

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

In the Matter of the Appeal of

WILLIAM F. NELSON, ET AL.

FILE NO. MUP-82-001(W)  
APPLICATION NO. 81274-0370

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

Introduction

Appellant filed an appeal from the Department of Construction and Land Use's declaration of non-significance for a project to be located at 2350-10th Avenue East. The appellant requested that the permit be denied.

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

Parties to the proceedings were: appellant, William F. Nelson, Esq., pro se; project applicant-proponent by Thomas A. Goeltz, Cohen, Andrews, Keegan and Goeltz, P.S.; the Director of the Department of Construction and Land Use (DCLU) by Elizabeth Edmonds, Assistant City Attorney.

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 4, and March 10, 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 is located in north Capitol Hill along the east side of 10th Avenue E. between E. Miller Street to the north and E. Lynn Street to the south. The vicinity land use includes a mixture of large single family homes, duplexes and three story apartments.

2. The two subject parcels are separated by the Schooley Apartment building. The parcel north of the Schooley, known hereafter as the Embassy site, includes 28,500 sq. ft. of area. That site is developed with six residential buildings-11 dwelling units renting from \$80-\$300 per month. Five of the eleven units are occupied. The Embassy site also contains three commercial buildings offering 1,800 sq. ft. of general retail space, a 600 sq. ft. laundramat and a 960 sq. ft. area deli for a total commercial square footage of 3,360. The site also contains 19 off-street parking spaces, including two stalls in single drive-ways and 17 in an open lot. Use of the parking stalls in the subject lot is at random by the neighborhood residents and/or business customers.

3. Project applicant proposes to replace the existing structures and develop the lot with a 38 unit condominium with approximately 35,000 sq. ft. of net living area, roughly 2,490 sq. ft. of commercial space and underground parking for 57 cars to be accessed from E. Miller Street. Proposed is three stories of residential and an additional floor of street level commercial use. The 35 ft. height code average will be observed, although the building will exceed that height at some points. To facilitate vicinity design compatibility the building facade will be modulated and the grounds will be landscaped. The modulation is designed to simulate separate houses. For the same reason chimneys will be located approximately 20 ft. from the sidewalk on extensions of the project.

4. South of the Schooley is the 4,500 sq. ft. area Consulate site. The Consulate site is developed with a fourplex proposed for demolition or relocation. Proposed is the construction of a three story-five unit condominium with underground parking for five cars and access off of 10th Avenue E. The units will be a mix of one and two bedrooms. City of Seattle approved landscaping is proposed for both projects.

5. The environmental specialist noted in the contested threshold determination that potential adverse environmental impacts included elements of earth, air, water, flora, noise, light and glare, and traffic and parking. The analyst concluded that "after examining the total proposal, the Department has determined that the environmental impacts generated by the proposed project are not significant". Appellant filed this appeal, primarily on the issues of traffic, parking and the character of the neighborhood. The issue of the Director's decision to issue a permit was dismissed during the hearing.

6. The Schooley Apartments are under renovation efforts and its 19 units are proposed for condominium sales as well.

7. An extended environmental checklist, also known as an environmental assessment, was entered into the record and prepared on behalf of the project applicant. Regarding traffic, base data on parking utilization was taken from the traffic study done by the Transpo Group for the Seattle Prep draft and final EIS, City of Seattle, Department of Construction and Land Use, September, 1980, and April, 1981. As defined in the assessment, parking utilization from the Seattle Prep EIS was supplemented with additional counts near the subject site.

8. As described by the assessment the present 15 housing units will be replaced (demolished or relocated) by "more than double the amount of units presently on the site." Projected is a net gain of 28 units. The assessment does note that the "positive impact of a net gain in housing units will be at least partially offset by the loss of 15 units in the low rental range". Page 38.

9. Traffic and transportation data were detailed in the assessment. The estimate was that the net gain in dwelling units would generate a net increase of up to 230 automobile trips per day or approximately 23 new peak hour trips through the 10th Avenue and E. Miller intersection which is signalized. It was also noted that total vehicles entering 10th from Miller would increase by up to 28 percent. However, consonant with the reduction of gross square footage of commercial area the assessment hypothesizes some proportionate decrease in related traffic volume.

10. The project site is located on a major transit route, also covered in the environmental assessment. That assessment notes that results of recent surveys show that buses stopping near the project site are at or near capacity during peak morning and evening periods.

11. Appellant's witness took sharp issue with the projection by proponent that there would be a net reduction of on-street parking demand of one space. Appellant's witness projected a net reduction of six parking spaces and further that on a "good" weeknight there would be six spaces on-street; on an average weeknight 22 more cars than spaces would be available; and that on a bad weeknight 47 more cars than spaces would be available. In appellant's witness view the 17 stall lot referred to above actually had 23 spaces. However, proponent's planning consultant offered that while in a certain sequence 23 cars could be parked in the lot, 5 would be unable to exit and that therefore, as a functional matter, only 17 stalls existed.

12. The environmental assessment also includes a parking utilization study, at page 47, with surveys from January 31, 1980, through September 3, 1981. The times range from 10:00 a.m. to 8:15 p.m. Appellant's principal witness on parking took samples on eight occasions, on Saturday, February 6, 1982, Sunday, February 14, 1982, Thursday, February 11, 1982, and Saturday, February 13, 1982. No survey was taken by that witness on a weekday morning or weekday evening. A second witness of appellant related his concern with the lack of vicinity parking and concomitantly with the apprehensions concerning his family's safety where nearby parking was unavailable. A third appellant witness was of the opinion that the subject project was three-four times larger than any other in the area in scale and that the environmental assessment's traffic consideration was a major glaring error. The appellant's witnesses all indicated a revitalization of neighborhood businesses and a simultaneous decline in available on-street parking.

13. Proponent's witness-architect tabulated that with the 38 Embassy units and the 5 Consulate units for a total of 43 units and with the 57 Embassy parking stalls along with the 5 Consulate parking stalls the parking ratio would approximate 1.5 to 1. That presently with 19 stalls and 34 units (including the Schooley units), the ratio is .56 to 1; that at project completion the result will be 62 units and 62 spaces although no parking is required for the Schooley units.

14. Additional parking stalls according to the architect would be prohibitive due to the necessary piling involved. Appellant questioned the provision of parking for the commercial area; the economic attributes and related automobile ownership-use pattern of projected buyers; and the impact on the character of the neighborhood. The proponent's planning consultant thought that the 1 to 1 ratio was appropriate even though unsuccessful efforts to correlate income level to automobile use have been made. The witness from the Seattle Engineering Department also testified that there is "no good information" correlating costs of condominiums with vehicle ownership and testified further that a previous Capitol Hill study attempting to do same could not be applicable to the subject property without further qualitative comparisons.

15. The Engineer witness for the Transpo Group testified that he worked on the traffic portion of the Seattle Prep EIS; and that practically all conditions assessed therein have remained stable. That witness further testified credibly that the intersection at 10th and Miller was at level service C (A very good; E, capacity) and that the travel pattern proposed by the project will not significantly impact this service level.

16. The environmental specialist made three site visits, reviewed the Seattle Prep EIS, and reviewed draft environmental assessments as well as the Multi-family Policies and other relevant information. The specialist testified that the information provided in the expanded checklist is that which an EIS would produce, and further that any changes in the composition of the neighborhood, including those pertaining to business renovation would be "quite insignificant".

### Conclusions

1. Section 24.84.170 requires the Hearing Examiner to give substantial weight to the Director's decision.

2. An environmental impact statement is required when there is an action which would have a significant adverse impact on the environmental, 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).

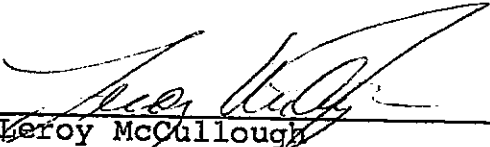
3. In making a threshold determination only the questions in the environmental checklist may be used. WAC 197-10-360.

4. Based on the above, the Director's decision is affirmed. The record reflects that the nature of the existing environment was considered by the environmental specialist. WAC 197-10-360(2). Adverse impacts related to traffic and parking have been acknowledged by the Director's decision. The record shows further that an EIS in this instance would prove redundant as to the issues raised by the appellant. Accordingly, although the appellant differed with the environmental specialist and the proponent in the assessment of the degree of the impacts appellant did not show any potential adverse impacts of the proposal not considered by the environmental specialist or not considered in the environmental assessment.

### Decision

The determination of the Director of the Department of Construction and Land Use is AFFIRMED.

Entered this 24th 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.