

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

In the Matter of the Appeal of

ALLIED ARTS OF SEATTLE and FILE NO. MUP-85-033(W)
LEAGUE OF WOMEN VOTERS OF SEATTLE APPLICATION NO. 82-0504,83-01314

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

Introduction

Appellants, Allied Arts of Seattle and the League of Women Voters of Seattle, challenge the adequacy of the environmental impact statement for the proposed Stimson Center and appeal the decision of the Director, Department of Construction and Land Use, on the master use permit for the project to be located at 1420 5th Avenue.

Parties to the proceedings were: appellants named above which were represented by attorneys, J. Richard Aramburu and Jeffrey M. Eustis; the Director who was represented by Assistant City Attorney, Judith Barbour; and the applicant, Stimson Center Associates, which was represented by Glenn J. Amster and Sarah E. Mack, Hillis, Cairncross, Clark & Martin, P.S.

The appellants exercised their 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 August 7, 8, 9, 15 and 16, 1985.

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, Stimson Center Associates, proposes to construct a mixed use building with base structure and tower on the block bounded by 5th and 6th Avenues and Pike and Union Streets in downtown Seattle. Draft and final environmental impact statements (DEIS and FEIS issued April, 1984, and September, 1984, respectively) were prepared for a 46 story building with 1,113,000 sq. ft. of gross floor area and parking for approximately 1,500 vehicles. Access to the three parking garages was to be from 6th Avenue near Pike, 6th Avenue near Union and Union St. The office tower was to be located at the northwest corner of the site extending 588 ft. above Pike St. The seven-story base structure covering the block, was to contain the parking lots and retail uses. Arcades would link the retail areas and provide through-block connections. The proposal depended upon the vacation of the alley between 5th and 6th Avenues.

2. The proposal was revised by the applicant in response to conditions imposed by the City Council on the alley vacation. An addendum to the EIS was prepared by Graham Development Services which "adds analysis and information about design modifications to Stimson Center...." Exhibit 2. Among other changes, the tower structure would be set back 70 ft. from 5th Avenue, the base structure would be reduced to about five stories, the tower would be 40 stories and the amount of parking would be reduced.

3. The project is within the downtown retail core, at its southeast corner. The zoning at the time of the application and DEIS was Metropolitan Business (BM) for the half block fronting on 5th Avenue and Metropolitan Commercial (CM) for the easterly half block. These zones had no restriction on height except that resulting from the maximum floor to lot area ratio. The zoning at the time of the Director's decision on the application was IDRC 240 (Intermediate Downtown Retail Core with a 240 ft. height limit). The Director, Department of Construction and Land Use (Director), has determined that the project was vested to consideration under the previous zoning.

4. The Logan Building stands at the southwest corner of the block on which the subject site is located and is not part of the proposal.

5. The proposal includes the demolition of a number of retail businesses, the Music Box Theatre, the former Windsor Hotel, and the Washington Athletic Club parking garage.

6. A notice of the availability of the Addendum to the Stimson Center Environmental Impact Statement (Addendum) was published in the Land Use Information Service and mailed to the subscribers of that service. Copies of the Addendum were not distributed to recipients of the FEIS.

7. The decision of the Director discussed various adverse impacts of the proposal: height and scale, parking demand and traffic congestion, loss of housing units, shadow on Westlake Park, glare, construction impacts and loss of theaters. The decision indicates that she weighed the adverse impacts and the benefits and granted the master use permit subject to 26 conditions imposed pursuant to the SEPA authority.

8. The benefits of the project considered by the Director are:

"the four levels of retail uses and shopping arcade, the ground level retail highly visible and accessible to the adjacent sidewalks, the cross block pedestrian access, the sidewalk canopies which provide pedestrian weather protection, the skylit public atrium, adjacent public spaces which will contain a public entertainment or art or sculptural feature, and public seating. The proposed development will provide needed and desirable public elements in the retail core, add tax revenues to the City and other public agencies, and job opportunities...." Exhibit 3, p.7.

9. The base structure of the Stimson Center, as originally proposed, would be similar in height to several nearby buildings which are 4 to 6 stories high. The tower would be about 200 ft. taller than the Sheraton Hotel and the Sixth and Pike building which are the two highest nearby buildings.

10. The text of the EIS emphasizes that the base structure would provide street edge definition and relate to the scale of the surrounding development in that the ground level design elements will give a sense of pedestrian scale. Comments in the FEIS disagree with these conclusions pointing out the incompatibility of scale and its affect on pedestrians.

11. A City Council condition required that the tower be set back at least 60 ft. from 5th Avenue if the tower is along an east-west axis or 70 ft. if the tower is on a north-south axis and if on an east-west axis at least 20 ft. from Pike Street. Another condition reduced the 5th Avenue street edge "facade" to two to four stories.

12. The height and scale of the proposed building would be a significant adverse environmental impact as it is substantially out of scale with surrounding structures, according to the unrebutted testimony of Melody McCutcheon, senior land use specialist. Further, the height and bulk is out of character with the retail core. The reduction in the height of the base structure brings about some compatibility of scale, however.

13. The Director found that the City Council considered height and scale in its alley vacation decision and conditioned the project for impacts of height and scale. She found no authority to allow further mitigation of the remaining impacts.

14. On the southeast corner of the subject site is the Windsor Hotel property which is under separate ownership. An agreement has been entered into between the Stimson Center Associates and Windsor Owners providing for an extension of the Stimson Center base structure onto the Windsor Hotel site and eventual construction of a tower above. The Stimson Center Associates are to remove the hotel and construct the base structure with a platform upon which the tower would eventually be constructed. The agreement states that the tower would be a project separate from the Stimson Center project.

15. Alternative B in the DEIS is the Proposed Project with Future Development of the Windsor Hotel Property. The alternative describes a 20 story tower with 193,000 gross sq. ft. of floor area. If housing, the demand for parking would be 251 spaces; if office, 170 spaces. The text states that the parking would already be included in the Stimson Center garages. The general parking discussion in the DEIS also discusses the potential development of the Windsor Hotel site and the conversion of short-term parking spaces to supply the future development.

16. Any new proposal would be reviewed under the new land use code. By Melody McCutcheon's calculations, the floor to lot area ratio would allow for very little remaining development potential on the block. The applicant stipulated that with the revisions to the proposal necessitated by the City Council's conditions, the applicant is no longer trying to achieve any reservation of development rights.

17. The decision of the Director as to the appropriate number of parking spaces did not include parking for a future tower.

18. The Washington Athletic Club (WAC) parking garage within the subject site which would be eliminated, now makes 287 parking spaces available to the public.

19. Stimson Center Associates has provided the owners of the Logan Building options for tenants to lease up to 40 nearby spaces during construction and at least 40 spaces in the Stimson Center when it is completed plus an additional 20 spaces until the southeast tower structure is constructed. The WAC garage is available for tenant parking now.

20. The DEIS projects parking demand from the Stimson Center at 149 spaces for carpools, 881 long-term unrestricted spaces and 452 short-term spaces including 251 for the Windsor property and 287 for WAC garage replacement for a total of 1,482 spaces. This calculation was based on DCLU's parking rule.

21. The Addendum utilized the Interim Downtown Code to estimate parking demand. That demand is now projected to be 529 long-term spaces, 128 for carpools, 203 for short-term parkers and 300 for WAC garage replacement for a total of 1,160 spaces.

22. A condition imposed by the City Council requires parking for 1,250 cars, the total to include 400 permanently available short-term spaces including the WAC replacement spaces.

23. The applicant is proposing 1,250 parking spaces made up of 722 long-term spaces, 128 spaces for carpools, and 400 short-term spaces including the WAC replacement.

24. A condition imposed by the Director requires that 128 spaces be reserved for carpools, at least 445 be reserved for short-term parking including the WAC replacement and 677 spaces be designated for unrestricted long-term parking. The Director's condition which requires 45 more short-term parking spaces than the City Council condition reflects a division of the 90 surplus, from the difference between 1,250 in the revised project and the 1,160 required, between short-term and long-term spaces.

25. While the total of 1,250 spaces is 90 more than the demand, as determined by the Interim Downtown Code, there will be a shortfall of 58 short-term spaces.

26. The demand for short-term parking spaces generated by the project would probably exceed the 145 spaces to be provided. The testimony was uncontroverted that the 203 space figure accurately reflects the probable demand.

27. Construction workers' demand is likely to be for 100 to 140 spaces during the construction period.

28. The existing 287 spaces in the WAC garage will be removed from the area's parking supply between demolition and the opening of the new garages. Parking demand being generated by existing uses on the site however would be eliminated simultaneously.

29. Existing parking in the retail core is utilized nearly to capacity with on-street spaces, generally used for short-term parking, utilized at or above practical capacity, according to the EIS.

30. Availability of short-term parking is critically important in the retail core because the success of the retail business is highly dependent on vehicular access, which includes parking.

31. The effect of the agreement with the Logan building ownership on demand and supply was not analyzed in the EIS.

32. According to the DEIS the Stimson Center project would increase peak hour traffic volumes on surrounding streets over the existing volumes by about 500 vehicle trips. The FEIS projects approximately 650 to 700 new transit riders during peak periods as a result of the Stimson Center.

33. The DEIS shows most intersections in the area of the proposal operating at level of service (LOS) A currently. The FEIS acknowledges that existing LOS may actually be lower, e.g. LOS B-C at 5th and Union because of pedestrian interference not necessarily accounted for in the national standards used. The Addendum revised the estimate for 5th and Union to LOS E currently.

34. Using the national standards from Transportation Research Circular No. 212, the DEIS projects by 1990 an LOS of A-B at 5th and Pike without the Stimson Center and B with the project; LOS C at 5th and Union without and D with; LOS E at 5th and University without and LOS E with; LOS C at 6th and Pike without and D with; LOS E at 6th and Union without and E with; LOS B-C at 6th and University without and C with.

35. The garage driveways, as originally proposed, would put little peak hour traffic at 5th and Pike and 6th and University. Heavier use during the peak hour would be made of the intersections at 5th and Union and 6th and Pike.

36. The Addendum shows an 11% reduction from that traffic previously projected for 5th and Union due to the revisions of the project to provide more of the parking below grade. The peak volume at 6th and Pike would be increased 8% but the projected LOS would remain at D. The additional traffic should not affect critical movements at the intersection of 6th and Pike because of the characteristics of that street.

37. The projected LOS's for 1990 include ten other projects known at the time of the DEIS in April, 1984, including Century Square and the Washington State Convention Center, but do not include the Union Square proposal for which a DEIS was published on September 20, 1984. The EIS for Union Square contemplated the impacts of Stimson Center traffic.

38. The 1990 Transit Plan and the bus tunnel alternative was adopted to provide a solution to the increasing demands from new office development for service. The system is now near capacity during rush hours and may experience problems with Stimson Center and other new development until the tunnel is functional. METRO encouraged the use of the transit subsidy in its comment in the FEIS, however, to increase ridership.

39. Conditions were imposed by the Director to mitigate impacts of increased traffic including No's. 20, 21, 22, 23 and 24 which provide for a transportation coordinator, efforts to encourage transit and carpool use such as 15% transit pass discount to tenants of the building for five years, reservation of spaces and price discount for carpools and monitoring and evaluation.

40. Limited data show that 12% to 15% more workers may use transit as a result of fare subsidies.

41. A draft EIS for the proposed Union Square project to be located on the blocks within 6th Avenue, University and Union Streets and I-5 was issued September 28, 1984. That document analyzed the traffic impacts of a project with 1,206,300 gross sq. ft. of floor area and recognized the Stimson Center and Washington State Convention Center proposals. The Union Square project would add a significant volume of traffic to the streets and to intersections which are now congested.

42. The EIS indicates that wind patterns are not expected to change noticeably from those existing. Annoying downward gusts may be decreased by a continuous canopy around the project. No wind studies had been done at the time of the EIS.

43. A wind study was performed after the publication of the FEIS. The results of the study were not reported in the Addendum because the conclusions agreed with those in the EIS in that there would be fewer areas where winds would bother pedestrians than currently exist.

44. The Director regards provision of canopies and street trees as measures that mitigate wind impacts.

45. The shadow analysis in the EIS discloses that the shadow impact of the Stimson Center on proposed Westlake Park would occur earlier than noon. Several structures already shadow portions of Westlake Park.

46. The Director imposed no measure to mitigate the shadow impact as a condition of the permit since the shadow would not affect the period of peak use of the park.

47. The loss of the Music Box Theatre is disclosed in the EIS. The FEIS prints Donald Kunz' extensive comments on the historical, architectural and cultural value of the theatre. Seattle's Landmarks Preservation Board had not considered the Music Box for any action at the time of the FEIS.

48. In December, 1984, Donald Kunz, for Seattle Theatre Treasures, and Ellen Miller-Wolfe, coordinator, Landmarks Preservation Board, nominated the Music Box Theatre to be considered for landmark status. The nomination was not approved by the board.

49. The City Council required that the facade details of the Music Box Theatre be incorporated into the project or that they be warehoused for future use.

50. Four smaller theatres are proposed to replace the Music Box and Town Theatres. No condition imposed by the Council or Director requires that a theatre be included in the Stimson Center. The plan submitted and approved with the master use permit application includes the theatres and the elimination of those would require resubmission for a revision to the master use permit application.

51. No evidence was presented by appellants as to any inadequacy of the treatment in the EIS of the project's impact on police and emergency services.

52. No evidence was adduced as to any wind impact not discussed in the EIS.

53. There is no evidence in the record as to any change in the shadow impact on Freeway Park from the revision in the proposal.

54. Appellants adduced no evidence as to any change in the impact of the project on freeway traffic flow as a result of project revisions.

55. Appellants presented no evidence as to any change in the impact on transit capacity and service due to the project revision described in the Addendum.

Conclusions

1. The Director failed to comply with Section 25.05.625(a) which requires that an addendum to a final EIS be circulated to the recipients of the final EIS. The Code provision does not require that there be opportunity to comment or that comments be accepted. Since the only use then would be informational or for appeal, the opportunity to challenge, by this appeal, statements in the Addendum which are different from the DEIS or FEIS and the adequacy of the Addendum as to impacts from the changes in the proposal, along with the belated circulation of the document, provides adequate remedy for the error. Therefore, the earlier ruling will not be reconsidered.

2. The appeal of the adequacy of the EIS challenges chiefly the disclosure of impacts from additional parking demand, on the cumulative parking problem in the area, from the loss of the Music Box, and of cumulative traffic generation and parking demand due to development at the southeast corner of the site.

3. The following issues were dismissed at the close of appellants' case for failure to present sufficient evidence: adequacy of the EIS as to impact on police and emergency services; adequacy of the EIS as to wind impacts; adequacy of the EIS as to shadow impacts on Freeway Park from revision of the proposal; adequacy of the EIS as to impact on freeway traffic flow resulting from project revisions; adequacy of the EIS as to impact on transit capacity from project revision; and adequacy of the discussion of the loss of the Music Box Theatre.

4. The degree of the existing parking "problem" and that which would occur during construction is clear from the EIS, though the document does not discuss the effect that an exacerbation of the problem would have on business in the retail core. Table II in the Addendum, despite the typographical error, shows the shortfall in short-term parking. The disclosure of parking impacts from the project in the EIS is reasonable.

5. The EIS includes discussion only of parking demands of a future tower where a complete disclosure of impacts is desired by appellants. Section 25.05.060(3)(b) provides for evaluation in the same document of proposals or parts "that are related to each other closely enough to be, in effect, a single course of action." "Proposal" means a proposed action. Section 25.05.784. A proposal exists when an application is presented to the agency. Here, there is no proposal to be evaluated so it is not error not to include an evaluation of the future tower's impacts.

6. The EIS must provide a "reasonably thorough discussion of the significant aspects of the probable environmental consequences" of the proposed action. Cheney v. Mountlake Terrace, 87 Wn.2d 338, 344-45 (1976). Appellants have not shown that the EIS, with its Addendum, fails to meet this test.

7. Section 25.05.660(1) provides that the permit may be conditioned to mitigate the environmental impacts subject to certain limitations:

- (a) Mitigation measures or denials shall be based on policies, plans, rules, or regulations formally designated in 25.05.902 as a basis for the exercise of substantive authority and in effect when the DNS or DEIS is issued.
- (b) Mitigation measures shall be related to specific, adverse environmental impacts clearly identified in an environmental document on the proposal and shall be stated in writing by the decision maker.
- (c) Mitigation measures shall be reasonable and capable of being accomplished.

8. The Director has not imposed measures to mitigate the height and scale impacts for want of authority. The new Downtown Plan, which provides height limitations, was not in effect as of the date the DEIS was issued. Other policies suggested by appellants as providing authority, R. 26598, Guidelines for Downtown Alternative Plans, are not designated in 25.05.902, the SEPA Policies, as a basis for exercise of substantive authority. Therefore, Section 25.05.660(1) does not authorize their use. The City Council went a step further in the case of policies adopted pursuant to implementation of the Downtown Land Use and Transportation Plan where it specifically stated that "such policies shall not, however, be used to condition or deny project pursuant to Chapter 25.04 of the Seattle Municipal Code in any interim downtown zone." Former Section 23.49.04.D, Seattle Municipal Code. Chapter 25.04 was the predecessor to Chapter 25.05.

9. The regulations and policies which are available for use to deal with height and scale are the Zoning Code, Goals for Seattle - 2000 Commission Report (Seattle 2000) and Seattle Growth Policies. The Zoning Code, Title 24, permits the proposed height and scale. Seattle 2000 provides goals and objectives for the City some of which can be read to be supportive of the proposal, e.g. Objective 2 of Goal E, Downtown and Major Activity Centers, which states, in part: "Within the downtown there should be a diversity of building sizes, density of development, and textures." Other goals and objectives can be interpreted to show that the proposal conflicts with the goal, e.g. Goal D, Downtown and Major Activity Centers, which urges "a unified, well-integrated whole, while maintaining and

enhancing the identity of areas of special character or emphasis." The Director did not find that direction or authority was sufficiently specific in Seattle 2000 on which to base the reduction of height or scale of the structure. The Hearing Examiner is not convinced she was in error.

10. Appellants contend that the proposed action is not consistent with Policy 10 of Seattle Growth Policies, R 25533, which policy is designated in Section 25.05.902. Policy 10, Office Development in the Central Business District, provides:

Seattle shall encourage construction in the Central Business District outside the retail core as long as:

- a. Due consideration is given to traffic, topography, and view corridors; and
- b. Additional taxes resulting from new development exceed city expenditures for supporting facilities and services. The city should encourage Central Business District office construction primarily by speeding up and simplifying the review process for approval of specific projects and specifying any conditions that such development must meet. (Emphasis added.)

11. It can be inferred from a policy that encourages office development outside the retail core that the City discourages office development within the retail core. Whether that inference actually reflects the intent of the policy is not certain enough to support a major mitigation measure, however. Therefore, the Director did not err in imposing a height and scale reduction on the basis of Seattle Growth Policies.

12. The only strong policy statement of the City about height and scale appears in the documents which are not designated by Section 25.05.902 as bases for conditioning authority and which the City Council has clearly stated may not be used. Therefore, while a significant adverse impact, that of the height and scale of the building, exists, the Director has been given no authority to impose adequate mitigating conditions or to deny the proposed action.

13. Section 25.05.902(4) provides specific policy intent and policies for dealing with the impacts of parking and traffic. Conditions were imposed by the Director to implement that policy intent and reduce dependency on single occupancy vehicles. The effectiveness of those measures is not assured and the record shows that some degradation in the LOS of at least two intersections is likely to occur even with the measures, resulting in increasing congestion on nearby streets. The policy intent further provides that it is city policy to make other requirements to assure reasonable access and flow but the actual policy allows the Director to require curb cuts, construction of sidewalks, deed of property for street right-of-way, etc. Whether a condition reducing the size of the building to lower the traffic volume generated is authorized by a general statement of policy intent alone, where specific measures are set forth in the policy, is doubtful. Moreover, judging the "reasonableness" of the traffic flow with LOS of D's and E's requires some subjectivity. Therefore, the Director imposed such measures to mitigate traffic impacts as are clearly authorized by the policy and did not err in failing to reduce the size of the building to reduce traffic volume based on that policy.

14. The policy intent as to off-street parking provides authority for modification of requirements. The policy itself, Section 25.05.902(4)(b)(iii) authorizes mitigating measures and offers two examples. In addition, R 24957, Downtown Parking Policies, designated by Section 25.05.902 as a SEPA Policy, encourages a change in the type of parking in the CBD from long-term to short-term. Evidence of the shortfall in short-term parking was disclosed in the

EIS and unrefuted. The City policies support requiring adequate short-term parking. Therefore, the Director erred in not requiring that the entire projected demand of the Stimson Center for short-term parking be met by shifting 58 unrestricted long-term spaces to short-term.

15. The Director found the condition imposed by the City Council to preserve the Music Box Theatre facade adequate. No authority has been cited by appellants for the imposition of a condition to preserve the theatre. Therefore, the Director's decision not to require retention of the theater was not in error.

16. Appellants point to Section 25.05.902(3), Cumulative Effects, as authority to lessen the demand of the project for support services and facilities, i.e. streets and transit, based on the cumulative impacts of this with other development such as Union Square, and also a future tower on the southeast corner. The language of the policy intent, Section 25.05.902(3)(a)(ii), speaks to prior development and development which the project may induce. The proposed Union Square development would not classify as prior development. The EIS did consider the cumulative effect of the Stimson Center, however, with Century Square and other existing or approved development in analyzing the traffic impacts. It is this aggregation of the traffic generation that results in the congestion at certain intersections. The possible future development of the Windsor Hotel site would not be caused by the Stimson Center. This project would make a structural provision for it but cannot be said to have caused or induced it.

17. The operative policy found in Section 25.05.902(3)(b)(iv) provides:

Based in part upon such analysis (capacity of facilities and planned improvements), a project may be modified to lessen its demand for support services and facilities or its impact on natural systems. Modification may also be required to provide for subsequent projects which can be expected to share the need for support services, and facilities or use of the natural systems' capacity.

This policy appears to provide authority to the Director to impose conditions to reduce the demands of a project on facilities, such as streets, in recognition of the claims of future projects to a share of the capacity of such facilities. Future projects such as Union Square will make considerable demand on street capacity. Since substantive authority exists and the adverse impact of the traffic generated on the operation of several intersections is clearly identified in the EIS, the project could be reduced in size to lessen the use of the streets.

18. Section 25.05.660, Substantive Authority and Mitigation, provides the Director with authority to mitigate such identified impacts but does not require that she do so. Her decision indicates that she did consider traffic congestion along with a number of other adverse impacts. She also considered benefits to the public. In her judgment the benefits outweighed the adverse environmental impacts. Increasing the amount of traffic at already congested intersections is undeniably undesirable and cannot continue to be compounded. It is easy to second-guess a judgment about whether it must stop with this project, or the next. The Hearing Examiner must give substantial weight to this decision, however. Section 23.76.36(B)(7). That means that on review, the examiner may not substitute her own judgment but may reverse only if, in light of all the evidence, the examiner is left with a definite firm conviction that a mistake has been made. See Brown v. Tacoma, 30 Wn.App. 762,764 (1981). This standard of review precludes second-guessing as to how much is too much. The Director is given discretion to assign relative weights to impacts and benefits and has done so.


The Examiner cannot say she was definitely wrong. Therefore, the Director's determination must be affirmed, with the modification of parking requirements discussed above.

Decision

The Director's determination as to the adequacy of the EIS is affirmed. The Director's decision to conditionally grant the master use permit application is modified as follows:

SEPA condition No. 21 e. shall read: The proponent shall reserve 128 on-site spaces for carpools as carpools are formed and shall provide at least 40 percent discount in parking fees for the carpool spaces. A minimum of 503 on-site spaces shall be reserved for shortterm parking, and the remaining 619 spaces may be designated for unrestricted long-term parking.

Entered this 30th day of August, 1985.


M. Margaret Klockars
Deputy 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.