorists" that would "decrease property values, cause an obstruction to views and be detrimental to the aesthetics of the area." Other letters called the proposed sign "an additional blight on a street already overburdened."

9. DCLU annotations to the Environmental Checklist prepared by applicant indicates that views from single family and apartment structures to the east "would in fact be altered ..." page 9, Aesthetics. DCLU also noted that the billboard would be aesthetically offensive to some residents of adjacent residential development.

10. Jules James, Chesley's witness, protested that Eastlake continues the fight to remain a neighborhood; that a 34 ft. sign, suggested as a compromise, would still be out of character; and that such a sign would obstrusively rise to the level of Fairview Avenue and to the significant Rogers Playground.

11. James requested that the Hearing Examiner remand the matter for the DCLU interpretation of whether the sign proposed should be considered a "roof top" sign since the sign would in fact peer over neighboring roofs. James' request was denied.

12. Project applicant also appealed the DCLU decision. While unhappy with the restrictions on the hours of illumination, Ackerley's only challenge was to the restriction of the billboard height to 25 ft. In Ackerley's view, a 25 ft. sign would be economically infeasible, thus unuseable.

13. The DCLU analyst arrived at the 25 ft. limitation by assessing the prevailing height in the area and requiring the sign to comport with the development height extant.

14. Disclaiming specialized knowledge of the computations involved, Ackerley's witness testified credibly that as a general rule regarding "read time" 9 seconds is preferred, that a 7 second read time is "ok", but that read time of less than 7 seconds is economically unviable. Application of this rule to the subject site, continued the witness, indicated an optimal sign height of 44 ft.

15. Ackerley's witness did indicate that a height of 34 ft. would be the minimally acceptable height for read time and advertising. This is because the building south adjacent to the proposed sign site appears as a two-story structure ("Beautyworks") with a front parapet to Eastlake Avenue. Applicant wishes to erect the sign such that the sign's lower border will rise a minimum of 3 - 4 ft. above the Beautyworks building's parapet. The 34 ft. minimum is derived from considering the sign's vertical measure (12 ft.); and the adjacent building's height with parapet (18 ft. plus).

16. Neither the Department of Construction and Land Use nor appellant Chesley offered any testimony to rebut applicant's assertion regarding "read time" or optimal height.

Conclusion

1. The Hearing Examiner has jurisdiction of this matter pursuant to Chapter 25.05, environmental protection, and Chapter 23.76, the Master Use Permit Ordinance.

2. The Hearing Examiner must accord "substantial weight" to the Department of Construction and Land Use Director's determination, Seattle Municipal Code Section 25.05.680(B)(3), Seattle Municipal Code Section 23.76.022(C)(7). Respective appellants must therefore show the DCLU decision at issue to be clearly erroneous.

3. If the Department of Construction and Land Use properly determines that a proposal will not yield "probable significant adverse environmental impacts" it "shall prepare and issue a determination of nonsignificance (DNS) ..." Seattle Municipal Code Section 25.05.340. If a proposal is determined to have a probable significant adverse environmental impact, the Department of Construction and Land Use "shall prepare and issue a determination of significance (DS)" and the environmental impact statement (EIS) process shall commence. Seattle Municipal Code Section 25.05.360.

4. Significant adverse environmental impacts that cannot be reasonably mitigated must be identified in an EIS before a proposal may be denied under SEPA. Seattle Municipal Code Section 25.05.660(A)(6). Thus, appellant Chesley is correct in suggesting that an EIS be issued as a condition precedent to denial of the proposal under SEPA. Appellant Chesley, however, failed to overcome the substantial weight accorded the Department of Construction and Land Use determination. Therefore, no EIS is required.

5. It was well established that a billboard injected into this area would affect the private views from the single and multi-family residential structures to the east. Nevertheless the sign would be located in a former CG zone in a busy area of mixed commercial and residential development. Further, appellant's evidence failed to show any significant impact on property values or on vehicular safety. Consequently, it was not established as clearly erroneous for the Department of Construction and Land Use to have issued a DNS and the proposal may not be denied pursuant to the provisions of SEPA.

6. Appellant Chesley through witness James has also suggested that the Hearing Examiner apply the Land Use Policies for Neighborhood Commercial Areas to deny the proposal. Specifically referenced is Seattle Municipal Code Section 23.55.14(E)(2), cited as prohibiting off-premise rooftop signs. Appellant's Exhibit 7. As an initial proposition, the Hearing Examiner has no reason to consider the sign proposed to be erected on a single pole as a "rooftop" sign. No remand is appropriate to resolve that issue in this SEPA context. Secondly, the proposal application vests to CG zoning. Therefore, the present neighborhood Commercial Code designation and attendant prohibitions against rooftop signs are inapplicable to this project as related to the Chesley appeal. Appellant Chesley specifically requested an EIS, to be distinguished from further conditioning of the proposal. Had the latter been requested, Policies, Zoning Code amendments, and similar materials, including the NC Policies, would be appropriate considerations. Seattle Municipal Code Section 25.05.660, Seattle Municipal Code Section 25.05.902 (reference Appendix A). Cf. In re Appeal of Ackerly Communications, Hearing Examiner File No. MUP 86-073(W), DCLU Application No. 8600347 (2824 Rainier Avenue South).

7. The remaining question is the propriety of the 25 ft. height limit imposed by the DCLU pursuant to SEPA. The mitigation measure proposed does relate to a specific, adverse impact on views, an element included within the Environmental Checklist category of aesthetics. The DCLU decision also notes that the billboard will be aesthetically offensive to some residents of adjacent residential development. Seattle Municipal Code Section 25.05.660.

8. As part of the assembled "resolutions, codes, ordinances ... or plans identified in Appendix A," Seattle Municipal Code 25.05.902(2)(b), the Neighborhood Commercial Areas Land Use Policies on signs and billboards are appropriate items for review in this question of mitigation. Those policies refer to present Building Code provisions.

9. The extracted intent includes the encouragement of sign designs that "attract and invite rather than demand" public attention; the encouragement of signs that "enhance the visual environment of the city;" the protection of the public safety and interest; as well as the following objectives:

C. To promote the enhancement of business and residential properties and neighborhoods by fostering the erection of signs complementary to the buildings and uses to which they relate and which are harmonious with their surrounding ...

E. To protect the right of business to identify its premises and advertise its products through the use of signs without undue hindrance or obstruction.

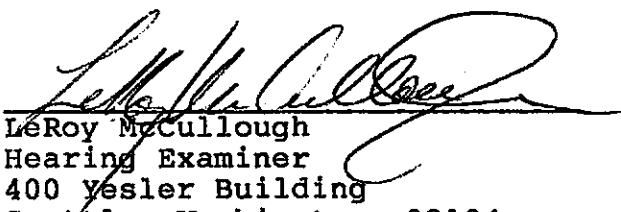
10. DCLU concluded with reference to the intent that the height of the billboard should be lowered "to a maximum of 25 ft. in height compatible with that of the adjacent commercial and residential building." Decision, p.5.

11. However, the unrefuted and credible evidence is that the 12 ft. vertical measurement of the rectangle (and its horizontal dimension) as proposed would be the minimum necessary in order for the applicant to have use of the sign "without undue hindrance or obstruction" by the adjacent building and parapet. Further, in relation to the actual identified impact regarding, a 25 ft. sign height limit at the subject location would not be reasonable. Seattle Municipal Code 25.05.660 (A)(3). The Department of Construction and Land Use condition is therefore amended only to allow the sign not to exceed 34 ft. in height.

Decision

The Department of Construction and Land Use Director's decision is MODIFIED to allow the sign not to exceed 34 ft. in height from grade.

Entered this 16th day of December, 1986.


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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.