

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

In the Matter of the Appeals of

JAY P. AMUNDSON AND
WASHINGTON DENTAL SERVICE

FILE NOS. MUP-86-069(W) AND
MUP-86-071(W)
APPLICATION NO. 8600281

from an environmental determination
of the Director of the Department of
Construction and Land Use

Introduction

Appellant, Jay D. Amundson, for himself and for area residents appeal the decision of the Director, Department of Construction and Land Use to issue a declaration of non-significance (DNS) for a proposal to construct a five (5) story parking garage at 9706 - 4th Avenue N.E.

Appellant exercised his right to appeal pursuant to Chapters 25.05 and 23.76, Seattle Municipal Code. Applicant also appealed but withdrew its appeal on October 27, 1986.

Parties to the proceedings were: Jay D. Amundson, pro se; Department of Construction and Land Use represented by Jay B. Laughlin; and the applicant, Washington Dental Service, represented by attorney Milton Smith.

This matter was heard before the Hearing Examiner on October 28, 1986, and the record remained open until November 4, 1986 in order to allow appellant to supplement the record and to allow DCLU and applicant to respond to appellant's supplement to the record.

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 applicant proposes to construct a five-story parking garage adjacent to its five-story office building. This appeal concerns only the proposed five-story parking garage.

2. The threshold determination pursuant to SEPA by the Director of DCLU was a determination of non-significance (DNS) with conditions.

3. The site is located in a BC zoned area and is part of a complex of business offices that is approximately five blocks south of the Northgate Mall and five blocks east of the I-5 freeway. There are other one and five-story office buildings in the complex.

4. The 95,615 square foot lot is presently undeveloped and has approximately 280 ft. of frontage on 4th Avenue N.E. From 4th Avenue N.E. the lot slopes slightly in elevation but at the rear of the lot, slopes steeply to the east and south. Through credible testimony of the Director's representative the Hearing Examiner finds that there is a 20 foot increase in elevation.

5. The surrounding development to the north is the Northgate Shopping Mall and accessory parking lots, to the east and south lies single family and multi-family development, to the southwest lies L-2 and L-3 zoned properties and to the west is the I-5 Freeway.

6. Development as stated in the record will be primarily on the flat portion of the lot with rock retaining walls to be constructed for stability of the hilly portions of the lot.

7. The Hearing Examiner finds through applicant's credible testimony and presentation that the proposed structures will be oriented to the west with access to the garage on 4th Avenue N.E. which is through the business complex and not through the residential area. The garage is to be constructed on the south-westerly portion of the lot and would directly abut the residential development situated at the south boundary. The Hearing Examiner finds that applicant's proposal will include buffering at the east and south boundaries of the subject site.

8. The five-story office building is proposed to have approximately 88,335 sq. ft. of floor space and the five-story parking structure is to provide 340 parking spaces.

9. Appellants indicated that the file contains area residents' correspondence expressing their concerns over air quality, noise, traffic, blockage of views and related impacts from the siting and use of the proposed five-story garage. Said impacts are stated by the area residents in their correspondence and testimony to be severe and that therefore an EIS should be required of the applicant's proposal.

10. Area residents testified regarding the alleged severe impacts from the proposed garage and that the proposed buffer at the south and east boundaries would be insufficient. For example, residents testified that prevailing wind patterns would cause CO to impact homes on the south boundary. Also residents expressed concern of the cumulative effect of the proposed garage and a proposed Metro terminal on the air quality in the area. The Hearing Examiner finds, however, no evidence in the record to establish that expected CO from either facility would cause a decrease of air quality in the area.

11. Appellants' allegation of false and misleading information in applicant's submittals were determined to be unfounded by the Hearing Examiner. Applicant's consultant testified that a typographical error was corrected by the reference at the June 2, 1986 public hearing. The Hearing Examiner does not find false and misleading information in applicant's submittals.

12. Appellant's argument that the consultant's report is biased in favor of applicant is not persuasive. The Hearing Examiner finds the consultant to be independent and free of conflict of interests from applicant and that the consultant's presentation was unbiased and credible.

13. The Washington State Department of Ecology maintains a monitoring station at the Northgate apartments 13 blocks north of the subject site to record CO levels and to establish if the area attains permissible levels of CO. Appellants' argument that the Washington State Department of Ecology station's monitor is not applicable because the site of the proposal is 13 blocks to the south, is not persuasive. The station's monitoring complemented with other evidence presented by applicant is found by the Hearing Examiner to be relevant and credible to this hearing.

14. Applicant's consultant testified credibly that in regards to the air quality issue, the Northgate area is designated as an attainment area for CO levels despite that 8 days in 1985 were recorded at the monitoring station as being in violation of the 8 hour CO ambient standard. Additionally, the consultant testified that if the Northgate area were designated as a nonattainment area, the project site would be south of the non-attainment area.

15. Even at the worst case scenario the consultant testified that emissions from 340 vehicles using the garage at the same

time there would not be a significant alteration in the air quality in the immediate area. Appellant's offered testimony in opposition but the Hearing Examiner finds no evidence that supports their testimony.

16. Testimony from residents establish the prevailing wind pattern to be southwesterly and the Director's representative in credible testimony indicated that emissions from autos utilizing the garage would impact those residences at the south boundary because the prevailing wind pattern may not be sufficient for complete dilution and dispersion of CO. Accordingly, DCLU conditioned the DNS by requiring the garage to have a solid wall and roof at the south end of the garage, that a 50' setback be provided, that Evergreen trees in a forest-like manner be planted in the setback to filter the air and buffer the residential edges at the east and south boundaries, roof top landscaping and that a transportation management program be established to encourage use of Metro by the building occupants.

17. The Director further conditioned the DNS to limit hours of construction, suppression of dust and other particulates and noise and shielding of lighting.

18. In regard to traffic generation, applicant's employee indicated that of its 110 office staff, few trips would be generated but the Hearing Examiner finds that an additional 200+ persons will occupy the building and that according to the consultant, 1565 vehicle trips will be generated per day. Two hundred forty trips would occur in the p.m. peak periods. Average stop delay time would increase at the six nearest intersections. Parking demand generated by the proposal would be in the range of 225 to 296 spaces.

19. Applicant's consultant did state in credible testimony that the proposed parking garage could meet the proposal generated parking demand, that although average stopped delay time would increase there would be no decrease in the level of service at the intersections and thus no adverse impact to the area.

20. The record discloses that 54.3% of the subject lot will be utilized and both applicant's architect and Director's representative in credible testimony indicated that the proposed setback is five times greater than that required by the Code. Views from the residences on the hills on east and south borders may be obstructed but the Hearing Examiner finds that no policy operates to protect private views from private residences. The Hearing Examiner finds in the record that notices were duly mailed and that DCLU made efforts to provide sufficient notice of the revised proposal.

21. The Hearing Examiner had provided additional time for appellants to submit further evidence but appellants have not supplemented the record. The Hearing Examiner delayed the close of the record so that a full and complete hearing would have been held in this matter.

Conclusions

1. Applicant's appeal, Hearing Examiner File No. MUP-86-071(W) is hereby dismissed.

2. An environmental impact statement is required if the responsible official determines that a proposal may have a probable significant adverse impact. Seattle Municipal Code Section 25.05.360. If the responsible official determines that there will be no probable adverse impact then the DNS is to be issued. Seattle Municipal Code Section 25.05.340. A significant impact is present "whenever more than a moderate effect on the quality of the environment is a reasonable probability". Norway Hill v. King County Council, 87 Wn.2d 267, 278, 552 P.2d 674 (1976).

3. The Director has found probable impacts but determined that none would be significant. The Hearing Examiner on review must give that determination substantial weight. Seattle Municipal Code Section 23.76.36(B)(7). The standard of review then is "clearly erroneous" which means that to overturn the Director's determination, the Hearing Examiner must have a definite and firm conviction that a mistake has been made. Hayden v. Port Townsend, 93 Wn.2d 870, 613 P.2d 1164 (1980).

4. In this case the appellants' testimony and testimony of witnesses dispute the Director's conclusion that the impacts would not be significant but there has been no showing that the facts relied upon by the Director are erroneous. Neither has evidence been introduced which contradicts the Director's conclusion. A difference of opinion, without more, is not sufficient basis for the Hearing Examiner to reverse the Director's decision given the standard of review.

5. The Hearing Examiner concludes the project should be conditioned per the DCLU decision as follows:

A. During Construction

1. Any long-term exposed or stockpiled soils shall be protected by common erosion control measures. These measures shall include but not be limited to placement of visquene and straw mulch over exposed soils as necessary land appropriate to prevent erosion; and placement and maintenance of filter fabric over storm water drainage grates in the adjacent street right-of-way.
2. The applicant/contractor shall be required to adhere to the requirements of Director's Rule 7-84 as necessary and appropriate to protect off-site property from the consequences of on-site slope failure.
3. The contractor shall be required to rinse the wheels of heavy construction equipment on-site before their use of City streets.
4. The contractor shall be required to clean City street (sic) of all mud from the construction site.
5. Construction operators and supervisors shall be advised in writing by the project's proponents that noise control and reduction of construction impacts is of particular importance. The letter to the construction operators and supervisors shall include the mitigating measures listed below as Conditions 5 through 7. A copy of this letter shall be forwarded to the Land Use Review Section of this Department.
6. Loud equipment, including but not limited to, pavement breakers, pile drivers, jackhammers, sandblasting tools, crawlers, tractors, compactors, drills graders, compressors and other similar equipment is strictly limited to normal working hours (7:30 a.m. to 6:00 p.m.) on non-holiday weekdays.
7. Use the quietest available machinery and equipment (adequacy of mufflers will be monitored by building inspectors) on all equipment brought to the site. Types of mufflers with the greatest noise reducing capability shall be used. Request that contractors use and maintain low-velocity equipment, lead-shielded equipment, mufflers and quieting devices whenever possible. Muffler design and use shall be in accordance with Seattle-King County Health Department guidelines.
8. Scheduling of noisy operations and equipment shall avoid concurrently operating sources of high noise levels.

9. Equipment shall not be permitted to idle unnecessarily.
10. Construction personnel shall sprinkle the site during demolition and construction to suppress dust and other particulates.
11. Proponents shall relocate any existing utilities requiring relocating at their expense.
12. During times of construction when air pollutant elements are produced, such as spraying of fire retardants on structural elements and welding, care shall be taken to contain the pollutant, such as enclosing the floor with a temporary enclosure to avoid having the pollutant spread to areas outside the building.

B. Prior to Building/Grading Permit Issuance

A memorandum of Agreement between Washington Dental Service, the City of Seattle and METRO shall be executed to formalize a Transportation Management Program (TMP) to encourage the use of High Occupancy Vehicles (HOV). Elements of the TMP shall include but not limited to:

- ° Designation of a Building Transportation Coordinator by the building owner;
- ° Establishment of a commuter information center;
- ° Setting aside a percentage of the total available parking spaces for use by carpools between the hours of 6:00 a.m. and 9:00 a.m.;
- ° Semi-annual promotions sponsored by the owner to encourage HOV travel.

C. Prior to Occupancy

1. All necessary street improvements shall be completed. Landscaping shall include a forest-like buffer along the south and east setbacks from the property line.
2. Landscaping shall be provided per approved plan prior to final occupancy of the building.
3. Any exterior lighting of the structure or of the parking areas shall be shielded and directed downward and away from adjoining properties.
4. A solid wall shall be provided along the south elevation of the parking garage. Rooftop landscaping of the parking garage shall be maintained by the owner.

D. Permanent

1. Maintenance of all on-site landscaping shall be the responsibility of the owner.
2. Any exterior lighting of the structure or of the parking area shall be maintained so that it is shielded and directed downward and away from adjoining properties. No exterior lighting shall be provided on the rooftop.

Entered this 19th day of November, 1986.

Roger Shimizu
Roger Shimizu
Hearing Examiner Pro Tempore

Concerning Further Review

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 must be by application for writ of review filed in King County Superior Court within fifteen days of the date of this 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 the decision on the underlying governmental action 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. Seattle Municipal Code 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 for preparing a verbatim written transcript of the hearing but will be reimbursed if successful in court. Instructions for preparation of the transcript are available in the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104. In the alternative, RCW 43.21C.075(6)(b) provides that a tape may be used for the 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 designate only those portions of the testimony necessary 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 taped transcript relating to issues on review.