

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

GLEN EASTHOM

FILE NO. S-80-041

from a determination of the
Director of the Department
of Construction and Land Use

Introduction

Glen Easthom, appellant, appeals the decision of the Director of the Department of Construction and Land Use (Director) to issue demolition and use permits for construction of new office buildings and parking garage by the Public Employees Mutual Insurance Company (PEMCO) at 301-333 Eastlake Avenue East.

The appellant exercised his right to appeal pursuant to Section 25.40 of the Zoning Ordinance (86300, as amended).

Parties to the proceeding were: Appellant, by his attorney, J. Richard Aramburu; the Director, by Elizabeth Huneke, Assistant City Attorney; PEMCO, by Theodore P. Cummings, attorney at law.

This matter was heard before the Hearing Examiner on August 21, 1980.

For purposes of this decision, all section numbers, unless otherwise indicated, refer to the Zoning Ordinance (86300, as amended).

After due consideration of the evidence elicited during the public hearing, the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. On July 17, 1980, the Director issued his Decision to conditionally grant PEMCO's application for demolition, building and use permits for PEMCO to demolish two office buildings and construct two, five-story office buildings as additions to an existing Teachers State Bank Building at 301-333 Eastlake Avenue East. The decision was published July 23, 1980.

2. Appellant filed an appeal August 6, 1980, challenging the Director's computation of floor area ratio, compliance with screening and setback requirements and his failure to condition the proposal to mitigate view blockage from a scenic route.

3. The property is zoned Manufacturing (M).

4. The total area of the subject site (lot) is 90,305 sq. ft.

5. Section 19.61 limits the gross floor area of a non-residential structure in the M zone to 2.5 times the area of the lot, except for modification under Section 22.2. The permitted gross floor area would be 225,765 sq. ft.

6. The total floor area of the proposed buildings, (1) including mechanical and below grade space but excluding parking, would be 281,577 sq. ft.; (2) including mechanical but excluding parking and below grade space would be 212,577 sq. ft.

7. "Gross floor area" is defined by Section 3.07"F" as "the number of square feet of total floor area bounded by the exterior faces of the building."

8. The Director excluded below grade area from the computation of gross floor area because it would not be "bounded by the exterior faces of the building."

9. The floor plan for cellar No. 2 shows it to be planned for use as storage, and to house mechanical equipment, electrical panels, engine room, telephone equipment, electrical equipment, stairways and elevators.

10. The half block across Eastlake Avenue from the subject site is shown on Kroll Map Page 36W, a section of the Official Zoning Map, (Dept's Exhibit 10), zoned Community Business (BC). The east half of that block is shown on the map as Multiple Residence High Density (RMH) Zone as are properties east of Melrose Avenue.

11. The Interstate 5 freeway right-of-way, acquired by the state through condemnation, occupies the land between Eastlake and Melrose.

12. The Director permits the owner of property to choose which street frontage is the property's principal frontage when the property fronts on more than one street.

13. The subject property fronts on four streets.

14. Section 24.6(a) requires that a lot in an M zone, developed for non-residential purposes and across a street from an R zone, have screening along that frontage, set back 10 ft. with landscaping in the 10 ft. setback except "when such frontage is an exclusive frontage or across the principal frontage of a through or corner lot, or along the side street lot line within one hundred (100) feet of the principal frontage."

15. The main vehicular access to the proposed facility is to be from Yale Avenue North.

16. The elevation of the southbound lanes of I-5 is 165 ft. (Exhibit 4 page 3-31).

17. The elevation of the top of the proposed building, including penthouse, is approximately 216 ft. The elevation of the third floor is 172.01 ft.

18. The southbound lanes of I-5 south of Mercer Street afford an overview of the layout of the City including hill profiles, hilltop land forms, mountains, sky, water surface and activity, building forms, Seattle Center, etc.

19. The entire I-5 through the City is designated as a scenic route by Ordinance 107678, however views are not available at points where the freeway dips into cuts or below adjacent grades.

20. Views available from the freeway vary in public value depending upon the size of the view shed and other aspects described by T. William Booth, architect/witness, as vividness, uniqueness, and memorability.

21. The westerly view from the southbound lanes of I-5 between Mercer Street and Denny Way has a high public value.

22. Some 181,600 vehicles travelling southbound pass the Mercer Street interchange each day.

23. The proposed buildings would affect the view from a vehicle travelling south on I-5 at 55 m.p.h. for approximately 15 seconds. For 3 seconds, the occupants of the vehicle would have a westerly view consisting entirely of the proposed buildings.

24. The Director concluded that the proposed buildings or expansion would be an "insignificant increment contributing to the ongoing alteration of views along I-5."

25. Because the SEPA Policies ordinance does not characterize some portions of the freeway view as more valuable than others, to determine significance, the City's Environmental Analyst assigned to the project weighed the view blockage which would occur against the length of the whole scenic route without considering the general or specific aspects of the particular view or portion involved.

26. To preserve the view from I-5, the upper two stories and mechanical penthouse (above 172.5 ft. elevation) would have to be located elsewhere on the site.

27. PEMCO's objectives for the proposal require the amount of floor space proposed for present use and future growth and a configuration allowing for physical separation of certain uses in separate buildings with flexibility. (Exhibit 5, pp. 93A, B).'

Conclusions

Computation of Gross Floor Area for Floor to Lot Area Ratio

1. Legislative intent is to be derived solely from the language used unless that language is ambiguous. Malone v. Seattle, 24 Wn.App. 217; Schneider v. Forcier, 67 Wn.2d 164 (1965). "Gross Floor Area" is defined in the ordinance and legislative definitions generally control. Seattle v. Shepherd, 93 Wn.2d 861 (1980). Where a word is not defined by the legislation its ordinary meaning is to be used. New York Life Insurance v. Jones, 86 Wn.2d 44 (1975).

2. The definitions provided by Webster's New International Dictionary, Second Edition, Unabridged, for "exterior" and "face," "the outward surface or part of a thing; that which is external; outside," and "the surface of any thing esp., the front upper, or outer part or surface; that which offers itself to view," support the Director's computation using only that area above the ground.

3. The rule cited by appellant, "expressio unius est exclusio alterius," that an expression of one thing in a statute excludes others not expressed, creates an inference that omissions were intended. State v. Seger, 1 Wn.App. 516 (1969). Rules of construction are not to be used, however, unless ambiguity in the language exists.

4. The officials charged with the administration of the ordinance are to be concerned with compliance with the ordinance and not with questions of policy or the wisdom of a provision. Pearson v. Evans, 51 Wn.2d 574 (1958). While the primary purpose of the floor to area ratio is to limit density, and appellant argues convincingly that the interpretation may allow greater density than intended, the Director may not amend or alter the ordinance by interpretation to better carry out the purpose.

5. Section 25.43 requires the Hearing Examiner to regard the Director's interpretation as prima facie correct and the appellant has the burden of establishing the contrary. Appellant has not carried his burden so the Director's computation should stand.

Setback and Screening

6. The Kroll sectional map (Exhibit #10) is a part of the Official Zoning Map of the City of Seattle, according to Section 4.12. The map shows the subject site to face BC zoning. The Official Zoning Map is amended only pursuant to the process under Section 27.1. Use of the property as freeway, whether conforming or nonconforming and however acquired, has no effect on the underlying zoning.

7. Section 4.13 provides that zone boundary lines are the center lines of streets, unless otherwise specifically shown on the Official Zoning Map. The boundary lines of the M and BC zones are, therefore, in the middle of Eastlake Avenue and property east of that point is BC.

8. Since the lot is not located across the street from an R zone, Section 24.6 is inapplicable.

Conditioning For View Impact

9. Section 6, Ordinance 107678, establishes the policy for view protection and (b)(1) requires the city official to assess the extent of obstruction of mountain, water, skyline and greenery view from scenic routes as a public place identified in Appendix B to that ordinance. Section 6(b)(3) permits the official to mitigate view obstruction by requiring a change in height or bulk of the development, among other options.

10. Section 19, Ordinance 105735, as amended, recognizes the authority under SEPA to reasonably condition or deny a proposal to mitigate or prevent adverse environmental impacts and requires the City and its Departments to exercise that authority where appropriate.

11. A proposal may be denied only where a significant adverse impact has been identified in the EIS which cannot be mitigated by reasonable conditions. Section 19(3). Appellant urges that the proposal be conditioned by limiting the height of the buildings to a maximum elevation of 172.5 ft. and asserts that the same floor area could be achieved elsewhere on site without the view impact.

12. The Director's conclusion that the buildings would cause an insignificant increment in the loss of views along I-5 is based on a failure to recognize the purpose of the stated policy of view protection. Section 6(b)(1) states clearly the view subjects that are to be considered and given value. The subject view has aspects of each subject and is therefore of high public value. A large part of the freeway has little or no view or views of lesser interest, in terms of the view subjects listed, and, therefore, less value. Without the recognition of the differing values of views from various segments of the freeway, the policy becomes meaningless.

13. A proposal which would eliminate a view of public value, even briefly, is subject to reasonable conditions under Section 19, Ordinance 105735, as amended, to reduce that impact. The condition necessary to prevent the adverse impact, in this case, is not reasonable. WAC 197-10-440(12)(e) limits the alternatives that must be explored in the EIS to those which reasonably allow achievement of the objective of the proponent. The alternatives section of the EIS and responses to comments show that the configuration proposed, of three buildings of the proposed size, is necessary to meet future requirements of the applicant.

14. A proposal may be denied only where a significant adverse impact which has been identified in the EIS cannot be mitigated by reasonable conditions. Section 19, Ordinance 105735, as amended. While the view impact is apparent from the EIS and represents an unfortunate loss, the view impact alone does not cause more than a moderate impact on the quality of the environment. Section 19 does not, therefore, permit the Director to deny the permit.

Decision

The appeal is DENIED and the Decision of the Director of the Department of Construction and Land Use is AFFIRMED.

Entered this 29th day of August, 1980.

M. Margaret Klockars
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Deputy Hearing Examiner

Notice of Right to Appeal

As to the issues of interpretation (computation of gross floor area and setback and screening), the decision of the Hearing Examiner in this case is the final administrative determination by the City. Any appeal to the Superior Court should be filed within 20 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977).

As to the issue of conditioning to mitigate view blockage, pursuant to Section 20A of the SEPA Ordinance (105735, as amended) a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the fifteenth (15th) day after the date the decision appealed from is filed with the SEPA Public Information Center. The appeal must be filed with the City Clerk. Rules have been adopted by the City Council governing the appeal procedure and should be reviewed prior to filing an appeal.

The City Council will only review issues relating to compliance with Section 19, Ordinance 105735, as amended. Section 19 relates to substantive authority to condition or deny a proposal on environmental grounds.