

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

ELMER LINDSETH, et al.,

FILE NO. MUP-86-013(W)
APPLICATION NO. 8600168

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

Introduction

Appellants challenge the determination of nonsignificance issued by the Director, Department of Construction and Land Use, for a billboard proposed for 6540 California Avenue Southwest and her failure to impose further mitigating conditions.

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 April 21, 1986.

Parties to the proceedings were: appellants, represented by James Stage, and the Director, Department of Construction and Land Use, represented by Leslie Lloyd, land use specialist. The applicant, Ackerley Communications, did not appear.

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. Ackerley Communications applied for a master use permit to erect a billboard advertising sign at 6540 California Avenue S.W. The Director, Department of Construction and Land Use, (Director) issued a determination of nonsignificance (DNS) and imposed one mitigating condition. Appellants filed this appeal.

2. The proposed billboard would have a single face oriented to the north and would extend 40 ft. above the ground supported by one pole. The sign face would measure 12 ft. by 25 ft. It is proposed to have external illumination.

3. The proposed site for the sign is a lot occupied by a 7-11 store in a Community Business (BC) zone. The BC zone extends along both sides of California Avenue S.W. but ends one lot to the south of the subject site.

4. The lot south of the subject site is occupied by a McDonalds restaurant with a 45 ft., freestanding sign. A Tradewell store is located to the north.

5. Across California Avenue S.W. are residences, apartments and single family, in the BC zone, along with some commercial use. A multifamily zone lies to the west of the BC zone and a single family zone beyond that.

6. To the east of the BC zone, the topography rises. The area to the east is zoned for multifamily and then single family and is residentially developed. South of the BC zone is also a residential area.

7. Another billboard is located across California Avenue, just to the north, in the yard of a residence.
8. The area is not a heavily commercial area.
9. Residences to the east of California Avenue S.W. enjoy views of Puget Sound and the mountains beyond.
10. The proposed billboard will interfere with those views.
11. None of those views affected are from designated scenic routes or view parks.
12. The Director concluded that, besides impacts from construction, the billboard would cause a visual impact, view blockage, and light and glare. She concluded these impacts would not be significant and issued a DNS.
13. The Director imposed a condition requiring that the lighting be shielded to mitigate the impact of light and glare.
14. Restricting the height to that of the apartment buildings on the west side of California Avenue S.W., approximately 35 ft., would eliminate most of the interference with views.

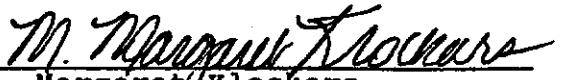
Conclusions

1. A DNS is to be issued if the Director determines that there will be no probable significant adverse environmental impacts from the proposed action. Section 25.05.340A. A "significant" adverse impact has been determined to be one that has "more than a moderate effect on the quality of the environment". Norway Hill v. King County Council, 87 Wn.2d 267, 278, 552 P.2d 674 (1976).
2. The Director's determination is to be given substantial weight by the Hearing Examiner. Section 23.76.022C(7).
3. The evidence appellants introduced shows interference with views, however, that interference would not have more than a moderate adverse effect on the environment since only a few degrees of the view will be obstructed. Therefore, the issuance of a DNS, instead of requiring an environmental impact statement, is not in error.
4. The Director has authority to impose conditions to mitigate adverse environmental impacts pursuant to Section 25.05.660. One of the limitations on that authority is that mitigation measures must be based on policies, regulations, etc., designated in the Code as a basis for the exercise of that authority. Section 25.05.660A(1).
5. The City Council has adopted a View Protection policy. Section 25.05.902G. That policy grants authority to impose conditions to reasonably protect views from certain public places and of certain historic landmarks. The City Council intended by the adoption of this policy to protect only such views. Therefore, the Director was without authority to impose a condition on the proposal solely to mitigate the impact on private views and views from streets not designated for such protection.
6. There being no error, the Director's determinations should be affirmed.

Decision

The Director's determinations are affirmed.

Entered this 25th day of April, 1986.


M. Margaret Klockars
Deputy Hearing Examiner

Concerning Further Review

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.