

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

W.J. Wagstaff and Dennis Solari

MUP-84-073(W)

APPLICATION NO. 8403774

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

#### Introduction

Appellants challenge a declaration of non-significance (DNS) for an Eagles Club proposal to renovate the interior of a bowling alley and restaurant and establish use as a private fraternal club at 6205 Corson Avenue South. The DNS was issued by the Director of Seattle's Department of Construction and Land Use (DCLU). The challenge to the classification of the use was decided adverse to appellants in S-84-003.

The appellants 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 February 7 and 13, 1985, in conjunction with the appeal S-84-003

Parties to the proceedings were: appellant Dennis Solari, pro se; and project applicant by attorney Martin Silver. Land use specialist Patrick Doherty appeared on behalf of the DCLU Director. W.J. Wagstaff entered no appearance at this proceeding. Accordingly, further reference will generally be to appellant Solari.

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. Project applicant, Fraternal Order of the Eagles, Seattle Aerie #1, proposes to renovate the interior of a former bowling alley and restaurant located in the Georgetown area of Seattle at 6205 Corson Avenue South. Eagles purchased the property in 1984.

2. The site, zoned General Industrial (IG), is located at the southwest corner of South Michigan Street and Corson Avenue South. Both streets are designated arterials.

3. A small group of single and multi-family residential uses lies east of Corson in a pocket Single Family 5000 zone. One of these dwellings, at 6222 Corson, is that of appellants' Wagstaff and Solari. North, west and south of the site are other IG zoned properties which are in light industrial, warehouse, commercial and similar uses.

4. Nearby Boeing Field Flight activities, the freeway ramp and the arterial street traffic contribute to the subject area's high background noise level. Generally, a noisy urban street is at approximately 90 decibels. The Seattle Municipal Code limits

the amount of noise to be received by a residential district from an IG zone to 60 decibals during the day and 50 at night. The vicinity background noise currently is in excess of 50 decibals.

5. Applicants propose to completely renovate the bowling alley building for energy, sanitation and sound improvements, specifically to design the building to insulate its inhabitants from outside noise while simultaneously containing noise generated on the inside. Included in the renovation proposal are new gypsum ceilings to dampen the sound (the bowling alley ceiling was uninsulated), and two major walls between the proposed 30 ft. by 8 ft. stage adjacent to a dance floor area and Corson Street.

6. The Seattle Aerie male membership is given as 1,350, although their secretary indicates a decline to a present figure of 1,321. The secretary further testified and the Examiner finds that the women auxiliary numbers are down from 450 to under 400; that 156 of the women members are younger than 50 years of age; and that most women members are 70 years of age and above. The Seattle Aerie is allowed to host "big conventions every 15 to 20 years."

7. Page one of the environmental checklist of record, Director's Exhibit 4, states that the Eagles' proposal will increase restaurant size from 1,400 sq. ft. to 5,000 sq. ft., with "primary usage after 5:00 P.M. for 'Eagles' private functions." The item F. notation continues:

It is foreseeable than an occasional "convention" function may be planned with 800-1,000 occupants in the building. Parking should not be greatly impacted as most of the members would be from out of town & using Metro or taxis...

8. DCLU annotations to the checklist state that the occasional conventions are likely to cause short-lived localized air quality reductions due to increased traffic volumes, page 4; and that the increased convention traffic and human activity would likely occasion increased localized noise, at page 6, as well as traffic hazards in the immediate vicinity. Page 7. The DCLU witness, however, anticipates no significant increase in previous noise levels.

9. Under environmental checklist item P, Utilities, applicant explained that the facility will be used as a banquet dining hall for "up to 700 people occasionally." Page 9. At hearing, applicant explained that the 700 number was used merely for base computation and that there is no actual history of such attendance.

10. Proposed activities for the new facility include table tennis, dances, bingo and band practice. Based on prior history dinner-dance attendance will approximate 200. No evidence was adduced on the frequency of the dances. The record is not clear regarding the frequency or attendance at proposed bingo games. One witness for applicant indicated that at one time the Eagles facility hosted bingo three times per week and that the attendance had dwindled to 75 people per night. The DCLU witness, however, indicated his understanding that bingo had occurred two times per week; that a maximum attendance per session had been as many as 200; and that the most recent attendance was 75. Appellant was apprehensive that the bingo activity would constitute a major operation but offered no direct evidence on this point.

11. According to the environmental checklist for the

proposal, page 9, "exercise facilities will be made available for the public at a future date." At present, applicant has abandoned this concept due to a number of factors including the cost of support systems (showers etc.) and a desire to be "non-offensive" to members wives. Reference Director's Exhibit 7.

12. When it was in use as a bowling alley, the subject property's restaurant would be open Monday to Saturday from 6:00 or 6:30 A.M. to 10:00 or 11:00 P.M., and had a capacity of approximately 100. A typical breakfast crowd was 40 to 50 customers. Lunch usually saw a waiting line from 11:30 to 1:00 and use of the bar area for service. There was a smaller crowd for the dinner hour. The bar, which was open from 11:00 A.M. to 1:00 or 2:00 A.M., had an additional seating capacity of approximately 30.

13. General activity hours for the 24 lanes were Monday through Saturday, 9:00 A.M. to midnight, although the busiest times were generally from 4:00 P.M. to 10:00 P.M. Monday to Friday the alley would "empty" near the end of the 8:00 P.M. bowling league schedule at approximately 11:00 P.M. One prior owner tried a midnight to 1:30 A.M. league.

14. The 1978-80 pro-shop manager recalled that some 450 to 550 people per day would typically flow through the bowling alley facility. The bowling alley's former-operator recalled that various weekend tournaments draw 300 bowlers and spectators at one time on the premises. He also testified that the facility closed in July for resurfacing and refurbishing, and that the restaurant would reopen in August. The Hearing Examiner finds in accord with the above-stated testimony. The bowling alley would also be used for meetings, such as by the auto club.

15. Summer activity and hours were somewhat reduced as a result of the alley's closure in July. According to appellant Solari, the bowling alley had "no impact" June through August.

16. The Hearing Examiner finds that parking problems accompanied the bowling alley use. A former resident of 6216 Corson Avenue testified credibly that immediately upon operation of the bowling alley, area residential owners experienced difficulty parking and that the witness had to park 1.5 blocks from his home. This witness reasonably believed that the purchase of his property was to facilitate applicant's major parking plans. The former 1978 to 81 pro-shop manager also recalled that parking was "always full" and that on-street and Shell Service Station parking was used for the spillover.

17. The Eagles club intends to maintain a verbal agreement for the property's use of three vicinity lots for overflow parking: B and G, Benaroya and Scougal Rubber.

18. Appellants' letter of appeal requests as relief a declaration of significance requiring an environmental impact statement and/or a denial of the master use permit application based on environmental impacts.

### Conclusions

1. As noted in Seattle Municipal Code Section 25.05.330, an EIS is required for proposals for legislation and other major actions significantly affecting the quality of the environment. Section 25.05.340 specifically provides that:

If the responsible official determines that there will be no probable significant adverse environmental impacts from a proposal, the lead agency shall prepare and issue a determination of non-significance...

2. A "proposal" is defined at Section 25.05.784 as a proposed action. The section provides that:

...A proposal exists at that state in the development of an action when an agency is presented with an application...and the environmental effects can be meaningfully evaluated...

3. Applicant at one time proposed or considered a gym for the Eagles facility. Additionally, at least one person who sold vicinity real estate to applicant reasonably believed that vicinity dwelling purchases were part of the applicant's plan to accommodate more parking. However, the record does not reflect applicant's pursuit of either item as part of the defined "proposal", Section 25.05.784, which proposal is to be evaluated for its likelihood of having a significant adverse environmental impact on the environment. Section 25.05.330(1)(b). Therefore, it was not clear error for the Director's assessment to not include the gymnasium and parking as specific items since they are presently speculative and not subject to "meaningful" environmental evaluation.

4. The nature of the existing environment is a proper consideration in evaluating whether a proposal will have a "significant" impact. Norway Hill Preservation and Protection Association v. King County Council Et Al, 87 Wn.2d 267, 552 P.2d 674 (1976). Nevertheless, Chapter 25.05 provides that the responsible official shall consider that the absolute quantitative effects of a proposal "may result in a significant adverse impact regardless of the nature of the existing environment..." Section 25.05.330(3)(b).

5. Section 25.05.330 also provides that the responsible official is to make the threshold determination "based on the proposed action (and) the information in the checklist..." The DCLU annotations to the applicant's checklist projected occasional air quality reductions as a result of increased convention traffic volumes as well as a concomitant increase in noise levels. The arterial street traffic noise is constant and in excess of 50 decibals, the limit for receiving residential districts. Other vicinity background noises include Boeing Flight and industrial and similar uses. Proposed renovation to the building includes sound proofing which is designed to enhance containment. The Examiner is presented with no evidence which would suggest that any live band at the premises will be situated other than two walls away from the Corson side of the building. And in general the evidence supports a conclusion that the proposed use will be quieter in terms of direct generation of sound than the former bowling alley use.

6. As to parking and traffic, appellant did not provide evidence refuting either DCLU's or the applicant's testimony on regularly scheduled activities or attendance. For example, DCLU estimated up to 200 people two times per week for bingo activity. The Examiner found that bowling could draw 300 participants and spectators per evening. As to conventions and dances, the record is inadequate on the numbers of vehicles expected at the regularly or specially scheduled events. There is a fleeting reference to anticipated transportation choice by the DCLU witness. But neither the checklist (annotated or unannotated) nor appellant's presentation included estimates on the frequency of dances, banquets or other typical traffic generators, although the evidence does show that the major conventions will be infrequent. Nevertheless, in the context of this subject environment, and considering the appellant's burden of proving clear error, the impacts of the proposal were not shown to be significantly adverse and the DNS is affirmed.

7. As an alternative appellant requested that the proposal be denied pursuant to SEPA. Section 25.05.660 provides that:

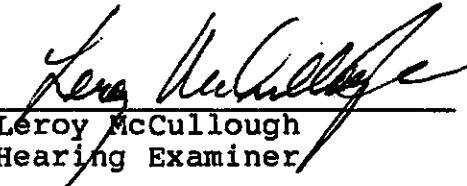
To deny a proposal under SEPA, an agency must find that the proposal would be likely to result in significant adverse environmental impacts identified in a final or supplemental environmental impact statement prepared under this chapter (emphasis supplied)...

Since that provision is not applicable here, the Director's decision is affirmed.

Decision

The Director's decision is affirmed.

Entered this 27th day of February, 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); Akada v. Park 12-01 Corporation, 37 Wn. App. 221 (1984); JCR 73. 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.