

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

ODEN INVESTMENTS AND  
KINNEN PARK CONDOMINIUM ASSOCIATION

FILE NOS. MUP-84-057(W) and  
MUP-84-058(W)  
APPLICATION NO. 8400582

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

#### Introduction

Oden Investments appealed the decision of the Director, Department of Construction and Land Use, to impose a condition limiting the number of stories on the master use permit for its proposal for 619 5th Avenue W. Kinnear Park Condominium Association appealed the failure of the decision to further limit the height.

The appellants exercised their 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 August 28, 1984.

Parties to the proceedings were: appellant Oden Investments represented by Lyle N. Kussman, the architect, appellant Kinnear Park Condominium Association, represented by John B. Darrah, president, and others, and the Director represented by Ed Somers, 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. Oden Investments (Oden) applied for a master use permit to construct a 7 story, 21 unit multifamily structure on the vacant lots at 619 5th Avenue W. The Director granted the permit subject to certain conditions including the reduction of height of the building to 160 ft. elevation. Oden challenges this condition. Kinnear Park Condominium Association (Kinnear Park) challenges the failure to further reduce the scale of the building.

2. The subject site is on the south slope of Queen Anne Hill and is currently zoned Midrise which has a 60 ft. height limit. The Midrise zone extends from the alley north of the subject site south to the Mercer Street corridor and east two blocks.

3. Property north of the alley is zoned Lowrise 3 with a 37 ft. height limit.

4. An environmental checklist (checklist) was prepared by the applicant and revised by Ed Somers, the Director's land use specialist. The checklist disclosed a number of adverse impacts. The Director did not find any to be significant so issued a declaration of non-significance.

5. Under H. Land Use, the checklist stated that the seven story building would be out of scale with the surrounding development consisting of two to five story buildings. In his decision the Director found "(t)he proposed structure would be seven stories in height which would be somewhat higher in scale than the surrounding two to five story structures."

6. The site is surrounded by the following development:

- 1) the Kinnear Plaza, across the alley north of the subject site, roof at 167 ft. elevation, four stories on Roy Street, four stories over parking on the alley;
- 2) frame, single family residence on property abutting the south side of the subject site, two story, 136 ft. elevation;
- 3) the Seaview to the northwest of the subject site across the alley, three or four stories, 155 ft. elevation;
- 4) the West Roy Apartments at the southeast corner of the intersection of 5th with Roy Street, four stories over parking on the south side, 173 ft. elevation;
- 5) the Parkwing to the east across 5th West, four stories, 153 ft. elevation;
- 6) a three story building at the northwest corner of 5th and Mercer, south of the subject site, 124 ft. elevation;
- 7) the Kinnear Park Condominium, on the north side of Roy Street, four stories from grade on the south side and three stories from grade on the north side, 185 ft. elevation.

7. Plans are underway for the redevelopment of the adjoining property to the south now occupied by the frame, two story residence. The 60 ft. height limit of the zone applies to that property.

8. The proposed building with the seven stories, but with the parapet eliminated, would have an average height of about 60 ft.

9. The number of stories does not indicate the height of a building with any precision. The applicant pointed out an older building in the area with a substantially greater floor-to-floor measurement than the 8.5 ft. of the proposed building.

10. The Land Use Correction Sheet prepared in response to the application by the Department of Construction and Land Use, Exhibit 5, states "Height-OK."

11. The applicant's architect testified, without contradiction, that the total bulk of the proposed building would be less than many other buildings in the area.

12. The area has a pattern of "stepped-down" building heights, i.e., each building is lower in elevation than the next building above it on the slope. The proposed seven story or conditioned six story building would depart from that pattern.

13. In an area north of Mercer Street and bounded on the other sides by 6th Avenue West, Olympic Place and Queen Anne Avenue, 47 lots are vacant, single family developed or used by accessory parking. This area includes both Lowrise 3 and Midrise zoned property.

14. On the south side of Mercer Street are two lots developed with eleven story buildings.

15. The new office building at 3rd Avenue West and Mercer Street is 5 stories off of Mercer and the new building at 1st and Mercer is 4 stories.

16. Many of the lots in the Midrise zone are underutilized so could be the subject of redevelopment in the future.

17. Section 25.04.510(A), the SEPA policy intent on cumulative effects, provides, in part:

2. A single development, use, or modification, though otherwise consistent with zoning regulations, may create adverse impacts upon facilities and services, natural systems or the surrounding area when aggregated with the impact of prior development; and a single development may induce, due to a causal relationship, other developments, which ultimately will adversely affect public facilities and services, natural systems or the surrounding area; it is the policy of the city to condition or deny proposals to minimize or prevent such adverse environmental impacts from occurring.

18. Policy 1 of the Multi-family Land Use Policies provides:

In designating areas for the various multi-family classifications, a match shall be sought between the the physical characteristics of areas and the locational criteria established for the multi-family classifications in Policy 3. One objective is to increase opportunities for new housing development in order to ensure that there will be adequate capacity for future housing need. An equally important objective is to ensure that new development is compatible with neighborhood character.

The achievement of both of these objectives will mean sensitively increasing the scale and intensity of development while attempting to minimize the impacts on existing character. The locational criteria are established so that new development will maintain a compatible scale in an area, preserve views, and enhance the streetscape and pedestrian environment, while achieving an efficient use of the land without major disruption of the natural environment.

19. Goals for Seattle - 2000 Commission Report is included in Section 25.04.500, Appendix A. The statement from the Community task force includes the following:

Goal A. Diversity and Freedom of Choice: the City of Seattle shall recognize, encourage and enhance the unique differences between existing Seattle neighborhoods and between unique styles of life.

Diversity: Subgoals:

4. The City of Seattle shall recognize that private or public multiple-unit housing must be built in scale with the neighborhood.
5. The City of Seattle shall encourage the location of residences, institutions and business with care for the integrity of those neighborhoods.

Goal B. Livable Population Densities: the City of Seattle shall establish criteria for optimum population density in communities and limit growth and change to that which can be achieved in an orderly manner.

3. Such planning shall be scaled to meet the needs of varying densities.
4. The City of Seattle shall act to reverse this policy by returning to zoning patterns that will protect existing neighborhoods.

20. The Queen Anne Community Council adopted goals and policies recognized by the City Council in Resolution 26164. Those goals and policies do not appear in Section 25.04.500, Appendix A, or elsewhere in the City's SEPA policies.

21. The locational criteria for the Midrise zone are:

- a. Areas which are adjacent to business and commercial areas with comparable height and bulk.
- b. Areas which are served by major arterials and where transit service is good to excellent, and street capacity could absorb the traffic generated by midrise development.
- c. Areas which are in close proximity to major employment centers.
- d. Areas which are in close proximity to open space and recreational facilities.
- e. Areas along arterials where topographic changes either provide an edge or permit a transition in scale with surroundings.
- f. Flat areas where the prevailing building height is greater than 37 feet or where, due to a mix of heights, there is no established height pattern.
- g. Areas with moderate slopes and views oblique or parallel to the slope where the height and bulk of existing buildings have already been limited or blocked views from within the multifamily area and upland areas.
- h. Areas with steep slopes and views perpendicular to the slope where upland developments are of sufficient distance or height to retain their views over new developments up to 60 feet high.
- i. Areas where topographic conditions allow the height of the building to be obscured. Generally, these are steep slopes, 16% or more, with views perpendicular to the slope.

22. William Blair, environmental planner, observed that the area is not adjacent to business areas with comparable (to what is proposed) height and bulk; that the streets off of Mercer are narrow; that the area is not flat and there is an established height pattern; that views still exist; and that the new 60 ft. building would block views.

23. The Director relied on Policy I of the Multi-family Land Use Policies for the condition imposed reducing the height of the building. The Director considered the policy on cumulative effects, Seattle 2000 and Midrise locational criteria.

### Conclusions


1. On appeal of the Director's master use permit decision, that decision is to be given substantial weight. Appellants must, therefore, prove that the decision is clearly erroneous. Brown v. Tacoma, 30 Wn.App. 762, 637 P.2d 1005 (1981).
2. While several issues were raised in Kinnear Park's notice of appeal, the issue on which evidence was presented was whether the Director erred in failing to further reduce the scale of the proposed building, an appealable discretionary decision listed under Section 23.76.30(I). Oden challenges the Director's decision to require the one story reduction. Both appellants are correct as to their facts for north of Mercer the height of the buildings is generally lower than proposed with a stepping down pattern on the slope, while south of Mercer there are two significantly higher buildings. Oden relies heavily on its rights under current zoning. The City Council concluded, however, in its Findings and Conclusions of the City Council on DCLU's Request for Interlocutory Review, File Nos. MUP-82-080, 085(W) that the zoning classification controls the maximum height of the project but that "the substantive authority of the Director of DCLU under SEPA is not limited by vested zoning rights." Therefore, the Director may limit the height of the project if appropriate under the facts and adopted policies. Though evidence was adduced on potential view blockage from private dwellings, it should be noted that the policies protect views only from public places identified in Appendix B. Section 25.04.550.
3. The Director considered the SEPA policies and concluded that it is the policy of the City to ensure that new development is compatible with neighborhood character and "to sensitively increase the scale and intensity of development while attempting to minimize the impacts on existing character." These statements are found in the Multi-family Land Use Policies which are included in Appendix A as modifications and updates of the Comprehensive Plan. The written decision indicates that he imposed the condition reducing the height of the building based on those policy statements. The Director considered the more intensive Midrise zoning of the subject site. To allow some increase in scale contemplated by the zone maximum and policy statement he reduced the height one story to minimize the impact on the area but declined to reduce it further which would be necessary to match the scale of the area. Oden did not show this approach to be erroneous.
4. Kinnear Park urges that permitting a 6 or 7 story building will be precedent for increase in scale in the area triggering the Cumulative effects policy, Section 25.04.510. Since the Multi-family Land Use Policy contemplates some change in scale the evidence, or an inference from the evidence, that increased scale may be induced is not sufficient to permit further conditioning. There also must be a showing that there will be an adverse effect on public facilities and services or natural systems. While traffic and parking was addressed, there was not sufficient competent evidence to find such adverse effects.
5. Kinnear Park points to the policy statements in Seattle 2000 to support its contention that the height must be further reduced. Goal A, Diversity, Subgoal 4, is the most directly applicable of those cited to the issue of scale where it requires the City to recognize that multiple unit housing must be built in scale with the neighborhood. Kinnear Park points also to various locational criteria for Midrise zoning which the site or area does not meet to show that the full height should not be allowed.

6. The record shows that the Director considered all the policies cited by Kinnear Park plus the general Multi-family Land Use Policies statement which he used as the basis of his decision. Since statements such as "multiple unit housing must be built in scale with the neighborhood" from Seattle 2000 and "to sensitively increase the scale" from the Multi-family Land Use Policies offer conflicting goals the Director was forced to choose between them or attempt to reconcile them. He appears to have elected to use the Multi-family Land Use Policy statements which provide for both increasing scale and neighborhood compatibility satisfying, to the extent possible, both goals. While a different choice could have been made, his approach was not clearly erroneous. Therefore, the decision reflecting that choice and the condition to carry out the policy must be affirmed.

#### Decision

The decision of the Director on the master use permit application is AFFIRMED.

Entered this 11th day of September, 1984.

  
M. Margaret Klockars  
Deputy Hearing Examiner

#### CONCERNING FURTHER REVIEW

Pursuant to Section 25.04.210, Seattle Municipal Code, a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the fourteenth day after the date the decision appealed from is filed with the SEPA Public Information Center. The City Council's review on appeal shall be limited to the issue of compliance with Section 25.04.190. The appeal must be filed with the City Clerk on the first floor of the Municipal Building. The City Council should be consulted regarding their appeal procedure. If an appeal is taken pursuant to Section 25.04.210 the time for judicial review of the underlying governmental action and/or other SEPA issues is stayed until City Council renders a final decision on this Section 25.04.190 appeal.

If no appeal is taken pursuant to Section 25.04.210, 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. 2 Am. Jur. 2d., Admin. Law Section 524. Any request for judicial review of the decision of the underlying governmental action and/or other SEPA issues must be filed in King County Superior Court within fourteen days of the date of this decision. Seattle Municipal Code Section 23.76.36(B)(11); Akada v. Park 12-01 Corporation. 37 Wn. App. 221 (1984); JCR 73.

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 transcript of the hearing, but will be reimbursed if successful in court. Instructions for preparing of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104.