

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

BRUCE W. GOODRICH

FILE NO. MUP-87-040(W)

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

APPLICATION NO. 8606329

#### Introduction

Bruce W. Goodrich appeals the decision by the Director, Department of Construction and Land Use, to conditionally approve a master use permit application for a proposed 60-unit apartment building at 2244 - 13th Avenue West.

The appellant exercised his 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 14, 1987.

Parties to the proceedings were: Appellant, Bruce W. Goodrich, pro se, the Director by Cheryl Waldman, land use specialist, and the applicant, by Jim Eeckhoudt, attorney at law.

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 two apartment buildings with a total of 60 units at 2244 - 13th Avenue West. The Director issued a determination of nonsignificance and approved the application subject to a series of conditions. Appellant challenges the approval by this appeal.

2. The subject site is zoned Lowrise 3 and is located on the west slope of Queen Anne Hill on the east side of 13th Avenue West just north of its intersection with Gilman Drive West. The zone line runs along the site's north and east boundaries with Lowrise 1 zoning to the north and east. The Lowrise 3 zone continues to the west and south.

3. The street, 13th Avenue West, is divided into two levels, an upper and lower, by a grassy embankment and retaining wall. Each half is two way but with parked cars has one lane of travel. A stairway at Wheeler Street, approximately 100 ft. from the subject site, allows pedestrians to go from one level to the other.

4. The proposal includes 70 parking spaces on-site or 1.16 spaces per unit.

5. A traffic and parking study was done by applicant's consultants in February, 1987. An on-street utilization update was done in June, 1987, because of concern that parking in February may have been affected by utility construction work.

6. The area studied for parking impact was that within 2-2.5 blocks of the site. Because of the unusual street configurations in the area due to topography, certain portions of

that area were deemed to be inaccessible and should not be considered in the on-street supply available to the site, leaving mostly parking on 13th West and the upper level of Gilman Drive. Accordingly, the land use specialist adjusted the consultant's figures for the eliminated spaces. Instead of a 179 space supply, the decision was based on a 104 space supply.

7. The current utilization of the appropriate on-street parking supply was determined to be approximately 44 percent.

8. The Director's analysis shows that demand for parking for 90 vehicles is projected for the 60 units. The parking provided would leave 20 vehicles competing with other area residents for on-street parking. On-street utilization would be increased to about 63 percent. The proposal's demand would consume about 19 percent of the total supply or 53 percent of the currently unoccupied spaces.

9. Appellant offered a higher utilization figure of 58 percent based upon a supply figure of 70 spaces. That supply was arrived at by estimating the number of cars that could park in areas appellant believed to be reasonably available to the site. Engineering Department guidelines for determining supply were not followed.

10. The supply figure provided by the traffic professionals, which was based on Engineering Department guidelines, as adjusted by the land use specialist, is considered the more reliable figure as to actual on-street supply.

11. Appellant showed that a number of projects are under construction or proposed for the area. The land use specialist had reviewed those projects and determined that due to their location, distance or topography, any unmet parking demand from none of them would overlap the supply area considered for the subject project.

12. The Pierre Marquis condominium, a 50-unit development to the west across Gilman Drive, with 75 on-site parking spaces, has 85 resident cars. The excess parks on a triangular portion of the Gilman right-of-way. A resident expressed concern that there would be competition for that space from residents of the subject site.

13. Concern was expressed about the speed of motorists using the streets.

14. The 60 units are expected to generate some 396 vehicle trips per day, 30 in the a.m. peak and 36 in the p.m. peak. This is not expected to change the operating conditions of the surrounding streets.

15. A one-story duplex is located on the lot to the north of the subject site. The structure would be in shadow during portions of the day. It is likely that any development of the subject site would cause some loss of sunlight on that lot.

16. Appellant seeks increased on-site parking or a reduction of the size of the project to 40 units to mitigate the project's adverse impacts.

#### Conclusions

1. The Hearing Examiner has jurisdiction of this matter and these parties pursuant to Section 23.76.022.

2. The Director is authorized to impose conditions to mitigate adverse environmental impacts from a proposal by Section 25.05.660 subject to certain limitations. Those are that the

impact must be identified in the environmental documents, the condition must be based upon a policy formally designated in Section 25.05.902 as the basis for the exercise of substantive authority, the condition must be reasonable and the responsibility for the implementation of the mitigating measure must be in proportion to the impact caused by the proposal. Section 25.05.660 A.

3. The Director's analysis and decision identifies unmet parking demand as an impact of this project and also identifies SEPA policies available as the basis for substantive authority. The Director found that she does not have authority to require additional parking and that the impact would not warrant reduction in the project size, i.e., reduction would not be reasonable.

4. The Director's determination is to be accorded substantial weight by the Hearing Examiner on review. Section 23.76.022 C.7. To overcome that weight, appellant must show that determination to be clearly erroneous. Brown v. Tacoma, 30 Wn. App. 762, 637 P.2nd 1005 (1981).

5. Most of appellant's objections to the approach to the determination of parking supply were met by the adjustments made by staff. The result, after those adjustments, still showed that there is adequate supply to meet the otherwise unmet demand and that there would still be on-street parking available for future demand within the supply area. The record also showed consideration of demand from proposed and uncompleted projects. No error was shown.


6. The Director's analysis and decision identifies the impact of traffic. Because the street's operating conditions would not be changed, no mitigating condition would be appropriate.

7. The shadowing of the adjacent property was not identified in an environmental document. However, there is no SEPA policy authorizing the Director to impose conditions to mitigate such an impact on private property, even if it had been identified. Again, no error was shown.

#### Decision

The decision of the Director is affirmed.

Entered this 28th day of September, 1987.

  
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 for 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.