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FINDINGS AND DECISION

OF THE HEARING EXAMINER FROM THE CITY OF SEATTLE

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In the Matter of the Appeal of

FILE NO. MUP-87-061(W)

EASTLAKE COMMUNITY COUNCIL

from a decision of the Director,
Department of Construction and
Land Use

ADDITIONAL FINDINGS, CONCLU-
SIONS AND DECISION FOLLOWING
DECISION ON REMAND

This matter was remanded to the Department of Construction and Land Use, December, 1986, following a hearing on the appeal. A decision was issued on April 2, 1987, by the Director entitled Response of the Director of the Department of Construction and Land Use to Hearing Examiner Remand. Objections to the decision were filed by appellant. After written submissions an evidentiary hearing was scheduled on one issue, the status of plans for rechannelization of Eastlake Ave. E. The hearing was held June 24, 1987. Appellant was represented by its attorney, Peter J. Eglick; the Director was represented by the City Attorney, Dennis J. McLerran, assistant; the applicant, Globe Development, was represented by Roger Sortino.

After considering the evidence adduced at hearing, the Response of the Director, the affidavit of Carol Eychaner and other submittals, the Hearing Examiner makes the following additional findings of fact and conclusions.

Findings of Fact

1. The Engineering Department has decided that the entire rechannelization project need not be done at one time. It has selected two blocks north of the intersection with East Lynn Street because the accident rate at East Lynn could be reduced and the impacts of traffic from this project would be mitigated.

2. Preliminary plans were being finished on the date of the hearing and work on the street was to begin, depending upon scheduling, the end of the week of June 29, 1987.

3. Traffic Spot Improvement Fund monies, along with a \$2,200 contribution from the developer of a project some distance away, are to be used to fund this portion of the rechannelization project. Appellant challenges the appropriateness of the source of funds. The impact mitigation would not be affected by any change in source.

4. The proposed curb cut is far enough from the intersection of East Lynn Street with Eastlake Avenue E. not to conflict with queued vehicles.

5. Adequate sight triangles from the driveway can be achieved with minor changes to the plans. A new condition was imposed to require relocation of the planters south of the driveway out of the 10 ft. sight triangle and require redesign of the retail space north of the driveway to leave a 10 ft. sight triangle.

6. Elimination of the curb cut on Eastlake was mentioned repeatedly in the CIS as a mitigating measure.

7. The Director balanced the adverse impacts from the curb cut with those from its removal. Retaining the curb cut would allow the provision of street-accessible parking during nonbusiness hours and reduce the amount of traffic in the alley and its attendant noise and disruption. The risk of conflict of exiting vehicles with street traffic, including bicycles, should be reduced by the rechannelization.

8. The Director asked the Engineering Department to review again the TMP to assess its likelihood of success. The result of the review was to project a 42 space shortfall when the building is fully occupied but, with the TMP, the shortfall is projected to be reduced to zero.

9. The attachment to the Director's decision, Appendix A, which shows the assumptions underlying the Engineering Department analysis and the objectives, included a footnote indicating that charging for employee parking would be coordinated with the implementation of a residential parking zone (RPZ). After objections were filed by appellant, the Director responded that the statement as to the residential parking zone was inadvertently left in the appendix. Though included by the Engineering Department, the Director rejected it because the establishment of an RPZ was not a certainty. It appears from the documents that the Engineering Department saw the imposition of parking fees as a fall-back position to assure that the objectives were reached but would be dependent on the implementation of the RPZ to avoid use of the streets for parking.

10. William Eager arrived at similar outcomes without reliance on an RPZ.

11. The Engineering Department's assumptions underlying its conclusions are not inconsistent with the evidence previously adduced. Statements made by Catelin Williams of Metro to Carol Eychaner suggest that Mercer corridor data may overestimate the average occupancy of carpool vehicles in Eastlake since some part of the Mercer traffic is bound for the Seattle Center. Her estimate for mode split in the Mercer corridor is 10 percent carpool.

12. The Director, in the decision following remand, evaluated the expected effectiveness of the TMP and imposed additional conditions. She found the assumptions used by the Engineering Department to be realistic with the mode split of 27% carpool or vanpool, 14% transit and 5% by other modes at the end of three years.

13. The Director modified her decision to revise the conditions of the transportation management plan (TMP) to establish objectives for transportation mode split with periodic evaluation of achievement of the objectives and mandatory incentives or disincentives if the 24 month objectives are not reached at that time. Those measures are 100 percent transit subsidy for all persons employed at the building, eleven free, exclusive carpool spaces, and all single occupancy vehicle parking to be for pay only at market rate. In addition, the TMP is to be included in all lease agreements, required quarterly reports are to be submitted within five days of the end of the quarter or civil penalties will be imposed. If the eleven carpool spaces are not fully utilized, the rideshare officer in the Engineering Department may offer them to other carpools in the neighborhood.

14. The reference in the Director's decision to the consultant's survey of the Northwest Management Building is incorrect. The consultants used existing survey data from Metro and PSCOG. That data included the Mercer corridor data and PSCOG data for the two Eastlake census tracts.

15. Mode split data gathered by appellant from two additional Eastlake businesses show carpool rates of 5 percent and none and bus of 5 percent and none. In one case, 17 parking spaces are provided for 25 employees and, in the other, 20 spaces are provided for 22 employees. Even without the TMP the proposed project would be materially different from these two businesses in that there may be approximately 64 parking spaces for some 100 or more employees.

16. Examples of effect of TMP's in other areas were given at hearing with the ridesharing mode split changing from 7% prior to the TMP to 19%-37% after, 12% to 27%, 10% to 42% and for several others, a 47% increase in ridesharing.

17. The increases projected in transit use and ridesharing were not shown to be unreasonable, even if the existing level of ridesharing is lower than assumed.

Conclusions

1. The Director properly responded to the remand order by balancing the impacts of the proposed curb cut with the impacts of its removal and by the assessment of the potential effectiveness of the TMP in reducing impacts of the project's parking demand on the surrounding neighborhood.

2. The Director appropriately relied on the rechannelization of Eastlake as its implementation in the affected area was shown to be a certainty. Her balancing of the impacts was not shown to be in error.

3. While there are still questions about the effectiveness of the TMP, it was not error for the Director to have relied upon the conclusions of the experts, the consultant and the Engineering Department, as to what reasonably can be expected. Further, the addition of conditions makes achievement of the objectives more likely.

Decision

The Director's decision, as amended with the additional conditions, is Affirmed.

Entered this 9th day of July, 1987.

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 government 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.

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeals of

EASTLAKE COMMUNITY COUNCIL AND
GLOBE DEVELOPMENT COMPANY

FILE NO. MUP-86-061(W) AND
MUP-86-063(W)
APPLICATION NO. 8600448

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

Introduction

Eastlake Community Council appeals the determination of the Director, Department of Construction and Land Use, (DCLU), to issue a determination of non-significance and conditionally approve a master use permit for a proposed office building and retail building at 2343 Eastlake Avenue East.

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 5, 6, 7, 12, and 13, 1986.

Parties to the proceedings were: appellant represented by Peter Eglick, attorney at law, the Director represented by the City Attorney, Dennis McLerran, assistant, and the applicant represented by Amy L. Kosterlitz and Joel Gordon, Buck and Gordon, P.S.

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 submitted a master use permit application for a proposed 4-story, 33,000 sq. ft. office and retail building with ground level parking at 2343 Eastlake Avenue East.

2. Because the Department of Construction and Land Use (DCLU) was alerted to a large number of proposals for development in Eastlake at the same time, a study of cumulative traffic and parking impacts was required in addition to an environmental checklist for the proposal. The identified projects' sponsors formed a consortium to prepare such a study. DCLU used that study, the Eastlake Corridor Transportation Impact Analysis, referred to at hearing as the cumulative impact study (CIS), and the environmental checklist to make the threshold determination pursuant to SEPA. The Director issued a DNS.

3. The CIS was prepared by TDA, Inc., transportation consultants. Cliff Portman, senior land use specialist at DCLU, helped coordinate the study. An architect for one of the project sponsors served as lead for the consortium.

4. A November, 1985, draft of the CIS was circulated to the members of the consortium for comment. A December, 1985, draft was provided the City. The Eastlake Community Council obtained a copy of that draft and provided comments to DCLU which transmitted them to TDA. All comments were considered by TDA.

5. Portman determined which projects would be included in the CIS and residential projects were not considered because he

was not specifically aware of any in the Eastlake corridor and the traffic and parking demands would be "miniscule" compared to the commercial projects being considered. Some residential projects may have been pending at the beginning of the study.

6. DCLU exercised independent oversight and review in preparation of the CIS. Comments as to the appropriate scope of the CIS were solicited from the Engineering Department and the Land Use and Transportation Project and comments on a draft were solicited from Engineering Department. Portman went over the Engineering Department's comments with TDA. TDA was to appropriately respond to the concerns raised in a memo issued by the Engineering Department.

7. The CIS was not circulated to Metro or the Washington Department of Transportation.

8. The level of analysis of the cumulative impacts on traffic and parking from the eleven projects studied was termed "extraordinary" by Portman. The CIS closely parallels an environmental impact statement except that it did not get broad circulation for comment and comments and responses to comments were not included in the document.

9. The project for the subject site reviewed for the CIS was one proposed by a different developer, designed by a different architect, had floor area smaller than the current proposal, had no retail and a lesser parking ratio.

10. The DNS was based on the environmental checklist and the CIS adjusted for the changes in the proposal. The DNS identified various adverse impacts from the project including those of height, bulk and scale, traffic and parking. Cumulative impacts from the project proposal studied in the CIS on traffic generation and circulation and parking were also identified. The impacts were determined not to be significant.

11. The design of the building proposed by this applicant was modified after application in response to statements by DCLU staff about changes that would be necessary for approval. The modified project then was considered by the Director to determine whether there were significant adverse impacts or impacts which should be mitigated. A series of conditions was imposed to mitigate impacts relating to construction, traffic, parking and landscaping.

12. The proposal upon which the appealed decision was based includes some 30,800 sq. ft. of office space and 2,000 sq. ft. of retail space located at street level and provides 64 parking spaces on two levels. One level of parking, 23 spaces, would be entered from Eastlake and the lower level with 41 spaces would be entered via the alley.

13. The Eastlake facade of the building would be 52.5 ft. high and 120 ft. long. The height of the building at the alley would be 33 ft. The building would have two 6 ft. deep recesses and rise to a total rear height of 61 ft. The north facade has been modulated to set back the western 65 ft. 16 ft. from the property line. The building is designed to have an historical feeling with vertical columns, stepped parapet with a central gable and cornices. Canopies over the street level retail spaces were added to add modulation to the front facade. The amount of retail space at street level was increased at the direction of DCLU.

14. The owner proposes to attract "high end" of the market, professional office tenants.

15. The project is vested to Community Business (BC) zoning standards. The height limit under BC zoning was 60 ft.

16. The project is proposed for a lot now used as a commercial parking lot on the west side of Eastlake Avenue East between East Louisa and East Lynn Streets. The lot slopes down from Eastlake to an alley with a change of elevation of approximately 9 ft.

17. The Eastlake frontage in the block is currently zoned NC2 40'. Development along the west blockfront starting from the south end consists of an older 1-story building housing a tavern connected to another tavern or restaurant with residence above, an older 2-story residence converted to restaurant use, a 5-story, 53 ft. high office building, Northwest Management, two 2-story buildings used for offices and mixed office and residence, the subject site, an apartment building, the Yates, 25 ft. high, a courtyard apartment building 1-story high, a 2-story office building and a 2 1/2 story residence converted to office use. Because of the slope to the west, some of these buildings have an additional story above the alley. The Northwest Management Building, for example, is 63 ft. above the alley and the Yates Apartment Building is 33 ft.

18. On the east blockface in the subject block from the south end are the following: a 3-story office building, 41 ft. high, now unoccupied; a 3-story office building 30 ft. high; a 5-story office building, approximately 58 ft. high; a 1-story grocery with surface parking lot; and the 4-story Areis Building, 40 ft. high, with offices and ground level restaurant and retail.

19. The subject block has some of the tallest and longest buildings in Eastlake. It also contains more commercial buildings than any other block in Eastlake.

20. Of 14 buildings on the two facing blockfronts, four meet or exceed 40 ft. in height, the Northwest Management Building at 51 ft., the NMS Building at 58 ft., the Wang Building at 40 ft. and the Aries four floors at 40 ft. Nine are 30 ft. or under. Two buildings are higher than the subject building is proposed to be, two buildings are as "bulky" as the proposed building and two buildings have street facades longer or similar in length.

21. The alley separates the NC2 40' zone from a Lowrise 3 (L-3) zone. The L-3 zone height limit is 37 ft. Development of the lots on the east blockface of Yale which abut the alley is duplex, apartment buildings and single family residences. Immediately behind the subject site are 2-story houses.

22. The Director's staff carefully reviewed the height, bulk and scale, traffic and parking impacts of the proposal and those impacts in combination with those of other projects.

23. The Director found the vicinity to be "characterized by a diversity of building types, height and bulk," Exhibit 1, p.7, and that the proposed building "reflects the general development pattern of the 3-to-5 story office/retail buildings extant within the subject block." Exhibit 1, p.8.

24. During the mapping process for the Neighborhood Commercial zoning, City Council staff reported that the existing development on the block was predominately 2 to 4 stories. Exhibit 41.

25. Exhibit 33, the panorama view at southwest of property, does not accurately portray the relative heights of the buildings.

26. Approximately 60 percent of the facades on the two sides of Eastlake is higher than that which would be permitted under current zoning, according to figures supplied by John Hunt, applicant's witness.

27. Folke Nyberg, professor of architecture and urban

design, found the proposed building to be out of character at three scale levels: distant, street and internal. He found too much bulk and too much window fenestration to reflect the residential character he sees elsewhere. He sees the building's bulk to cause a sharp transition to the L-3 zone behind. Professor Nyberg suggested as one way of asserting scale, to look at the average height of the buildings. The buildings on the block average 34 ft., according to Professor Nyberg's figures.

28. The height, bulk and scale impacts would be mitigated by reducing the height of the building to 40 ft. by eliminating one floor and requiring a mixed residential-commercial use to retain residential character, according to Professor Nyberg.

29. The architectural character of the two facing block-fronts is definitely mixed.

30. The general development pattern of the two blockfronts is closer to 2 to 4 story with exceptions lower and higher. The proposed 4-story building would be at the upper end of the general pattern but still within the range.

31. A "canyon effect", created by existing buildings is evident at the southern half of the block. A reduction in the height of the proposed building to the maximum currently allowed by zoning would be likely to do little to diminish that effect.

32. The Areis Building is 210 ft. long along Eastlake.

33. A person passing through the alley would be likely to perceive the building to be no higher than the adjacent apartment building. Farther to the west of the alley the greater height would be visible.

34. The modulation through the two recesses was added to respond to the Department's request for better transition to the L-3 zone.

35. The north wall of the parking levels in the proposed building would be open and expose tenants on the south side of the Yates Building to vehicle noise and headlights.

36. The slope continues beyond the alley down to the lake. The alley and slope provide space and topographical change to lessen to sharpness of the transition from the NC2 40' zone to the L-3 zone.

37. A typical L-3 apartment building fronting on Yale would rise approximately 25 ft. above the alley.

38. The proposed building would shade the south side of the adjoining Yates Building most of the year.

39. The eleven projects considered in the CIS were spread over a 12 block length of the Eastlake Corridor and 25 to 30 square blocks.

40. Since the commencement of the CIS, projects studied have been modified or dropped and other have been proposed. The total floor area which would have been added to the area if the projects were completed as then proposed would be 133,200 sq. ft. of warehouse, 292,360 sq. ft. of office and 11,570 sq. ft. of retail.

41. Projects not included in the CIS, proposed or constructed since the CIS, if completed would add some 196 to 202 units of housing to the Eastlake neighborhood. An additional 2-story office-retail building is proposed, a 50,000 sq. ft. office addition to an existing building is proposed and a 3-story office building has received permits.

42. Eastlake Avenue East is classified as a principal arterial-residential in the area of the subject property. It has four lanes for travel with parking on both sides but is only 50 ft. wide with 12 1/2 ft. wide sidewalks. The only intersection in the immediate area which is signalized is that with Lynn Street. Traffic volumes on Eastlake range from 8,000 to 11,000 vehicles per day in each direction.

43. East Louisa Street, the first street north of the subject property, has two lanes for travel with parking on both sides and ends in a dead end in the block. Its intersection with Eastlake is not signalized except for a pedestrian crossing. The level of service (LOS) for the west approach is E, east approach is A, north approach is C and south approach is A.

44. East Lynn Street is the first street south of the subject property. East of Eastlake to Boylston Avenue it carries over 4,000 vehicles per day. Level of service at its intersection with Eastlake is currently B-C.

45. Eastlake is a major transit street with five Metro transit routes connecting with the University District, downtown and Capitol Hill. Service is every 5-10 minutes during rush hours. A bus stop is within 800 ft. of the subject building.

46. Vehicles turn midblock, crossing the center line, to enter building parking lots in the block.

47. Because the block between Lynn and Louisa is especially long, pedestrians cross midblock.

48. Cars experience difficulty entering Eastlake traffic from building parking because parked cars make visibility difficult and, during rush hours, cars backup from the signal at Lynn.

49. The Director concluded from the CIS that the cumulative traffic impact of this project and others studied would be up to a 50 percent increase over traffic expected without the projects, 12 percent of which would be from the subject proposal. The total is not considered significant by the Director because not all vehicles are expected to use the same route for the same distance. The CIS and Director's decision mention dispersion of traffic to other streets as a basis for the conclusion that cumulative traffic will not be as severe as it would appear. Appellant disagrees that this should be considered as reducing the impact since it wants traffic directed toward major streets, not dispersed.

50. The Director relied on information that the project would generate approximately 634 vehicle trip-ends per day. This figure is based in ITE trip generation rates of 17.7 weekday trips and 4.7 employees per 1,000 sq. ft. of general office space. The traffic added to the existing traffic during the peak hour would be 95 trips. The Director noted that the LOS at the Lynn Street intersection is projected to drop from B to C even without the project. At Louisa the north approach would drop from C to D.

51. The traffic growth rate has been approximately 1 percent per year. The Engineering Department approves using that figure for growth projections and this is the figure used in the CIS.

52. Without any mitigation, the traffic increase from all the projects considered in the CIS would cause the LOS at Lynn to drop further to D. The LOS for the north approach at Louisa would not be lower than the D projected because of the general growth.

53. It is common for unsignalized intersections to have one approach at LOS E or F. If it is the street with the smaller

volume that condition is considered to acceptable because of the cost of improving the situation through signalization.

54. Signalization at the intersection of Eastlake and Louisa was not shown to be warranted.

55. Two projects, a 1-story retail building on Eastlake and an 8-unit residential building, will have access off Louisa Street and increase that traffic.

56. Options for improving traffic circulation in the Eastlake corridor offered in the CIS include rechannelization of Eastlake by restriping and restricting on-street parking during peak hours to improve the flow of traffic and operation of the intersections. Both options would improve the operation of the intersection at Lynn, one by creating a center left turn lane.

57. The capacity of Eastlake during peak hours would be increased by either rechannelization option.

58. The state has no proposal to add devices to meter on-ramp traffic at the freeway ramps in the Eastlake area.

59. The CIS evaluated the capacity of the I-5 Harvard ramp.

60. Even though the Director found the impact from the proposed building's traffic not to be significant, conditions were imposed including:

1. The owner(s) shall enter into a contract with SED to finance its share of the proposed rechannelization of Eastlake Avenue E. Specifically, the developer shall be responsible for financing eleven (sic) percent of the current estimated cost of rechannelization ($.12 \times \$32,000 = \$3,840$). Payment shall be due upon call by SED once it undertakes improvement construction. Said contract shall be forwarded to the Land Use Division of DCLU for concurrence.

SED will undertake the street improvement whether all eleven of the projects contribute their proportionate share or not.

A Transportation Management Program (TMP) was also required and will be discussed later. The building is also to join a Cumulative Transportation Management Committee (CTMC).

61. William Eager, president of TDA, Inc., has found the Washington State Department of Transportation to be concerned chiefly with the overall capacity of the regional system and the capacity of freeway ramps in its comments on EIS's.

62. Access via a curb cut on Eastlake to one level of the garage and from the alley to the other level is the most efficient access since space does not have to be devoted to a ramp or other connecting device.

63. TDA notes from a meeting with the project architect show a comment that access for the then project from other than Eastlake would not be possible.

64. The November, 1985, CIS draft, stated, at p. 57, that the curb cut at 2343 Eastlake would disrupt pedestrian and bicycle circulation and increase risk of conflict. Exhibit 22. That draft also cites risk of accident from the midblock curb cut at p. 61. As a mitigation measure for pedestrian and bicycle circulation, the November draft proposes that curb ramps on Eastlake be discouraged. The December, 1985, draft, Exhibit 17, states that the curb cut at 2343 Eastlake will disrupt pedestrian

and bicycle circulation and increase risks. p. 69. At p. 73, it calls out the potential for midblock accidents at 2343 Eastlake.

65. The final CIS in the section on identification of mitigating measures under the heading for pedestrian and bicycle circulation on Eastlake East includes a statement that "(v)ehicular access (curb ramps) should be discouraged where possible on Eastlake because of their impact on pedestrian and bicycle circulation and safety." Exhibit 4, p. 58. At p. 73, the final CIS states that the curb cut at 2343 Eastlake will disrupt pedestrian and bicycle circulation and increase risk of conflict.

66. The format of the report was changed between drafts.

67. Relocating the access to the proposed building at 2240 Eastlake to Lynn Street was specifically mentioned in the CIS at p. 82 as a mitigating measure because that curb cut would be located so close to the congested intersection of Eastlake and Lynn. The more general statement that curb cuts should be discouraged where possible on Eastlake applies to the subject proposal.

68. Appellant urges that the changes over the drafts to the final CIS in the presentation of the curb cut impacts and mitigating measures show improper influence by the sponsors. This is not supported by the evidence.

69. William Eager testified that there are adverse impacts associated with the midblock curb cut but that there would be a trade off of impacts if the curb cut was eliminated in the form of additional traffic on the alley and East Louisa and Lynn Streets.

70. If the curb cut on Eastlake is eliminated, traffic on the approach streets and the alley would be increased.

71. Another mitigating measure was identified in the CIS for the midblock curb cut which is to improve the condition for left turning vehicles into midblock parking through one of the rechannelization options.

72. The parking requirement for the proposed building under Title 24 would be from 40 to 55 spaces depending upon the type of office tenant. Under the current Code between 32 and 48 spaces would be required. The proposal is to provide 64 spaces.

73. The Director found that the average on-street parking occupancy on Eastlake is 93 percent of supply with the peak occurring between 10:00 and 11:00 a.m. Parking on the residential streets in the area is at 82 percent capacity during peak weekday hours from 10:00 a.m. to 2:00 p.m. The record is clear that the parking situation in the area is very poor with residential and business parking competing for on-street spaces.

74. The demand for parking from users of the proposed building is expected to be from 85 to 123 spaces, according to the Director's analysis. The building would replace an existing parking lot which has 37 spaces. By that analysis if 64 spaces are provided in the building, from 48 to 86 vehicles could require parking elsewhere if no mitigation was required.

75. The parking demand from the projects in the CIS was based on 3.5 employees per 1,000 sq. ft. and lower and upper drive-alone mode splits of 75 percent and 85 percent. Customer demand was assumed to be .2 and .8 spaces per 1,000 sq. ft. for the upper and lower demand. Retail demand is included in the customer demand. The low figures given in Table 20, Exhibit 4, p. 75, do not include customer parking.

76. The approach to parking demand used in the CIS,

according to Eager, is to assume the 3.5 employees per 1,000 sq. ft., 100 percent building occupancy, 90 percent of employees present at any time, 90-95 percent driving with an average car occupancy of 1.05 to 1.11 and .2 to .8 visitors spaces per 1,000 sq. ft. For the proposed building the demand on that basis would be from 85 to 111 spaces.

77. Recent studies of the Eastlake corridor show an average vehicle occupancy of 1.16 and transit mode split of approximately 8 percent.

78. A more realistic figure would be attained, according to Eager, by assuming 3.5 employees per 1,000 sq. ft., 95 percent occupancy, 85 percent of employees present at any one time, 87 percent driving with average car occupancy of 1.16 and .5 visitor spaces per 1,000 sq. ft. The demand, based on these assumptions, would be 81 spaces.

79. The highest number of spaces in the existing parking lot occupied at any one time was shown to be 23 spaces.

80. Utilizing Eager's figures the overflow parking demand from the project without mitigation would be for 17 spaces plus 23 from the existing parking lot for a total of 40 spaces needed.

81. The Engineering Department recommended to the Director that, in addition to implementing mitigating measures in the CIS, the applicant provide additional parking to achieve a net gain of 53 spaces instead of 27 to avoid greater impacts than those found in the CIS because of the change in the proposal.

82. Overflow parking demand from the eleven projects included in the CIS would take 185 to 500 spaces to satisfy but this would be spread to some extent over 25 to 30 blocks.

83. If the office building which was vacant during surveys for the CIS had been occupied, there would be little difference in the conclusions of the CIS, according to Portman.

84. The parking demand from residential projects not considered in the CIS would be minor.

85. The existing parking lot on-site has 36 spaces for lease. Jules James, who manages the lot, reports that 18 spaces currently are leased to Northwest Administrators in the Northwest Management Building. Information obtained by William Eager from the owner, which may have been from a different time period, showed 21 spaces are leased to that organization.

86. The survey of employees of tenants in the Northwest Management Building by appellant provides some information about commuting characteristics of employees in that building but should not be used to generalize about characteristics of the area.

87. Parking in the Northwest Management Building is assigned. At peak periods, Eager's studies showed approximately 23 vacant spaces. By changing how the parking is used, all cars using spaces eliminated from existing lot could be accommodated. The City was not shown to have any authority to require a change in management of parking in that building.

88. Eager concludes from his studies of the area that the overflow parking of the subject proposal and others proposed in the immediate area can be accommodated but will involve more drive around time and parking violations. He believes his conclusion is conservative because he assumed no TMPS are implemented and that all proposed residential projects are constructed, he used theoretical on-street parking supply which is smaller than the actual supply, some projects have been reduced in size since his studies and the Northwest Management Building

could absorb all parking displaced from the existing parking lot on-site.

89. Patrick Doherty, the land use specialist preparing the Director's decision, interprets the policy of the City to be not to provide excessive amounts of parking thereby encouraging other modes of transportation. Portman, Doherty's supervisor, maintains the policy is forwarded by the decision balancing a reasonable supply of parking with an aggressive TMP.

90. To mitigate parking and traffic impacts of the project, the Director imposed the following condition:

3. The proponent shall execute a Memorandum of Agreement with SED to establish a Transportation Management Program (TMP) for the proposed building. Details of the TMP shall be worked out with SED upon execution of the Agreement but shall, at a minimum include the following incentives for High Occupancy Vehicle (HOV) travel by employees:

a. A Building Transportation Coordinator for the subject building to assist employees at the building in making their work commute by HOV and to report to the City regularly.

b. A Commuter Information Center in the lobby of the building where it is easily accessible and visible to employees and visitors to the building.

c. Lease agreements with building tenants to promote and provide incentives for employee HOV travel, transit travel, flex time, transportation credits, etc.

91. To further mitigate parking impacts the Director imposed a condition requiring that the garage in the proposed project be available for commercial parking after business hours until midnight.

92. To mitigate the cumulative impacts of the subject property with others affecting the Eastlake corridor, the Director imposed the following condition:

4. The owner(s) shall join a Cumulative Transportation Management Committee (CTMC), to be formed by SED when more than one of the subject nine developments has been occupied. The CTMC shall be responsible for coordinating individual building's TMP's, for submitting quarterly and annual transportation reports to the City, and for promoting transit and HOV usage.

93. The CTMC, as planned, would consist of representatives of the buildings' management, one from Metro, one from Seattle Commuter Services and one from the Eastlake Community Council. Eastlake Community Council was not contacted specifically about its members' willingness to serve on such a committee which is intended to function for the life of the building. Eastlake Community Council leadership was aware of the proposed committee and voiced no objection. Metro was not specifically asked about its willingness to serve but it has been willing to provide representation on other TMP committees. There is currently no plan for funding the CTMC.

94. The Director, through her staff, relied on the judgment of the Engineering Department that the TMP would reduce parking impacts to a reasonable level. The decision maker had no

specific goal or quantity in mind as to the percent or number of employees who need to shift from SOV to adequately mitigate the parking impact of the project.

95. Eager explained that to estimate the effect of a TMP, an idea of the kind of tenants, e.g., where they would fit on a economic scale and whether a single employer or many and the site characteristics, would be needed. He explained that the numeric effect of a mitigating measure such as a TMP is usually established after the project receives approval when more specific details are known.

96. The decision maker needs to have some sense of whether a condition will be reasonably effective in meeting the decision maker's expectation for reducing the impact.

97. The City has had no experience with TMP's outside of downtown Seattle with the possible exception of those instituted or to be instituted in institutions. There has been no long term experience with TMP's in Seattle but there is enough experience to conclude that TMP's cause some shift in the mode of transportation.

98. The characteristics of downtown Seattle are sufficiently different that the experience as to the effectiveness of downtown TMP's may not be transferable to a TMP in the Eastlake neighborhood. The chief difference is that many more bus lines converge in downtown Seattle.

99. The transit use under TMP's in downtown Seattle is as high as 44 percent, at Safeco in the University District 34 percent.

100. A TMP involving one large employer is easier to manage and likely to be more effective than one involving a number of tenant employers. The cumulative TMP would provide a greater commuter base and opportunity for greater effectiveness.

101. Congestion aids the effectiveness of a TMP.

100. A residential parking zone (RPZ) is under consideration for Eastlake. If adopted it would force parking associated with commercial buildings from the residential streets. An RPZ would increase the effectiveness of a TMP.

102. The TMP agreement has not yet been drafted. The City desires to acquire as much information as possible as to occupancy prior to preparing the memorandum of agreement.

103. The TMP would be monitored through quarterly reports to Seattle Commuter Services, the office in the Engineering Department assigned to that activity. The agreement would include flexibility to respond to measures which prove to be ineffective or changes in conditions. The sanctions for not observing the requirements of the TMP would be suspension of permits for the building.

104. Appellant observes that TMP's are increasing in popularity as a condition of projects and the staff responsible may not be adequate to properly oversee all of them.

105. Appellant pointed to two situations in the immediate area where parking covenants necessary to satisfy requirements for permits have not been enforced.

106. According to Portman, the figures prepared by the Seattle Commuter Services for the TMP project 12 to 30 percent transit ridership, 8 to 12 carpool set-asides and somewhat less than five high occupancy vehicles (van) set-asides.

107. Alan Bennett, the director of the Seattle Commuter

Services office, advised appellant's representative that even the most hopeful outlook is 15 percent transit ridership in Eastlake and that would be with full subsidy. A realistic range, with subsidy, is 11 to 14 percent, according to Bennett.

108. Eager estimates that the individual TMP for the subject proposal should reduce employee parking demand by 12 percent and total parking demand by 9 percent. If that occurred, the parking shortfall for the project would be reduced to 10 spaces, according to Eager, plus the 23 from the existing parking.

109. The applicant withdrew its appeal of conditions at hearing.

Conclusions

1. The Hearing Examiner has jurisdiction over this matter and these parties pursuant to Section 23.76.022.

2. A DNS is appropriate if the Director determines that there will be no probable significant adverse impacts from the proposal. This determination by the Director is to be given substantial weight. Section 23.76.022. For an EIS to be required by the Hearing Examiner, appellant would have to have shown that the decision made was clearly erroneous. Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981).

3. The CIS provided the Director with additional information on which to base the threshold determination pursuant to Section 25.05.335. It cannot substitute for an EIS, however, since several components required for an EIS are missing. The issue, then, is strictly whether there are probable significant impacts which would make an EIS necessary. Given the opinion of Eager, that using the most conservative approach parking overflow can be accommodated, it must be concluded that the impact from parking demand would not be significant. The impacts on traffic circulation and height, bulk and scale were not shown to be significant either. Therefore, the DNS should be affirmed.

4. Appellant challenges the failure to impose further conditions to mitigate parking, traffic, and height, bulk and scale impacts and the decision to impose a measure which it contends is not capable of accomplishing the mitigation. The conditions requested are the reduction of the building by one story to mitigate all three impacts, removal of the curb cut on Eastlake and signalization of the Louisa and Eastlake intersection. Appellant contends that the effectiveness of the TMP was unknown to the Director and is too speculative to rely upon.

5. The Director has the discretion to impose conditions to mitigate environmental impacts subject to certain limitations: the mitigating measure must be based on policies adopted pursuant to Section 25.05.902 as the basis for the exercise of substantive authority under SEPA; the mitigating measure must be related to an impact identified in the environmental documents; and the mitigating measure is to be reasonable and capable of being accomplished. Section 25.05.660.

6. An impact on the Louisa-Eastlake intersection from the cumulative traffic from the projects is identified in the CIS and decision. The City Council has adopted a traffic policy to assure reasonable traffic flow. Appellant has not shown, however, that requiring a signal is reasonable given the low traffic volume on Louisa. It was not error, therefore, for the Director not to impose that condition.

7. An adverse impact from the midblock curb cut was also identified in the CIS and there is substantive authority to mitigate that impact through conditions pursuant to Section 25.05.902(4). While it is true that removal of the curb cut would result in other adverse impacts, i.e., increased traffic turning at Lynn and increased traffic on Louisa and on the alley,

there is no indication that the Director considered the curb cut or balanced these impacts. It would be error not to consider whether this mitigating measure should be imposed so the matter should be remanded for that consideration.

8. No party suggests that the parking impact of the proposal does not require mitigation given the over-utilization of on-street parking. Appellant questions whether the mitigating measure chosen by the Director will be effective in reducing the demand to that which can be reasonably accommodated. The probability of success is more critical in Eastlake than in a strictly commercial area because here residents must compete with business for on-street parking and residents do not have the options available to employee commuters. If the TMP fails to reduce the demand, the residential community is seriously affected.

9. The Director relied upon the judgment of the Engineering Department that the TMP would be successful. The record shows that the Director had no "goal" or definition of success in mind to evaluate the judgment offered by the Engineering Department. Applicant's expert, Eager, provided quantification of the effect of a TMP and opined that the reduction afforded would be adequate. Given that the Director is responsible for applying the policy of the City, she needs to evaluate the numbers provided by applicant's expert or obtain actual quantification from the Engineering Department to assure that its judgment about mitigation reflects City policy.

10. Appellant has not shown the Director's determination as to the effect of the height, bulk and scale of the building to be erroneous. The Director found the building to be taller and larger than some of the buildings in the vicinity, and the record shows on the block, and shorter and smaller or similar to others. This is true both on the street and the alley. Therefore, the building, as currently designed, presents no scale impact in need of mitigation. Even if the building was not in scale, the Neighborhood Commercial Area Land Use Policies support both the reduction or retention of the size proposed. For example, goals supporting the decision to allow the proposed building are "I. A.7. (p)reserve and improve existing commercial areas in preference to creating new business district;" "B.5. (e)ncourage an efficient use of commercially zoned land" and on the other side "B.1. (r)einforce the objectives of the adopted single family policies and multi-family policies" and "A.8 (e)ncourage residential development in combination with new business structures in existing business districts."

11. The building would shadow the Yates Building, however, there appears to be no policy providing substantive authority for mitigating that impact on private property.

12. If the Director determines that the TMP will not, or cannot, be relied upon to reduce parking impacts to a level acceptable under City policy, reducing the size of the building would be appropriate for consideration along with other available mitigating measures.

Decision

The matter is remanded to the Director for consideration of requiring the removal of the curb cut on Eastlake and for evaluation of the effectiveness of the TMP recognizing the balance to be maintained between the residential and business communities and imposing additional conditions, if appropriate. The Director shall issue a supplemental decision and mail it to the parties herein. The Hearing Examiner retains jurisdiction to consider objections to the Director's supplemental decision. Any objection to the Director's supplemental decision must be filed with the Office of Hearing Examiner within 10 days of issuance of that decision. If no objection is filed by 5:00 p.m. on the 10th day after issuance, the Director's decision is deemed incorporated into the decision of the Hearing Examiner and is final for the purpose of further review. The appeal of Globe Development Company is dismissed.

Entered this 2nd day of December, 1986.

M. Margaret Klockars
M. Margaret Klockars
Deputy Hearing Examiner