

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

ROOSEVELT NEIGHBORS ALLIANCE

FILE NO. MUP-89-030(W)  
APPLICATION NO. 8701394

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

#### Introduction

The Roosevelt Neighbors Alliance appeals the determination by the Director, Department of Construction and Land Use, that the environmental impact statement for the Lee Plaza proposal at 4746 11th Avenue N.E. is adequate and the failure to deny the application or impose additional conditions.

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 July 25 and 27, 1989.

Parties to the proceedings were: appellant, Roosevelt Neighbors Alliance, represented by Karen Schmidt, president, and other members Harold Hemke, Hans Aschenback and Philip Thiel; the Director, Department of Construction and Land Use, by Cheryl Waldman, land use specialist, and the applicants, Joseph and Penelope Lee, represented by Robert Baronsky, Beresford, Booth, Baronsky & Trompeter, and C.M. McCune, McCune, Godfrey, Emerick & Marshall, P.S.

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 applied for a master use permit to demolish three single family residences and one duplex and to construct Lee Plaza, a mixed use building, at 4746 - 11th Avenue N.E. The Director, Department of Construction and Land Use ("Director") issued a determination of significance and an environmental impact statement (EIS) was prepared. The Director then issued a decision approving the proposal subject to certain conditions. Appellant filed this appeal challenging the adequacy of the EIS and the failure of the Director to impose additional mitigating conditions.

2. The site of the proposed project is a parcel zoned Neighborhood Commercial 3 (NC3 65') on the southeast corner of the intersection of 11th Avenue N.E. and N.E. 50th. The site abuts an alley in the rear.

3. The proposed building would be five stories high consisting of one level for retail and office use and four for residential use. There would be 40 dwelling units, 15 with one bedroom and 25 with two bedrooms. Parking for 51 vehicles is to be provided in a basement garage and for 14 off the alley.

4. The site of the proposal is at the north edge of the NC3 65' zone. It is separated from the Lowrise 3 zone by N.E. 50th Street which has a 60 ft. wide right-of-way and four lanes for

travel.

5. The EIS did not directly document the visual/aesthetic characteristics of the surrounding neighborhood and that to the north because, as it explains, the scoping process did not identify negative impacts on visual/aesthetic character. Exhibit 2, p.77.

6. The EIS does allow the reader to assess the general character of the area from Figure 13, Neighborhood Land Use, (Exhibit 1, p.24) which shows that development along 11th Avenue N.E. north of N.E. 50th is largely single family along with two apartment buildings, one three stories high, and the fire station. Further, the final EIS (Exhibit 2, p.39) in Figure 1, supplied by Hans Aschenbach in his comment, shows the actual heights of the structures on 11th N.E.

7. The Aschenbach figure in the EIS shows that only one building is four stories tall, six are three stories, four are 2.5 stories, seven are two stories, one is 1.5 stories and two are one story tall. Exhibits prepared by appellant show a similar profile.

8. The proposed building will be higher and bulkier than existing buildings nearby on N.E. 50th and 11th N.E. There are buildings in the greater area taller than the proposal such as an 11-story Seattle Housing Authority building at the south end of the block to the east and the 22-story University Plaza condominium to the southwest.

9. The north facade of the proposed building is approximately 41 ft. to the top of the fourth floor and 50-51 ft. to the top of the fifth floor which floor is to be set back 9 ft. from the north edge of the building.

10. The height standard for buildings in the Lowrise 3 zone to the north is 30 ft. under the interim standards. The building immediately north of site in the L-3 zone is a two-story duplex. That site could be redeveloped under current development standards with a building 30 ft. high. The difference then between the height of the proposed building and a building that could be constructed under the interim standards would be approximately two stories.

11. The structures in the two zones would be separated by the right-of-way of N.E. 50th Street of 60 ft. plus building setbacks.

12. The Director imposed a condition requiring certain design changes to mitigate the effect of the north wall and create more of a transition in height between the zones. The condition is:

1. The owner and/or responsible party(s) shall submit revised plans to the Land Use Review section. The revision shall modify the north facade with a series of 2 ft. deep modulations, some of which step down the building with the slope of the site, in order to reduce the bulk and apparent height of the building in relation to the Lowrise-3 zone across NE 50th St.

To further reduce the apparent height of the structure, and to differentiate the commercial uses from the residential use, the proposal is further conditioned to provide a masonry exterior material (such as brick or tile) at the first floor "base" of the building. The Land Use Review Section shall approve the revised plans and proposed materials.

13. Philip Thiel, professor of architecture and urban design at the University of Washington, offered his opinion that that two feet deep modulations, paint accent and change in exterior finish can suggest different uses but the perception of reduced dimensions is not supported by scientific evidence. He acknowledges that the patterning may affect perceived scale.

14. The separation due to the street right-of-way lessens the effect of the height and bulk and helps with the transition.

15. As redesigned to comply with the condition of approval No. 1, the north facade would have modulations stepping up the slope, balconies, 2 ft. setbacks to the south above the commercial level and at two more levels below the larger setback for the fifth floor.

16. The project architect showed through computer-generated drawings (Exhibit 23) that stepping the fifth floor back 21 ft. instead of the proposed 9 ft. would have little effect on the appearance of height or bulk from directly across N.E. 50th and from a point on 12th Avenue N.E.

17. The project architect opined that the stepping back which changes the blockiness of the facade also gives the perception of a smaller building.

18. A witness for appellant speculated that the CAP initiative would reduce demand for "close in" housing and services and that decentralization of the University of Washington would reduce demand for housing and services in the University District so, he argued, any assumption that future development to the maximum potential would mitigate the impact of the proposed scale of the building is fallacious.

19. Professor Thiel cites a text by an architect with special interest and information base in architectural scale, Heath Licklider, who, in discussing relationships, points out that the more divisions used, the larger a building appears. Exhibit 33.

20. The Hearing Examiner finds that the north facade, even as modified by the Director's conditions, will still represent an abrupt change in height at the edge of the NC3/L-3 zone.

21. Appellant noted that the EIS fails to disclose the relationship of the project to several of the Neighborhood Commercial Areas Land Use Policies and misapplied others. Those not discussed were goals A.7, indicating a preference to preserve and improve existing commercial areas over creation of new business districts; B.3, encouragement of commercial concentration rather than sprawl; and B.9, "provide for a transition in scale and use between residential and commercial areas, buffering residential areas from the impacts of heavier commercial uses, wherever possible." Contrary to the conclusions in the EIS appellant finds that: the integrity of the adjoining neighborhood would be threatened (A.2); the proposal does not encourage reducing impact of automobile use (A.10); the pedestrian character of the area is not promoted (A.11); the landscape and design does not create a "pedestrian-friendly" streetscape (B.7); and instead of preserving the distinctive character of the neighborhood and business, the proposal is undermining the character by its scale (B.12).

22. The EIS states that the University District is classified as a carbon monoxide (CO) non-attainment area, though the number of days in violation of the standard has diminished over the last 10 years and the CO concentration has been decreasing due to emission standards for vehicles. The document does identify that the traffic generated by the proposal will affect the CO level but points out that the change would be so minor as to be undetectable since the traffic associated with project would represent around three percent of the cumulative peak hour traffic from the new projects identified in the EIS.

23. Appellant's witness disagreed with the statement in the EIS that CO emissions from 395 trips would not be measurable since her information is that emissions from 500 trips would measure .5 P.P.M. The actual language in the EIS is that the change in air quality would be "probably undetectable," referring to a number of traffic-related air pollutants. Further, she points out that the EIS acknowledges that there would be a reduction in traffic speed from the cumulative impact of projects which it recognizes could worsen air quality.

24. The Puget Sound Air Pollution Control Agency did not comment on the draft EIS.

25. The EIS projected traffic generation for the proposed 40-apartment units, 3,500 ft. of retail space and 2,700 ft. of office space to be 440 daily trips and 50 p.m. peak trips. The median value of the ITE trip generation range was used for the analysis. The traffic actually added to the streets is expected be 395 daily trips with 44 during the p.m. peak.

26. The EIS evaluated the cumulative impact on traffic from the proposed Lee Plaza plus seven other projects proposed for development by 1990 adding 1,439 p.m. peak trips. Of those, two projects have been abandoned which would reduce the total trips by 544 or 37 percent. Since traffic from those proposals is used in the analysis, the cumulative impacts are overstated.

27. Nineteen ninety was used as the horizon year for the baseline since, at the time of the traffic analysis and preparation of the draft EIS, the project was expected to be occupied by 1989 or 1990 and thus that would be the existing condition to which the traffic would be added.

28. The traffic projections assumed a growth rate of one percent for background traffic, i.e., growth from other than the projects identified for the cumulative analysis. This rate was used on instruction from the Seattle Engineering Department. A rate of two percent had been used for the analysis of traffic in connection with the University Center proposal but this was adjusted by the Engineering Department to reflect the addition of completed projects to the baseline data, as explained at p.61 of the final EIS.

29. The EIS described the street system in the area, the volumes of traffic on the streets and the levels of service (LOS) currently experienced at the intersections. The north-south one-way couplet is made up of Roosevelt Way N.E. and 11th N.E., two general principal arterials. Eleventh Avenue N.E. is striped for three lanes with parking restricted on the east side during the p.m. peak period. Northeast 50th Street is a principal arterial, with four lanes in the 40 ft. wide street and no parking. There are traffic signals at N.E. 50th and 7th N.E., N.E. 50th and Roosevelt Way, and N.E. 50th and 11th N.E. On N.E. 47th at 11th and at Roosevelt there are stop signs however those intersections are currently warranted for signalization.

30. The EIS shows weekday traffic volumes on N.E. 50th Street between 11th and Roosevelt to be 20,000. Eleventh Avenue N.E. carries 8,600 vehicles per day and N.E. 47th, between 11th and Roosevelt, 4,100 vehicles per day.

31. The traffic consultant independently calculated the LOS at the affected intersections which levels generally coincide with those from other studies. The EIS shows that traffic generated by the subject proposal alone would not change the LOS at the nearby signalized intersections.

32. The cumulative impact of the traffic from identified projects would cause the LOS at N.E. 50th and Roosevelt during the a.m. peak to decline from D to F unless the timing is changed as suggested in which case it would remain at D, and at N.E. 50th and 11th to decline from C to D during the p.m. peak unless a fourth lane is added in which case it would remain at C.

33. An LOS of D is considered acceptable by the Seattle Engineering Department. Two intersections in the area have unacceptable LOS, N.E. 45th and Roosevelt and N.E. 47th and Roosevelt.

34. Though the analysis and decision, Exhibit 6, mentions only the existing p.m. peak LOS for N.E. 50th and Roosevelt, which is C, the EIS does show that in the a.m. peak the LOS is D. This LOS would not be reduced in 1990 by addition of the project's traffic but would become F with the cumulative impacts from all the projects unless the timing changes were implemented.

35. The LOS on N.E. 47th at 11th N.E. and at Roosevelt Way during peak periods is presently F so, while the level would not change, the additional traffic from the project using those intersections would lengthen the delay.

36. Signalization of the two intersections on N.E. 47th is warranted at this time, according to the EIS. The addition of signals would improve the peak hour LOS from F to B.

37. The traffic analysis did not consider intersections north of N.E. 50th since the one-way couplet would assure that the traffic from the project would go through the intersections studied and southbound traffic from the uses to the north would be also considered.

38. The area's accident history for the three year period, 1984 to 1986, is recorded in the draft EIS. Statistics obtained by appellant for the period 1983 to 1988 and in the final EIS show the same or lower averages as those reported in the draft EIS. The intersection of N.E. 47th and 11th has had an average of 5.0 accidents per year, 11th and N.E. 50th, 8.0 and N.E. 50th and Roosevelt Way, 7.7. In 1986, the N.E. 50th and 11th Avenue intersection was a "high accident location" meaning it had 10 or more accidents. Midblock between 11th and 12th Avenues on N.E. 50th there has been an average of 3.0 accidents per year.

39. Various measures to mitigate the impacts of the project's traffic and the cumulative traffic impacts are listed in the EIS. Among the measures are adjustment of the timing of the signal at N.E. 50th and Roosevelt to provide additional green time for east/west movements, signalization of 47th and 11th N.E. to improve operating and safety conditions, dedication of 5 ft. along 11th and 50th to allow for future widening to provide a fourth lane on the 11th Avenue approach to N.E. 50th.

40. The Director's decision included conditions to mitigate traffic of contributing up to \$10,800 for installation of a signal at N.E. 47th and 11th Avenue and \$1,000 toward signal retiming at N.E. 50th and Roosevelt Way, and posting of bus schedules in the building lobby.

41. One concern of appellant's is that the traffic signals proposed for N.E. 47th may send traffic through the neighborhood lying west of Roosevelt. The fear is that traffic desiring to go to the I-5 freeway will avoid N.E. 50th and use N.E. 47th if signals are provided.

42. The EIS projects no trips generated by the proposed building west of Roosevelt on N.E. 47th. The traffic consultant does not believe that signalization at N.E. 47th and Roosevelt would change this because the street looks like a residential street and a driver would have to cross the traffic exiting the freeway at N.E. 45th heading north to get to the on-ramp at 50th after crossing N.E. 50th. The consultant acknowledged that there may be some impatient drivers who will choose to go to that effort.

43. Traffic exiting the site on 11th desiring to go west on N.E. 50th would need to cross two lanes during the p.m. peak and one the rest of the time, in a distance of approximately 150 ft. Periodic gaps created by a signal at N.E. 47th would aid this maneuver, according to the traffic consultant.

44. The alley is currently 10 ft. wide and is used for traffic both ways. As shown by Figure 13 in the draft EIS, it provides access to the rear of some 17 single family and duplex structures, an apartment building, a motel, a subaru lot, two restaurants and two businesses. trucks occasionally block the alley and the meeting of two vehicles requires one to pull into a driveway or back up. the traffic consultant estimated that there are 200 vehicle trips per day in the alley based on his peak hour observation in the summer. appellant's witness' suggestion that this observation does not lead to an accurate estimation of the traffic volume because the student population declines markedly in the summer has validity.

45. the projected distribution of trips generated from lee plaza shows some 80 trips using the alley, 50 north of the site and 30 to the south with 6 to the north and 3 to the south during the peak hour period.

46. the consultant stated that the alley has a capacity for 7,000 trips per day. that is assumed to be a theoretical capacity, but not an appropriate volume, for an alley of that configuration.

47. widening the alley is listed in the eis as a mitigating measure to enhance traffic safety. a special exemption has been granted by the seattle engineering department from the required 20 ft. width for the right-of-way and 18 ft. width for the pavement. the developer will add 8 ft. to the width of the alley on the west half from n.e. 50th to approximately 10 ft. south of ivar's loading area, a distance of about 50 ft., and 5 ft. to the west half for the remaining 100 ft. along the property.

48. for a symmetrical alley 20 ft. wide, an additional 5 ft. should be supplied by property owners on each side. the ivar's restaurant building on the east side of the alley has been built 4 ft. from the edge of the alley with utilities on the rear wall protected by concrete posts 2 ft. from the edge of the alley and an overhang to 1 ft. east of the edge of the alley. garages and other structures to the south, including the garage for the motel, were built to the edge of the alley.

49. the seattle street design manual states that a special exemption will be allowed where the alley does not have adequate right-of-way for standard pavement width "unless the developer...proposes 10 or more new parking spaces with access from the alley." Exhibit 10, p.30. The alley is to be used for access to all 14 proposed spaces, however the Seattle Engineering Department interprets the quoted text to apply to spaces from which cars must back directly into the alley and in this case that applies only to 10 of the spaces.

50. Widening the alley 8 ft. for the full length of the site would reduce the parking which could be provided by 3 to 5 spaces.

51 Two cars can meet and pass within a 15 ft. width.

52. Two utility poles within the alley will have to be moved at the applicant's expense.

53. Northeast 50th Street slopes down at a grade of 7.6 percent from 9th N.E. to Roosevelt, then is comparatively level to 11th N.E. and then rises up east of 11th at a grade of 5.6 percent. Harold Hemke has observed that there is a tendency to speed up to make both lights which may make exiting the alley, turning right from 11th to N.E. 50th, or turning into the alley hazardous. At 30 miles per hour it takes 2.2 seconds to travel from the intersection to the alley.

54. Thirty of the total trips per day from the alley are predicted to turn west on N.E. 50th.

55. The traffic consultant, who is a traffic engineer, does not see the left turn at this point to be a dangerous maneuver

but widening the alley will improve safety.

56. Street parking in the area is utilized to capacity with the utilization over 100 percent after 9:00 p.m.

57. The parking for the proposed structure required by the Land Use Code is 68 spaces reduced to 62 for the joint use of retail spaces during the evening hours. A total of 65 spaces, seven of which are tandem pairs, are to be provided.

58. The EIS projects no spillover parking from the project.

59. Office parking demand in the EIS was based on employee density of 4.0 employees per 1,000 gross sq. ft. and retail demand was based on the ITE "parking generation" manual. The Eastlake Corridor Transportation Impact Analysis, April 1986, assumed 3.5 employees per 1,000 sq. ft. with another .2 to .8 for customer services where some minor retail business is involved. Any disparity between these two approaches is such that the EIS is more conservative, i.e., assumes greater demand.

60. The applicant has proposed to close the retail businesses at 6:00 p.m. and the Director has imposed a condition requiring that closure to avoid overlapping of retail and residential parking.

61. Appellant believes that the condition requiring the retail uses in the building to close at 6:00 p.m. is unenforceable, based on a conversation with an Engineering Department counterperson, so is not capable of being accomplished. The witness has observed that conditions attached to another project have not been effective despite his complaints to the department.

62. No reason was shown why the condition could not legally be enforced.

63. A study of car ownership in the University District is to be undertaken this fall. Appellant urges that the application be held to include those results in the analysis.

64. The EIS does not identify the Agreement Between the City of Seattle and the University of Washington ("Agreement") and the Joint Statement of Goals and Policies of the City of Seattle and the University of Washington (Exhibits 19 and 20) as plans or policies which relate to the proposal. The relationship to the proposal is that the agreement discusses the congestion on the Montlake Bridge and states that the University and City will implement programs designed to reduce peak hour traffic on the bridge with the objective that there will be no increase over the Autumn, 1983 baseline survey data in University and non-University generated traffic to and from northeast Seattle during weekday peak periods.

65. Of the trips expected to be generated by the proposed project, only 10 vehicles would go eastbound on N.E. 50th and 45th during the p.m. peak and as many as two might use the Montlake Bridge. During the day the number could be higher since as many as 75 would head east from the site. The bridge now carries between 60,000 and 80,000 vehicles per day according to the consultant's recollection. No contrary datum was provided. Though the number likely to use the Montlake Bridge was not directly disclosed in the EIS, it can be estimated using Figure 22, p.57.

66. A fire station is located at the northwest corner of the intersection of N.E. 50th and 11th Avenue, cater-corner from the site. The Fire Department can control the signals on N.E. 50th for emergency access. The Fire Department did not comment on the draft EIS. In conversations with various station personnel the parties were given different information. The traffic consultant spoke with an Officer Spalding who thought the project would not affect their emergency vehicle circulation safety. The appellant's representative spoke with Captain Stevenson and Chief Burt who were not aware of the project and stated their belief that

the EIS is reviewed downtown and may have been overlooked. Both conversations disclosed concern about parking.

67. Appellant seeks additional mitigation or substitute conditions as follows: reduction of the proposed building to three stories with commercial/retail on the first story and residential on the second and third; widening the alley to 20 ft. for the entire length of the alley and accommodating any lost parking elsewhere on the site or, in lieu of widening the alley, to reduce the size of the building to eliminate all alley parking; immediate widening of the right traffic lane and east sidewalk on 11th Avenue N.E.; required provision of free transit passes to office and retail employees and subsidized transit passes to residents; reduction in the rent for residents without cars; requirement of maximum parking eliminating any credit for tandem parking spaces; payment the full cost of the traffic light at 47th and 11th; payment for additional stop signs and signing; requiring a covenant to run with the land for the reduced hours of retail operation; and the limitation on the office and retail use to exclude high traffic generators also in a covenant to run with the land.

#### Conclusions

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

2. An EIS is to provide "impartial discussion of significant environmental impacts and shall inform decisionmakers and the public of reasonable alternatives, including mitigation measures, that would avoid or minimize adverse impacts or enhance environmental quality." Section 25.05.400(2). The adequacy of an EIS is to be judged by the "rule of reason". Cheney v. The City of Mountlake Terrace, 87 Wn.2d 338, 552 P.2d 184 (1976). The rule of reason requires "a reasonably thorough discussion of significant aspects of the probable environmental consequences...." Trout Unlimited v. Morton, 509 F.2d 1276, (1283 (9th Cir. 1974)).

3. The decision by the Director that the document was adequate is entitled to substantial weight on review. Section 23.76.022C.7. The burden is upon the appellant to overcome that weight by showing the decision to be clearly erroneous. Brown v. Tacoma, 30 Wn.App. 762, 637 P.2d 1005 (1981).

4. Appellant has failed to show that the Director's determination as to the adequacy of the document was in error. Appellant did not show that the impact of the buildings bulk and scale on visual/aesthetics would be significant and therefore was required to be analyzed in the document, though there is information in the eis on which a judgment about the effect can be made. appellant showed a difference of opinion as to the application of the goals in the neighborhood commercial areas land use policies but a difference of opinion is not proof that the disclosure was not reasonably thorough. no error was proven in the disclosure as to air pollution or parking. the disclosure of the traffic impacts from the project and the other known projects was also shown to be reasonably thorough. appellant disagreed with some of the methodology, the assumptions used and the conclusions but it did not prove them to be clearly erroneous. as to the allegation of error due to failure to analyze impacts from the proposed signals on n.e. 47th, those signals are warranted by the traffic from other projects and therefore any change in traffic circulation would not be a result of this project.

5. Appellant seeks a remand of the document to allow for comment by the Fire Department but Section 25.05.545(1) directs the lead agency to assume that the consulted agency has no information if it does not submit a written comment. Moreover, the oral comments of Fire Department personnel to the parties do not show any impact on Fire Department operations.

6. As the significant aspects of the probable adverse



impacts have been reasonably thoroughly discussed, the document is adequate under the rule of reason.

7. The Director has authority to condition the proposal to mitigate adverse environmental impacts that have been disclosed in the EIS based on policies, plans, rules, or regulations designated in Section 25.05.902 as bases for the exercise of that substantive authority. Section 25.05.660. The mitigation measures must be reasonable and capable of being accomplished and the responsibility for implementing the measures may be imposed only to the extent that of the impact is attributable to the project. The proposal may be denied under this authority only if the EIS discloses significant adverse impacts and reasonable mitigation measures would be insufficient to mitigate the impact. Section 25.05.660.

8. Since no adverse impact on parking from spillover was disclosed in the EIS, no additional parking mitigation can be imposed.

9. With the exception of the alley, the impacts on traffic circulation from the trips generated by the proposed structure and uses would have negligible effect on the environment so conditions beyond those already imposed would not be reasonable.

10. As to the alley, the increase over the estimated existing volume of traffic is proportionately very great. It is very minor in proportion to the theoretical capacity of the alley, however. Because the 18 ft. width would allow for adequate room to turn into the alley and to pass loading trucks, and the 15 ft. width would allow two cars to pass, requiring additional widening along the remainder of the subject site would not be reasonable. Requiring the applicant to acquire additional right-of-way south of his property would also not be reasonable. Moreover, the evidence showed that the alley to the south would be used less than that to the north. For those reasons no additional condition for the alley is warranted.

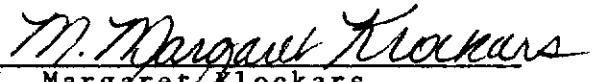
11. The record does show that there is an inadequate transition in height between the proposed structure and that which could be built in the adjacent, lower intensity zone. The City Council has determined that mitigation of height, bulk and scale is appropriate only when there are unusual circumstances which would not have been contemplated in establishing the zoning or when the zoning does not provide for adequate transition between the zone and a zone of lesser intensity. Oden, CF 293557 (1985). The authority for a condition to create that transition is found in the Neighborhood Commercial Areas Land Use Policies, Goal B.9. p.23-74.2. Because there is an impact which can be identified in the EIS and authority to mitigate the impact, a reasonable condition should be imposed. The Director has imposed measures to alter the perception of the bulk and height. The record shows, however, that the mitigating measures imposed will make the northern facade more interesting but are unlikely to provide for transition. Requiring the removal of two stories, as requested by appellant, is more than is necessary for transition. Further stepping back of the floors would reduce the appearance bulk and height on the north side with a lesser loss of floor area. Therefore, a condition should be imposed to require a setback at the fourth floor level of no less than 9 ft. with another setback of no less than 9 ft. for the fifth floor. The number of parking spaces may be adjusted if the number of required spaces is changed due to any loss of units as long as no spillover would result.

#### Decision

The determination by the Director that the EIS is adequate is affirmed. The conditions of approval are modified to eliminate Condition Prior to Issuance of Master Use Permit No. 1, and Condition Prior to Occupancy No. 2, and to substitute as Condition No. 1: The owner and/or responsible party(s) shall submit revised plans to the Land Use Review section showing

modification of the north facade with a step back of no less than 9 ft. at the fourth floor and a second step back of no less than 9 ft. at the fifth floor.

Entered this 8<sup>th</sup> day of August, 1989.

  
M. Margaret Klockars  
Deputy Hearing Examiner

CONCERNING FURTHER REVIEW

Pursuant to Seattle Municipal Code Section 23.76.024, 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, 5th Floor Municipal Building, 684-8322. 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 23.76.024, 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 City Council appeal.

If no appeal is taken to the City Council, 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. 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. See Chapter 43.21C, RCW and Chapter 25.05, Seattle Municipal Code.

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 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, Room 1320 Alaska Building, 618 Second Avenue, 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.