

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

LENORE WEGNER, et al.,

FILE NO. MUP-85-005

APPLICATION NO. 8406227

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

Introduction

Appellants appeal the decision of the Director, Department of Construction and Land Use, to issue a declaration of non-significance and his failure to further condition the permit for a proposed office building at 8401 - 35th Avenue N.E.

The appellants exercised their 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 March 20, 1985.

Parties to the proceedings were: appellants, of whom the following participated in the hearing: Lenore Wegner, Alan Schulkin, Kathleen DeSalvo, Jeanette Ashby and Susan Schulkin; the Director represented by Clay Leming, land use specialist; and applicant, Windermere Real Estate, represented by Kimberlee McDonald, attorney at law.

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. Windermere Real Estate applied for a master use permit to construct an office building at 8401 - 35th Avenue N.E., in an Intermediate Business (BI) zone. The site is a lot created from the short subdivision of the property to the north and was formerly part of the parking lot for the bank which is located on the property to the north.

2. An environmental checklist was prepared by the applicant and modified by the environmental specialist. The checklist shows that N.E. 84th Street and 35th Avenue N.E. would provide access to the site; that nine parking spaces would be eliminated and the project would have nine, however anticipated parking demand is expected to be accommodated on site; that 40 to 60 vehicle trips per day would be generated; and that to reduce or control transportation impacts:

the existing driveway on the west side of the lot extending from N.E. 84th Street to N.E. 85th Street will be closed off and a "left turn only" or a "no right turn" sign will be placed at the exit from the parking area on N.E. 84th Street forcing traffic to 35th Avenue N.E. will mitigate transportation impacts on adjoining residential streets.

3. The declaration of non-significance (DNS) was issued showing anticipated impacts of an increase in noise levels and decrease in air quality during grading and construction, increase in lighting levels from normal building lighting, and a slight increase in ambient and nuisance noise levels. Conditions to mitigate the impacts described were imposed including a requirement that the left turn only or no right turn sign be placed to direct traffic to 35th Avenue N.E.

4. Thirty-fifth Avenue N.E. is an arterial with a signal light at 35th and N.E. 85th. Both N.E. 84th and N.E. 85th Streets are residential. Northeast 84th has sidewalks and curbs on both sides. Northeast 85th has a sidewalk on the south side but no sidewalk or curb on the north side. There are sidewalks on both sides of the subject site.

5. There are a number of businesses along 35th near N.E. 85th including the bank, flower shop, savings and loan, hardware store Pay 'n Save, tavern, Chinese restaurant, the Wedgwood Broiler and others. Customers of the businesses and employees park on N.E. 85th.

6. Windermere Real Estate has had its office across the street from the subject site and proposes to move its operation to the new structure. The 25 people working out of the office will include 21 salespeople, two people connected with Windermere's relocation service, one person connected to Windermere Services and a secretary. A total of four people would be in the office at all times and all would be present only on Monday morning during a staff meeting. Experience at other Windermere Real Estate offices has shown that seven to ten spaces has been sufficient to accommodate the demand. The owner of the Wedgwood Shopping Center has agreed to make the parking lot at that center available for staff at the Monday morning meetings. While the environmental checklist stated that the completed project would have nine parking spaces, Exhibit No. 7, the testimony of Clay Leming and neighbors referred to 13 spaces.

7. Neighbors report that the parking on N.E. 85th west of 35th N.E. is fully utilized with vehicles blocking driveways and making travel down the street hazardous for pedestrians and cars. They report that drivers treat the street as an arterial to get to Lake City Way and travel faster than 25 miles per hour. Sidewalks and curbing would make the parking more orderly and give pedestrians some measure of safety.

8. At certain times the existing parking, including that on the subject site, is fully utilized by Sea-First. Neighbors expect that there will be more overflow from Sea-First parking to use the residential streets even more than currently.

9. At the signalized intersection turning movements to and from 85th obstruct the free flow of traffic. Restricting parking near the intersection would allow for a lane for right turns from 85th to 35th.

10. Neighbors on N.E. 84th advised the land use specialist of the short cut used by drivers between 84th and 85th on the driveway at the rear of this property, which was treated as an alley. The restriction on turns was intended to force traffic onto the arterial instead of using N.E. 84th which is a residential street.

11. The most recent traffic counts for 35th N.E. are from 1982 and show an average weekday total southbound at 35th and 85th of approximately 6,700 and northbound of about 6,200 vehicles. The Director determined that the increase in traffic volume from the proposed development would be negligible.

12. Appellants oppose the condition requiring that traffic turn toward 35th N.E. on 84th because traffic which wants to go westbound will then be forced to make a left turn onto N.E. 85th putting more traffic onto that street. Appellants believe it would be fairer to allow each street to carry its normal share of the traffic.

Conclusions

1. Appellants urge that an environmental impact statement (EIS) should be required to analyze the impact of the additional traffic on the streets and demand for parking created by the proposed office building. They have shown that N.E. 85th Street is more sensitive to increased traffic because it lacks improvements that some other streets, including N.E. 84th, enjoy.

2. An EIS is required whenever more than a moderate affect on the quality of the environment is a reasonable possibility according to our Supreme Court. Norway Hill v. King County Council, 87 Wn.2d 267, 552 P.2d 674 (1976). The Director's determination to issue a DNS instead of an EIS is entitled to substantial weight. Section 23.76.36B(7). Appellants bear the burden of overcoming that weight by proving that the decision is clearly erroneous. Brown v. Tacoma, 30 Wn.App. 762, 637 P.2d 1005 (1981).

3. Here appellants did not show that the facts relied upon by the Director were incorrect or that there were facts unknown to the Director at the time of the decision. Appellants urge only that the conclusion reached by the Director with regard to the severity of the impacts on N.E. 85th is incorrect. The record is not entirely clear as to whether any increase in traffic can be anticipated since the applicant was located immediately across the street before, so the conclusion that the overall impact on traffic volume would be negligible was not shown to be in error. Further, while appellants suspect that the bank's parking demand will not be satisfied by the remaining spaces and, therefore, the cumulative effect of the proposed development with existing development would be to increase the demand for on-street parking, again the Director's determination that this would not be more than moderate was not disproved.

4. Appellants further challenge the imposition of the condition requiring that vehicles leaving the site on N.E. 84th turn left because of their belief that westbound traffic would go left on 35th and turn left onto N.E. 85th further impacting their street. The Director's condition was a reasonable effort to mitigate the impact on N.E. 84th. Appellants did not show what proportion of the traffic entering 35th N.E. would turn onto N.E. 85th, so it is not possible to conclude that the benefit of removing the restriction would be greater than retaining it. Appellants did not bear their burden of proof.

5. Appellants' testimony suggests a number of improvements that appellants feel are needed to accommodate further business development on 35th in this area. Because the need for improvements does not relate directly to the subject proposal, the Director would not have authority to require that the applicant provide the improvements. Appellants should bring their needs for street and traffic improvements to the attention of the City Council and the Engineering Department.

Decision

The Director's determinations are affirmed.

Entered this 3rd day of April, 1985.


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.