

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

In the Matter of the Appeal of

CONCERNED CITIZENS OF THE
BROADVIEW COMMUNITY

FILE NO. MUP-87-075(CU,W)
APPLICATION NO. 8703153

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

Introduction

The Department of Construction and Land Use (DCLU) granted with specific conditions administrative conditional use and environmental approval (determination of nonsignificance) for a chemical dependency facility proposed for 600 North 130th Street. Appellant submitted this appeal.

The appellant exercised the right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code, and pursuant to Chapter 25.05, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on January 13, 1988.

Parties to the proceedings were: appellant by Pete DeNormandie, Esq.; the applicant by Brent Carson and Amy Kosterlitz of Buck & Gordon, and the DCLU Director by land use specialist John Doan.

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. Recovery Centers of America (RCA) applied for a master use permit to establish a chemical dependency treatment center at 600 North 130th Street. DCLU conditionally granted the administrative conditional use for the proposal, which would allow the institution to be located less than 600 ft. from the adjacent Broadview Elementary School, another institution. DCLU also issued an environmental determination of nonsignificance for the project. The Concerned Citizens of Broadview submitted this appeal.

2. The proposal site is on the north side of North 130th Street and is the subject of a short subdivision that would change the boundaries of the existing three parcels. Greenwood Avenue is several lots west.

3. The site and other properties fronting the north side of 130th are zoned Lowrise 3 (L-3) and are bordered on the north by Seattle School District property that has maintained an RD 7200 zoning. The Broadview Elementary School is located on the school district site. Broadview houses kindergarteners and grade 4-6 youngsters. Leschi 4th and 5th graders share the facility which is primarily operated from 8:30 a.m. - 3:20 p.m. The building also houses after school sports, tailoring and other activities. North of the school district site is the body of Bitter Lake.

4. Directly east of the site is a senior citizen's apartment complex. Farther east and northeast, to Linden Avenue North, is the Bitter Lake Park. (The Broadview School Playfield,

generally open, is in merger route to the park.) The CG-zoned Park site retains Title 24 zoning as does the school district site pending adoption of open space zoning.

5. South of the project site, across North 130th Street, are primarily single-family homes within the Single Family 7200 (SF 7200) zone. There is a small L-3 zone at the southwest corner of North 130th and Fremont Avenue North, roughly one block east of the proposal site. A segment of Evanston Avenue North is west parallel to Fremont Avenue and lies almost directly in front of the proposal site. Houses on this street are oriented away from North 130th and to Evanston Avenue North. Some have fencing on their north boundaries.

6. By DCLU conditions to the project the owner is to submit street improvement plans to include provision of street trees along North 130th, and is to submit and maintain a landscaping plan. Prior to Occupancy DCLU requires owner to provide other street improvements, e.g. curbing, to the satisfaction of the Seattle Engineering Department. These street improvements will be consistent with those for an adjacent project.

7. Other conditions require a 6 ft. high view obscuring fences along the east and west property lines adjacent to the parking area and a 6 ft. "solid sound retaining fence completely around the outdoor recreation area." (Outdoor recreation is limited to 8:00 a.m. - 9:00 p.m.) The parking area fence is to minimize vehicle light impacts on adjacent properties.

8. The DCLU decision indicates that a 9-building, 186-unit apartment development is proposed for the easternmost portion of the subdivision-proposed site, along with parking for 248 vehicles. This specific lot is developed only with an abandoned classroom building.

9. The specific site proposed for the chemical treatment center has 111 feet of frontage along North 130th Street. The site widens to 121 ft. roughly 117 ft. north of North 130th, but is otherwise rectangular in shape. The north-south dimension is approximately 292 ft. and the lot square footage 33,560.

10. The "treatment center site" contains a three-story building which was formerly used as a Lutheran Bible Institute dormitory. The single story classroom building referenced in Finding 8 above was also part of the prior Institute complex. The buildings were constructed in approximately 1964 and have been abandoned since 1985. The former dormitory is a 14,600 sq. ft. building. Applicants propose a 3400 sq. ft. addition for the building's west side. The building is larger than the single family homes across the street but is smaller than the adjacent senior complex, the elementary school or the proposed adjacent apartment complex. Since the addition is proposed for the northwest corner of the existing structure, the setback, required landscaping and other features will reduce the structure's visual impact on the nearby single family zone.

11. The adjacent segment of North 130th is an arterial improved with three lanes of asphalt. This segment has no curbs or gutters.

12. Consistent with the 800 ft. distance recommended by the Seattle Engineering Department, applicant's consulting traffic engineer inventoried on street vicinity parking utilization on two mid-week evenings (12-16 and 12-23-87). The study considered parking along North 130th east of Greenwood to Linden Avenue, and included parking along the parallel segments of North Park, Fremont, Evanston and Dayton Avenues generally to North 127th. The Hearing Examiner finds in accord with the results that the identified supply was 116 and that 34 vehicles were parked for a utilization of approximately 29%. This does not include potential parking on the north side of North 130th. Exhibit 23.

13. The Hearing Examiner also finds reasonable the study's

projection that considering the vicinity's proposed complexes of generally 180, 40 and 50 units within the 800 ft. sphere; the on-site parking proposed; and the projection of 1.5 vehicles per anticipated unit, that the on-street parking utilization would approximate 59%.

14. It was undisputed that the Bitter Lake Community Center, east and behind the elementary school, provides 36 off-street spaces and that the school itself provides a minimum of 80 off-street parking spaces.

15. There is no vicinity parking shortage at this time.

16. The 1986 Level of Service for the North 130th - Greenwood Avenue North intersection was B for morning and afternoon peak hours.

17. Of the 180 daily vehicle trips projected to come from the developed site, 9 are expected during the morning peak and 11 during the afternoon peak. The applicant's traffic analysis projected a "B" 1989 morning peak level of service, and a "D" for the afternoon peak hour "either with or without the project." Exhibit 21, p.6. Factors in the above conclusions include projected trips from the proposed adjacent apartment complex.

18. The most desirable LOS is A. LOS D, with some delays, is generally considered acceptable for an urban environment.

19. DCLU and applicant's consultant report that improvements are expected to the North 130th-Greenwood Avenue North intersection, "the most significant being the improved signalization...with protected left turn movements...expected to be completed in 1988." Exhibit 25.

20. Transit service is available on North 130th, Greenwood and nearby Aurora Avenue North. Peak parking is expected during evenings when outpatient session (up to 50 persons involved), visitations and staff activity may occur simultaneously. Assuming that family and support members would arrive with at least two persons per car, and that staff people would arrive individually, DCLU adopted a worst case parking demand of 33 spaces. The Hearing Examiner finds that the 2.0 persons/car is a low estimate for family-support members and that there is little potential for spillover parking.

21. Applicant's proposal is to renovate and add to the existing site development. The structure presently is boarded up and a known target and site of vandalism. As noted above, the use would be by a chemical dependency treatment center for adolescents. It is undisputed that the center is considered a "hospital" by Land Use Code definition.

22. The building would be set back 20 ft. from the east property line, 28 ft. from the north property line, in excess of 13 ft. from the west property line and 128-152 ft. from the south property line. The proposal is for 36 on-site parking spaces; the minimum requirement is 22 spaces. Passenger loading will occur on site.

23. Generally, the 44 maximum residents would range in age from 11-19 years. From June, 1986 to June, 1987, the residents of the Lakewood RCA facility, near Tacoma, Washington, numbered 165. Approximately 14% were referred by alumni, 14% by human service programs, 13% by schools, and 10% by the justice system. The remaining referrals came from various other services. Of the justice system referrals, some residents had been arrested for burglary and others for driving while intoxicated. A "couple" of these residents had been involved in assaults.

24. Some of the justice system references are screened out of the RCA program. In general, all would-be residents are required to undergo an initial assessment, which screens out some 80% of applicants. Approved residents begin with a detoxification phase. During this period the resident's attire is re-

stricted to pajamas and the resident is monitored every 2 hours. Other stages include rehabilitation, recreation therapy, counseling-referral, and aftercare. Residents are not allowed to leave the site without supervision, wander the units or to visit other's rooms, nor are they allowed their own money, tv, radio or cars. Visitation is strictly limited to family members or significant others who will participate in the therapy. There are no open visiting hours.

25. The RCA staff will include a program director (principally for marketing); a clinical director (treatment coordinator) and counselors; a 24-hour RN or LPN nursing staff; a medical director (Physician); a family therapist, typically a licensed clinical social worker; and a night security guard. RCA professional staff are expected to maintain continuing education efforts.

26. The proposed facility will offer an extensive security system designed to limit access to and from the building. The resident windows, for example, will be sealed. The north door exits have 24-hour alarms. Several other doors are locked and may be released only when in the fire mode. Other doors are locked at night only. Visitors may enter only through the main lobby (south), through the security area. See Exhibit 19.

27. RCA operates 43 similar facilities throughout the U.S. Approximately 15 are for adolescents, and approximately 14 are free standing, i.e. not related or physically adjoined to another health facility. Few, if any, of the RCA programs are as near to an elementary school.

28. The record reflects that RCA has reported no incidents of patient-visitor crime or vandalism in its more than 5 years of operation. In its 5 year history RCA has treated more than 80,000 patients.

29. All RCA facilities are accredited by the Joint Commission on Accreditation of Hospitals, and by a commission on rehabilitation facilities which is more program oriented in its review of facilities.

30. The major construction phase is expected to last approximately three months. During this time an increase is anticipated in related noise, dust and other temporary factors. DCLU imposed a condition on the permit which is to limit loud construction activity (e.g. machinery which would exceed permitted decibel ranges) to between 7:30 a.m. and 6:00 p.m. on non-holiday weekdays.

31. Appellant's witnesses agree that alcohol and drug treatment for youth are needed. The overwhelming community sentiment expressed, however, is against the proposed siting of the project. A principal objection concerns the location in a residential area adjacent to an elementary school, senior housing complex and public park. Appellant's witnesses are apprehensive that the residents' "criminal element" will negatively influence curious school children from Broadview Elementary, and will increase crime in the area e.g. by attracting drug abusers or dealers to the facility and/or vicinity. Also of concern were property value, traffic, parking and other infrastructure impacts anticipated from the completed proposal.

32. The record reflects critically inadequate support for any finding that the Broadview Elementary children will gravitate from across their playfield to the treatment center's fence where the elementary children will be criminally influenced by the treatment center residents who would simultaneously be on the other side of the solid wood fence.

33. The record fails to support any finding that drug dealers or users will be attracted to the vicinity by the presence of the highly structured and secured facility.

34. The Hearing Examiner finds that the treatment center may

experience severe patient withdrawal or other episodes where police or other emergent professional assistance may be advisable or required.

35. The Hearing Examiner finds that the youth and general community exposure to the proposed facility and its outreach efforts could heighten the awareness and sensitivity to the issue of youth alcohol and drug abuse.

36. The Hearing Examiner finds that the noise expected to be generated by the treatment center will neither be inconsistent with nor exceed the present ambient noise level from school, park and other activity.

Conclusions

1. The Hearing Examiner has jurisdiction of this proceeding pursuant to Chapters 23.76 and 25.05, Seattle Municipal Code.

2. The Director's environmental determination is accorded substantial weight, Seattle Municipal Code Section 23.76.022(C)(7), and the burden of establishing the contrary is appellant's. Seattle Municipal Code Section 25.05.680(A)(3). Appellant must therefore show that this DCLU determination of nonsignificance is "clearly erroneous."

3. If no probable significant adverse environmental impact is determined, a determination of nonsignificance (DNS) is appropriate. If a proposal may have probable significant adverse environmental impacts, a declaration of significance is required. Significant has been read to mean "of more than a moderate effect." Norway Hill Preservation and Protection Association v. King County Council, 87 Wn. 2d 267, 552 P.2d 674 (1976).

4. The expected impacts were not shown to be "significant." No environmental impact statement is therefore required. Adverse impacts on natural resource systems such as earth and air will be temporary and related to construction. Noisy construction activity will be restricted to weekdays. The projected noise level will not exceed or be noticeable as against the present noise level from traffic and human activity, such as the adjacent school playground activity. The "permanent" impacts will be of no more than a moderate effect.

5. The proposed structure will primarily consist of a renovated former dormitory building that will be smaller in scale than the adjacent apartment complex and school. Extensive setbacks and landscaping will complement the development. The smaller single family dwellings south of 130th are oriented away from the proposal site. Some have fencing which also detracts from the visual presence of the proposal structure. Although these homes could experience light and glare impacts from automobiles exiting the proposal site, the impacts would be fleeting and minor. Further, on-site perimeter fencing is required to reduce lighting impacts.

6. Impacts on vicinity parking would be insignificant. The weight of the evidence shows that no parking shortage presently exists in the vicinity. Applicant will provide 36 on-site spaces. The present 29% utilization could be raised to 59% if buildings nearby are constructed as proposed and if the car vehicle ownership pattern is 1.5 vehicles per those newly constructed units. Off-street spaces would be required for the new proposals. Off-street spaces are also presently available at the Community Center and at the elementary school. In the event of simultaneous events, each of the "institutions" would therefore be able to bear some portion of its own parking need. Treatment Center residents are not allowed to have cars at the site.

7. The proposal will not significantly impact the level of service at the nearby intersection of 130th and Greenwood Avenue. Of the 180 daily vehicle trips expected to be generated by the proposal, only 9 are expected to occur during the morning peak

and only 11 during the afternoon peak. Improvement to the signalization are expected to be completed in 1988. Further, street improvements are required as conditions, to be consistent with those of an adjacent development. There is no indication that the nature and frequency of traffic expected to result from the proposal will affect local traffic flow to more than a moderate degree. There is no evidence that the project will significantly impact police, fire or other public services.

8. As DCLU has conditioned the project, no EIS is required and a determination of nonsignificance is appropriate. No further conditions pursuant to S.E.P.A. are shown to be warranted.

9. An administrative conditional use is required to allow the proposed institution to be located less than 600 ft. from another institution. Seattle Municipal Code Sections 23.45.90; 23.45.102; 23.45.122. The categories of criteria at Section 23.45.122 include (A) Bulk and Siting, (B) Dispersion and (C) Noise and Transportation.

10. The proposal calls for a landscaped lot, and a relatively minor addition to the existing building which is smaller than the adjacent non single-family uses and substantial setbacks. Visual and physical separation from the proposal will also be presented by the 130th street separation and by orientation of the single family homes away from the proposal site.

11. Although the siting fails to meet the 600 ft. distance separation, the environmental analysis shows that the proposal will result in the "creation or aggravation" of no parking shortage or traffic congestion. The noise impact on residential uses will be minimal. DCLU has conditioned the proposal so that solid fencing will surround the project recreation area. There are restrictions on the hours of outdoor recreation use. The recreation area (and the new wing) will be sited northwest of the structure, away from the single-family homes that are south of 130th.

12. DCLU has generally approved the applicant's transportation analysis and plan, and the record reflects no reason to reverse that action. Specific worst case projections relative to parking have been made and are, in the Hearing Examiner opinion, generous. Peak hour trips of 9 (morning) and 11 (afternoon) will have no special bearing on the vicinity traffic pattern. The record shows that parking overflow could be easily accommodated within the Seattle Engineering Department's standard 800 ft. radius. Conditions have been imposed to reduce the impact of headlight glare and to improve the street.

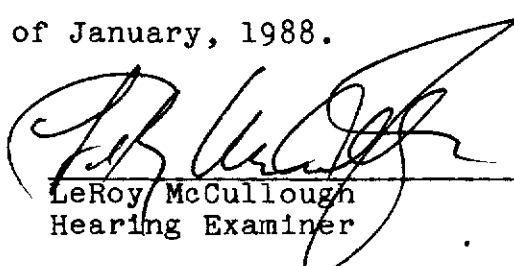
13. Appellant group does not dispute that the program is needed, but challenges the siting. The Hearing Examiner concludes that the use, with proposed siting, will be of no "material detriment" to the vicinity. An elaborate screening, programing, and security system will minimize opportunities for damage to the environment by treatment center residents. Residents will have no money, cars, radios or televisions. As noted earlier, the Hearing Examiner cannot find that the Broadview Elementary school population will be harmed by the siting and operation of the program.

14. Certain positives can be expected from the siting, including re-use of an existing, abandoned facility by a needed program that will enhance sensitivity to the general nature of the problem sought to be addressed. For maximization of these benefits, applicant shall make arrangements to receive and positively respond to advisory group input. The advisory group shall be composed of at least one representative from the adjacent elementary school, from the school PTA, from the Broadview United Church of Christ and one from appellant group member or representative. The group should be encouraged to offer recommendations on program operation and improvement. Except as modified hereby, the DCLU decision is affirmed.

Decision

The DNS is affirmed. The administrative conditional use is affirmed as modified.

Entered this 29th day of January, 1988.


LeRoy McCullough
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.