

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

ACKERLEY COMMUNICATIONS OF THE
NORTHWEST, INC.,

FILE NO. MUP-86-073(W)
APPLICATION NO. 8600347

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

Introduction

Ackerley Communications of the Northwest, Inc., appeals the decision of the Director, Department of Construction and Land Use, to impose certain conditions of approval of the proposed billboard at 2824 Rainier Avenue South.

The appellant 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 November 7, 1986.

Parties to the proceedings were: appellant by Andrew Sutcliffe, director of communications, and the Director 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. Appellant applied for a master use permit to erect a billboard at 2824 Rainier Avenue South. The Director issued a determination of non-significance (DNS) and imposed two conditions pursuant to SEPA. Appellant filed an appeal challenging those conditions.

2. In 1985, appellant applied for a master use permit for a billboard in this location which would have been the same as the one currently proposed except that it would have had only one face. The permit was granted without conditions by the Director, was appealed, and on appeal was conditioned to require landscaping to obscure the blank east side of the sign. That application was eventually withdrawn.

3. The proposal is to erect a double-faced, illuminated billboard on a site at 2824 Rainier Avenue South. The sign would be oriented in an easterly-westerly direction. As proposed, the sign would be 12 ft. by 25 ft. supported by a single metal pole. The total height would be 37 ft. above grade.

4. The Director's decision identified as adverse impacts of the proposal noise and dust during construction, possible increase in glare and view impairment. The decision also states that the proposed billboard will be aesthetically offensive to some residents of the area. None of the adverse impacts were found to be significant.

5. The Director imposed the following conditions:

- 1) The overall height of the billboard shall be reduced to 20 ft. in height compatible to

that of surrounding buildings. As the heights of the buildings adjacent to the sign increase, the sign at the subject site may also be permitted to be increased in height to remain complementary to and harmonious with the surrounding buildings, and a new SEPA application will be needed to allow for public comment and review of impacts of a higher sign at this location.

2) The asphalt paving below the proposed sign for an area of 2 ft. by 31 ft. shall be removed and that the earth be planted with a minimum of 5, 2 gallon evergreen shrubs (photinia fraserie or similar shrub to be approved by DCLU) 5 ft. apart in the area under the proposed sign. In addition, 2 trees will be required on site on the north and south ends of the proposed billboard. The trees shall be number 2 inch caliper and shall be a variety of red maple, or douglas fir or similar species to be approved by DCLU, and shall be permitted to grow to the height of the billboard. The billboard owner shall be permitted to trim branches that grow on the east and west sides of the sign, but shall not be permitted to trim branches on the north or south sides of the sign. The shrubs shall be permitted to grow to minimum height of 5 ft.

6. When the MUP application was filed, the site was zoned General Commercial. The Neighborhood Commercial Areas Policies were in effect on the date of the decision appealed from. Those policies include provisions for billboards which make a reference to the Building Code. The decision cites the intent section from Chapter 49 of the Building Code as the basis for the height limitation.

7. The land use specialist who reviewed the application and prepared the Director's decision concluded that only height approximating the height of the existing adjacent buildings would be complementary.

8. The landscaping condition was imposed by the Director to "reduce aesthetic incompatibility", according to the land use specialist.

9. The site is located in a C2 65' zone and is located on the southerly side of McClellan Street some 125 ft. east of Rainier Avenue South. The sign would be adjacent to a masonry retaining wall and across a narrow driveway or alley from a warehouse which is approximately 20 ft. high. Parking is provided in the driveway. A service station is located to the west of the billboard site. A building, approximately 18 ft. high, is located to the southwest of the proposed site.

10. The zoning of the property along McClellan Street changes to NC1 40' to the east, across Martin Luther King Jr. Way. East of the NC1 40' zone is single family zoning.

11. Because of sloping topography, the billboard is likely to be visible to residents of some of the houses in the residential area to the east.

12. The proposed billboard would not impair the view from any scenic route or place designated in Chapter 25.05, Appendix B.

13. The pole of the proposed billboard would be visible only along a short distance of McClellan.

14. With the 20 ft. height restriction the bottom of the

sign face would be 8 ft. from the ground which could invite vandalism.

15. At 20 ft. much of the east face of the sign would be blocked by the adjacent building.

16. Exhibit 11 misrepresents the length of the proposed billboard. Exhibit 10 somewhat overstates the height of the proposed billboard.

17. The Director's representative reported substantial community opposition to both master use permit applications for billboards. A representative from the Mt. Baker Community Club and a resident of the area each testified at the hearing in support of the Director's decision.

18. The height proposed for the billboard is that judged by the applicant to be the minimum necessary for reasonable viewing time by passing motorists.

19. Landscaping was required as a condition of a permit for the large building along Rainier occupied by the CX Corporation.

Conclusions

1. The Director has authority pursuant to Section 25.05.660 to impose conditions to mitigate adverse environmental impacts subject to certain limitations. Any condition must be based on policies designated by Section 25.05.902 for that use and in effect when the DNS was issued; any condition must be related to impacts which have been clearly identified in the environmental documents; and any condition must be reasonable and capable of being accomplished.

2. The Director has based the mitigating conditions on the Neighborhood Commercial Areas Land Use Policies (NCAP), Section IV.K., and on the landscaping policy, Section 25.05.902(5). None of the general standards for all commercial zones relating to signs in the NCAP apply directly to off-premise billboards. Subsection 3 specifically relates to billboards and continues the current Building Code provisions. Billboards are permitted in NC2 areas subject to standards which include a maximum size dimension of 672 sq. ft., 25 ft. height and 50 ft. length and maximum height above ground of the lesser height of the zone or 65 ft. p. 16.20.39.

3. The current zoning allows 65 ft. height. The CG zoning to which standards the application had vested has a general height limitation of 60 ft. Section 24.52.140.

4. The portion of the NCAP relied upon by the Director for authority to limit the height to 20 ft. is the reference to the "(p)resent Building Code provisions concerning billboards" which are to be included in the Land Use Code, p. 16.20.38, which provisions include an "intent" section. That section provides:

A. To encourage the design of signs that attract and invite rather than demand the public's attention, and to curb the proliferation of signs, B. To encourage the use of signs that enhance the visual environment of the City; C. To promote the enhancement of business and residential properties and neighborhoods by fostering the erection of signs complementary to the buildings and uses to which they relate and which are harmonious with their surroundings; D. To protect the public interest and safety; and E. To protect the right of business to identify its premises and advertise its products through the use of signs without undue hindrance or obstruction.

5. The Director found the proposed billboard to be designed to demand attention, contrary to A., above, and not to enhance the visual environment or be harmonious with its surroundings, contrary to B. and C., above.

6. Appellant's arguments are to the effect that the condition limiting height is contrary to subsection E, above, given that the adjacent buildings obstruct the view of the sign at the height allowed.

7. The intent must be regarded as a general statement of purpose to be carried out by the specific standards. Since the specific billboard standards of the NCAP would allow the sign as proposed, to restrict it to the height of surrounding buildings where it would not be visible would be "undue...obstruction" contrary to the intent.

8. The further requirement of Section 25.05.660 that the impact, "aesthetically offensive", be clearly identified in the environmental document is met.

9. The final consideration is whether the condition is reasonable in its relationship to the impact. Here, where the billboard is permitted and the impact is very subjective, a condition which would eliminate half of the sign's utility is unreasonable.

10. Since appellant did not contest the Director's finding of the existence of the impact, that some will find the the sign to be aesthetically offensive, and there is policy authority for attempting to foster a harmonious relationship between the sign and its surroundings, a reasonable condition may be imposed. Limiting the height to that necessary to allow the face to be seen over the adjacent buildings is reasonable. A 30 ft. height limit would allow all but the lower 2 ft. to be seen from the east and assure that all could be seen over the 18 ft. high building from Rainier. Therefore, that limitation would be reasonable.

11. Appellant also objects to the condition requiring trees beside and shrubs below the sign. The landscaping policy generally authorizes the Director to require landscaping to reduce aesthetic incompatibility with the surrounding area. Section 25.05.902(5)(A). Further, aesthetic incompatibility of the billboard was identified in the DNS. The remaining issue is whether the landscaping condition is a reasonable attempt to mitigate the aesthetic incompatibility. The supporting single pole, in an alley between a masonry wall and an alley, would not have been the part of the sign judged by the Director to be aesthetically offensive. Shrubs growing to a 5 foot height could only address the impact of the pole on the alley. Since that is not the adverse impact, that portion of the condition is unreasonable.

12. The trees at each end of the sign are intended to address the aesthetic effect of the billboard. The community witnesses approve that effort. The examiner believes that improvement to the aesthetics of a billboard by the addition of two trees is unlikely. Since aesthetics are inherently subjective and the review standard requires that the decision stand unless shown to be clearly erroneous, Brown v. Tacoma, 30 Wn.App. 762, 637 P.2d 1005 (1981), the Director's determination to require trees should be affirmed.

Decision

The decision of the Director is modified to substitute the following conditions:

1. The overall height of the billboard shall be no greater than 30 ft. above grade to be compatible with the surrounding buildings. If the height of the buildings adjacent to the sign increase, the sign may also be permitted to be increased in height as long as complementary to, and harmonious with, the surrounding buildings. A new SEPA application will be needed to allow for public comment and review of impacts if the sign is proposed to be higher at this location.

2. Trees, one at each end of the billboard, shall be planted and maintained. The trees shall be 2 in. caliper and shall be of an evergreen variety to be approved by DCLU and encouraged to grow to the height of the billboard. Pruning of the trees is permitted to maintain the visibility of the billboard faces.

Entered this 24th day of November, 1986.

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 governmental 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.