

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

In the Matter of the Appeal of

DAG'S RESTAURANTS

FILE NO. MUP-88-029(W)
APPLICATION NO. 8706697

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

Introduction

Dag's Restaurants appeals the decisions of the Director, Department of Construction and Land Use, on a master use permit application by McDonald's Corporation, to establish a fast food restaurant with drive-through window at 2401 4th Avenue South.

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 June 17, 1988.

Parties to the proceedings were: Dag's Restaurants represented by John K. Dahl, Mallavey, Prout, Grenley, Foe & Lawless; the Director, Department of Construction and Land Use, by Cheryl Waldman, land use specialist; and McDonald's Corporation, represented by Brent Carson and Peter Buck, Buck and Gordon, P.S.

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. McDonald's Corporation applied for a master use permit to establish a fast food restaurant with drive-through window at 2401 4th Avenue South. The Director, Department of the Construction and Land Use, issued a determination of non-significance (DNS) and conditioned the approval of the permit. Dag's Restaurants appealed.

2. The proposal is to construct a restaurant building approximately 4,580 sq. ft. in area with a drive-through window. The stacking lane for the drive-through window would hold 13 cars and 49 parking spaces would be provided for customers and employees. There would be two in and out curb cuts on 4th Avenue South and one on South Stacy Street.

3. The site of the proposed restaurant is at the southwest corner of the intersection of South Stacy Street and 4th Avenue South and is zoned UG1/85'. It had formerly been the site of a service station but is now vacant.

4. Immediately south of the subject site is a Dag's fast food restaurant with drive-through window. Across 3rd Avenue South to the west is a large U.S. Postal Service facility and across 4th Avenue South to the east is postal service parking. The area is generally developed with commercial and industrial uses.

5. Fourth Avenue South is designated a principal arterial

with two lanes southbound, three lanes northbound and a two-way turn lane in the middle with a parking lane on each side. South Stacy Street is a 44 ft. wide commercial access road one block long going between 4th Avenue South and 3rd Avenue South. A stop sign is located on Stacy at 4th Avenue South. There are signal lights on 4th Avenue South at South Lander and South Holgate Streets.

6. A traffic study was prepared by Entranco Engineers, Inc., at the request of the Engineering Department.

7. Fourth Avenue South in front of the subject site carried approximately 1,500 vehicle trips in the noon peak hour and 1,650 in the p.m. peak hour in 1987. South Stacy carried 111 trips in the noon peak hour and 59 in the p.m. peak hour in 1987. The 1988 projection was for 1,511 and 1,669 on 4th Avenue South and 112 and 59 on South Stacy.

8. Entranco projects that the new McDonald's facility will generate 138 trips inbound and 140 trips outbound during the noon peak hour and 76 inbound and 74 outbound in the p.m. peak hour. Since a portion of the customers come from existing traffic, the trips added to the volume is projected to be 156 during the noon peak and 80 during the p.m. peak.

9. Restaurants in this industrial area experience the highest volume of sales at lunch on weekdays and have much lower sales on weekends.

10. Entranco's trip generation projection is based on the floor area of the proposed restaurant and a 1980 study of 30 McDonald's restaurants in the Chicago area. Though the Chicago study did not consider breakfast traffic, that period is not critical since the noon and p.m. peaks are heavier.

11. The ITE trip generation manual shows a lower rate of trip generation for fast food restaurants than the Chicago study and presents no noon trip generation data. Dennis Neuzil, the transportation engineer with Entranco, testified that the Chicago study is superior to the ITE figures for projecting traffic generated by the proposed McDonald's restaurant.

12. Appellant questioned the applicability of the results of the Chicago based study for this proposal. The Hearing Examiner is persuaded, however, that the Director utilized the most reliable predictor.

13. Dag's office manager made a count of traffic entering and leaving a McDonald's restaurant at 4th Avenue South and South Michigan Street from noon to 1:00 p.m. on Tuesday, June 14. A total of 404 trips was observed.

14. Mr. Neuzil's conclusion that the addition of traffic generated by McDonald's would not be a significant adverse impact would be unchanged even if the traffic of the proposed restaurant were comparable to the level observed at the 4th South and South Michigan restaurant.

15. Since the peak traffic period for McDonald's is expected to be at noon, its impact on traffic during that period was considered. Based on the information supplied by Entranco, the land use specialist concluded that the restaurant would add about 5 percent to the southbound traffic on 4th Avenue, 3 percent to the northbound traffic and 21 percent to the eastbound traffic on South Stacy Street. The consulting transportation engineer determined that traffic from the restaurant during the noon hour would add about 4 percent to the total two-way traffic on 4th Avenue South.

16. The accident experience on 4th Avenue South in this area is well below average.

17. Levels of service (LOS) at the intersections and driveways were analyzed. The only LOS that would change with the

addition of McDonald's traffic is that for left turning movements from South Stacy Street onto 4th Avenue South which would go from theoretical LOS E to F. Entranco observed that, due to gaps in traffic caused by the signals north and south on 4th Avenue South, the actual LOS is higher than the theoretical LOS. Entranco's analysis assumed that there would be a left turn lane in South Stacy Street to allow right turns while drivers wait for left turn opportunities.

18. The Director imposed a condition requiring the applicant to restripe the eastbound approach on South Stacy Street for a left turn only lane. The Director's analysis did not take into account that the consultant's traffic analysis assumed the existence of a left turn only lane when it calculated a future LOS of F.

19. A signal warrant analysis was performed by Entranco for the 4th Avenue South and South Stacy intersection. The traffic volumes, with the addition of that projected for McDonald's, were found not to meet requirements for the warrants.

20. A potential conflict between vehicles exiting McDonald's from the south driveway on 4th Avenue South and those properly exiting Dags and turning left onto 4th Avenue South was considered. Because of the distance between the two driveways, the consultant anticipates no problem. If cars leave Dag's by the inbound driveway, the distance would be less so there may be greater potential for a problem if this movement is not restricted.

21. The LOS for Dag's driveway on 4th Avenue South was analyzed. The existing LOS for left turns is E and would remain E with the addition of traffic from McDonald's. Other turning movements experience LOS A currently and would remain A. No conflict was predicted between vehicles attempting to turn left into the south driveway of McDonald's with vehicles attempting a left turn in or out of the Dag's driveways.

22. McDonald's north driveway is to be 60 ft. from the Stacy Street intersection so left turns in and out could create problems. The consultant recommended that the situation be monitored and that a right turn only restriction be imposed if problems arise.

23. Appellant urges that a right turn restriction be imposed at this time. It questions who will monitor the situation and how many accidents would have to occur to constitute a "problem".

24. Approximately 50 percent of the sales volume comes through the drive-through window at McDonald's restaurants with drive-through windows. When a drive-through window is added to an existing McDonald's restaurant, sales increase an average of 10-14 percent.

25. Dag's witnesses questioned the figures provided by McDonald's regarding increased sales attributable to the drive-through window, the proportion of sales at the drive-through window, the projected lunch hour volume and the projected vehicle traffic. Except for the traffic count at the South Michigan store, no counter figures were provided.

26. ITE parking demand rates would require 37 stalls on a weekday for a fast food restaurant of this size to accommodate customers and employees. Since Saturdays and Sundays in industrial areas are low volume days, the ITE figure for Saturday demand is inapplicable. With 49 parking spaces, there should be no demand for on-street parking. The DNS did cite a potential spillover of two spaces utilizing the Saturday ITE figure.

27. The vacant subject site is used for parking by postal employees. Those cars will have to find other parking when the site is redeveloped. While on-street parking is heavily used and apparently virtually unavailable, ample parking for postal employees is available in the lot on the east side of 4th Avenue

South.

28. The traffic report found no traffic problems in the area. Appellant's witnesses questioned the statement because of anticipated traffic from the closure of the First Avenue South Bridge and new development such as an industrial park under construction to the west of the subject site and discussion of postal services executive offices on the east side of 4th Avenue South.

29. McDonald's is required to submit a drainage control plan for approval.

30. Dag's witness described an existing situation with an overflow release valve in 4th Avenue South in front of the subject site which releases water that flows down the street.

31. McDonald's proposes to place a trash "corral" at the southwest corner of its site. The structure would be fully enclosed and contain a trash compactor with a 10 cubic yard capacity plumbed for hot and cold water with a drain into the sanitary sewer system. Plastic bags of refuse would be loaded into the compactor and the compactor would be cleaned daily. A condition imposed by the Director requires landscaping on the south and west sides of the trash corral.

32. The proposed location of the trash corral would be immediately adjacent to Dag's menu and order board.

33. McDonald's commonly places menu boards next to trash corrals. The licensee for the proposed location operates the McDonald's at 4th South and South Michigan where the menu board is in front of the trash corral and he reports no complaints. He testified that the trash corral is odor free.

34. While Appellant's witnesses are concerned about potential odor, no evidence that trash corrals are odoriferous or cause insect problems was adduced.

Conclusions

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

2. A determination of significance (DS) requiring an environmental impact statement is necessary whenever the Director finds that a proposal may have a probable significant adverse environmental impact. Section 25.05.360. As used in SEPA, "significant" means a reasonable likelihood of more than a moderate adverse impact. Section 25.05.794. The Director's determination is to given substantial weight by the Hearing Examiner on review. Section 23.76.022C.7. The burden is on appellant then to show that her determination is clearly erroneous. Brown v. Tacoma, 30 Wn.App. 762, 637 P.2d 1005 (1981).

3. Appellant has failed to show that any of the effects of this project or all in combination would amount to a significant adverse impact on the environment. Therefore, the DNS should be affirmed.

4. The Director is authorized to impose conditions requiring mitigation measures subject to the limitation set out at Section 25.05.660. The impacts must be clearly identified in the environmental document; the conditions must be based on policies designated for that purpose pursuant to Section 25.05.902; the conditions must be reasonable and capable of being accomplished; and the responsibility for implementation of the mitigation must be proportional to the extent the impact is created by the proposal.

5. The environmental documents and records show no evidence of a probable adverse impact in the form of odor from the trash corral and, further, there is no SEPA policy to address such an

impact if it were shown. No error was proved.

6. The drainage problem complained of is an existing condition and there was no showing that the proposed development would exacerbate it so no mitigation can be required.

7. Based on the estimate in the environmental document of parking spillover of two spaces, the Director decided that no mitigation was warranted. The record shows that there would be in fact no spillover so no mitigation could be required.

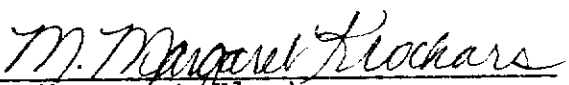
8. The documents identified minor impacts from traffic to be generated by the proposed restaurant. Only two areas present potential problems, left turns from the northernmost driveway conflicting with right turns from South Stacy and the delay in left turns from South Stacy. As the record shows, the LOS for left turn movements from South Stacy would be lowered from the theoretical LOS of E to F even with the existence of a left turn lane so the condition imposed requiring the left turn lane will not improve the situation from LOS F. The record also shows that, in part because of gaps offered by the traffic signals, the actual LOS is not and will not be so low as the analysis suggests. Left turns from the other potential problem, the northern driveway, appear to add to the delay at Stacy as well as show a potential for conflict with traffic from Stacy. While the number of turns from the driveway is not of a level to require a mitigating condition in itself, the removal of those turns would provide that many more openings for the vehicles attempting to turn left from South Stacy and, to that extent, would provide mitigation of that impact. Restricting the outbound movements from the northern driveway to right turns would be reasonable mitigation for the Stacy Street situation which the Director should have required.

Decision

The determination of non-significance is affirmed. The Director's decision as to the use of her substantive authority is affirmed with the addition of the following condition:

Appropriate signs shall be installed at McDonald's north driveway to restrict outbound traffic to right turns only.

Entered this 5th day of July, 1988.


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 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.