

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

In the Matter of the Appeals of

FLOATING HOMES ASSOCIATION AND
EASTLAKE COMMUNITY COUNCIL AND
SHELTER VENTURES, INC.,

FILE NO. W-86-004 AND
W-86-005

from an environmental determination
of the Department of Construction and
Land Use

Introduction

Shelter Ventures, Inc., applied for Council Conditional Use authorization for dwelling units in a CG zone at 2048 Fairview Avenue East. Two environmental appeals were filed: one by the Floating Homes Association and Eastlake Community Council, and one by Shelter Ventures, Inc.

This matter was heard before the Hearing Examiner on October 13, 1986.

The representatives of the parties at the hearing were: Jules James, president, Eastlake Community Council and Rob Widmeyer, Floating Homes Association for appellant associations, John Hempelmann and Terry Danysh, Diamond and Sylvester, for appellant applicant, and Cliff Portman, senior land use specialist, for the Director, Department of Construction and Land Use.

Findings of Fact

1. The proposal subject to environmental review is the demolition of five duplexes and the construction of a four-story, 32-unit apartment building with 42 parking spaces on property bounded by Fairview and Minor Avenues East and East Boston Street at 2048 Fairview Avenue East.

2. The zoning of the site is Lowrise 3 (L-3) on the eastern half and was General Commercial (CG) on the western half at the time of application. The western half is now zoned Lowrise 1/Residential-Commercial (L-1 RC). The western two-thirds of the site is within the shoreline and is classified as Urban Stable/Lake Union.

3. Zoning and development of the area surrounding the subject site is as follows: to the west, across Fairview is the SF 5000-zoned floating homes community; to the north, along Minor, is L-1 zoning with multi-family structures at the Boston intersection and along Fairview, also L-1 RC, the development consists of single family residences, houses converted to office use and a contractor's storage yard; to the east, in the 2000 block of Minor Avenue East, L-3 zoned, are two small office buildings and two, two-story office buildings on the west side and on the east side, three four-story apartment buildings, a three-story apartment building, two two-story apartment buildings, a one-story apartment court and a single family residence; and to the south, along Fairview are lots used for accessory parking and a two story office building.

4. Fairview Avenue East is classified as a Commercial Access street but has no sidewalks, curbs or gutters and the street is narrow especially at the subject site. Boston Street and Minor Avenue are Residential Access streets and are fully improved.

5. The Director projects the proposed development would generate up to 190 person trips per day. Some 15-20 vehicle trips would be expected to occur in the p.m. peak hour.

6. On-street parking in the vicinity of the subject site is very heavily utilized. Few moorages provide parking for tenants. Older apartment buildings may not provide parking and some parking demand comes from businesses along Eastlake Avenue.

7. A parking survey conducted by the applicant at the request of the Engineering Department showed only a 5-6 percent vacancy rate on weekday evenings and a 22 percent vacancy rate on Sunday afternoon. A parking survey conducted by the neighborhood showed utilization rates ranging from 90 to 129 percent.

8. The applicant projected vehicle ownership or demand for parking based on a survey of an existing condominium on East Lynn Street. That survey showed vehicle ownership of .7 cars per unit and visitor demand of 3.2 per unit per week for 1.15 spaces per unit per day. The proposed project would supply 1.31 spaces per unit which would satisfy demand.

9. The community contacted the manager of the building used in applicant's study and obtained her vehicle ownership records for all units. Ownership for the two-bedroom units alone is 1.125 cars per unit. A different visitor rate was also used of 3.37 per unit, reflecting the average of the range rather than the lower end. The demand, then, would be 1.6 cars per unit. At that rate there would be an overflow of 9 cars.

10. The site slopes down to the west, the elevation changing some 10-12 ft. over the distance of the lot. There are to be four levels of residences over one of parking in the basement. The site is to be excavated. The maximum height above existing grade along Minor would be 30.5 ft. and above finished grade, 38.13 ft. The maximum height along Fairview Avenue above existing grade would be 36.88 ft. and above finished grade, 38.13 ft.

11. Views to the west from some units in apartment buildings along Minor Avenue would be obstructed.

12. No view from a designated scenic route would be affected by the proposal.

13. The Director identified construction related impacts; some increase in air contaminants; increase in storm water runoff; increase in noise from traffic; bulk and scale impacts on Fairview because of excessive height and width; private view alteration; building illumination; and increased traffic in the determination of non-significance. The Director determined the probable impacts from the proposal would not be significant.

14. The Director imposed a series of conditions pursuant to SEPA to mitigate some of the identified impacts. Among the conditions is the following:

1. If recommended condition #1 of the Council Conditional Use is not adopted then:

The proponents shall submit revised drawings for Zoning and Land Use approval that indicate a Fairview Avenue facade of no greater than 75 feet in width, with modulation in accordance with the L-1 Modulation Standards (Sec. 23.45.12, SMC). If this results in fewer units, the applicants may reduce the on-site parking supply. However, a reduction below the currently proposed unit-to-space ratio of 1:1.3 will result in new environmental review.

Condition No. 1 recommended for the Council Conditional Use is:

Residential development of the site shall conform with the L-1 RC development standards

of the Land Use Code. An exception shall be made to allow parking within the Fairview Avenue setback but no closer than 5 feet from the property line and screened with landscaping and a 3-foot tall solid fence or wall.

15. The applicant provided a revised drawing meeting the requirements of the Council Conditional Use Condition No. 1. The revision reduces the number of dwelling units to 29 with three stories of residential space over basement parking on the west half of the site. On-site parking provision would be 39 spaces for a 1:1.34 ratio.

16. With the higher parking ratio and fewer units the demand for on-street parking, if any, would be lessened. The traffic generated would be lessened under the revised plans. The bulk and scale impacts would be lessened. There would be no change in view blockage because the easterly, L-3 portion, would remain as proposed.

17. The Director imposed no condition affecting the bulk and scale of the eastern half of the proposed building because she found no adverse height, bulk and scale impacts on the Minor Avenue frontage. She determined that buildings ranged in size from two to four stories, which is correct except for one one-story building on the block face.

18. The condition, designed to mitigate height, bulk and scale impacts from the western half of the building, was based on Policy 5: Bulk Requirements, of the Multi-Family Land Use Policies.

19. The height, bulk and scale impacts of the western portion of the building were analyzed using both existing development, single-family homes and parking lots, and potential development under the L-1 RC bulk standards. The analysis showed that buildings could be 30-35 ft. high, 60 ft. wide and up to 65% of the lot deep.

20. The building, as originally proposed, would be 38.13 ft. high and 89 ft. wide.

21. The proposed building would be larger than any existing building along Fairview except for the five-story building partially over water north of East Lynn.

Conclusions

1. Appellant community groups urge that the matter be remanded to the Director for a new environmental determination. Appellant argues that the environmental impacts of a building which would conform to the requirements of the Council Conditional Use condition are unknown or cannot be ascertained. The record shows, however, what those impacts are likely to be and that they clearly would be less than those of the proposed building.

2. Appellant community groups also seem to suggest that those impacts which can be predicted are significant and, therefore, require the preparation of an environmental impact statement (EIS).

3. The Director's determination is to be accorded substantial weight. Section 25.05.680(1)(c). That determination, therefore, must be affirmed unless appellant shows it to be clearly erroneous. Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981).

4. The Director relied, at least in part, on the parking survey and projections provided by the applicant. Appellant

obtained more complete data and projected a higher rate of demand which represents a greater adverse impact. The threshold determination may not be reversed unless it has been shown that with this greater demand the impact may be significant. A "significant" impact has been determined by our courts to mean "more than a moderate effect on the environment." Norway Hill v. King County, 87 Wn.2d 267, 552 P.2d 674 (1976). The parking availability study shows that the overflow could be accommodated within one block of the subject site. While appellant community groups questioned the accuracy of the parking availability study because the on-street supply figure is different from that in other studies, no actual error in the figure was shown. Since even the overflow projected by appellant community groups could be absorbed, the impact would not be significant.

5. No other impact was shown to be significant so the Director's determination of non-significance is not erroneous.


6. The appellant applicant alleges that it was error for the Director to impose conditions reducing the bulk of the building and requiring a parking ratio of at least 1:1.3. The latter was not pursued at hearing. First, appellant disagrees with the Director's opinion that the proposed building would be excessive in height, bulk and scale in comparison to other structures. The larger structures cited by appellant either relate to the easterly half of the building or are too far removed to affect the character or scale of the area of concern. The Director's opinion is valid.

7. Appellant argues that its application was vested to the CG zoning and that reduction in scale would violate its right to rely on zoning standards applicable to that zoning, citing Hull v. Hunt, 53 Wn.2d 125, 331 P.2d 856 (1958), and West Main Associates v. Bellevue, 106 Wn.2d 47, ___ P.2d ___ (1986). While West Main affirmed the continuing validity of the vested rights rule, it specifically excepted from that rule necessary mitigation pursuant to SEPA. p.53. The Director relied on the Multi-Family Land Use Policies, which apply to this area and which have been adopted as SEPA policies pursuant to Section 25.05.902, for authority for this condition. The degree of mitigation was not shown to be unreasonable. The Director did not err.

Decision

The environmental determinations by the Director are affirmed.

Entered this 28th day of October, 1986.


M. Margaret Klockars
Deputy Hearing Examiner

CONCERNING FURTHER REVIEW OF THE DNS

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 of the underlying decision within 30 days after the date of official notice of that decision if a notice of intent to seek judicial review of SEPA issues is filed with the Director, Department of Construction and Land Use, 600 4th Avenue, Seattle Washington, 98104 within the time limit set for appealing the underlying governmental action. Seattle Municipal Code 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 for preparing a verbatim written transcript of the hearing but will be reimbursed if successful in court. Instructions for preparation of the transcript are available in the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington, 98104. In the alternative, RCW 43.21C.075(6)(b) provides that a tape may be used for the 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 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 taped transcript relating to issues on review.

Concerning Further Review of the Exercise of Substantive
Authority Pursuant to SEPA

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 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.