

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

In the Matter of the Appeal of

STEPHEN J. CRANE AND MICHAEL WEINER

FILE NO. MUP-87-062(W)  
APPLICATION NO.8703001

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

Introduction

Appellants challenge the decision of the Director, Department of Construction and Land Use, on a master use permit application not to impose additional mitigation measures as conditions for a proposed apartment building at 2040 - 13th West.

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, 8 and 15, 1987.

Parties to the proceedings were: Stephen J. Crane, attorney at law, pro se and representing Michael Weiner; Cheryl Waldman, associate land use specialist, representing the Director, Department of Construction and Land Use; and James C. Klosterman, applicant.

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. Abacus Development, by James Klosterman, applied for a master use permit to construct an 18-unit, four-story, terraced apartment building at 2040 13th Avenue West. The Director, Department of Construction and Land Use, issued a determination of non-significance (DNS) and approved the proposal subject to a series of conditions. Steve Crane and Michael Weiner filed a timely appeal of that decision.

2. The three lot, 140 ft. site is located on the east side of 13th West between W. Newton and W. Boston Streets. It is zoned L-3 and is surrounded by L-3-zoned properties.

3. Thirteenth Avenue West, south of Gilman Drive, is separated into two halves by an embankment. The eastern half is approximately 17 ft. wide. Each half is used currently as a two-way street. A petition to change the halves each to one-way has been filed with the Engineering Department and has the requisite number of signatures. Jim Mundell, a member of the Engineering Department, stated in Exhibit 21 that signs designating the streets as one-way will be installed "shortly after the first of the year."

4. The on-street parking supply in the area has been surveyed by the applicant, by appellant Crane, by Crane's consultant, an engineer with TDA, and by a team comprised of the land use specialist and an engineer from the Engineering Department, Mike Odom. Each survey had different results. Each surveyor attempted to follow Engineering Department guidelines for assessing parking supply. The area included in the survey by Mr. Klosterman was reduced by the land use specialist to elimi-

nate streets which were not easily accessible from the subject site due to steepness. The supply for the reduced area was determined to be 68 spaces, using the applicant's survey. At hearing, the parties stipulated that one space on the end of 13th West in a cul-de-sac should not have been counted which would reduce the supply from that survey to 67 spaces. Steve Crane surveyed the supply and arrived at a figure of 54 spaces. His consultant reviewed his figures and assigned an aide to measure the area who found that there are 56 spaces. Because of the disparity in the supply figures, the land use specialist enlisted the assistance of the traffic engineer to conduct her own count. That survey showed a supply of 70 spaces and errors in each of the other surveys.

5. Because the land use specialist's survey had the advantage of following the other surveys so she had knowledge of potential errors and because it was done with the assistance of a traffic engineer from the department which promulgated the standards for assessing supply, the resulting supply figure, 70 spaces, is regarded as the most likely to be accurate. The decision of the Director had been based on the 68 on-street space supply instead of 70 spaces.

6. Parking utilization was surveyed by the applicant on two days in May between 9:00 and 9:30 p.m. The utilization rate used by the Director for the decision was 61 to 65 percent (41.5 to 44 cars). Appellant Crane conducted surveys at night on 24 days between September 4 and December 13, which included Saturdays and Sundays. He found an average of 51.8 parked cars through December 1 and 53.9 between December 2 and 13th. The average utilization rate for those two periods would be 74 and 77 percent. The highest utilization was on two dates when 59 cars were parked for an 84 percent utilization.

7. The land use specialist testified that an on-street utilization rate of 78 percent would not have altered her decision that the impact would be insignificant and need not be mitigated through the imposition of conditions.

8. The proposed building would have parking for 19 vehicles in an underground garage and five on an existing parking area at the property's east property line. The Department of Construction and Land Use has determined that the average vehicle ownership per unit in the City is 1.5. At that rate, three cars from the proposal would need to be accommodated on-street. When the applicant and appellant Crane collected signatures from area residents for the petition for one-way street designation, they inquired about car ownership. The applicant reported car ownership of 1.37 cars per unit in his survey of 95 households. Appellant Crane believes that an average of 2.0 vehicles per unit is more accurate for the area because he has found that that is the pattern in the duplex north of the subject site and in expensive condominiums in the area. At that rate of ownership there would be a spillover of 12 cars.

9. The survey results of Mr. Klosterman and of Mr. Crane support the all-City average of 1.5 cars per unit used by the Director.

10. There was no showing of the likely sales price of the proposed units so the City wide average figure should be used.

11. The Land Use Code has been amended recently to increase the required parking ratio. Testimony that the proposal meets or exceeds these new requirements was uncontroverted.

12. Ms. Waldman calculated that within the parking study area, the 18 proposed units would constitute 16 percent of the total dwelling units. The projected overflow parking would use four percent of the total on-street supply, or approximately 12 percent of the average unused spaces. She does not regard this use of on-street supply to be greater than the property's share.

13. Mr. Crane shows six lots with potential for multi-family

development due to existing underdevelopment. His estimate of an additional 54 units on these sites cannot be accepted because his estimate of nine units on 40 ft. lots is not realistic. Further, one of the lots listed is currently being remodeled as a single-family residence so is unlikely to be available for redevelopment in the foreseeable future. A total of 4 to 5 units per lot is realistic and if they are all redeveloped would increase the unit count as much as 17.6 percent.

14. The 18 units would be expected to generate 119 vehicle trips per day, 12 of them during the p.m. peak hour. Part of these trips would be on 12th Avenue West because of parking access from that street.

15. Street intersections in the area are operating at level of service A. The addition to traffic volume from the proposal would not cause these levels to change.

16. The subject site's north property line is at the crest of a rise in 13th West. Appellants' consultant, John Perlic, recommends that if the street continues to operate with two-way traffic, parking should be restricted for 300 ft. south of the north property line and 300 ft. north of the south property line or a total 480 ft. for adequate sight distance. He makes this recommendation because of risk of head-on collision at the rise due to the narrow street. If the street becomes one-way, he recommends restricting parking for 50 ft. south of the driveway for adequate sight distance. He also recommends pulling the curb line in a distance of 3 ft. along the subject property to create a 20 ft. wide street.

17. The Engineering Department requires a 10 ft. sight triangle at driveways.

18. The standard width for a two-way street is 32 ft.

19. Cars now park on the sidewalk because of the narrow street and two-way traffic.

20. There were no head on collisions in this part of 13th West between January, 1982, and April, 1987. Of the four accidents reported, three were "side swipes" and one a "front end".

21. The staff person relied upon the Engineering Department's assesement that an accident history of one accident per year does not indicate a problem requiring change in street flow to one-way, restricting parking or widening the street.

22. The land use specialist did not require either dedication for street width, altering the streets to one-way or that parking be restricted since the alleged problem is an existing condition and any contribution by the proposed development would be minimal.

23. The proposed structure would be wider and taller than nearby development in the L-3 zone. The terraced design, however, would reflect the slope of the site and tend to mitigate the scale differential. There are other large buildings nearby: one with 20 units at 13th West and Gilman; 20 units at 13th West and West Boston; 49 units on Gilman about one block east of 13th; and 60 units on 13th West, one block north of Gilman.

24. The analysis and decision of the Director identified long term environmental impacts including increased light and glare from the building, vehicle and site lighting, increased noise, increased stormwater runoff, increased parking demand and traffic, increased consumption of energy and natural resources and bulk and scale impacts. The proposal's impact on on-street parking was found not to be significant or substantial. The increased traffic and parking spillover together with existing traffic was found to have the potential to increase accidents between moving vehicles and/or parked vehicles but is not anticipated to create a substantial increase in traffic conflicts.

### Conclusions

1. Appellants request the imposition of additional conditions to mitigate impacts from the proposal on traffic and pedestrian safety, on-street parking utilization and from the bulk and scale of the proposed building. The Director has authority to impose mitigating measures as conditions pursuant to Section 25.05.660 provided each is related to an environmental impact identified in the environmental documents, is based on a policy formally designated in Section 25.05.902 as authority for such condition and is reasonable and capable of being accomplished. The other limitation is that:

4. Responsibility for implementing mitigation measures may be imposed upon an applicant only to the extent attributable to the identified adverse impacts of its proposal.

2. The Director identified increased potential for accidents between moving and/or parked vehicles but no substantial increase in traffic conflicts. She decided not to require any mitigation measure because any problem, and none was found, is existing and cannot be attributed to the proposal. The addition to traffic volume is so minor that requiring restricted parking, widened street or delay of the project until the street revision becomes reality would be unreasonable. Appellants' evidence, in the form of expert testimony, addressed the desirability of such restrictions but not their reasonableness. No error in the decision was shown.

3. An impact on the parking utilization was also identified in the documents. The evidence shows that the demand can be accommodated and would not use an unfair proportion of the supply. A requirement that units be eliminated to reduce the parking overflow would be, therefore, unreasonable.

4. The environmental document identifies an impact from the bulk and height of the building which is partially mitigated by its design. Appellants have not cited specific authority which could have been used by the Director which would allow her to require the applicant to reduce the scale of a building totally surrounded by similar zoning. The Director had determined she had no authority. No error was shown.

5. The Director's decision should be affirmed.

### Decision

The Director's decision is affirmed.

Entered this 30th day of December, 1987.

  
M. Margaret Blockars  
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 for 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.