

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

FORREST E. BEAIL

FILE NO. MUP-84-068(W)
APPLICATION NO. 8402118

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

Introduction

Project applicant proposes construction of 84 apartment units in six buildings at 13321 - 15th Avenue N.E. Appellant, a neighbor to the proposal site, contests DCLU's failure to require an environmental impact statement (EIS) and impose certain conditions on the project.

The appellant exercised his 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 September 28, 1984.

Parties to the proceedings were: appellant, Forrest E. Beail, pro se; proponent (project applicant) by Joel E. Haggard, attorney at law; and the DCLU Director by Leslie Lloyd.

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. Applicant proposes to demolish a single family residence and an abandoned service station and construct on-site six apartment buildings for a total of 84 units at the property address of 13321 15th Avenue N.E. All of the proposed units will be 900 sq. ft. in area or less.

2. On-site parking for 92 vehicles is proposed with access from east abutting 15th Avenue N.E.

3. In addition to approximately 250 ft. of frontage along 15th N.E., the site has approximately 205 ft. of frontage along north abutting N.E. 135th Street.

4. Proponent estimates that the approximately 76,555 sq. ft. area subject site area currently is 25% paved (impervious), 50% gravel ("semi-pervious") and 25% pervious; and that after development the site would be 68.2% impervious. Appellant estimates current impervious surface as 15-20% and projects 85% impervious post-development surface.

5. The proposed site receives drainage from the Jackson Golf Course and 135th Street as well as from the north adjacent Bridgehaven Condominium development.

6. South of the project site is Thornton Creek which empties into the Mathews Beach area of Lake Washington. Appellant recalls the Creek as a spawning and rainbow trout area. Runoff into Thornton Creek is from a drainage basin area of 1000 acres or more of neighboring land. The Creek experiences some uncontrolled drainage, siltation in the stream bed, dissolved oxygen and a variety of pollution toxicants. DCLU declined to follow appellant's early suggestion that they contact the State Department of Fisheries concerning this project's impact on the Creek. DCLU explained this action by noting the State Department's "absence of jurisdiction" and the proposal's "insignificant impact" expected on Thornton Creek.

7. Appellant could not project the amount of increased runoff to Thornton Creek resulting from approval of the project.

8. One of the DCLU conditions imposed in the decision here appealed was that applicant satisfy Seattle Grading and Drainage Control Ordinance 110880 requirements, including those for storm water detention and a new storm sewer, the facilities to be designed per Seattle Engineering Department standards. Consequently, a catch basin will be located within 135th Street. Also, the proponent's retention system will include gas and oil separators. Proponent's witness further projected that the rate surface runoff would not exceed the pre-development runoff. The witness noted additionally that his company installed the north adjacent Bridgehaven drainage system, which will be connected to the present proposal's site.

9. The proposal site is zoned Lowrise 3 (L-3). It was changed from SF 7200 to RD 7200 zoning in 1966, and to L-3 in 1982. The subject vicinity is developed with single and multi-family uses. The subject L-3 zone development includes a large condominium development and five single family residences abutting N.E. 135th Street. The Jackson Municipal Golf Course is immediately northwest.

10. N.E. 135th Street is described as a narrow two lane street used as access to abutting single family development and to the Jackson Golf Course where the street ends. It is without curbs or sidewalks.

11. The subject portion of 15th N.E. is considered a major arterial. According to the DCLU witness its four lanes carry an average weekday vehicular traffic load of 15,495 vehicles, 7975 northbound and 7520 southbound, at 15th N.E. and N.E. 137th. Director's Exhibit 11.

12. Engineering Department figures, Appellant's Exhibit 3, show the southbound average daily traffic for 7 days as 7,548 and for 5 weekdays as 8102 (AWDT). It further shows the AWDT peak hour volume as 1025 for the morning, and 505 for afternoon-evening, both based on 5 days.

13. Morning northbound AWDT peak volume was 285 and PM 1282, both based on 5 days. The average daily traffic was 7418 and the average weekday traffic (5 days) was 8030. Appellant's Exhibit 3, noting start of 7 day count 13:00 hours, Tuesday, June 21, 1983.

14. In an effort to predict the traffic impact of the new development DCLU assumed that each (occupied) unit would be responsible for 6.1 trip ends. At 84 units the DCLU figure for daily trip ends, 494, added to the 15,495 figure yielded a new total volume of 15,989. The 494 additional trip ends would constitute a 3% (.0319) increase over the 15,495 figure. The Examiner would note that the 84 units at 6.1 trip ends would yield 512 trip ends, which divided by 15,495 still gives a 3% increase (.0330).

15. Based on the credible and undisputed testimony of proponent's architect, the Examiner finds that the trip end factor for multiple residences ranges from 3.1 - 3.5. Utilizing the 3.5 factor, the additional trip ends would be 294, or an increase of .01897, less than 2%.

16. Utilizing figures from appellant's Exhibit 3, the average weekday total would be 8102 plus 8030 or 16,132 vehicles. The percentage of increased trip ends resulting from the project would be correspondingly reduced.

17. An approximate 3% increase in morning and afternoon peak hour traffic is expected by the new development.

18. Appellant presented that before 1974-84 there were 250 accidents between 125th and 135th on 15th; and that the 30 MPH posted limit has given way to a 40 MPH general, unpatrolled speed pattern.

19. Appellant also fears that the amount of off-street parking offered is insufficient and will cause a problem for neighbors of the development. Applicant's Exhibit 12, a survey tabulation, showed that for the 482 unit Executive Estate at 15th N.E. and 145th, the ratio for average occupied parking spaces to parking spaces available was .87; for the 56 unit Jackson Park, .55; for the 126 unit Villa Roma .38; and for the 84 unit Bridgehaven Condominium, .28.

20. DCLU consulted the Seattle Fire and Engineering Departments prior to issuing and conditioning the subject proposal.

Conclusions

1. The Director's environmental determination is to be accorded substantial weight and the burden of establishing a contrary position is that of the appellant. Seattle Municipal Code Section 23.76.36(B)(7); Seattle Municipal Code Section 25.04.200(C). To overcome the legislatively accorded weight, the challenger must show the decision to be clearly erroneous. Polygon Corporation v. Seattle, 90 Wn. 2d 59, 578 P. 2d 1309 (1978); Brown v. Tacoma, 30 Wn. App. 762, 637 P. 2d 1005 (1981).

2. With respect to access, 135th is not a through street and passes single family residential development en route to the Jackson Golf Course. The Examiner is accordingly not persuaded, as urged by appellant, that access to the proposed 84 unit development should be via 135th Street, particularly since 15th N.E. is more developed and could more easily absorb the increased traffic expected from the development.

3. Secondly, the Director was without authority to impose more than one parking space per unit since the units will be less than 900 sq. ft. in area. Section 23.45.46 establishes that one off-street parking space per L-3 zoned dwelling unit is required. For apartment structures of more than 20 units the Director may require up to 1.25 parking spaces per unit, but only according to the provisions of Section 23.54.20. Section 23.54.20 requires that 40% or more of the subject units have 1200 sq. ft. of living area. It is also noted that the parking patterns of area developments tend to support the conclusion that overflow parking will not prove to be such that an EIS should issue. Similarly, since the 10 year accident rate quoted by appellant averages 2.5 per year, the Examiner is not "firmly convinced" that DCLU's decision to issue the DNS was in error.

4. Concerning traffic, the increase in peak hour and average weekday total traffic will be 3% or less. This does not, in light of either DCLU's or appellant's average weekday traffic count submitted, constitute more than a moderate impact on the quality of the environment. Therefore, no environmental impact statement is required. Norway Hill v. King County Council, 87 Wn. 2d 267, 552 P.2d 674 (1976).

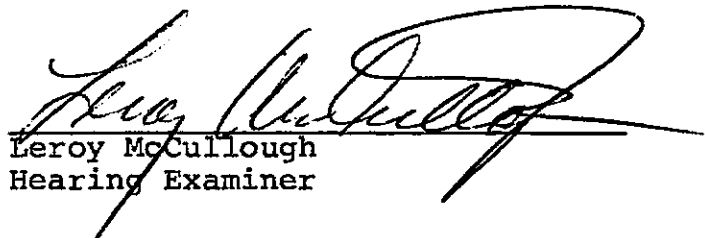
5. Appellant articulated well his concerns with the Thornton Creek ecosystem and the Creek's relationship to Lake Washington and the Mathews Beach area. However, the record reflects insufficient evidence to conclude that the proposed development will cause more than a moderate effect on the quality of the environment. Thornton Creek presently receives unchecked drainage from 1000 or more acres of surrounding land. Applicant's site is less than two acres. The current site surface is already to a large degree impervious. Applicant's proposal will include oil and gas separators as part of the newly installed retention system that will connect with north adjacent development. A new basin will be installed in 135th Street. Applicant is required to comply with Seattle Engineering standards in development of the sewer and drainage system. Although DCLU could have invited comments from the State Department of Fisheries, their failure to do so does not, in this case, constitute a legally sufficient reason to overturn the decision.

6. The Examiner would note the stipulation offered that proponent would develop on street parking along 135th Street; and would also install "right turn only" signs at the development's access; "should the Examiner deem the conditions appropriate." While this record does not show imposition of those conditions as required in order to sustain the Director's DNS, the proposals nevertheless appear as reasonable responses to conditions in the subject vicinity, and proponent would do well to pursue them.

Decision

The decision of the DCLU Director is Affirmed.

Entered this 12th day of October, 1984.


Leroy McCullough
Hearing Examiner

CONCERNING FURTHER REVIEW

Pursuant to Section 25.04.210, 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 issue of compliance with Section 25.04.190. 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 25.04.210, the time 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 25.04.190 appeal.

If no appeal is taken pursuant to Section 25.04.210, 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); Akada v. Park 12-01 Corporation, 37 Wn. App. 221 (1984); JCR 73. 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. WAC-197-11-680 (4)(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 taped transcript of testimony and evidence to be reviewed. Parties are encouraged to designate only those portions of the testimony necessary 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.