

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

ACKERLEY COMMUNICATIONS OF THE
NORTHWEST, INC.,

FILE NO. MUP-86-045(W)
APPLICATION NO. 8600952

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

Introduction

Appellant, Ackerley Communications of the Northwest, Inc., appeals the decision of the Director, of the Department of Construction and Land Use, to impose a condition on the approval of its proposal to erect an illuminated billboard at 8010 15th Avenue N.E.

The appellant 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 September 15, 1986.

Parties to the proceedings were: appellant by Andrew Sutcliffe, director of communications, and the Director by Clay Leming, 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. Ackerley Communications of the Northwest, Inc., applied for a master use permit to erect an illuminated billboard advertising sign at 8010 - 15th Avenue N.E. The Director issued a determination of non-significance (DNS) and approved the application subject to two conditions, one of which is the subject of this appeal.

2. The condition objected to is "(n)o lighting which illuminates the billboard in any manner shall be permitted on or adjacent to the billboard." Exhibit 1.

3. The site of the proposed billboard is a lot midblock on the east side of 15th Avenue N.E. between N.E. 80th Street and Lake City Way N.E. The zoning of the site was Community Business (BC) at the time of application and has changed to NC2-40'.

4. An SF 5000 zone begins at the alley to the east and approximately 300 ft. to the south. Across 15th Avenue N.E. to the west is NC2 zoned property. To the southwest is a small Lowrise 2 zone.

5. Surrounding land uses include the auto repair business on the subject site, a small multi-family structure across the alley, a service station across 15th N.E., a rental equipment business at the southwest corner of 15th N.E. and N.E. 80th, a triplex and a duplex in the L-2 zone, a small business on the southeast corner of the intersection of N.E. 80th and 15th N.E. and single family residences to the south of that.

6. The billboard is proposed to be 40 ft. high with one

face oriented directly to the south. The sign face would measure 12 ft. by 25 ft. which is the standard "poster" panel. The billboard would be placed near the western edge of the lot which is over 90 ft. wide.

7. The DNS, Exhibit 1, states that "(t)he billboard would also produce light and glare and, in this case, could be significant because the development facing the billboard is almost entirely single family uses.

8. Billboards are typically lighted from dusk until midnight.

9. Less than 5% of appellant's billboards are unlighted and those are in locations where it is physically impossible to obtain electricity.

10. When display space is sold on an individual billboard, which is not customary, the monthly rental cost for an illuminated billboard of this size is \$850 compared to \$288 for one without illumination.

11. Appellant's witness testified that it is not economically feasible to construct a billboard which could not be illuminated. This testimony was not rebutted by any credible evidence.

12. The Director has mitigated the impact from light and glare in other instances by limiting the hours of illumination, requiring that the illumination come from the base of the sign face rather than the top, or requiring that all bulbs be shielded from view. The land use specialist was not aware of techniques such as these, that could be used to reduce glare. Therefore, these less restrictive measures were not considered.

Conclusions

1. The Director has authority to condition a proposal to mitigate environmental impacts. Section 25.05.660(1). Those conditions must be based on a policy designated in Section 25.05.902 as a basis for exercise of such authority; the impact must be identified in the environmental document for the proposal and the condition must relate to that impact; and the condition must be reasonable. Section 25.05.660.

2. A policy on light and glare has been adopted which recognizes that lighting and reflective surface materials can have an adverse impact which may be mitigated by the use of alternative techniques. That statement of policy intent provides for weighing the costs of conditioning or denying the approval against the benefits to be gained by the condition. Section 25.05.902(9).

3. The adverse impact has been identified in the analysis and decision for the DNS.

4. The final consideration is whether the impact is "reasonable". For application of conditions under the light and glare policy the Director is to consider the costs in relation to the benefits. The record shows the sign would face due south. The closest residence to the south is 300 ft. away, according to the record. There are residences to the east across the alley, at least 60 ft. plus the width of the alley away, but those within the block view the sign at an acute angle. The Director's condition, by disallowing any light, assures no impact but at the cost of applicant's opportunity to have a billboard at this location, where it is a right to the use.

5. Glare which could disturb residents to the east can be removed by a less restrictive condition, that of shielding all bulbs. The condition, as it relates to light, is intended to

make the billboard less mostly invisible to residents after dark. The visibility of a permitted use is not necessarily an adverse impact, it is adverse only if the light interferes with the residents' use of their homes, e.g., interference with sleep. Restricting hours of illumination to coincide with common waking hours would remove that interference for the majority of residents. The City Council has recognized, through the Noise Control Ordinance, that between the hours of 10:00 p.m. and 7:00 a.m. noise should be reduced. Section 25.08.420. The reason for choosing those hours should be equally applicable to bothersome lighting.

6. A condition restricting the hours of illumination would be reasonable in that the applicant would still have an economically feasible use and the interference with residential use would be minimal.

Decision

The Director's decision is modified by deleting the condition denying illumination of the billboard and adding the following conditions:

Permanent

1. Lighting shall be from the bottom of the billboard face only, with all light bulbs shielded from view from the east and south.

2. A timing device shall be installed to restrict hours of illumination to between dusk and 10:00 p.m. No photoelectric cells shall be allowed.

Entered this 26th day of September, 1986.

M. Margaret Klockars
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.