

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

In the Matter of the Appeal of

JANET FLICKINGER BLEAKNEY

FILE NO. MUP 85-074(V)  
APPLICATION NO. 8504250

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

Introduction

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 December 9, 1985. The record was left open for DCLU to submit an affidavit of mailing for its General Mailed Release.

Parties to the proceedings were: appellant Janet Bleakney, pro se; the DCLU Director by Ed Somers; and William T. Pope, representing Mt. Baker Community Club, participated along with other witnesses in support of the appeal.

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 erect and maintain a single faced exterior illuminated billboard sign on property addressed as 2824 Rainier Avenue South. DCLU reviewed the proposal and issued a declaration that the project would be of no environmental significance (DNS). Appellant submitted this appeal.
2. The proposed sign would stand 25 ft. to its bottom, have a total height of 37 ft. and would be approximately 25 ft. wide. It would be oriented to the west.
3. The subject site is at the rear of a service station in a General Commercial (CG) zone. The specific site is on the south side of South McClellan Street between Martin Luther King, Jr. Way South and Rainier Avenue South. Franklin High School is two blocks to the southeast. The Mount Baker Community is east and the Cheasty Greenbelt two blocks to the west across Rainier Avenue South.
4. Applicant completed the Environmental Checklist to state that no views would be altered or obstructed. According to the DCLU annotation, the sign would be offensive to some people and would cause "some view blockage." p. 9, Checklist.
5. Appellant is a Mt. Baker resident who considers the billboard as a foreign business "blight on a cohesive neighborhood." Appellant and supporters also complain that project notice was inadequate and inappropriate. By way of relief, appellant requests remand and renotification; denial of the sign; or conditioning the sign to make it more aesthetically acceptable, such as by requiring that the back (east) wall of the sign be obscured by trees or other vegetation.
6. In DCLU's opinion, no protected view from a public space or of a landmark would be impaired by the proposed sign. Therefore, DCLU concluded, they were without authority to condition the proposal to reduce height. Concerning notice, the DCLU analyst

testified of a December 2 meeting with the Mt. Baker Community Club, and that notice of the project was given in the Daily Journal of Commerce and in the DCLU General Mailed Release (GMR) which is sent to subscribers.

7. The affidavit from DCLU shows that the October 24, 1985, GMR was mailed to the Beacon Hill News, Daily Journal of Commerce, the Rainier Beach Community Club, the Seattle Times/Real Estate News, the Seattle P.I., the Seattle Public Library (Documents, 1000 4th Avenue) and others. The GMR notice of decision gave the project address, zone, application number, Kroll map number (52E), briefly described the project, indicated a DNS as the decision, and gave the November 8, 1985, deadline for an appeal to the Hearing Examiner.

8. The Mount Baker Community Club specifically protested the fact that no notice was given to the Community Club or in a Mount Baker community newspaper. Because of the proposed sign's perceived visual blight on the community and its significant adverse environmental impact on motorists, etc., and because of the question of notice, the Community Club requested that an EIS be required or that the matter be remanded to DCLU for additional public comment and reconsideration of the DNS.

### Conclusions

1. The Hearing Examiner has jurisdiction of this proceeding pursuant to Chapters 23.76 and 25.05, Seattle Municipal Code.

2. The Director's environmental determination is accorded substantial weight, Seattle Municipal Code 23.76.36(B)(7), and the burden of establishing the contrary is appellant's. Seattle Municipal Code 25.05.680(1)(c). Appellant must therefore show the DCLU determination here at issue to be "clearly erroneous".

3. If a proposal may have probable significant adverse environmental impacts a declaration of significance is required. Seattle Municipal Code Section 25.05.360(1). Otherwise, a declaration of non-significance (DNS) is appropriate. Seattle Municipal Code 25.05.340. Significant has been read to mean "of more than a moderate effect." Norway Hill Preservation and Protection Association v. King County Council, 87 Wn.2d 267, 552 P.2d 674 (1976).

4. The impacts were not shown to be significantly adverse. New light and glare will be introduced. The CG zoned site is near a service station and between Rainier Avenue South and Martin Luther King, Jr. Way. The Mount Baker Community is farther east. While some private views from that community will be affected, the impact will not be of more than a moderate effect. No EIS is therefore required. Since no EIS has been prepared and none is required, the Hearing Examiner is without authority to deny the proposal. Seattle Municipal Code Section 25.05.660(1)(f).

5. Although not a significant adverse impact, the Hearing Examiner acknowledges that there will be some effect on private views from Mount Baker. Mitigation of impacts that are not significant may be accomplished pursuant to Seattle Municipal Code Section 25.05.660, and 25.05.902. Section 25.05.902(5)(a) provides that landscaping may be required to reduce aesthetic incompatibility. The DNS is accordingly affirmed on the added condition that applicant present for DCLU approval a feasible plan to obscure with evergreen vegetation the rear (east) wall of the sign. DCLU is encouraged to share that plan with appellant and the Mount Baker Community Club. Once DCLU approves the plan, applicant shall implement same.

6. Seattle Municipal Code Section 23.76.32 requires that the DCLU Director compile a list of the Master Use Permit decisions made. The Section continues that the list shall be published

"...in the City official newspaper...posted in... the Department and shall be included in the general mailed release. Notice shall also be mailed to each applicant and to interested persons who have requested specific notice in a timely manner."

7. Seattle Municipal Code Section 25.05.510(3)(b) provides that notice of a DNS, along with other information from the SEPA Public Information register, be published weekly

"...in the City official newspaper. In addition, notice of a DNS and notice of the right to appeal a DNS...shall be submitted in a timely manner to at least one community newspaper with distribution in the area impacted by the proposal for which the DNS was adopted..."

8. There is no requirement under Section 25.05.510 for a newspaper to actually publish submitted material. Secondly, there is no definition in Chapter 25.05 of "community newspaper." DCLU's position is that the Seattle Times, to which newspaper notice of the DNS was submitted via the GMS, is a "community newspaper" per the language of Section 25.05.510 since the Times serves the Seattle "community." The Hearing Examiner was presented with insufficient information to counter that argument.

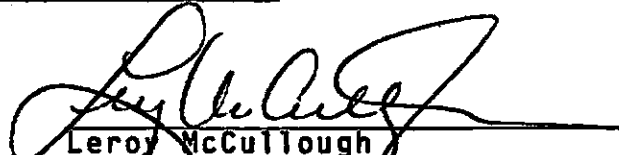
9. Further, notice of the DNS was submitted to the Daily Journal of Commerce, the City's official newspaper.

10. Finally, the Hearing Examiner review of the record shows that the appellant had sufficient notice and information to understand the nature of the proceeding. Cf. North State Tel. Co., Inc. v. Alaska Utilities Commission, 522 P.2d 711 (1974). While more extensive notice was certainly possible the record fails to show that more extensive notice was legislatively required or that appellant's case suffered as a result of the notice procedure. No remand to DCLU for renotification is therefore required.

#### Decision

As modified herein, the DCLU decision is AFFIRMED.

Entered this 23rd day of December, 1985.

  
Leroy McCullough  
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.