

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of

CENTRAL BALLARD COMMUNITY COUNCIL

FILE NO. MUP-87-052(W)
APPLICATION NO. 8703144

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

This appeal by William Anderson on behalf of the Central Ballard Community Council was scheduled to be heard on November 20, 1987. The appeal challenged the determination of non-significance and failure to deny or impose further conditions on a proposal for property at 1761 N.W. 61st Street. At the public hearing the appellant was represented by William P. Anderson, the Director, Department of Construction and Land Use, by Meredith Getches, senior land use specialist, and the applicant, Gary Gallagher, by Howard B. Breskin, Breskin & Robbins. Prior to the presentation of evidence and again at the end of presentation of evidence, the applicant renewed his motion or requested reconsideration of the ruling on his earlier motion to dismiss the appeal. The following findings are relevant to that motion.

Findings of Fact

1. Gary Gallagher applied for a master use permit to construct a six-unit apartment building at 1761 N.W. 61st Street. The Director, Department of Construction and Land Use ("Director"), issued a determination of non-significance (DNS) for the proposal and imposed certain conditions on September 3, 1987, the date of publication.

2. On September 9, 1987, the Department of Construction and Land Use received a postcard stating:

Are you perhaps unaware of Mayor Royer's, Paul Kraable's (sic), and Sam Smith's news conference last week in which they suggested that the cumulative impact of these projects is unacceptable to our neighborhood, and to our City as a whole?

You bet I appeal your finding on project #8703144/Kroll 11E, and on any other projects you care to push through until this is settled. Sincerely, Bill Anderson

3. The postcard was delivered to the Office of Hearing Examiner on September 9, 1987. On September 14, 1987, a message was left by the Office of Hearing Examiner for Mr. Anderson that no filing fee had been received. On September 24, 1987, the \$25 filing fee was received by the Office of Hearing Examiner.

4. A motion to dismiss the appeal for failure to comply with the requirements of the Code and Hearing Examiner Appeal Rules was filed by the applicant. The Hearing Examiner notified appellant by letter dated November 6, 1987, that a response to the motion was due by November 12, 1987. On November 16, 1987, the Hearing Examiner notified the parties that the request for dismissal was denied but that appellant was to identify specific issues and notify the Hearing Examiner and other parties by November 18, 1987.

5. A letter to Katy Chaney, Department of Construction and Land Use, from William P. Anderson, was received by Department of Construction and Land Use on November 9, 1987, and forwarded to the Office of Hearing Examiner on November 18, 1987. The four page letter specified appellant's allegations of error in the Director's decision.

Based upon the facts above, the following conclusions are entered.

Conclusions

1. Section 23.76.022C3, Seattle Municipal Code, establishes requirements for the filing of master use permit appeals. There are four. The appeal must be filed by 5:00 p.m. of the fifteenth day following publication of the notice; the appeal is to be written and clearly identify the component of the master use permit appealed; "(t)he appeal shall be accompanied by payment of the filing fee..."; and "(s)pecific objections to the Director's decision and relief sought shall be stated in the written appeal." Section 23.76.022C3.a. Only one of these requirements was met, i.e., the postcard reached the Office of Hearing Examiner by the fifteenth day.

2. The appeal section also requires that the appeal conform with the rules of the Hearing Examiner in form and content. Section 23.76.022C3.b. Hearing Examiner Appeal Rule 1.2, Content of Appeal, requires:

(a) A brief statement as to how the appellant is significantly affected by or interested in the appeal.

(b) A brief statement containing explicit exceptions and objections with regard to the appealed matter.

(c) The requested relief such as reversal or modification.

(d) The signature, mailing address and telephone number of the appellant, agent or attorney.

Neither the requirements of a, b nor c was fulfilled. D was not fully met in that, though signed, there was no mailing address or telephone number given. While the four page letter did contain these elements, it was filed with the Office of Hearing Examiner two months after the close of the appeal period.

3. An administrative agency has only that authority granted expressly or by necessary implication. McGovern v. Department of Social and Health Services, 94 Wn.2d 448, 450, 617 P.2d 434 (1980). The Hearing Examiner has been given authority to consider appeals which comply with the requirements set forth in the code and the rules of the Hearing Examiner. While it is intended that the Office of Hearing Examiner avoid hypertechnicality in applying the procedural rules and requirements, the appellant failed to effect even substantial compliance with the requirements so the Hearing Examiner is without authority to consider the appeal. It should be, therefore, dismissed.

The appeal is dismissed.

Entered this 17th day of December, 1987.

M. Margaret Klockars
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Deputy Hearing Examiner