

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

TRIAD DEVELOPMENT, INC.

FILE NO. MUP-88-027(W)  
APPLICATION NO. 8708475

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

#### Introduction

Triad Development, Inc. ("Triad") appeals the decision by the Director, Department of Construction and Land Use ("DCLU"), to impose certain conditions on a mitigated declaration of non-significance for Master Permit Application Number 8708475.

Triad exercised its right of appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code. This matter was heard on June 14, 1988. Triad was represented by Mr. Fredrick W. Grimm and DCLU was represented by Mr. Jay Laughlin.

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 of law and decision of the Hearing Examiner on this appeal.

#### Findings of Fact

1. Triad is interested in developing a multi-story, multi-unit apartment complex at 1504 Aurora Avenue North, on the southeast slope of Queen Anne Hill on the east side of Aurora Avenue. Triad initially applied for a Master Use Permit to allow the construction of an eight story, 50 unit apartment building, with parking for 80 cars on four platted lots (the "Initial Proposal"). The Initial Proposal was conditionally approved and a mitigated declaration of non-significance ("MDNS") was issued in December 1987 under Master Use Permit Number 8702099.

2. DCLU did not condition approval of the Master Use Permit No. 8702099, (the Initial Proposal) on a financial contribution by Triad toward the cost of traffic signal and other improvements at the intersection of 8th Avenue North, Westlake Avenue North, and Galer Street (the "Westlake Intersection").

3. Two other projects, the Union View Square Apartments and the West Lake Union Center, proposed in the area and in the Master Use Permit application and review process, were considered by DCLU in its evaluation of cumulative effects: a. The Union View Square Apartment Project. This project would consist of a 50 unit apartment building with 2,400 square feet of office space and would be located on the southwest corner of 8th Avenue North and Hayes Streets. This project would provide 50 parking spaces with access to Hayes Street and 8th Avenue North. b. The Westlake Union Center Project. This project would be located between Dexter Avenue North and 8th Avenue North, south of Garfield Street. There is no evidence that the Westlake Union Center project will be pursued, approved, conditioned or completed. This project would consist of a 150,000 square foot apartment building and approximately 330 parking spaces in an underground garage with primary access from Garfield Street.

4. Triad later modified its plan, withdrew the Initial Proposal and applied for a new Master Use Permit to allow construction of a seven story, 60 unit apartment building, with

parking for 90 cars on five platted lots (the "Current Proposal"), including the four platted lots of Initial Proposal. The Current Proposal was conditionally approved and an MDNS was issued in March 1988 under Master Use Permit Number 8708475.

5. Triad filed this appeal with a request that the hearing examiner review the following two specific conditions of approval of the MDNS issued for the Current Proposal: a. Traffic Signal Improvements, including Triad's participation in the cost, not to exceed \$20,000, of installing a traffic signal and other improvements at the Westlake Intersection; and b. Landscaping Improvements, including the construction of landings, benches and tables within the Galer Street right-of-way.

6. Prior to the hearing, Triad withdrew its objection to the condition related to landscaping improvements. Therefore, the only issues considered during the hearing were whether Triad should be required to participate in the cost of traffic signal and other improvements at the Westlake Intersection; and if so, whether the amount of its participation, up to \$20,000, is reasonable.

7. Because of the size of the proposed development and the level of existing development, Triad was required by DCLU to prepare a transportation study. The study was designed to define the level of transportation impacts associated with the Initial Proposal, alone, and cumulatively with the Union View Square Apartments and West Lake Union Center. TDA, Inc. served as transportation consultant to the developers of all three said proposed developments and was represented at the hearing by Ms. Sarah Boettcher.

8. The Seattle Engineering Department provided information to TDA to assist in Triad's transportation study. The City Engineering Department was represented at the hearing by Mr. Alan Bennett.

9. DCLU found that the p.m. peak hour vehicle trips generated by the Initial Proposal would not affect existing levels of service at adjacent intersections; and that the cumulative effect of the Initial Proposal and other pending projects would not be sufficient to justify Triad's participation in the cost of signal and related improvements at the Westlake Intersection.

10. DCLU reached a different conclusion in evaluating the Current Proposal's contribution to cumulative traffic impacts. The Current Proposal is expected to generate 36 more daily trips to the Westlake Intersection during the p.m. peak travel period. The Hearing Examiner finds in accord with the TDA projection that only 13 of the estimated 36 additional p.m. peak period trips generated by the Current Proposal are likely to impact the Westlake Intersection. The parties agree that even if all 36 trips are distributed to the Westlake Intersection, those trips, alone, would not significantly impact operating conditions at the Westlake Intersection.

11. The Union View Square Apartment project is expected to generate about 35 p.m. peak period trips. Those trips combined with the maximum 36 p.m. peak period trips expected to be generated by the Current Proposal still would not have a substantial impact on operating conditions at the Westlake Intersection.

12. The Westlake Union Center project, if pursued and approved, is expected to generate about 305 p.m. peak period trips. The cumulative effects of additional p.m. peak period traffic expected to be generated by all three proposed projects would have substantial impacts on operating conditions at the Westlake Intersection. The degree of impact would depend on a number of factors, which include whether 13 or 36 p.m. peak period trips from the Current Proposal should be assigned to that intersection.

13. If it can be shown that a proposed development is likely to have direct impacts, the City can enter into a voluntary agreement with the developer for the purpose of mitigating the direct impact caused by the proposed development (RCW 82.02.020).

14. In mitigating the adverse impacts of proposed developments on parking and traffic in surrounding areas, it is the policy of the City to: (a) encourage transportation modes such as public transit, vanpools, carpools and bicycles rather than single occupancy vehicles; (b) modify off-street parking requirements to mitigate adverse impacts; and (c) make other requirements as necessary to assure reasonable access and flow. Seattle Municipal Code Section 25.05.902D.1.

#### Conclusions

1. The Examiner adopts the conclusions of the Director, as set forth in the DCLU Decision dated March 17, 1988, except as specifically modified below.

2. DCLU has authority, during its initial environmental review, to consider a project's contribution to cumulative effects on existing traffic conditions; and has limited authority to impose reasonable and lawful conditions on the approval of master use permit applications for the purpose of mitigating adverse impacts.

3. RCW 82.02.020 prohibits the City from imposing a tax, fee or charge, either direct or indirect, on developers as a condition of approval of the master use permit application. A requirement that Triad pay up to \$20,000 toward the cost of signal and other improvements at the Westlake intersection would be an unlawful tax, fee or charge within the meaning of RCW 82.02.020 and cases interpreting that section because it is intended to raise revenue.

4. RCW 82.02.020 permits the City of Seattle to enter into a voluntary agreement with Triad that allows a payment to mitigate direct impacts of the Current Proposal on the Westlake Intersection. As evidenced by this appeal, Triad has not voluntarily agreed to participate in the cost of improvements of the Westlake Intersection.

5. There is no evidence that the Westlake Union Center project will be pursued, approved, conditioned or completed. Therefore, a cumulative impact analysis which includes traffic expected to be generated by that project is highly speculative and is related to no specific clearly identified adverse impact. Seattle Municipal Code Section 25.05.660A.1.

6. Seattle Municipal Code Section 25.05.902D.2 defines the City's SEPA policies related to parking and traffic. It provides that the responsible City official or authorizing agency is empowered to (a) examine the proposed building occupants' likely use pattern and guest and service parking needs; (b) weigh the need for off-street parking by considering on-street parking and public transit, existing traffic conditions, trends in local area development, parking characteristics of the proposed building and the immediate area, and the availability of goods and services; (c) require measures to mitigate adverse parking impacts; (d) require curb cuts, construction of sidewalks and other pedestrian access amenities or deeding of street right-of-way; or (e) require conditions or mitigating measures to be continuously met by the property owner.

7. Section 25.05.902D.2 does not specifically permit the City to require a developer to contribute toward the cost of traffic signal and related intersection improvements.

8. It is the City's policy intent to mitigate adverse impacts of proposed developments on parking and traffic in surrounding areas by making requirements as necessary to assure reasonable access and flow. However, since there is no actual City policy that specifically permits DCLU to require Triad to

contribute to the cost of a traffic signal and other improvements at the Westlake Intersection, that requirement is improper.

Decision

Relating to the requirement that Triad participate in the cost of installing traffic signal and other improvements at the intersection of 8th Avenue North, Westlake Avenue North and Galer Streets, the DCLU decision is REVERSED.

Entered this 29th day of June, 1988.

  
Christopher E. Mathews,  
Hearing Examiner Pro Tempore

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 decision is filed with the SEPA Public Information Center the same day that the decision is signed by the Examiner. The SEPA Public Information Center telephone number is 684-8322. 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.