

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

In the Matter of the Appeal of  
**CINEPLEX ODEON**

FILE NO. MUP-87-036(W) and  
MUP-87-037(W)

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

APPLICATION NO. 8602619 and  
8602983

**Introduction**

Appellant, Cineplex Odeon, challenges two decisions by the Director, Department of Construction and Land Use, on its master use permit applications for the demolition of a service station and addition to the Admiral Theatre and for the demolition of a single family residence and expansion of a parking lot. Appellant also appeals a Land Use Code interpretation for which a separate decision has been issued.

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 September 3, 1987. The record was closed on September 8, 1987.

Parties to the proceedings were: appellant represented by Sarah E. Mack, Hillis, Clark, Martin & Peterson, P.S., and the Director, Department of Construction and Land Use by John Doan, 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. Cineplex Odeon (Cineplex) proposes to expand the existing two-auditorium Admiral Theatre at 2329 California Avenue S.W. to six auditoriums. Two master use permit applications were filed by Sterling Recreation Organization, Cineplex's predecessor in interest. The proposals were modified by Cineplex and determinations of non-significance and approvals with conditions were issued by the Director, Department of Construction and Land Use. Because of the Director's approach to parking, an interpretation was requested, issued and appealed separately. The instant appeals were filed by appellant as to the imposition of certain conditions.

2. After the hearing, negotiations were conducted between appellant and the Director as to the wording of certain conditions. The result was a stipulation to the modification of Conditions 4, 7, and 12 of the decision on application No. 8602619 and Conditions 3, 4 and 7 in No. 8602983. The agreed language is as follows.

No. 8602619

4. Improvements to the parking lot shall not affect the existing condition or functions of the alley located between Blocks 3 and 4 of Niesz' Plat of West Seattle.

7. and 12. The owner(s) and/or responsible party(s) shall direct and shield illumination of the building exterior and parking areas so as to minimize adverse effects of light and glare on street traffic and nearby residential properties.

No. 8602983

3. Improvements to the parking lot shall not affect the existing condition or functions of the alley located between Blocks 3 and 4 of Niesz' Plat of West Seattle.

4. and 7. The owner(s) and/or responsible party(s) shall direct and shield illumination of the building exterior and parking area so as to minimize adverse effects of light and glare on street traffic and nearby residential properties.

3. The remaining conditions challenged by appellant are Nos. 2 and 8 on Application No. 8602619. Conditions No. 2 requires a revised project proposal that reduces anticipated parking overflow for the new theatre to zero which would require an additional 53 off-street parking spaces within 800 ft. of this site. Condition No. 8 states that the parking required shall be provided prior to occupancy.

4. The existing theatre has 900 seats in the two auditoriums. After expansion and remodeling, the six theatres would have 1621 seats.

5. No parking has been legally established as accessory to the theatre (see decision in S-87-007) however a 77 space lot across the street is used by theatre patrons.

6. The parking lot across from the theatre is to be expanded to 111 spaces. Twenty of those spaces are now assigned to Puckerfield's restaurant for its required parking, the remaining are available to the theatre through a joint use agreement with a bank. The decision indicates that the restaurant's lease will be terminated and those spaces will be available to the theatre.

7. Transpo, a traffic consultant, prepared a parking analysis at the applicant's request which was used by the Director's staff. Surveys of parking utilization in the area were done three times, in May, 1986, October, 1986 and August, 1987. The consultant inventoried supply and utilization within a one-eighth mile walking distance radius in the first survey and found 289 on-street spaces. After a discussion with the Engineering Department and Department of Construction and Land Use, the surveyed area was expanded to a walking distance of one fourth mile. There were 427 spaces within that area.

8. The number of cars found in the October, 1986, survey of on-street utilization was 245 for a 34 percent utilization. In August, 1987, 258 cars were parked for a utilization rate of 36 percent.

9. When on-street utilization was surveyed, cars using the parking lot across the street were also counted. In October, 1986, 64 spaces were full and in August, 1987, 75.

10. The traffic consultant assumed, for the purpose of the study, that the average peak occupancy of the existing theatre is 40 percent of capacity.

11. Average vehicle occupancy for theatres is estimated to be 2.3 persons per car.

12. For the purpose of the study the consultant assumed all patrons arrive by private auto though a study by the Engineering Department showed a small percentage using other modes. A summer weekend survey at the Admiral Theatre showed that about 20 percent of its patrons used modes other than private vehicle.

13. Based on the assumptions stated in the previous findings, the traffic consultant determined there would be a total demand for 282 parking spaces, or 125 for the added seats. The traffic consultant estimated that satisfying this demand would require utilization of approximately 60 percent of the on-street supply.

14. The area considered appropriate by the Director for the study of parking utilization is the eighth mile radius plus an extra block on California both north and south, a block in each direction from California on Walker and a block to the west of California on Lander. This area has 289 spaces in the eighth mile radius plus 122 spaces in the added blocks for a total of 411 spaces.

15. The Director's staff determined that the on-street parking supply in the area considered appropriate is 411 spaces. Of those, 169 are used now and 24 more are projected to be needed for the overflow from two approved, but not constructed, projects for an "existing" demand of 193 spaces leaving 218 spaces unused.

16. The overflow parking demand for the existing two auditoriums is included in the 193 spaces. The decision assumed a 40 percent occupancy at the theatre so projected a 157 space demand or 100 space overflow.

17. The 40 percent occupancy average for the existing two auditoriums was shown by appellant to be higher than experience. Attendance records for the existing theatre show levels of 12 - 13 percent on summer Friday and Saturday nights. The highest attendance level this year was 24 percent of capacity.

18. At 24 percent attendance, the existing demand for on-street parking would be for 17, or 37 without use of the 20 assigned to the restaurant, spaces or, at most, 9 percent of supply.

19. The existing patrons park in the 77 space parking lot, 20 of which are assigned to a restaurant, or the street. With 40 percent attendance and with the lot used to capacity, some 80-100 vehicles would be on the street using up to 24 percent of the on-street supply.

20. With attendance of 40 percent, which was assumed for the new and remodeled auditoriums, the parking demand from the 1621 seats would be for 281 spaces. With the expanded lot, 111 spaces, and the 10 spaces acquired through a joint use agreement, there would be a demand for 160 on-street spaces or about 39 percent of the total supply.

21. The Engineering Department uses the standard of 85 percent as practical capacity. If that percentage is applied to the supply, the appropriate area would be at practical capacity when about 350 cars are parked.

22. The applicant reviewed the experience at the Factoria theatre when three existing auditoriums were remodeled and five added. Attendance before and after at the three auditoriums was compared and showed no increase after the remodel. The Engineering Department also reviewed Factoria's attendance per screen for a four month period before and after the remodel, including the new auditoriums in the analysis. The results of that approach showed an increase of 33-40 percent per screen.

23. If the Admiral Theatre experienced the highest per screen rate of increase the Engineering Department found at the Factoria theatre after remodeling and expansion, the highest attendance at the Admiral Theatre would be about 34 percent of capacity with unmet parking demand for some 120 spaces or 29 percent of on-street supply or 34 percent of practical capacity.

24. To assess what portion of the excess parking supply would be used by the remodelled and expanded theatre the current theatre use of on-street parking (37) must be netted out of the current utilization (193) for a non-theatre existing utilization of 156. The on-street parking in the "appropriate" area, practically available after non-theatre use would be 193 spaces (411 x 85% - 156). The unmet parking demand of the remodelled and expanded theatre would claim 77 percent of the space not claimed by parking associated with the current and approved uses.

25. A market survey done by SRO showed that the audience for the Admiral Theatre comes chiefly from a two mile radius, unlike the Uptown and Factoria, two theatres which have been remodeled and upgraded.

26. The type of movies shown will be changed which should attract greater attendance.

27. An additional ten spaces have been acquired nearby by a joint use agreement.

28. The space deemed appropriate for accommodating theatre parking appears from the rough sketching on Exhibit 7 to be zoned approximately one half for commercial use and one half for residential use.

29. The peak times for theatre parking, Friday and Saturday evenings, coincides with times of high demand for residential parking. Peak for the theatre is during off-hours for the commercial district.

30. The Director determined that the demand for parking from the theatre use consumed 60 percent of the on-street supply and, therefore, 60 percent is its "fair share" of on-street parking. She concluded that because the theatre already has its fair share, the parking demand from the new auditoriums should be accommodated by off-street parking. Her witness testified that 60 percent was "reasonable and appropriate."

31. The Director's analysis and decision, Exhibit 10, identified an adverse impact from the proposal on the on-street parking supply in the area.

### Conclusions

1. The Hearing Examiner has jurisdiction over the parties to this appeal and its subject matter pursuant to Section 23.76.022.

2. The City Council has granted authority to the Director to impose conditions of approval to mitigate adverse environmental impacts subject to certain limitations. Section 25.05.660. The impacts must be specific and clearly identified in an environmental document. Section 25.05.660(A)(2). The conditions imposed must be based on policies formally designated for that purpose in Section 25.05.902 as a basis for the exercise of substantive authority, Section 25.05.660(A)(A), and the conditions are required to be reasonable. Section 25.05.660(A)(B).

3. An adverse impact of the project on the parking supply was identified in the DNS issued by the Director based chiefly on her analysis of the environmental checklist. Even at the lower level of total demand for the project, it is clear that there would be an adverse impact because there would be some level of demand for on-street parking.

4. The Director's decision failed to cite the SEPA policy on which the challenged conditions were based as required by Section 25.05.660. Policy basis is provided in Section 25.05.902 D.2.c: "The City official...may require measures to mitigate adverse parking impacts..." and Section 25.05.902C.

a. The analysis of cumulative effects shall include a reasonable assessment of the present and planned capacity of such public facilities as...streets...and parking area to serve the area affected by the proposal.  
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b. Based in part upon such analysis, a project may be modified to lessen its demand for support services and facilities.... Modification may also be required to provide for subsequent projects which can be expected to share the need for support services and facilities....

Since which policies apply is clear, it is not necessary to remand the decision to the Director to cite this authority.

5. The issue to be resolved is whether the condition requiring that all parking demand for the new auditoriums be met off-street is reasonable. This issue is complicated by the Director's choice of 60 percent as the theatre's "fair share" of on-street parking. Testimony at hearing clarified that this 60 percent figure was chosen as the "fair share" because the Director's staff believed that 60 percent represents current utilization. The evidence at hearing showed that it is currently much lower. This raises the question of whether the lower figure is then the "fair share", whether 60 percent represents a fair share without regard to earlier utilization or whether "fair share" can be fixed with any degree of certainty.

6. The Director did not assess the potential for development in the area and the record would have to be expanded greatly to provide a factual basis for the Hearing Examiner's assessing what future development may occur in the appropriate area. However, since additional land will be devoted to the new use, it would not be fair to limit the theatre's "fair share" of on-street parking to that consumed by the smaller amount of land based solely on history. Given that the Director's witness testified not only that the 60 percent level was "appropriate", based on historical use, but also "reasonable"; that approximately one-half of the "appropriate" area for theatre parking is zoned for commercial use where peak parking demand does not coincide with theatre demand so can be fully utilized without adversely affecting those commercial uses and that the projected demand based on the highest attendance this year is a true "worst case", 60 percent utilization meets a "fairness" standard. With provision of 111 spaces in the parking lot and 10 spaces by joint use agreement, the on-street utilization, at 34 percent of practical capacity, would not exceed the 60 percent of the supply. Therefore, a condition requiring the provision of additional off-street parking is not reasonable.

6. The Director's decision should be modified to substitute agreed conditions Nos. 4, 7 and 12 on application 8602619 and Nos. 3, 4 and 7 on application No. 8602983, and to eliminate the requirement of off-street spaces in addition to the 121 proposed.

#### Decision

The Director's decision on Application No. 8602983 is modified as follows:

Substitute for Condition No. 3 the following:

Improvements to the parking lot shall not affect the existing condition or functions of the alley located between blocs 3 and 4 of Niesz' Plat of West Seattle.

Substitute for Conditions No. 4 and 7 the following:

The owner(s) and/or responsible party(s) shall direct and shield illumination of the building exterior and parking area so as to minimize adverse effects of light and glare on street traffic and nearby residential properties.

The Director's decision on Application No. 8602619 is modified as follows:

Condition No. 2 is deleted.

Substitute for Condition No. 4 the following:


Improvements to the parking lot shall not affect the existing condition or functions of the alley located between Blocks 3 and 4 of Niesz' Plat of West Seattle.

Substitute for Condition 7 and 12 the following:

The owner(s) and/or responsible party(s) shall direct and shield illumination of the building exterior and parking area so as to minimize adverse effects of light and glare on street traffic and nearby residential properties.

Condition No. 8 is deleted.

Entered this 23rd day of September, 1987.

  
M. Margaret Klockars  
Deputy Hearing Examiner

#### CONCERNING FURTHER REVIEW

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

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

If no appeal is taken pursuant to Section 25.05.680(C), the decision of the Hearing Examiner in this case is final and is not subject to reconsideration except to correct errors on the ground of fraud, mistake, or irregularity in vital matters. Any request for judicial review of the decision on the underlying governmental action must be filed in King County Superior Court within fifteen days of the date of this Hearing Examiner decision. Seattle Municipal Code Section 23.76.22(C)(12)(c). Judicial review under SEPA shall without exception be of the decision on the underlying governmental action together with its accompanying environmental determinations. RCW 43.21C.075(6)(c). SEPA issues may be added to the request for review within 30 days after the date of this decision if a notice of intent to seek judicial review of SEPA issues is filed with the Director of the Department of Construction and Land Use, 400 Seattle Municipal Building, Seattle, Washington 98104, within fifteen days of the date of this decision. Section 25.05.680(D)(4).

If the Superior Court orders a review of the decision, the person seeking review must arrange for and bear the cost of preparing a verbatim written transcript of the hearing but will be reimbursed if successful in court. Instructions for preparation of the transcript are available for 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.