

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

Eastlake Community Council

FILE NO. MUP-85-062(W)  
APPLICATION NO. 8502300

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

#### Introduction

Appellant, Eastlake Community Council, appeals the decision of the Director to issue a determination of non-significance for a proposal for property at 2240 Eastlake Avenue East and her failure to further condition the permit.

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 October 24, 1985.

Parties to the proceedings were: Appellant represented by Kay Shoudy and Carol Eychaner; the Director, represented by Malli Anderson, land use specialist; and the applicant, Richard McKay.

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. The applicant applied for a master use permit to demolish a service station and construct an office building at 2240 Eastlake Ave. E. The Director issued a determination of non-significance (DNS) for the proposal and imposed two conditions on the permit. Appellant appeals these decisions.

2. The site of the proposed project is a corner lot at Eastlake Ave. E. and E. Lynn St. in the Eastlake neighborhood. It is at the southern end of a Community Business (BC) zone, which extends north along both sides of Eastlake Ave. E. A Shell service station has operated at the site for many years and would be removed.

3. The proposal is to build a three story building, two stories of offices over one level of parking. Vehicular access would be from Eastlake with two curb cuts. The main pedestrian entrance would be on Lynn St. Street trees would be provided on Eastlake and Lynn and benches for pedestrians along the north side of the building. The lower level parking would accommodate some 34 cars and an additional 9 parking spaces would be available off the alley, according to the plans in Exhibit 10. The plan's cover sheet shows 46 spaces would be required, and 47 provided.

4. The west side of Eastlake, just north and south of Lynn, has a series of "neighborhood-serving" businesses. Office buildings with parking at the first level are located on the east side of Eastlake north of Lynn, and one on the west side north of the retail area.

5. The Eastlake/Lynn intersection is one of the busiest in the area.

6. This area is not designated as a pedestrian-oriented district.

7. The proposed structure would not be out of scale with other development along Eastlake.

8. An environmental checklist was prepared for the proposal and approved by the Director. Question 14a asks that the streets and highway serving the site and the proposed access be identified. The response given was "close to freeway." The response to Question 14f "(h)ow many vehicular trips per day would be generated by the completed project" was "not known at this time."

9. The DNS decision reports that concerns were expressed by residents and the Eastlake Community Council about traffic and parking congestion, lack of street level retail space and cumulative impacts, among others.

10. The DNS decision concluded, as to traffic, only that "(n)oise levels would increase...from additional traffic over the long-term."

11. The testimony of the Director's land use specialist and the exhibits show that the decision-maker did not have available or consider specific data regarding traffic generation and parking demand.

12. The Director's senior land use specialist testified that Anderson, the land use specialist, relied on her professional judgment in lieu of numerical projections. The record does not reflect Anderson's qualifications in the field of traffic and transportation.

13. Parking demand projections were done by DCLU after the DNS to respond to this appeal. Based on an employee occupancy of 80, 70% of the occupants arriving by car, 1.2 occupants per car, the employee parking demand would be 47. Visitor demand is projected at 13 spaces. At worst case, then, the overflow of parking would be 13 to 17 vehicles, depending on the number of parking spaces provided.

14. Trip generation calculations done by DCLU to respond to the appeal show a projection of 336 vehicle trip ends per day generated by the use with 56 of those trip ends during the evening peak hours.

15. The street traffic count for 1982 shows peak hour volumes on East Lynn at 642 vehicles per hour and on Eastlake at 1,514. Average weekday traffic in 1982 on Eastlake was about 15,000 and on Lynn, east of Eastlake, 7,422.

16. Much development has occurred in Eastlake since 1982 which may have increased the traffic on the streets above 1982 levels.

17. The two curb cuts for building entrances are close to the intersection but farther away than those for the existing service station. The Engineering Department has approved their placement.

18. The DNS decision states that "(i)t (the office use) would promote the pedestrian character of the neighborhood commercial area."

19. Utilization of the first level of buildings for parking does not promote pedestrian character.

20. Conversion of parking to retail space would cause a further shortfall of parking unless the bulk of the building was increased.

21. The applicant, who has developed other retail projects, opined that a 500 sq. ft. retail use at this location would not be successful.

22. The land use specialist had been alerted by the Eastlake Community Council that there were other proposals pending for office buildings in Eastlake. On the date of the DNS for this project, probably three of the six projects were known to DCLU.

23. The DNS for this project was issued August 29, 1985.

24. On September 19, 1985, the Director sent notice to six applicants for permits for other office buildings in Eastlake that they must coordinate the study of traffic and parking in Eastlake to allow DCLU to assess the cumulative impact from simultaneous development. SEPA analysis had not been completed on those projects at the time of that letter.

25. The environmental analysis for this project was based on the existing environment which included projects underway but not the six proposals.

26. The following Neighborhood Commercial Area Land Use Policies or Goals were cited by the parties:

- A. 10. Encourage reducing the impact of the automobile and increasing alternative forms of transportation;
- 11. Promote the pedestrian character of neighborhood commercial areas;
- B. 2. Preserve the neighborhood-serving character of small neighborhood-oriented business districts while permitting the flexibility of business activity in business districts with regional markets;
- 7. Encourage landscaping and quality design in the development of commercial areas in order to create a "pedestrian-friendly" streetscape;
- 10. Coordinate land use development with transportation by discouraging development whose transportation impacts cannot be accommodated by practical, cost effective improvements in the City's transportation system.

27. The City Council resolution which established the Neighborhood Commercial Areas Policies as a basis for SEPA review made the policies applicable only to those projects for which the DNS was issued after October 7, 1985. Resolution 27186.

28. Through Resolution 26072, the City Council recognized the Goals and Policies of the Eastlake Neighborhood. Policies emphasized by appellant are:

- C. Economic development
  - 2. The location of neighborhood business along Eastlake Avenue, serving the needs of Eastlake and abutting neighborhoods.
  - 5. Encourage the location of small neighborhood oriented business and labor intensive economic development that will provide jobs for the neighborhood's unemployed.
- D. Traffic and Transportation
  - 3. The availability of parking which does not exceed land use capacity nor exacerbate on-street congestion.

#### Conclusions

1. Appellant's position is that the Director had insufficient information about the impacts of the proposal on parking and traffic and the cumulative effects of the project with the others proposed

to make a reasoned determination. It asks that the matter be remanded for consideration of the results of the comprehensive review of traffic and parking in the neighborhood as well as information from a completed checklist as to the traffic and parking impacts of the proposed project.

2. Section 23.05.335 provides that "(t)he lead agency shall make its threshold determination based upon information reasonably sufficient to evaluate the environmental impact of a proposal...." The applicant can be required to submit more information or the agency may do its own study. Section 25.05.335(1) and (2).

3. Here, the checklist response to Question 14.f about trip generation coupled with the comments received by the Director expressing concern about traffic should have signaled a need for some quantification of the impact. Since the calculations, though belatedly done, show that the impact of the trip generation would not be significant, there will be no need to remand the decision for consideration of trip generation data.

4. An adverse impact from the unmet parking demand was not acknowledged in the DNS decision but was by the Director's representative at the hearing. The impact must be clearly identified in the environmental document if mitigation measures are to be imposed, as requested by appellant. Section 25.05.660(1)(b). The Director's representative concluded that the excess demand would not be significant enough to warrant mitigating conditions. Since the Director's decision is entitled to substantial weight, Section 23.76.B.7, appellant would have to show this conclusion is clearly erroneous to warrant remanding the decision to properly identify the impact in the DNS as a basis for a condition. No evidence was adduced as to the nature of the parking situation surrounding the proposed site so appellants did not meet their burden.

5. Appellant urges that the Director should have withdrawn the DNS pursuant to Section 25.05.340(3)(a)(ii) so that the information from the coordinated study could be considered. That section speaks of significant new information that shows a probable significant impact. Here, the information does not yet exist and the record is without competent evidence of the probability that it would show that this proposal would cause significant adverse impact. The same showing would be necessary in order for the Hearing Examiner to remand the DNS for consideration of the study's results.

6. Appellant asks that a retail or other pedestrian-oriented or neighborhood-serving use be required in the first level of the structure. As conceded by one of appellant's representatives, the Director's authority to impose conditions to mitigate the land use impacts caused by non-compliance with the Neighborhood Commercial Areas Policies is effective only as to projects where the DNS was issued after October 17, 1985. The Director did not have authority to impose a condition requiring retail or other neighborhood-serving or pedestrian-oriented use at the time of the decision so did not err in not doing so.

7. The other policy relating to the type of use, the Eastlake Neighborhood Goals and Policies, while to be considered, are not formally designated in Section 25.09.902 as a basis for the exercise of substantive authority so will not support the imposition of a mitigating measure. Section 25.05.660(1)(a).

8. While appellant has shown that the Director erred in not considering the magnitude of the traffic to be generated and parking demand for the project, a remand for further consideration would not be warranted where the record shows that the impact would not be significant and there was no showing that mitigating measure would be appropriate. Therefore the decision should be affirmed.

Decision

The Director's decision is affirmed.

Entered this 7th day of November, 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.