

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

BETTE M. EUSE, ET AL.

FILE NO. MUP-82-014(CU,W)
APPLICATION NO. X-81-020

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

Introduction

Stephanie Edwards for McDonald's Corporation, project applicant, proposes to construct a fast-food restaurant with drive-in window at 2137 Northgate Way. On behalf of herself and others appellant, Bette Euse, appealed from approval by the Department of Construction and Land Use (DCLU).

The appellant exercised the right to appeal pursuant to the Master Use Permit Ordinance, Chapter 24.84, Seattle Municipal Code.

Parties to the proceedings were: appellant, pro se, and by Chris Duros; project applicant by Stephanie Edwards; and the Director of the Department of Construction and Land Use by Malli Anderson.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 24 (Ordinance 86300, as amended) unless otherwise indicated.

This matter was heard before the Hearing Examiner on March 22, 1982.

After due consideration of the evidence elicited during the public hearing and as a result of the personal inspection of the subject property and surrounding area by the Hearing Examiner, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The subject property, zoned Community Business (BC), is located on the southwest corner of Northgate Way (also known as North 110th Street) and Corliss Avenue North. Immediately east of Corliss Avenue is the Interstate 5 highway and ramps. The subject lot, 125 ft. wide and 186 ft. deep, is paved and used, according to the applicant's witness, for parking for 15-20 vehicles per day; in the view of appellant's witness, the lot is used for vehicle storage.

2. For on-site development project applicant proposes a 3,500 sq. ft. area fast-food restaurant facility with a drive-in window. Twenty-one angled, on-site parking spaces are proposed, to be located along the north and west sides of the lot. The drive-in window is proposed for the east side of the lot.

3. Proposed restaurant hours are 6:00 a.m. to 11:00 p.m. daily. Access to the restaurant is proposed from Northgate Way, an east-west arterial which has a median two-way left turn. As requested by the Seattle Engineering Department, applicant proposes one way circulation around the building, south-north, such that through traffic could by-pass the drive-in window en route to the exit to Northgate Way, where signing will indicate right (east) turn only. From the plot plan the access point appears roughly 60 ft. west of the property's northeast corner.

4. An Exxon station is west adjacent to the subject site. A five story office building is to the south. The remaining development on the block, which is bounded on the west by Meridian Avenue N.; on the south by N. 107th; on the north by Northgate Way; and on the east by Corliss Avenue N., includes one other service station, a two story office building, and a second five story office building. Directly across Northgate Way are two service stations, a family restaurant and the Ramada Inn lodging facility.

5. On the condition that landscaping "conform to approved plans submitted for the building permit application" DCLU approved the administrative conditional use required to establish a fast-food restaurant and to establish a drive-in window for the restaurant. DCLU also undertook a threshold environmental review and issued a declaration of non-significance (DNS) with the same condition as was imposed for the conditional use applications.

6. Appellant filed an appeal from the DCLU decisions. In addition to the testimony of appellant and witness, several letters of opposition were of record. Objections generally fell into one of the following categories, utilized in a response letter of the CH2M Hill Company to project applicant:

- (a) impact on I-5 access of the FLOW system
- (b) existing traffic congestion on Northgate Way
- (c) possibility of alternative, less detrimental uses of the property
- (d) parking
- (e) use of the west adjacent property owner's access.

As described by appellant, Northgate Way is one of the few northend east-west arterials which carries, among other traffic, the community college traffic originating from the south. Further, the subject site is near on and off ramps for Interstate 5 and at a busy, signalled intersection. In the appellant's view the project can only compound the problem. Appellant's witness was of the view that the 3 or 4 car lengths site distance from Corliss Avenue was insufficient.

7. Based on the characteristics of several area McDonald's restaurants applicant charted the percentage of sales by hour showing, for example, that a high of 3.63 percent of daily sales occurred between the hours of 6:00 a.m. and 11:00 a.m.; that peak sales, 14.52 percent, occurred between the hours of 12:00 p.m. and 1:00 p.m.; that between 4:00-5:00 p.m. 5.43 percent of the sales occurred, rising to 9.99 percent between 5:00-6:00 p.m., declining to 9.87 percent 6:00-7:00 p.m. and further declining to 5.03 percent from 7:00-8:00 p.m., with decreases thereafter. Applicant considered the existing Southcenter restaurant as a particularly suitable comparable because of that store's proximity to an established shopping center and arterial access. The Southcenter store lunch trade constitutes 18-19 percent of the restaurant sales.

8. As related in the credible testimony of the senior transportation engineer for CH2M Hill, it is projected that 270 automobile trips per day would be made into the site; however, roughly 25 percent of that traffic would be diverted (drawn) from the existing traffic flow. This is consistent with the witness' view that fast-food restaurants do not typically generate traffic, but rather draw from existing traffic. The projection by the project applicant of the percentage of draw traffic ranged to 45 percent.

9. Northgate Way carries approximately 2,200 vehicles per hour between 4:00-5:00, p.m. peak hour, 1,300 of these eastbound.

10. The traffic FLOW system, which utilizes metering devices to signal availability of the freeway system, is in current use for northbound afternoon (peak) traffic and southbound for the morning (peak) traffic period. The effects of the system are currently under observation by the Washington State Department of Transportation so that changes, as may be appropriate, might be implemented. Some temporary queing and ramp delay has resulted; however, it is estimated that the carrying capacity of Interstate 5 has been increased by up to 10 percent as a result of the new system, and that additional queing resulting from the project could be accommodated.

11. The project applicant's witness was of the opinion that the project would, for example, convert local office and college auto trips to pedestrian trips.

12. An environmental checklist was prepared by applicant for this proposal and reviewed by DCLU. Regarding Transportation/Circulation, proponent noted that there might be a generation of additional vehicular movement and as well potential effects on existing parking facilities or demand for new parking. DCLU annotated the foregoing responses by indicating, yes, the proposal would result in the inquired-of changes; however, no explanation of the DCLU answer appeared in the checklist of record.

13. The proponent also noted in the checklist that there would be alterations to present patterns of circulation and an increase in traffic hazards, essentially attributed to "higher traffic volume to and from adjacent city streets and circulation within the lot itself".

14. The proposal will be responsible for additional traffic to the site and will increase the use and queing of the median left-turn lane.

Conclusions

1. In evaluating threshold determinations, the decision of the Director is accorded substantial weight. The burden of proving a position contrary to the Director is that of the appellant. Section 24.84.170.

2. An environmental impact statement is required only when there is an action which would have a significant adverse impact on the environment, i.e., "whenever more than a moderate effect on the quality of the environment is a reasonable probability". Norway Hill Preservation and Protection Association v. King County Council, 87 Wn.2d 267 (1976).

3. Therefore, in order for the Examiner to require an environmental impact statement in this case, it must be shown that the Director's decision was clear error.

4. In the instant case, the DCLU approved checklist was without comment on the issues of affirmative impacts on traffic and parking. Further, the record reflects that there will be environmental impacts, such as increased traffic, as a direct result of the project. It is clear that appellant disagrees with the DCLU assessment of the degree of those impacts and with the DCLU decision that no EIS should be required.

5. However, considering the major existing arterial traffic pattern; the fact that McDonald's peak customer traffic will not conflict with either a.m. or p.m. existing peak traffic; and considering that from 25-45 percent of the traffic generated by the proposal will be from existing traffic we do not conclude as a matter of law that the impact on the environment rises to the

level of a "significant adverse impact". The appellant has not overcome the substantial weight accorded the Director's decision and the decision on the DNS is accordingly affirmed.

6. The requirements for drive-in restaurants and for fast-food restaurants as principal conditional uses permitted by the Director are delineated in Section 24.44.080 of the Seattle Municipal Code. Drive-in restaurants and fast-food restaurants are subject to the conditional use criteria of Section 24.74.010 which states in relevant part as follows:

In specific cases the Director may authorize a conditional use if it is found that the... use will not be materially detrimental to the public welfare or injurious to property in the zone or vicinity in which the property is located, and that the authorization of such conditional use will be consistent with the spirit and purpose of (this) subtitle.

In considering applications for conditional uses the nature and condition of adjacent uses and structures are to be considered. Section 24.74.010.


7. The site of the proposed fast-food restaurant is in a Community Business zone. The land uses surrounding the property include service station, office, restaurant and lodging. The site is immediately adjacent to major arterials. Therefore, separating out the issue of traffic, the use would be consistent and compatible with the adjacent uses, structures and systems extant.

8. Specifically relating to traffic, some new traffic would be generated by the establishment, adding to an unpleasant situation particularly on Northgate Way. However, from 25-45 percent of the traffic would be drawn from the existing traffic flow. Sales peak hours would be different from morning or afternoon peak hour traffic. As the applicant has suggested, some existing local automobile trips for restaurants could possibly be converted to pedestrian trips. Twenty-one parking spaces would be provided on-site, with direct egress and ingress from Northgate Way where the exit will be right turn only. Accordingly, while providing some additional measure of inconvenience, the conditional use will not be, as conditioned herein, "materially" detrimental to the public welfare. The Examiner agrees with appellant's witness that the proximity of the access to the Corliss Avenue and Northgate Way intersection is of concern. Therefore, the Director's decision on the administrative conditional use application is modified to require that the applicant request a review of the westbound traffic ingress into the facility. If the Department of Engineering concludes that due to the proximity to the intersection the ingress of westbound traffic to the facility should be prohibited, the applicant shall comply with mitigating conditions recommended by the Engineering Department.

Decision

The decision of the Director on the DNS is AFFIRMED. The decision of the Director on the application for the administrative conditional uses is AFFIRMED as conditioned and modified herein.

Entered this 30th day of March, 1982.


Leroy McCullough
Hearing Examiner

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981). Should an appeal 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.