

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal

CONCERNED CITIZENS FOR  
THE IMPROVEMENT OF FREMONT

FILE NO. MUP-83-046(W)  
APPLICATION NO. 83-289

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

#### Introduction

Appellant challenges the declaration of non-significance (DNS) issued by the Director of the Department of Construction and Land Use (Director) for a proposed warehouse building and accessory parking at 124 - 148 and 162 North 35th Street. Appellant also contests the absence of conditions pursuant to Chapter 25.04, Seattle Municipal Code.

The appellant exercised its right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on September 19, 1983. The record remained open to September 21 for additional memoranda.

Parties to the proceedings were: appellant by R. Patrick McGreevy, Stafne, McGreevy and Taylor, P.S.; applicant by J. Vernon Williams, Riddell, Williams, Bullitt and Walkinshaw; the Director by Jim Barnes, land use specialist.

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 subject property consists of two parcels located in the General Industrial (IG) zone. Located on the north side of North 35th Street, the two parcels are separated by approximately 120 ft. of property in artist-studio use. Tyrell's Pet Food processing Plant is found almost directly across North 35th Street. That plant basically operates with two shifts.

2. The westernmost parcel measures approximately 27,000 sq ft. in area. Tyrell's, project applicant, proposes to construct thereon a 26 ft. high warehouse roughly 26,532 sq. ft. in area. The structure would be of concrete slab, and used only for storage of finished goods.

3. The new warehouse would have three loading bays and two fire escape doors toward the rear (north adjacent) alley.

4. The 9,000 sq. ft., more easterly site, is proposed for twenty parking spaces. Thirteen are required for the warehouse use. A single family residence previously located on this site was demolished without license. Arranging required parking around the residence was not possible.

5. On a daily basis, applicant projects that 2-3 additional truck trips per day will be generated by the addition. This count considers only the larger 50-60 ft. trailers. The Department of Construction and Land Use analyst projects that "the impacts of additional truck movements may be offset by a reduced on-street parking demand" since the balance of the 20 spaces to be provided on-site would be used by new or current employees who presently park on-street. Proponent projects adding three new employees as a result of the proposal.

6. Appellant's witness testified that 2-3 additional trucks per day would grossly overload the street capacity. The Director's witness projected that the additional traffic over a 2 shift period would not be a significant impact.

7. North 35th Street experiences blockage from some double parking and backing of applicant's vehicles. The right-of-way is 80 ft. wide and parking is permitted on both sides.

8. In reply to the environmental checklist item, Land Use, the Department of Construction and Land Use analyst noted that the area was designated "industrial" by the Comprehensive Plan and the Fremont Neighborhood Improvement plan and that "the proposed development will not alter the existing or planned land use for this vicinity." at p.6.

9. The Fremont Neighborhood Plan makes no recommendation that the subject site be reclassified from IG. It does recommend that commercial and industrial development be encouraged to locate in nodal concentrations "desirably in a park-like setting", Exhibit 6, and that efforts be made to encourage the relocation of manufacturing artisans to the area. A general development goal is to:

maintain the predominant character of the Fremont neighborhood as a combination of residential development, arts and crafts centers, and business and manufacturing areas... p 3.

10. Appellant is concerned with the odor attributed to Tyrell's plant operation. Appellant's witnesses fear that the warehouse, viz. expansion, will signal an intensification of the principal plant operations and a concomitant deterioration of air quality. No expert testimony was offered on the source of the objected to odors, and as to whether the odors would be intensified by the proposal. One proponent witness, a former vicinity resident, testified that the smell from the applicant's operation was similar to that of an Oberto's or Rainier Brewery, and was not offensive.

11. Concerning air quality, the analyst commented on the checklist that construction and demolition impacts were not expected to be significant, but also acknowledged the possibility of increased production. Checklist p. 4.

12. Vicinity development includes asphalt, masonry, foundry and other industrial and manufacturing uses. Artist-studio uses are allowed in the zone as a special exception and are extant.

13. On July 29, 1983, the Director of the Department of Construction and Land Use issued a decision that the proposal required no environmental impact statement (EIS), and that the Director had conditioned the project as applicable. The decision required that landscaping "per approved plans" be provided.

14. Appellant, Concerned Citizens for the Improvement of Fremont, submitted this appeal. Their letter specifically challenged the adequacy of the discussion concerning present or planned land use and transportation/circulation impacts, and further challenged the adequacy of conditions to mitigate adverse environmental impacts.

15. Appellant also submitted that the Director's decision was tainted by contact from a City Council member which urged the Director to expedite the project. The Examiner ruled that this issue, and the issue of improper demolition of the single family dwelling, as presented, were beyond the scope of the hearing. As to the latter issue, it is noted that the Director's analyst commented in the checklist that the single family residence was removed without the benefit of a demolition license and that said residence was unoccupied. p. 6., p.7.

### Conclusions

1. The Director's environmental determination is accorded substantial weight, and the burden rests with the appellant to establish a contrary position. Section 23.76.36.B.7.

2. The Director here issued a declaration of non-significance, that no EIS was required. To prevail, the appellant must show that the Director's decision was clearly erroneous. Brown v. Tacoma, 30 Wn. App 762 (1981). Unless more than a moderate effect on the quality of the environment is a reasonable probability, Norway Hill Preservation and Protection Association v. King County Council 87 Wn. 2d 267 (1976), no EIS is required.

3. Factors not listed in the environmental checklist shall not be considered in the threshold determination. WAC 197-10-360.

4. Appellant did not sustain its burden of proving that an EIS was required. The vicinity is industrially zoned and is in industrial use. The use proposed is industrial. Asphalt, foundry and other uses predominate. No evidence of record shows that the warehouse proposal will result in increased production, or objectionable emissions or traffic to the degree that an EIS is warranted. It is acknowledged that roughly three truck trips per day will be added to the double parking, rear driving scene of the vicinity. As noted by the Director's witness however, those trips for 2 shifts will not constitute a significant adverse impact. A bare assertion to the contrary by a lay witness is insufficient to prove otherwise. The impact of the project on the subject industrial-manufacturing environment will be no more than moderate.

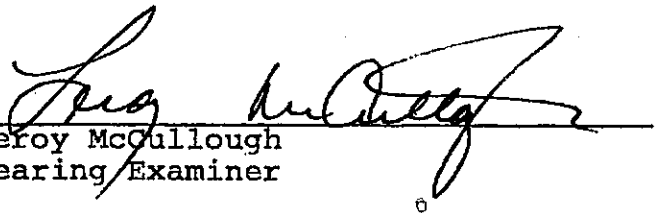
5. Comments to the checklist noted the Comprehensive and Fremont Neighborhood Plan designations for the subject site, i.e. industrial. And the Fremont Plan appears to recommend some harmonious balance between an industrial development, to be retained, and artists uses, to be solicited and encouraged. The record further reflects that the Director's witness sufficiently considered the question of the single family residence. The Director's decision as to the requirement of an EIS is affirmed.

6. Section 25.04.190 provides that a proposal may be reasonably conditioned on the basis of identified adverse environmental impacts. The sole adverse environmental impact per the record concerns traffic. Three trailers per day added to the existing, less-than-fluid, right-of-way traffic pattern is not of inconsequential concern. The proposal should be accepted on the additional condition that the proponent submit and comply with a truck traffic routing plan reviewed and approved by the Seattle Engineering Department. Section 25.04.520.

Decision

As modified herein, the decision of the Director is Affirmed.

Entered this 5<sup>th</sup> day of October, 1983.

  
Leroy McCullough  
Hearing Examiner

Concerning Further Review

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any request for court review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981). Should such request be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court.

Notice of Right to Appeal

Pursuant to Section 25.04.210, Seattle Municipal Code, a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the 14th 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 on the 1st floor of the Municipal Building. The City Council should be consulted regarding their appeal procedure.