

FINDINGS AND DECISION

SEP 17 1987

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE S.E.P.A.

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In the Matter of the Appeal of

PUBLIC SAFETY EMPLOYEES, LOCAL 519

FILE NO. MUP-87-039(W)
APPLICATION NO. 8603174

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

Introduction

Appellant appeals the decision of the Director, Department of Construction and Land Use, to issue a mitigated determination of non-significance.

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 on September 10, 1987. The hearing was scheduled for 9:00 a.m. When a representative of appellant did not appear, the hearing commenced at 9:45 a.m. The Director was represented by Jim Barnes, land use specialist, and the applicant by Diamond and Sylvester, John W. Hempelmann and Terrence I. Danysh.

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. Martin Selig applied for a master use permit to construct a six-story building at 3101 Western Avenue. After negotiations between the applicant and the Director, a mitigated determination of non-significance (DNS) was issued by the Director and the proposal was approved. This appeal followed.

2. The decision of the Director was based upon information in an expanded environmental checklist (checklist), public comment and visits to the area.

3. Attachment A to the checklist describes the height and configuration of the proposed building. It states that on the upper or Western Avenue side the height would be 42 ft. from existing grade to the roof deck. From Elliott Avenue, the lower side, the building would reach 65 ft. above existing grade. The rooftop of the building would be at or below the elevation of the streets in the lower Queen Anne Hill and Denny Regrade area.

4. Attachment D to the checklist includes ten photographs illustrating the proposed building's effect on views from various public view points.

5. Additional photos depicting its effect from other locations were considered by the Director's staff.

6. The Director's staff directed the applicant's consultants to analyze the effect on views from public viewpoints in the checklist. Those viewpoints in the area designated in Appendix B to Section 25.05.902G are Bhy Kracke Park, Kerry Park, Kinneer Park and Myrtle Edwards Park. The only designated scenic route in the area is that part of Denny Way bordering the south margin of the Seattle Center between Broad Street and Second Avenue. Other public viewpoints, not included in Appendix B, were also considered. The photos in the checklist show the

building to be barely visible from Kerry Park, eliminating a portion of the view of water and of the land across the water from Denny Way and not to have any effect on the water view from Myrtle Edwards Park. Since the building would not be visible from Kinnear Park no photo was included.

7. The checklist acknowledges that some private views from adjacent buildings would be blocked or impaired.

8. The consultant's and Director's analyses concluded that no views from public places would be blocked.

9. View loss was also shown from Queen Anne Avenue North. Approximately one quarter of the water view when the trees were in leaf would be gone.

10. The land use specialist testified that there is nothing further that could be done to analyze view impacts, i.e., what was done for the threshold determination is the same as what would be done for an environmental impact statement.

Conclusions

1. An environmental impact statement is required when the Director determines that a proposal may have a probable significant environmental impact. Section 25.05.360. Here, the Director determined that with the conditions imposed and agreed to, there would be no significant adverse environmental impact. The determination is entitled to be accorded substantial weight. Section 23.76.022C7.

2. To overcome a decision given substantial weight, an appellant must show it to be clearly erroneous. Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981). No evidence was adduced by appellant to show error. Moreover, the record shows that the Director's staff thoroughly evaluated view impacts, the only issue raised by appellant, and that while there will be some private view loss the impact on public views would not be significant. Therefore, the determination should be affirmed.

Decision

The threshold determination by the Director is affirmed.

Entered this 17th day of September, 1987.


M. Margaret Klockars
Deputy Hearing Examiner

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, 408 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.