

RECEIVED

FINDINGS AND DECISION

OF THE HEARING EXAMINER FROM THE CITY OF SEATTLE

JUL 09 1987

S. E. P. A.  
PUBLIC INFORMATION CENTER

In the Matter of the Appeal of

EASTLAKE COMMUNITY COUNCIL

FILE NO. MUP-87-061(W)

from a decision of the Director,  
Department of Construction and  
Land Use

ADDITIONAL FINDINGS, CONCLU-  
SIONS AND DECISION FOLLOWING  
DECISION ON REMAND

This matter was remanded to the Department of Construction and Land Use, December, 1986, following a hearing on the appeal. A decision was issued on April 2, 1987, by the Director entitled Response of the Director of the Department of Construction and Land Use to Hearing Examiner Remand. Objections to the decision were filed by appellant. After written submissions an evidentiary hearing was scheduled on one issue, the status of plans for rechannelization of Eastlake Ave. E. The hearing was held June 24, 1987. Appellant was represented by its attorney, Peter J. Eglick; the Director was represented by the City Attorney, Dennis J. McLerran, assistant; the applicant, Globe Development, was represented by Roger Sortino.

After considering the evidence adduced at hearing, the Response of the Director, the affidavit of Carol Eychaner and other submittals, the Hearing Examiner makes the following additional findings of fact and conclusions.

Findings of Fact

1. The Engineering Department has decided that the entire rechannelization project need not be done at one time. It has selected two blocks north of the intersection with East Lynn Street because the accident rate at East Lynn could be reduced and the impacts of traffic from this project would be mitigated.

2. Preliminary plans were being finished on the date of the hearing and work on the street was to begin, depending upon scheduling, the end of the week of June 29, 1987.

3. Traffic Spot Improvement Fund monies, along with a \$2,200 contribution from the developer of a project some distance away, are to be used to fund this portion of the rechannelization project. Appellant challenges the appropriateness of the source of funds. The impact mitigation would not be affected by any change in source.

4. The proposed curb cut is far enough from the intersection of East Lynn Street with Eastlake Avenue E. not to conflict with queued vehicles.

5. Adequate sight triangles from the driveway can be achieved with minor changes to the plans. A new condition was imposed to require relocation of the planters south of the driveway out of the 10 ft. sight triangle and require redesign of the retail space north of the driveway to leave a 10 ft. sight triangle.

6. Elimination of the curb cut on Eastlake was mentioned repeatedly in the CIS as a mitigating measure.

7. The Director balanced the adverse impacts from the curb cut with those from its removal. Retaining the curb cut would allow the provision of street-accessible parking during nonbusiness hours and reduce the amount of traffic in the alley and its attendant noise and disruption. The risk of conflict of exiting vehicles with street traffic, including bicycles, should be reduced by the rechannelization.

8. The Director asked the Engineering Department to review again the TMP to assess its likelihood of success. The result of the review was to project a 42 space shortfall when the building is fully occupied but, with the TMP, the shortfall is projected to be reduced to zero.

9. The attachment to the Director's decision, Appendix A, which shows the assumptions underlying the Engineering Department analysis and the objectives, included a footnote indicating that charging for employee parking would be coordinated with the implementation of a residential parking zone (RPZ). After objections were filed by appellant, the Director responded that the statement as to the residential parking zone was inadvertently left in the appendix. Though included by the Engineering Department, the Director rejected it because the establishment of an RPZ was not a certainty. It appears from the documents that the Engineering Department saw the imposition of parking fees as a fall-back position to assure that the objectives were reached but would be dependent on the implementation of the RPZ to avoid use of the streets for parking.

10. William Eager arrived at similar outcomes without reliance on an RPZ.

11. The Engineering Department's assumptions underlying its conclusions are not inconsistent with the evidence previously adduced. Statements made by Catelin Williams of Metro to Carol Eychaner suggest that Mercer corridor data may overestimate the average occupancy of carpool vehicles in Eastlake since some part of the Mercer traffic is bound for the Seattle Center. Her estimate for mode split in the Mercer corridor is 10 percent carpool.

12. The Director, in the decision following remand, evaluated the expected effectiveness of the TMP and imposed additional conditions. She found the assumptions used by the Engineering Department to be realistic with the mode split of 27% carpool or vanpool, 14% transit and 5% by other modes at the end of three years.

13. The Director modified her decision to revise the conditions of the transportation management plan (TMP) to establish objectives for transportation mode split with periodic evaluation of achievement of the objectives and mandatory incentives or disincentives if the 24 month objectives are not reached at that time. Those measures are 100 percent transit subsidy for all persons employed at the building, eleven free, exclusive carpool spaces, and all single occupancy vehicle parking to be for pay only at market rate. In addition, the TMP is to be included in all lease agreements, required quarterly reports are to be submitted within five days of the end of the quarter or civil penalties will be imposed. If the eleven carpool spaces are not fully utilized, the rideshare officer in the Engineering Department may offer them to other carpools in the neighborhood.

14. The reference in the Director's decision to the consultant's survey of the Northwest Management Building is incorrect. The consultants used existing survey data from Metro and PSCOG. That data included the Mercer corridor data and PSCOG data for the two Eastlake census tracts.

15. Mode split data gathered by appellant from two additional Eastlake businesses show carpool rates of 5 percent and none and bus of 5 percent and none. In one case, 17 parking spaces are provided for 25 employees and, in the other, 20 spaces are provided for 22 employees. Even without the TMP the proposed project would be materially different from these two businesses in that there may be approximately 64 parking spaces for some 100 or more employees.

16. Examples of effect of TMP's in other areas were given at hearing with the ridesharing mode split changing from 7% prior to the TMP to 19%-37% after, 12% to 27%, 10% to 42% and for several others, a 47% increase in ridesharing.

17. The increases projected in transit use and ridesharing were not shown to be unreasonable, even if the existing level of ridesharing is lower than assumed.

#### Conclusions

1. The Director properly responded to the remand order by balancing the impacts of the proposed curb cut with the impacts of its removal and by the assessment of the potential effectiveness of the TMP in reducing impacts of the project's parking demand on the surrounding neighborhood.

2. The Director appropriately relied on the rechannelization of Eastlake as its implementation in the affected area was shown to be a certainty. Her balancing of the impacts was not shown to be in error.

3. While there are still questions about the effectiveness of the TMP, it was not error for the Director to have relied upon the conclusions of the experts, the consultant and the Engineering Department, as to what reasonably can be expected. Further, the addition of conditions makes achievement of the objectives more likely.

#### Decision

The Director's decision, as amended with the additional conditions, is Affirmed.

Entered this 9th day of July, 1987.

M. Margaret Klockars  
M. Margaret Klockars  
Deputy Hearing Examiner

#### Concerning Further Review

Pursuant to Seattle Municipal Code Section 25.05.680(C), a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the fifteenth day after the date of the decision appealed from is filed with the SEPA Public Information Center. The appeal statement must be filed with the City Clerk on the first floor of the Municipal Building. The City Council's review on appeal shall be limited to the issue of compliance with Section 25.05.660. The City Council Land Use Committee should be consulted regarding further appeal specifics.

If an appeal is taken pursuant to Section 25.05.680(C), the time for filing a request for judicial review of the underlying government action and/or other SEPA issues is stayed until the City Council renders a final decision on this Section 25.05.680(C) appeal.

If no appeal is taken pursuant to Section 25.05.680(C), the decision of the Hearing Examiner in this case is final and is not subject to reconsideration except to correct errors on the ground of fraud, mistake, or irregularity in vital matters. Any request for judicial review of the decision on the underlying governmental action must be filed in King County Superior Court within fifteen days of the date of this Hearing Examiner decision. Seattle Municipal Code Section 23.76.22(C)(12)(c). Judicial review under SEPA shall without exception be of the decision on the underlying governmental action together with its accompanying environmental determinations. RCW 43.21C.075(6)(c).

SEPA issues may be added to the request for review within 30 days after the date of this decision if a notice of intent to seek judicial review of SEPA issues is filed with the Director of the Department of Construction and Land Use, 400 Seattle Municipal Building, Seattle Washington 98104, within fifteen days of the date of this decision. Section 25.05.680(D)(4).

If the Superior Court orders a review of the decision, the person seeking review must arrange for and bear the cost of preparing a verbatim written transcript of the hearing but will be reimbursed if successful in court. Instructions for preparation of the transcript are available 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.