

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

In the Matter of the Appeals of

ED STRICKLAND AND
SEATTLE SHORELINES COALITION

FILE NO. MUP-86-092(W) and
FILE NO. MUP-86-094(W)
APPLICATION NO. CC-8502814

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

Introduction

Appellants, Ed Strickland and the Seattle Shorelines Coalition, appeal the decision of the Director, Department of Construction and Land Use, to issue a determination of non-significance for a proposal to create new floating home moorages and add an office and retail building at 933 North Northlake Way. The proposed floating home moorages require Council conditional use authorization. The appeals and the application for that approval were consolidated and heard on December 5, 1986.

The appellants exercised the right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

Parties to the proceedings were: appellant Ed Strickland, pro se; appellant Seattle Shorelines Coalition by Dr. Virginia Richmond and Ruth Moore; the Director, Department of Construction and Land Use by Jay Laughlin, land use specialist; and the applicants, Charles Viele and Paul Blauert, pro se.

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 total project proposed by applicants is to remove an existing dry dock and shed, to construct a 3-story structure for office-retail/parking/caretaker unit use, to establish five new floating home moorage sites and make one existing site conforming, to relocate two existing floating homes, to relocate existing moorage and finger piers and extend the existing dock and to provide eleven accessory parking spaces.

2. Various approvals are required for the proposal including Council conditional use for the floating home moorage sites and shoreline permits. The Director conditionally granted the shoreline development permit and the shoreline conditional use.

3. The Director issued a determination of non-significance (DNS) pursuant to SEPA for the proposal and imposed conditions. Included in the conditions are street improvements, landscaping, construction impact control, screening between the parking area and water area and posting of the parking. Conditions were also imposed on the shoreline approvals.

4. Environmental impacts identified by the Director that may occur during construction are erosion and sedimentation, water contamination from debris, paint, etc., noise and additional traffic and parking demand. Mitigating measures are required as conditions. The permanent adverse impacts identified are view blockage caused by the new building and new floating

homes that may be constructed, increased light on the site, increased traffic and increased parking demand. The Director found none of these impacts to be significant.

5. Appellants address the following environmental concerns: water quality, earth, parking, view, shadow and land use.

6. Ed Strickland, who owns property immediately to the east of the subject property, took a sample of lake bottom material approximately 30 ft. north of the north side of the dry dock. He was concerned that heavy metals may be present on the site. His sampling technique did not include measures that would be necessary to assure accurate results, he acknowledges. He feels, based on the testing he did, the past use of the property and the presence of heavy metals at other similar locations, that there is probably a concentration of such elements in the lake bottom at this site.

7. Metro reviewed the proposal and commented on water quality. It made suggestions for mitigating measures to protect the water quality including using methods that prevent "excessive resuspension of sediment to reduce turbidity" (letter, November 17, 1986) but proposed no testing.

8. The portion of parking to be provided over water would be on solid decking and would have to meet code requirements for control of drainage.

9. The applicants do not know if new pilings will be needed for the construction. It may be feasible to cut off unneeded pilings rather than to remove them.

10. Both appellants were concerned about a probable parking shortfall. The Engineering Department calculated that 26.5 spaces would be required if the development was all new, i.e., no "grandfathered" or existing nonconformity. The code requires ten spaces for the proposed new uses. The applicants propose to provide eleven spaces on site.

11. Ten spaces which had been available to the floating home residents on the site in the railroad right-of-way are no longer available. That space is now leased to the adjacent Strickland property. Some on-street parking will be lost because of the new curb cuts. The staff estimate is that one and a half would be eliminated. If there are two curb cuts the losses may be three. If wider ramps are required by code, more spaces would be eliminated.

12. The overflow demand is likely to be for around fifteen spaces. Five spaces are to be developed in the street right-of-way which can be used by site users or the public. There still would be approximately ten site users competing with users of other properties and businesses for on-street parking in the area.

13. The parking in the area was described as tight but no utilization figures are in the record.

14. The lease of the railroad right-of-way property to a different business could be expected to reduce competition for the public parking by that number so the displaced parkers from the subject site could use that public parking.

15. The environmental checklist states that no fill will be used and Mr. Viele testified that there would be no fill.

16. The view obstruction identified by the Director is of the water and uses from the street by the building and of the water and uses from existing houseboats by new houseboats.

17. There are no public places identified in Appendix B,

Chapter 25.05, from which views would be affected by this proposal.

18. New floating homes, if constructed on the new sites, would cast shadows over the water. Lay testimony about the effect of shadows on fish migration was provided but was speculative and controverted. Little weight can be given the testimony.

19. The applicants plan to subdivide the underwater property into individual home sites. Further land use approvals will be required to accomplish this. No impact from such action was suggested other than a possibility that the code may require parking for those sites now nonconforming.

20. Various other issues regarding development standards were raised but were not relevant to the SEPA appeals.

21. Adjacent business operators would prefer retention of the dry dock because of the commercial traffic it would generate which would benefit those businesses.

Conclusions

1. If she finds there will be no probable significant adverse environmental impacts from a proposal, the Director is to issue a DNS. Section 25.05.340(1). "Significant" means "a reasonable likelihood of more than a moderate adverse impact on environmental quality." Section 25.05.794(1). The severity of the impact is to be considered as well as its likelihood. Section 25.05.794(2).

2. The determination made by the Director is to be accorded substantial weight by the Hearing Examiner and the burden of establishing the contrary is on the appellants. Section 25.05.680(1)(c). To sustain their burden appellants must show that the decision is clearly erroneous. Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981).

3. The only potential impact cited by appellants which was not considered by the Director is that of the effect on water quality if the floor of the lake is disturbed by removal of existing pilings or the addition of pilings. It was not shown that it is probable that either will happen since pilings can be cut off rather than be removed. Further, the degree of disturbance, if pilings must be added or removed, was not shown. Suggesting there may be an impact which should have been assessed is not sufficient to sustain appellants' burden of proof.

4. The other impacts were considered by the Director. It is clear that the amount of parking demand not satisfied on site was understood. The Director's judgment about the significance of this impact was not shown to be clearly erroneous.

5. The Director has authority to impose conditions to mitigate adverse impacts pursuant to Section 25.05.660 subject to the limitations that the measures be related to specific impacts identified in the environmental documents, that they be based on policies designated as a basis for the exercise of substantive authority and that the measures be reasonable and capable of being accomplished.

6. Appellants urge that additional parking be required, that floating home use not be allowed, that the existing dry dock be retained and that the building be required to be built entirely over land. As to the uses, no adverse environmental impact was identified in the environmental documents and that was not proved to error so no condition may be imposed for mitigation. It should be noted that the use issues are reviewed through the Council conditional use process and shoreline permits. Likewise no adverse environmental impact from the building's location was shown.

7. Greater demand for parking than that to be provided is identified as an adverse impact in the environmental documents. A policy, Section 25.05.902(4), has been designated to provide the basis for conditioning to mitigate the impact. The Director did impose one condition to mitigate this impact, that of posting a sign to show that ten of the eleven spaces are available for floating home and moorage users. Appellants urge that more parking be required, however, they have not shown that such requirement would be reasonable or capable of being accomplished, given the small amount of upland available. Therefore, the Director's decision has not been shown to be clearly erroneous.

Decision

The determination of the Director is affirmed.

Entered this 22nd day of December, 1986.

M. Margaret Klockars
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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.