

FINDINGS AND DECISION

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In the Matter of the Appeal of

NEIGHBORS FOR NEIGHBORHOODS

FILE NOS. MUP-89-064(W) and
S-90-003

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

APPLICATION NO. 8706828

Introduction

Appellant, a community organization, appeals a declaration of nonsignificance issued October 23, 1989, by the Director of the Department of Construction and Land Use and the Director's interpretation of the Land Use Code issued February 6, 1990 regarding a proposed multi-family structure on Queen Anne Hill. Timely appeals were filed pursuant to Chapters 23.76 and 23.88 of the Seattle Municipal Code.

Parties to the proceedings were: appellant, represented by Susan G. Diamondstone, attorney; the applicant, Jan Thomsen, represented by James R. Watt, attorney; and the Director of the Department of Construction and Land Use (Director), represented by John Doan, Senior Land Use Specialist, and Hermia Ip, Land Use Specialist.

This matter was heard on April 10, 16, and 17, 1990. The record remained open until May 2, 1990, for submission of written argument, as well as offers of proof and responses thereto relating to constitutional deprivation claims and challenges to the L-2 mapping by appellant, which claims the Examiner had earlier dismissed as outside the scope of her jurisdiction in the instant appeals. A site visit was also made by the Examiner.

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 these appeals.

Findings of Fact

1. The proposal is to construct a three-story, eight-unit, multi-family residence at 2108 Warren Avenue North on a northeast hilltop area of Queen Anne Hill. There will be nine off-street parking stalls provided in the structure's basement garage. DCLU issued a DNS with various conditions, including additional landscaping, design requirements, and a contribution to the cost of an intersection improvement.

2. The property is a 50 foot by 120 foot rectangular lot (or 6000 square feet) zoned Lowrise 2 (L-2). It is on the east side of Warren Avenue North, between Crockett Street and Boston Street. The property slopes mildly downward from west to east. At the east end there is an abrupt three to four foot drop to the abutting property on the east.

3. The site is presently developed with a tall boxy two and one-half story residence with a sloped roof. This was built in 1905 and functions as a duplex. This residence will be demolished. From the rear, this residence appears to be from 22-25 feet above grade to the roof peak.

4. Property immediately behind and to the east and west of

the site between Crockett and Boston streets is zoned L-2 also. Such zoning exists for a total of five consecutive blocks. There is also a strip north of Boston zoned L-2 extending eastward and westward in the same pattern. Such property is developed primarily with single family residential structures; however, on the particular block in which the proposal is sited, there is at least one other duplex and a triplex. Across Warren Street to the west is Queen Anne Manor, a large brick four-story retirement home which used to be a hospital. This structure, essentially, takes up the whole block face across from the project.

5. South of Crockett Street and on both sides of the L-2 zoning, property is zoned and developed mainly with single family residences (SF 5000). At the eastern end of the L-2 zone there is Residential Multifamily (RM) and Neighborhood Commercial 1 (NC1/30) zoning.

6. The lot directly behind the proposal and the two northward from it on the same block are developed with one or one and one-half story single family residences. These face on Second Avenue North. The proposal would be uphill from these homes. As noted in paragraph 4 hereof, these homes rest on property zoned L-2.

7. The homes in the area described by most witnesses as an "eclectic" mix of styles and periods. Some date to the early 1900's. Many have been upgraded, remodeled and refurbished in recent years. No testimony indicated that any of the residences in the surrounding area were historically or architecturally significant, or were designated landmarks. Nor did anyone testify that the existing house to be demolished on the site was historically or architecturally significant, was a landmark, or on a register of historic places. One person testified the house was typical of a box style common on Queen Anne and had historical merit when considered as a whole with others on the Hill for continuity with the past.

8. Queen Anne Avenue North parallels Warren Avenue North two blocks away to the west. There is a Safeway store there which is planned to be demolished and replaced with a mixed use structure containing a retail store 75 percent larger than the present store, plus 48 residential units. That project is application No. 8903435, includes a rezone request from NC2 to NC3. It was the subject of considerable controversy and protest within the neighborhood in 1989. At present, this project is "on hold," with some communications having been made by the Safeway applicants to DCLU that the project will not proceed as planned. The application for the expansion, however, has not been withdrawn to date of the hearing.

9. There are at least seven other known multifamily or mixed use projects pending in DCLU within a one-mile radius of the site, not counting the present proposal and not counting the Safeway project. Those other projects will add 109 residential units to the community. However, except for the Safeway project, none of these other pending proposals are within the 800 foot radius studied for street parking utilization for the instant project.

10. The East Queen Anne Playground is one block south of the project, within the single family zone. John Hay Elementary School is four to five blocks to the east of the project. Most of the persons within appellant's organization and who testified live within a mile of the project; many live within a block's radius.

11. The proposed structure is basically rectangular in footprint on the site with modulations of the facade by projecting balconies and decks on the front and back sides and by recesses on the sides. There will be a mansard-type roof on all sides and horizontal siding on certain faces; the rest will be stucco. The building will be stained or painted a muted warm shade. Four levels will be built in all: three stories above grade for the residential units and one level below grade for a

parking garage.

12. Access to the parking garage will be off Warren Avenue North on a 10 foot wide paved driveway sloping down to the garage entrance at a slope of 21.7 percent. The garage floor also slopes. From the garage entrance to about one third of the way in, the floor slopes at 18.26 percent grade. Thereafter, the floor is level or has only a minimal slope.

13. Corrections to the driveway slope to reduce the degree of slope to 20 percent or below must be made to bring the project into compliance with the Seattle Building Code, which Code prohibits driveways of over 20 percent slope. This can be accomplished by minor grading adjustments which will lift the building by three inches.

14. The garage will have nine stalls, all perpendicular to the north wall of the structure. Stalls 1 and 9 are each 9 feet 11 inches wide. The rest are smaller. The parking aisle is on the south side and is 22 feet wide. According to DCLU, the parking plan meets the Land Use Code requirements for parking and provides adequate maneuvering space for full utilization of the stalls and for ingress and egress. From other testimony and the exhibits, it appears that cars utilizing stalls 1 and 9 will have some difficulty maneuvering to enter or exit those stalls and in turning to exit from the garage front first. Maneuvering is further complicated by the sloped garage floor.

15. As presently planned, the front portion of the proposed building is lower in height than the back portion. On the Warren Avenue North side, the building will be 21.75 feet above grade to the roof line at the maximum. To the rear of the building, facing the single family homes, the structure will be 30 feet high to the roofline from grade at the maximum, due to the dropped lower slope on the east, exposure of some of the basement level, and the higher roof line there.

16. Maximum allowable height from grade for the L-2 zone is 30 feet. Because of the slope of the property, this site qualifies for a height bonus of 11 inches at the lower elevation of the footprint under the Land Use Code. Therefore, adjusted maximum height allowed under the Code with the bonus at the lower east elevation of the building is 30 feet 11 inches.

17. Lot area coverage for the proposed structure is 2,732 square feet. This is just under the maximum lot area coverage allowed under the Code. The existing single family residence covers approximately 900 square feet of lot area.

18. The landscaping plan is to eliminate an existing poisonous golden chain tree on the rear property line, and landscape the rear yard with three pine trees, a weeping willow, rhododendrons and other evergreen shrubs. DCLU has also required the addition of three columnar red maple trees spaced 15 feet apart and of 3-1/2 inches minimum caliper. Other landscaping in the form of a large spruce, deciduous trees and evergreen shrubs and ground cover is planned for the front and sides.

19. Warren Avenue South and Crockett streets are residential access streets with a 60 foot right-of-way. They are improved with 25 foot wide street pavement, curbs, planting strips and sidewalks on both sides. On-street parking is prohibited on the west side of Warren Avenue North between Crockett and Boston Streets adjacent to the retirement home.

20. Boston Street is a collector arterial and is the principal route for traffic from the east side of the hill to the commercial district along Queen Anne Avenue North.

21. Warren Avenue North is used by the Seattle Fire Department as a main access and response route from a fire station south about 8 blocks.

22. In 1989, according to the Safeway study, the average

daily traffic volume on Boston Street approaching the intersection of Boston and First Avenue North westbound was 1800; eastbound average daily volume was 2800. Northbound on First North in the area, average daily traffic volume was 750. There was no evidence presented at the hearing of the daily traffic volume on Warren Avenue North or on Crockett, however, these streets are not described in any of the studies as heavily used. The project is projected to add 49 vehicle trips per day to the traffic in the area.

23. Major intersections of the area have level of service ratings of C and D going eastbound and westbound. With the Safeway project, the LOS, at Boston and Queen Anne would drop to F. Some of the project's traffic is expected to use that intersection. None of the intersections nearby are identified as high accident intersections. In fact, the statistics on accidents in the area are very low.

24. If the Safeway project is pursued, anticipated increased traffic will be considerable. As an example, in the Safeway study it is estimated that there will be a net increase of daily vehicular trips from the new Safeway and apartment complex of 3,387 trips, about double the present volume, with an increase of 250 trips during the p.m. peak hours. Most of this increase is projected to travel north and south along Queen Anne Avenue North consistent with present observed supermarket traffic patterns. Little of the increase is projected eastward on Crockett or Boston.

25. The estimated parking demand for the project is 1.5 spaces per unit during peak evening time. Based on this demand and the number of parking stalls provided, spillover to the streets from the project is expected to be three. At present, parking on the surrounding streets is not at practical capacity under the SED formulas used. According to the applicant's parking study for this project, there are 327 parking spaces available on the street within an 800 foot radius (2-1/2 blocks). The utilization rate for this study area during peak hours ranged from 46 percent to 53 percent, or an average utilization of 50 percent. With the additional cars from the project, the utilization rate would be 54 percent. The Safeway parking study showed an existing utilization rate of 54.8 percent in the same area as applicant's study. The practical capacity rate for utilization is 85 percent. If the Safeway project were to be built as presently planned, parking utilization of the streets would increase to 64 percent.

26. The Queen Anne Community Council is opposed to this project. The concerns are with the destruction of another single family residence instead of rehabilitation and with the bulk, height and density of the project in a predominantly single family area. The land use goals and policies of the Queen Anne Community were adopted by the City under Resolution 26164. Those reflect the goal of strengthening and preserving the unique residential character of the community. In this respect, among the policies adopted were rehabilitation of deteriorating residences, particularly those with historic or community significance; controlling the growth of apartment development and assuring that new development will be compatible with the neighborhood in bulk, siting, height and density, and that apartments are dispersed instead of concentrated within the community.

27. On March 8, 1988, Ordinance 113858 was enacted by the City of Seattle adopting interim controls for development in lowrise zones, including L-2 zones. That ordinance, essentially, reduced lot area coverage and put a limit on the number of units which could be built on existing lots by imposing density requirements. Under the terms of this ordinance, complete building permit applications received prior to March 8, 1988, and complete master use permit applications without building permit applications received before February 16, 1988, were exempted from the interim regulations. The ordinance also stated that the interim controls were not to be used as SEPA policy or for the

exercise of substantive SEPA authority.

28. The submittal requirements for a complete building permit application are identified in Section 302 of the Seattle Building Code. That section provides, among others, that applications be accompanied by plans and data as designated in subsection (b) and (c) thereof. Subsection (b) is not an issue here. Subsection (c) indicates the information required on plans, and includes, as applicable, a plot plan, architectural plans, structural plans, cross-sections, and topographic plans.

29. Subsection (c)H of Section 302 further clarifies topographic plans as "including original and final contours, location of all buildings and structures on and, when required by the Building Official, adjacent to the site, and cubic yards of cut and fill." It further indicates that a survey of the property prepared by a licensed land surveyor shall be required for new construction where the building official has reason to believe there may be certain intrusions on open areas or property lines.

30. Application for the master use permit and building permit for the instant project was made on February 29, 1988, under application 8706828. A set of plans including various elements accompanied the application. On March 1, 1988, those plans were screened by a DCLU plans examiner for completeness relating to vesting rights. The plans were determined to be adequately complete and the application was deemed vested by DCLU on March 1, 1988. Additional pages of plans were submitted for inclusion in these plans on March 4, 1988.

31. The plans submitted with the application did not contain a topographic survey. Such plans did, however, contain spot and corner grade elevations, some existing and finished contours, location of the building on the site, and data on yards of cut and fill.

32. Later, on March 17, 1989, revised plans were submitted by the applicant in response to DCLU's requests and neighborhood concerns to reduce the project in number of units and provide more modulation, parking and landscaping. These plans included a boundary and topographic worksheet prepared by a professional land surveyor.

33. It is not a practice at DCLU to include topographic surveys at intake. Even later, DCLU does not require topographic surveys with all projects. The Director may require surveys when there is a question of the lot line or an intrusion into open space, or where a project is shown to the limit of the height allowed. When plans are reviewed for land use compliance, the plans examiner reviews to verify if the project substantially meets the development standards of the Code. For vesting purposes, there must be sufficient information on the site, elevations and structure to screen for code compliance. The Department does not use "vesting" to mean that everything is in compliance. Some deviation or missing information is normal, and correction sheets are issued to secure the information or the applicants are requested to submit plan corrections to accomplish the changes needed.

34. Neighbors indicate they have plans underway to seek downzoning of the L-2 area, but, to date, no applications for such zoning have been made.

35. Recently, the City studied a number of multi-family zoned parcels for possible remapping to less intensive zones in connection with the proposed interim controls ordinance. The L-2 zone for the area of this project was rejected for the study as not meeting the study criteria.

36. The appellant challenges the DNS on issues of height, bulk, scale, density, traffic and parking, and seeks further mitigation of these elements under SEPA. In the interpretation requested, the questions were (a) whether the driveway slope

complied with Section 23.54.030; (b) whether the parking plan was in violation of Section 23.54.030; (c) whether the building fit within the required space envelope under the land use code; and (d) whether the plans were sufficiently complete or so unchanged as to be vested prior to the interim ordinance on multi-family development. Appellant seeks to reduce the project to six units, reduce the bulk and scale of the building and redesign the facade to make it more compatible with the neighborhood. There were also questions raised on the legality of the L-2 zoning and claims of deprivation of constitutional rights, but these latter claims were dismissed before the hearing. The Examiner did authorize an offer of proof on those dismissed claims, which offer was submitted in documentary form and is of record.

Conclusions

1. The Hearing Examiner has jurisdiction of this appeal and the parties pursuant to Chapter 23.76 and Chapter 23.88 of the Seattle Municipal Code.

2. Under the Code, appeals are considered de novo. In MUP appeals, the Hearing Examiner is to consider compliance with substantive criteria, environmental determinations, and whether adverse environmental impacts were appropriately considered and dealt with in the permit decision, among other matters. Section 23.76.022.C.6. In interpretation appeals, the Examiner decides the matter on the same basis as was required of the Director. Section 23.88.020E.5. In both appeals, the Director's decisions are to be accorded substantial weight, and the burden of establishing the contrary is on the appellant. Section 23.88.020E.5; Section 23.76.022C.7. To overcome the deference required in the Code, the appellant must show that the decision of the Director was "clearly erroneous." Brown v. Tacoma, 30 Wn.App. 762, 637 P.2d 1005 (1981).

Environmental Issues

3. Parking. On street parking is not at practical maximum capacity on the surrounding streets, even with the projected Safeway project or the addition of spillover of three cars from the instant project. That additional parking need can be absorbed by the existing streets. Therefore, while there is some adverse impact due to additional parking, such impact is not significant. Furthermore, under Section 25.05.675.M.2.b., there is no authority under SEPA to mitigate parking impacts of multi-family development such as this project except where on-street parking is at capacity or will reach capacity with the development. Accordingly, parking mitigation under SEPA is not authorized in the instant project.

4. Traffic. The project's impact on traffic in the area is minimal. The evidence does not establish that the present traffic through the residential community on Warren, Crockett, 2nd Avenue, or other such streets east of Queen Anne Avenue North is significant in volume or is anything more than normal for a residential community. There is no evidence that the 49 additional trips to be generated by the project will be so adverse as to affect the stability, safety, or character of the community, or will unduly impact transportation facilities or city services. Most of the other residential projects pending are not sufficiently close to the project so as to create a presumption that traffic from those projects would circulate through this residential area near this project; in fact, an opposite conclusion could be drawn. The responsibility for the cumulative impact on traffic and City services from the Safeway renovation is not applicant's, since his contribution is minor in relation to Safeway's projected contribution. Therefore, no mitigation for traffic beyond that imposed by the Director is warranted under SEPA policy.

5. Height, bulk and scale and Density. The proposal would be an increase in height, bulk, scale and density over existing development on the site. It also would be larger than existing surrounding development, except for the Queen Anne Manor across

the street. Such differences would create an adverse impact on the residential use in the same block of the site, particularly to those residences behind on the east. However, the project is not substantially incompatible with the general character of development anticipated by the land use policies for the area in which it is located. Nor does it involve a transition problem with less intensive zoning of the magnitude envisioned by the land use policies or SEPA policies which would authorize mitigation under SEPA. The site does not present unusual circumstances and is not on an edge, although arguably it is near an edge of a less intensive zone. There is only a lot and street intervening from single family zoning. Applying the substantial weight criteria to the Director's decision, the Examiner concludes that SEPA policies are adequately satisfied by the proposal and further mitigation of the project to reduce the adverse impacts on the residence behind or to the south is not justified or authorized under SEPA.

Interpretation

6. Parking Plan. Appellant contends that the parking plan does not meet the requirements of Section 23.54.030 of the Land Use Code, arguing that with the stalls as designed, tenants using the stalls would be inclined to back out of the garage and up a slope in excess of 10 percent grade, which appellant contends is prohibited by Section 23.54.030D.1.b. Appellant's reliance on Section 23.54.030D.1.b for this argument is misplaced. That section does not prohibit the parking plan or slope at issue here. Instead it authorizes backing out of vehicles from parking areas servicing 5 or fewer vehicles so long as the slope is not greater than 10 percent. This section is not applicable to the instant project.

7. In any event, the Hearing Examiner does not agree that the tenants would be inclined to back out of the garage in this project. It is unlikely that tenants would back up grades of 18.26 percent in the garage and 20 percent in the driveway to exit the garage, because to do so would be difficult and dangerous. There is adequate space for maneuvering turns of vehicles with the parking plans proposed to allow those vehicles to exit the garage front first. The Hearing Examiner concludes that the plan meets the requirements of Section 23.54.030, and conforms to the dimensions identified in Exhibit 23.54.030D of that section.

8. Driveway Slope. Appellant also contends that the driveway slope exceeds the maximum permissible slope for driveways under the Seattle Building Code and under the Street Design Manual. The organization claims the Street Design Manual is incorporated into the Land Use Code by Director's Rule 10-85 and SED Rule 85-02 (Ex 5).

9. All parties concur that, as presently designed, the driveway exceeds the maximum slope authorized by the Seattle Building Code. This problem can be corrected by a minor grade adjustment on the west (front) side of the building, thereby increasing the elevation of the grade there by 3 inches. This grade change will be required of the project by DCLU to bring it into conformance with the driveway requirements of the Building Code.

10. The appellant, however, asked for an interpretation of whether the driveway slope complied with Section 23.54.030(a land use section). The Land Use Code contains no specific private driveway slope requirements (although there is a slope mentioned in the section authorizing vehicles to back out). Nor is there any slope requirement in the Land Use Code for the garage floor. The Director's rule referred to (Exhibit 5) incorporates the Street Design Manual into the Land Use Code for street and alley improvements relating to development. It does not by its terms or by implication incorporate the manual into the land use regulations relating to private driveways, although such driveways do have to meet the level of the street. Therefore, although the driveway slope does not meet the Building Code

requirements, one cannot say the slope violates Section 23.54.030 of the Land Use Code, the same being silent on the issue of slope.

11. The Hearing Examiner concludes that slope of the driveway and garage floor are within that authorized by the Land Use Code and with the minor adjustment of grade contemplated for the driveway will bring the driveway into conformance with the Building Code.

12. Building Envelope. With the height bonus for slope, the proposed structure does fit within the building envelope required under the Land Use Code. Under Section 23.45.022A, on sloped lots additional height is permitted along the lower elevation of the footprint in a certain ratio. The calculated bonus in this case is 11 inches. Thus, the slope bonus would allow the building along the lower elevation to be raised to 30 feet 11 inches. The additional height needed for correction of the driveway grade would only be 3 inches. The bonus is more than enough to accommodate this correction. Therefore, even at its highest point the building would fit within the height allowed and space envelope under the Land Use Code.

13. Vesting. Under the Interim Controls Ordinance adopted on March 8, 1988 (Ordinance 113858), further lot coverage controls were instituted and limitations were placed on the number of residential units allowed per lot in multi-family residential zoning. Prior to the Interim Controls Ordinance, the Land Use Code placed no limitation on number of residential units allowed in such zones. Under that ordinance, the maximum number of residential units allowable for the instant project's lot would have been six. As designed, the project has eight units. By the terms of the ordinance, the interim controls did not apply to complete building permit applications received prior to the effective date of the ordinance (March 8, 1988). Therefore, the critical question becomes whether the application submitted February 29, 1988, or as corrected on March 4, 1988, was a complete building permit application. If it was, the project was vested to prior Municipal regulations in terms of density and lot coverage controls. Section 23.76.026. If it was not, the project was subject to the interim controls.

14. Section 23.76.026 on vesting of development rights provides, in part, that master use permits of the type at issue

...shall be considered under the Land Use Code and other land use control ordinances in effect on the date a fully complete building permit application, meeting the requirements of Section 302 of the Seattle Building Code, is filed....

The submittals required under Section 302 for a complete building permit application which are at issue in this appeal relate to absence of a topographic survey from the plans submitted with the application February 29, 1988.

15. A topographic survey is not required for new construction under Section 302 unless there is evidence of some problem with intrusion into a required open area or property line. Section 302(c)H of the Seattle Building Code (Exhibit 2). No such problems were presented by the plans or have been raised in this appeal. Section 302 does require topographic plans, however. That section does not define how complete or in what form such plans are to be presented, although it does identify items to be included.

16. The plans presented topographic information on existing and final contours, spot elevation on grade, location of the building on the site, and cut and fill information. An experienced plans examiner from DCLU testified that the plans submitted originally had adequate topographic and other required information to constitute a complete building permit application. She also testified that the department does not require the

inclusion of a topographic survey at intake, and in fact only requires it under certain circumstances, such as those enumerated earlier and when height proposed is at the maximum. Another plans examiner reviewed the earlier submittal for completeness on March 1, 1988, and determined those were sufficiently complete to vest the project. The Director's earlier determination that the project was vested before the interim ordinance was reaffirmed in this appeal.

17. Under principles of statutory construction zoning ordinances are to be liberally construed so as to effectuate their intent. Mall, Inc. v. Seattle, 108 Wn. 2d 369, 739 P.2d 668 (1987). The code is to be construed as a whole with regard to the drafters intent. Mall, supra, at 379. A literal reading is to give way to the spirit or intent of the legislation to avoid unlikely, strained or absurd consequences. Mall, supra, 379. Moreover, considerable deference is to be given construction of an ordinance by officials charged with its enforcement. Mall, supra, at 377-378.

18. Given a liberal reading of the codes at issue and according the deference to be given the administrator charged with review and enforcement of the Codes, and applying substantial weight to the Director's decision as required on appeal, the Examiner concludes that a complete building permit application was filed on this project prior to the Interim Controls Ordinance and the applicant's development rights were vested to those regulations in force prior to the Interim Controls Ordinance.


19. Appellant also claims that the project was not vested earlier because revised plans were submitted which are claimed to be substantially different. The Hearing Examiner is not persuaded. The plans submitted in March of 1989 are not substantially revised over those submitted in February of 1988. The project still has the same basic design, floor plan, size, height and shape. It is reduced in density and bulk somewhat, and has more on-site parking and landscaping. These changes were made to accommodate some of the concerns of the neighborhood and of DCLU. Accordingly, the applicant did not lose its earlier vesting by the revisions made.

20. In sum, the Hearing Examiner is not persuaded from the evidence presented that the Director's decisions appeals were clearly erroneous. The mitigating conditions applied to the project by the Director are adequate for the adverse environmental impacts disclosed, and the Director's decisions should be affirmed.

Decision

The Director's determination of nonsignificance in this project and the interpretation of the Director on the issues requested are each AFFIRMED.

Entered this 17th day of May, 1990.



Dona Cloud
Deputy Hearing Examiner

Concerning Further Review

File No. MUP-89-064(W)

Pursuant to Seattle Municipal Code Section 23.76.024, 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, 5th Floor Municipal Building, 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 23.76.024, 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 City Council appeal.

If no appeal is taken to the City Council, 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 23.76.022(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. 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. See Chapter 43.21C, RCW and Chapter 25.05, Seattle Municipal Code.

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, Room 1320 Alaska Building, 618 Second Avenue, 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.

CONCERNING FURTHER REVIEW

File No. S-90-003

The decision of the Hearing Examiner in this case is the final administrative determination by the City, 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 must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within fourteen days of the date of this decision. Should such a request be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, Room 1320 Alaska Building, 618 Second Avenue, Seattle, Washington 98104.