

BEFORE THE HEARING EXAMINER

CITY OF SEATTLE

In the Matter of the Appeals of

N.E. 45th STREET CONCERNED NEIGHBORS and
WILLIAM S. TSAO

FILE NO. MUP-85-071(W)
FILE NO. MUP-85-072(W)
APPLICATION NO. 8500218

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

ORDER DENYING REQUEST
FOR CLARIFICATION

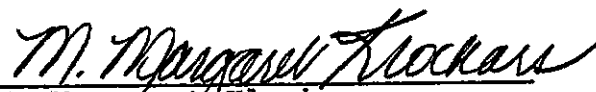
N.E. 45th Street Concerned Neighbors, appellant herein, by its attorney, Peter J. Eglick, filed its Request for Clarification of the Findings and Decisions of the Hearing Examiner entered in this matter. The Director, Department of Construction and Land Use, by Patrick Doherty, associate land use specialist, filed her response opposing the request. Applicant, Northwest General Contractors, filed no response.

Appellant's paragraphs No. 1, 2, 3, 4 and 5 request additional findings and conclusions to clearly frame issues for review by the City Council. Since the City Council's review of the Hearing Examiner's final decision is to be based on the entire record from the hearing, Section 23.76.024.F, Seattle Municipal Code, appellant can urge additional findings of fact be made at that time if appropriate. No further conclusions should be made as those necessary to the decision of the Hearing Examiner were entered at the time of the decision. Conclusion No. 19 will not be reconsidered.

In paragraph No. 7, appellant requests an amendment to the decision to require notice to appellant of any decision on remand. The intention of the examiner that the Department of Construction and Land Use give such notice was unstated because it has been the practice of the Director of the Department of Construction and Land Use to give such notice. Unless the Department of Construction and Land Use notifies the Office of Hearing Examiner that it will not be following that practice in this case, appellant is to assume that it will be mailed notice of the decision.

The Request for Clarification is denied.

Entered this 4th day of April, 1986.


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N.E. 45TH STREET CONCERNED
NEIGHBORS

FILE NO. MUP-85-071(W)

from a decision of the Director, ORDER ON REQUEST FOR CLARIFICATION
Department of Construction and AND
Land Use on a master use permit FINAL DECISION
application

This matter was originally heard December 3, 1985, after which a decision was entered remanding it to the Director, Department of Construction and Land Use, for consideration of the appropriateness of imposing conditions to mitigate the incompatibility of the bulk of the proposed building by requiring the structure to conform to the topography of the site. Appellant filed a Request for Clarification, including reconsideration. A ruling was entered on the request and later vacated. The Director issued her response to the remand which imposed an additional condition on the permit. Appellant filed its objection to the Director's determination on remand and a hearing was held on June 3, 1986, on that objection and on the Request for Clarification.

Request for Clarification

In the Request for Clarification, appellant objects that its argument that the change in the zoning of the Children's Orthopedic Hospital property was not responded to in Conclusion 13. Appellant argues that the zoning change from RD 5000 or RD 7200 to I-4/SF 5000, which occurred after the subject was zoned L-3, reflects City Council intent regarding development on N.E. 45th and represents a change in circumstances which the Council would not have contemplated when it applied the L-3 zoning to the site. Conclusion 13, therefore, is amended to read:

Appellant neighbors urge that the instant case meets both standards. The circumstances not contemplated by the Council, it submits, are a) community opposition to the rezoning of which the Council may have been unaware; and b) the later zoning change of the Children's Orthopedic Hospital property to institutional/single family from a duplex designation.

Conclusion 14 is amended to read:

The Hearing Examiner is in a good position to observe that community opposition to rezoning is not "unusual." Moreover, community opposition to a rezone is not the kind of circumstance that could serve as a basis for a SEPA condition. Further, the application of a non-institutional zone designation into major institution property which is less intense than the prior zoning, when that zone faces long-established single family zoning, is not an unusual circumstance which could not have been contemplated when the subject property was zoned.

Appellant requests a finding of fact as to the location of Gary Tomlinson's property. The following finding of fact is added:

47. Gary Tomlinson owns a single family residence at 4181 42nd Avenue N.E. which property abuts the east side of the alley, east of the subject property, and has a view of the subject property from the rooms, deck and yard at the back of the house.

Appellant asks that Professor Nyberg's summary of ways the design of the proposed building ignores City policy be included. Finding of Fact 40 is amended to read:

40. Professor Nyberg testified that the proposed building does not consider the topography of the site, architectural characteristics of the area, bulk, scale or transition between zones. He suggests the following measures to mitigate incompatibility impacts: design the structure to step down the slope, reduce the building's depth, and introduce ground-related entries.

Appellant requests that a finding of fact be entered that the Department of Construction and Land Use analyst acknowledged that he did not consider Seattle 2000 policies as separate bases for conditioning or denying the project. Since the Hearing Examiner could not locate such acknowledgment in the record, no finding will be entered.

Finally, appellant requests reconsideration of Conclusion 19 on the grounds that City Council decisions support the use of Seattle 2000 policies even after enactment of zoning provisions. The Hearing Examiner declines to reconsider Conclusion 19. While the Hearing Examiner agrees with appellant's position as to certain policies, she does not agree that the policies addressed in Conclusion 19 may serve as the basis for conditioning a project.

Additional Findings of Fact on Further Objections to
Decision of Director on Remand

48. After remand the Director considered Policies 3 and 4, Multi-family Land Use Policies, as directed in the remand order, and imposed the following additional condition to reduce the proposed building's appearance of bulk:

10. Prior to issuance of a MUP, the applicant shall submit revised plans indicating that the proposed building shall step down the site from east to west by breaking the roofline into no fewer than three levels, each of which shall be vertically separated by at least three feet. A total vertical roofline elevation change of at least six feet shall be accomplished.

49. Across the 100 ft. frontage of the site on N.E. 45th, the grade drops down to the west approximately 8 ft. Across the 86 ft. front facade of the proposed building the grade drops approximately 6 ft.

50. The height of the building as proposed, is less than the maximum allowed by the zoning. The new Condition No. 10 would not prohibit the redesign of the building to the maximum height, as long as the roofline is broken into the three levels, in which case actual bulk would be increased.

51. Patrick Doherty, land use specialist for the Director with a master's degree in urban planning, opined that the condition, interrupting the expanse of the roof, will reduce the appearance of bulk even if the actual bulk is increased.

52. Professor Nyberg, professor in the School of Architecture and Urban Design at the University of Washington, a registered architect with a masters of architecture and graduate studies in urban planning, opined that the condition allows an increase in bulk and, if that occurs, the required stepping down of the roofline will not decrease the appearance of bulk.

53. Professor Nyberg has also concluded that the transition to the SF 5000 zone with the proposed building will be abrupt and "brutal."

Additional Conclusions

24. Policy 3, for the Lowrise 3 classification, addresses the appearance of bulk which is to be controlled by "...relating building height to the topography." The intent of Policy 4 is to "require that building heights reflect the topography of the site...." Under Implementation Guideline 2a. there are illustrations to show that "(w)hen the slope is parallel or perpendicular to the street in front of the building, the top of the building envelope shall "step" (Figure 20) or follow the land contours (Figure 21)." The additional condition conforms to the policy on which it is based.

25. Appellant urges that the condition imposed is inadequate in that the bulk of the building as it relates to other structures, or its scale, is not improved. The Director has exercised the extent of authority available to her to condition based on Policies 3 and 4 of the Multi-family Land Use Policies.

26. Appellant further argues that recent decisions by the City Council, In re SQAD (160 Lee), C.F. 294378, and In re Martin (1430 1st Avenue North), C.F. 294508, provide new substantive authority, or new understanding of the existing substantive authority, to condition projects incompatible as to bulk and that the Hearing Examiner should reconsider the matter in light of those decisions. In the case of In re SQAD, the City Council relied on the reasoning of In re Oden, C.F. 293551, that if a project presents unusual circumstances which would not have been contemplated in the rezoning of the area or the project is on the edge of a zone and presents a problem of transition between the zones, the multi-family policies support the imposition of mitigating conditions.

27. The Hearing Examiner finds no reason to reconsider her conclusion that the site presents no unusual circumstances not contemplated by the City Council at the time it rezoned the subject site. Further, no impacts from lack of transition to the SF 5000 zone to the south (the Battelle property) were identified so, though the property is on the edge of the zone, no mitigating condition may be imposed. As to transition to the single family zone to the east, it is not clear to the Hearing Examiner that the Director has authority to reduce the height or bulk to make the transition more gradual when another L-3 zoned lot intervenes between the subject property and the edge of the zone. The width of a single family lot plus one half the width of an alley is much greater than the "unusually narrow" Lee Street in In re SQAD which was considered one part of the unusual circumstances in that case. Therefore, it is doubtful that the intent expressed in those cases to provide transition at an edge applies to this case. The Hearing Examiner declines to reconsider the earlier decision.

28. Finally, appellant contends that the Director's practice, followed in this case, of not requiring the applicant to submit revised plans to reflect an additional condition until after appeals are resolved is error. That practice was also followed by the Council in In re SQAD where revised plans are to be examined by DCLU for consistency with the conditions and if found to be consistent no further review or appeal is required. The Director did not err.

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

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Introduction

Neighbors of the project proposed for property at 4017 N.E. 45th appeal the decisions of the Director to issue a determination of non-significance and her failure to condition the project further to mitigate environmental impacts. The applicant appeals the decision to impose certain conditions.

The appellants 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 December 3, and 13, 1985.

Parties to the proceedings were: appellant N.E. 45th Street Concerned Neighbors, represented by Peter Eglick, attorney at law; appellant/applicant Northwest General Contractors, property owner, by its president, Pakie Plastino; and the Director by Patrick Doherty, associate 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. A master use permit application was filed for a proposal to construct a three-story, 15 unit apartment building at 4017 N.E. 45th Street. The Director issued a determination of non-significance (DNS) for the proposal and imposed a series of conditions including increased front setback and a redesign of the roof. These appeals followed.

2. The subject site is a vacant, 10,000 sq. ft. parcel located on the south side of N.E. 45th Street in the Laurelhurst neighborhood.

3. The site is within a Lowrise 3 (L-3) zone. The zone extends one more lot to the east of the subject site where it meets an SF 5000 zone at an alley; to the west several lots where it meets a Community Business (BC) zone; and across N.E. 45th to the north for approximately two blocks. The southern boundary line extends along the alley on the south side of the subject site.

4. Single family residences occupy the three lots to the west and one lot to the east of the subject property, all within the L-3 zone. The SF 5000 zone to the east contains single family residences. Immediately to the south is the campus of the Battelle Memorial Institute, a private research facility, zoned SF 5000. Across N.E. 45th is the Laurelon Terrace apartment complex. Beyond the three lots to the west on the south side of N.E. 45th is a Battelle-owned building containing apartments and offices. The Childrens Orthopedic Hospital complex is located to the northeast of the subject site, across N.E. 45th.

5. The zoning of the Childrens Orthopedic Hospital property is I-4/SF 5000. The underlying zoning was changed from RD 5000 or RD 7200 to SF 5000 during the Institution zoning process to assure that if the property were sold by the hospital it could only be developed as single family.

6. Northeast 45th Street drops in elevation as it goes east from the Sand Point Way intersection and then begins to rise at about 40th N.E. The change in elevation from the top of the hill to the east to the bottom is about 100 ft.

7. The proposed project is a three-story plus basement, 15 unit apartment building with 15 parking spaces in the basement. The parking level would be accessed via the alley at the rear of the site. The building is to have a flat roof.

8. The plan's cover sheet for the proposed building shows a 15 ft. 7 in. front setback and 6 ft. 6 in. side yard setbacks, 15 parking spaces with alley access, and a 38 ft. 6 in. height with a flat roof (Exhibit 16). The Director's decision refers to a 14 ft. average front setback and 5-7 ft. side setback.

9. The architect has designed a building which meets the code requirements while maximizing development.

10. The alley to be used for access at the rear of the site turns north to N.E. 45th at the zone line one lot to the east and joins 40th N.E. three lots to the west. It has a dedicated 16 ft. wide right-of-way and is partially improved to a width of 10-12 ft. with gravel.

11. The following impacts from the proposal were identified in the DNS: those related to excavation, shoring and erosion; increased runoff; increased air contaminants and noise levels from increased traffic volume and human activity; increased shading of properties to the east; land use incompatibility with the four adjacent single family residences; bulk and height impacts on the streetscape and adjacent single family residences; view alteration of the view shed by the addition of a flat-roofed structure; loss of privacy; new illumination; increased traffic volume; and increased demand for on-street parking. The Director found that with mitigation none of the identified adverse impacts would be significant.

12. Various conditions were imposed by the Director to mitigate adverse impacts. Condition No. 6 provides:

Prior to issuance of MUP, the plans shall be revised as follows:

- a. The front setback shall be increased to 20';
- b. Street trees shall be indicated in the planting strip;
- c. The front setback shall be landscaped with sod, bushes, and fast-growing evergreen trees;
- d. The sideyard setbacks shall be planted with fast-growing, evergreen trees; and
- e. The roof shall be redesigned to incorporate 5' maximum gables or hips.

13. The condition requiring landscaping is generally not recorded so does not appear in the title nor is it required to be placed in the condominium declaration.

14. The type or size of evergreens to be used in the landscaping to meet the condition was not specified.

15. The Director's representative asked that language inadvertently omitted be added to conditions 5(c) and (d) requiring that the required landscaping be installed prior to the issuance of an occupancy permit and that the owner or owners continuously maintain the landscaping.

16. Appellant applicant agreed to the addition of that language.

17. The increased setback was required by the Director to reduce the perception of mass and bulk by increasing the distance from the street and to preserve the existing pattern.

18. The Director projected that the new use of the property would generate some 90 vehicular trips per day, ten of which would occur during the peak hours.

19. The Director expects that parking demand will exceed the supply on-site by some eight spaces but, because there are spaces on-street, determined the impact not to be significant.

20. Visibility of on-coming traffic is limited by the topography where the alley connects with N.E. 45th.

21. Vehicular use of the alley will increase substantially with the addition of the proposed building.

22. Single family residences in the area and to the east have pitched roofs as do the structures in the Laurelon complex. The buildings associated with Childrens Orthopedic Hospital and apartment and commercial buildings to the west have flat roofs.

23. The single family structures on each side of the subject property and to the east are generally under 20 ft. in height. Buildings in Laurelon Terrace are two stories and under.

24. If the building height must be reduced to add a pitched roof and stay within permissible heights, as suspected by William Tsao, project architect, the number of units would have to be reduced by about one sixth. It appears, however, that a pitched roof of up to 5 ft. could be placed on top of the structure as designed under the Land Use Code's exception to the height limit for pitched roofs.

25. The houses along the south side of N.E. 45th are set back more than 20 ft. and are landscaped with lawns and shrubs.

26. The approximately 5,000 sq. ft. flat roof would be visible from houses on the hillsides to the east and to persons travelling west down N.E. 45th. Other flat roofs would also be visible.

27. There is a gradual but pronounced rise in terrain between the subject property and the first single family zoned house to the east.

28. The Battelle-owned apartment/office building to the west of the subject site gives the perception of being two stories high along the street but may have one story below on the interior courtyard. The roofline of the building parallels the street grade which rises to the west.

29. The Battelle research facility is on a campus with a clustering of buildings of different heights and considerable open space. Battelle is considering development which would involve demolishing the existing apartment/office building on N.E. 45th and extending new construction south and west.

30. A row of poplar trees line the northern edge of the Battelle property.

31. The DNS identifies no impact on the Battelle property from the proposed project. Doherty explained that the nature of the use makes it less sensitive to use and bulk impacts than residential uses and the amount of separation further reduces potential impacts.

32. Witnesses differed as to whether an additional five feet of setback would make any real difference to the visual perspective of the building. Doherty believes it would. Professor Folke Nyberg, an architect and professor of architecture and urban design at the University of Washington, testified that the additional setback would not really help. Exhibit No. 9, showing the effect of the condition, supports Nyberg's opinion.

33. Because of the disparate lines and silhouette of the flat roofed building the Director invoked a Multi-family Land Use Policy, Policy No. 4, encouraging pitched roofs, to require the alteration of the design to include a pitched roof.

34. While the pitched roof is intended by the Director to change the visual impact from the street of the bulk of the building but not the size, according to Doherty. Nyberg says it does not change the perception of bulk.

35. Adding a pitched roof to the building does not significantly mitigate the bulk impact of the building and may add to the problem by adding more height.

36. The territorial views to the west from houses on the slope to the east of the subject site of the lake, mountains, skyline, etc., in the distance would not be substantially altered because the new project would be downhill from the houses. The immediate views of the vacant lot would be changed. Any territorial and immediate views from the Sayles' house, the next east, would be gone.

37. The subject site slopes, with the street, down to the west and it slopes to the south. The building proposed does not respond to the slope of the site.

38. The Director recognized that the proposed structure would be one story higher than the multifamily development across the street as well as one to one and one-half stories higher than adjacent single family development. She interpreted the City Council's decision, In re Oden, C.F. 293557, to limit her authority to reduce the height of structures to those proposed at the edge of disparate zones. She identified no negative impact on the SF 5000-zoned Battelle property.

39. Professor Nyberg feels that one lot for transition between the subject site and the single family zone is not sufficient given the mass of the proposed building.

40. Professor Nyberg suggests the following measures to mitigate incompatibility impacts: design the structure to step down the slope, reduce the building's depth, and introduce ground-related entries.

41. The house on the lot immediately east of the subject site would be less desirable to live in if the building is constructed because it would lose privacy, light and air, would suffer more noise and traffic and would experience the loss of existing architectural continuity and consistency along the street front.

42. The Director recognized the potential for redevelopment of the lots in the L-3 zone now in single family use in her assessment that there would be adverse impacts on the single family residences in the short term but not in the long term, assuming redevelopment.

43. The house at 4027 N.E. 45th has undergone substantial improvement since 1982. The house at 4013 N.E. 45th, also within the L-3 zone, has had major internal remodelling and the addition of a deck.

44. None of the neighbors testifying, Gary Tomlinson, Thomas Mathers or Victor Galbraith, was aware of the rezoning of the subject site and neighboring properties to L-3 until they became aware of the proposed project.

45. Myron and Joan Sayles purchased their property in 1982.

46. The staff summary and recommendation to the City Council during the city-wide zoning to implement the Multi-family Land Use Policies reported that no letters were received opposing the proposed L-2 zoning of the subject site and the four single family developed lots on the south side of N.E. 45th.

Conclusions

1. The Hearing Examiner has jurisdiction over this matter pursuant to Chapter 23.76.

2. The decision of the Director is to be given substantial weight by the Hearing Examiner on review. Section 23.76.36.B.7. To overcome that weight appellants must prove the decision is clearly erroneous. Brown v. Tacoma, 30 Wn.App. 762, 637 P.2d 1005 (1981).

3. The Director has authority to impose reasonable conditions to mitigate adverse environmental impacts identified in the environmental documents based on policies adopted pursuant to SEPA. Section 25.05.660.

4. Appellant/applicant challenges the imposition of the conditions requiring additional setback and redesign to add a pitched roof. To impose the condition requiring a 20 ft. setback, the Director relied on Policy 7, Multi-Family Land Use Policies, which states that "(f)ront yard setbacks shall maintain established setback patterns". The policy goes on, however, in Implementation Guideline 1 - Front Yard Setbacks, after describing averaging and measurement, to state: "(h)owever, no front yard shall be required to exceed...15 feet in Lowrise 3 or Midrise zones." Therefore, this policy does not provide the authority to require a 20 ft. setback in an L-3 zone. The Director erred.

5. The pitched-roof design condition was based on Policy 4, Multi-Family Land Use Policies. The policy states that its intent is:

to establish maximum heights, maintain a consistent height limit throughout the building envelope, require that the building heights reflect the topography of the site, reduce view blockage, encourage pitched roofs, and facilitate rooftop recreation and solar energy development.

p. 16.02.35.

6. Three issues were raised as to the propriety of the pitched-roof condition. One question is whether a cognizable, for purpose of mitigation, adverse impact has been identified in the view from afar of a flat roof. Another is whether intent to "encourage" pitched roofs authorizes the requirement of pitched roofs when the same statement indicates intent to "facilitate" a seemingly mutually exclusive amenity, rooftop recreation. The third is whether the required addition of a pitched-roof, without requiring lowering of the building, provides any mitigation of the bulk of the building and is, therefore, reasonable. To all three, the answer is "no". There is a specific SEPA policy on view protection,

Section 25.05.902(7), which addresses views from specified public places and of historic landmarks. Views from private properties or public streets not identified in Appendix B of unaesthetic development are not mentioned in the view policy and therefore do not represent an impact that can be mitigated.

7. Policy 4, "encourages" pitched roofs through a special provision for extra height for pitched roofs. A policy intended to look favorably on, or foster, pitched roofs does not provide authority to require pitched roofs.

8. Finally, as to the requirement of a pitched roof, the impact of the perceived bulk of the structure is not mitigated by adding a pitched roof so the condition is not reasonable.

9. Appellant neighbors challenge the issuance of the DNS as well as the failure to impose additional mitigating conditions. A determination of significance and an environmental impact statement is required whenever "more than a moderate effect on the quality of the environment is a reasonable probability." Norway Hill v. King County Council, 87 Wn.2d 267, 278, 552 P.2d 674 (1976). The Director identified numerous impacts of the project on its surroundings. Appellant has not shown any, or all in combination, to be significant, or more than moderate, so the Director's decision to issue a DNS should be affirmed.

10. Appellant neighbors contend that the Director should have imposed additional conditions to mitigate the problem, recognized by the Director, of incompatibility caused by the structure's bulk and scale. Appellant cites Multi-family Land Use Policies, Goals for Seattle (Seattle 2000) and Single Family Residential Areas Policies as bases for requested conditions.

11. Appellants find authority in Multi-family Policies 1, 3, 4 and 5 to require the design and height of the building to be changed to be compatible with the single family residences to the west and east and multi-family structures to the north.

12. The City Council considered the use of Policy 1 of the Multi-family Policies to achieve compatibility of scale in its decision in In Re Oden, CF 293557, Exhibit No. 11. There the Council concluded that it would be "inappropriate to require a reduction in scale merely because the surrounding buildings in the same midrise zone are developed to a lower height" as the decision had been made at the time of zoning the area that the height was appropriate for the area. A reduction in height could be justified only if it was shown either that "the project presents unusual circumstances which would not have been contemplated as part of the rezoning of the area or that the project is on the edge of a zone where the problems of transition are not fully accommodated by the zoning." Oden, supra.

13. Appellant neighbors urge that the instant case meets both standards. The circumstance not contemplated by the Council, it submits, is community opposition to the rezoning of which the Council may have been unaware. Appellant argues the property satisfies the other prong on two grounds: it is at the zone boundary as to the Battelle property; and it is on the "edge" of the single family zone to the east, if a broader definition is given to the term "edge."

14. The Hearing Examiner is in a good position to observe that community opposition to rezoning is not "unusual." Moreover, community opposition to a rezone is not the kind of circumstances that could serve as a basis for a SEPA condition. While the property is on the edge of the SF 5000 zoned Battelle property, no impact on that property from the bulk of the building was identified so no condition is warranted under Section 25.05.660. Appellant urges that the Director erred in not recognizing an impact on that

property since it could be further developed. The record does not reflect a probable impact, however, and one may not assume that new development to the south of the site would be impacted the same way as properties to the east and west.

15. Appellant suggests that the subject property should be treated as being on the "edge" of the zone because the distance of the width of one lot and the alley, some 66 ft., is not sufficient for the transition needed from a structure of the type contemplated to the existing single family development in the SF 5000 zone. The term "edge" is defined by the City Council in the Single Family Residential Areas Policies as "...the boundary between two zones." p. 16.02.11. In *Oden*, supra, however, the line was removed from the property by the width of half the alley and the Council still treated the property as being on the edge. The Hearing Examiner does not believe that the City Council intended to create an "edge" wide enough to include property where development intervenes between it and the zone line so does not find error in the Director's treatment of the "edge" exception.

16. Policies 3 and 4 of the Multi-family Land Use Policies provide support for appellant's argument that the structure should be required to reflect the topography of the site. Policy 3 summarizes the development standards of each of the classifications of multi-family housing. The Lowrise 3 classification is to control the appearance of bulk by "...relating building height to the topography" with the intention of providing "for a transition in scale between multi-family and single family areas...conform with the topography to maintain natural hills and valleys and preserve views, encourage new development which is compatible with existing neighborhood character...." p. 16.02.17. Policy 4: Height of Buildings, Implementation Guideline 2 provides: "When the slope is parallel or perpendicular to the street in front of the building, the top of the building envelope shall 'step'...or follow the land contours...." p. 16.02.36.

17. While the record reflects that the Director's representative reviewed the Multi-family Land Use Policies it does not reflect that she considered the relationship of the proposal to the intent of Policies 3 and 4 to require structures in the zone to reflect the topography of the site and street. Therefore, the matter should be remanded to her to consider whether conditions should be imposed to require the building to conform to the topography of the site.

18. The Seattle 2000 goals cited by appellant neighbors as supportive of the requested conditions to make the project more compatible with the single family zone to the east follow:

I. COMMUNITY

GOAL A. DIVERSITY AND FREEDOM OF CHOICE:

Subgoals: Diversity should be understood rather than defined. The City planning process should be sensitive to the types of communities and the elements of diversity, but should not categorize or define diversity in a rigid manner. Residential and community business variety should be constrained only by gross limits of density, scale, safety and burden on public facilities.

Subgoal 4. The City of Seattle shall recognize that private or public multiple-unit housing must be built in scale with the neighborhood.

Subgoal 5. The City of Seattle shall encourage the location of residences, institutions and businesses with care for the integrity of those neighborhoods.

p. 4, Seattle 2000.

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.

Subgoal 4. The City of Seattle shall act to reverse this policy (unwarranted expectation of growth resulting in high land values) by returning to zoning patterns that will protect existing neighborhoods.

pp. 5 and 6, Seattle 2000.

GOAL E. SEATTLE'S GOAL SHALL BE TO HUSBAND THE ECONOMIC RESOURCE OF ITS COMMUNITIES AND ENCOURAGE ORDERLY GROWTH AND REPLACEMENT THROUGH A SYMPATHETIC COMBINATION OF PUBLIC AND PRIVATE INVESTMENT ZONING SUBGOALS:

Zoning Subgoal 2. In consideration of above, the City shall promote owner occupancy of property, enforce high standards for rental properties, create mutually acceptable buffer zones between districts which have competitive uses of land and redirect public policy toward programs that will preserve the existing housing supply.

Zoning Subgoal 4. The City of Seattle shall encourage development in accordance with existing uses in communities, and not in ways that indicate public policy intends drastic alteration in density or use.

Zoning Subgoal 6. The City shall undertake to restore the confidence of investors and property owners in present neighborhoods by a policy of down-zoning properties to uses and densities that coincide with the majority of sound structures in those neighborhoods.

pp. 15, 16, 17, 18, Seattle 2000.

VII. HOUSING.

GOAL C. TO MAINTAIN THE STABILITY OF HEALTHY RESIDENTIAL AREAS WITHIN THE CITY.

Zoning Subgoal 2. To protect residents from losing sunlight because of higher building construction.

Zoning Subgoal 3. Protect single family residential areas from encroachments by apartment and commercial uses.

pp. 192, 193, Seattle 2000.

19. The Community goals cited, while addressing compatibility, are directed toward appropriate zoning and do not provide the Director a policy basis for conditioning a specific project. The City Council already has determined that Lowrise 3 zoning is appropriate, presumably using these goals as well as the Multi-family Policies. Housing goals also would have been appropriately used in the zoning decision. Even though solar access could be addressed on a lot by lot basis, the Council has indicated its intent to authorize solar access protection for publicly owned parks only.

20. Appellant also contends that conditions may be based on the Single Family Residential Areas Policies. It argues that the intent of those policies is to protect the edges of single family areas from encroachment by other uses. Use Policies, Edges, Implementation Guideline 1 states:

The edges (see Definitions) of Single Family Residential Areas shall be protected from encroachment by other uses. No special provisions for higher intensity use on the edges of Single Family Residential Areas shall be allowed except for residential uses which are compatible with the adjacent Single Family Residential Areas.

p. 16.02.03.

21. Even if Single Family Policies were properly applicable to multi-family zoned land, the subject property is not at the "edge" as defined in the Single Family Residential Areas Policies.

22. Appellant neighbors also maintain that the use of landscaping conditions to mitigate incompatibility and privacy impacts is illusory since landscaping is transitory and the condition to maintain the landscaping is nearly impossible to enforce. While mitigation may not be complete and permanent, the Director did not err in imposing the conditions since the impacts were identified, there is a policy basis and the conditions are reasonably related to the impacts.

23. Appellant neighbors are concerned about the obvious architectural and scale incompatibility of the proposed structure. Except for possible conditioning pursuant to Policies 3 and 4 of the Multi-family Policies, the Director has used the authority available to her through SEPA to mitigate this impact to the extent possible. The conditions requiring a pitched roof and 20 ft. setback exceeded her authority.

Decision

The Director's decision to issue a DNS is AFFIRMED; her decision to impose conditions pursuant to SEPA is MODIFIED to delete Condition No. 6.a. and 6.e. and add the following as Number 9: "All landscaping required by these conditions shall be installed prior to the issuance of an occupancy permit and shall be continuously maintained. The maintenance shall be the responsibility of the owner or owners"; and the matter is REMANDED for consideration of the appropriateness of imposing conditions to mitigate the incompatibility of the bulk of the building by requiring the structure to conform to the topography of the site, based on Policies 3 and 4, Multi-family Land Use Policies. The Hearing Examiner retains jurisdiction of this matter. If any party to these appeals has objections to the Director's determination on remand, it may file such objection in writing with the Office of Hearing Examiner within ten (10) days of the date of the issuance of such determination. If no objection is filed, the decision is final on the 10th day after the Director's decision and the notice Concerning Further Review below, will apply. If an objection is timely filed, further proceedings will be scheduled before the Hearing Examiner.

Entered this 27th day of December, 1985.

M. Margaret Klockars
M. Margaret Klockars
Deputy Hearing Examiner

Concerning Further Review

Pursuant to Section 25.05.680(2), 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 of the decision appealed from is filed with the SEPA Public Information Center. The City Council's review on appeal shall be limited to the exercise of the City's substantive authority to condition or deny the proposal under SEPA as authorized by Section 25.05.660. The appeal statement 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 25.05.680(2), 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(2) appeal.

If no appeal is taken pursuant to Section 25.05.680(2), 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 fourteen days of the date of this Hearing Examiner decision. Seattle Municipal Code Section 23.76.36(B)(11). 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 fourteen days of the date of this decision. Section 25.05.680(3)(d).

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, 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.