

FINDINGS AND DECISION

RECEIVED

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE DEC 13 1989

In the Matter of the Appeal of

JOHN W. BERTI

FILE NO. MUP-89-061(W)  
APPLICATION NO. 8901317

SEPA  
PUBLIC INFORMATION CENTER

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

Introduction

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 November 30, 1989.

Parties to the proceedings were: John W. BERTI, the appellant, appearing personally, the Director of the Department of Construction and Land Use (DCLU), appearing by his representative, Susan Kunimatsu, and Golden Stream Co., Ltd., the applicant, appearing by its representative, Howard Dong.

This document and all Section numbers refer to the Seattle Municipal Code.

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 for this appeal.

Findings of Fact

1. The project is at 6040 California Avenue S.W.

2. A master use permit was issued by the DCLU to demolish two single-family residences and an office building at the project site and to replace them with a mixed use four-story building having twenty-five apartment units, approximately 4,647 square ft. of office space, and thirty-one parking spaces. The proposal site is zoned Neighborhood Commercial 2, 40 ft. height limit (NC2/40). It rests within a NC2/40 zoning area one block long and one-half block deep on either side of California Avenue. Fauntleroy Way lies two blocks east from the proposal site, the property along either side of it for approximately two blocks having L-2 zoning. Fauntleroy Way and California Avenue intersect approximately one-and-one-half blocks south of the proposal site, Fauntleroy having changed from a north-south course at Graham to a southwest-northeast curve. Two blocks of land zoned Single Family 5000 (SF 5000) lie between the California NC2/40 and Fauntleroy L-2 strips. The SF 5000 area is immediately adjacent to the proposal site on the east.

3. The DCLU issued a Determination of Nonsignificance (DNS) with conditions on October 5, 1989. The permanent conditions are set forth verbatim:

To minimize traffic and parking impacts on the surrounding community, the owner(s) and/or responsible party(s) shall include all charges for on-site parking in the sale price or rental fee for each residential unit, and shall provide complimentary parking to customers of the on-site business(es). No additional parking fees shall be charged. Each residential unit shall have one parking space reserved for the residents' use after 5:00 p.m. and on weekends. Signs shall be posted designating reserved spaces and times.

A sample copy of the lease or sales agreement stating these terms shall be submitted to the Land Use Division for inclusion in the file.

To mitigate height, bulk and scale impacts on the adjoining residential zone, the owner(s) and/or responsible party(s) shall maintain the rear setback at the fourth level and the landscaping along the rear lot line as shown on the approved MUP plans dated August 4, 1989, sheets (1) through (4) inclusive.

4. The document initiating the appeal was filed October 19, 1989. The issues are summarized in that document's second paragraph:

In its revised, proposed form, the project is ill-conceived for this location due to ineffectual mitigation of a) spillover parking b) alley ingress/egress, and c) traffic increases on side streets, all of which will profoundly impact the adjacent residential community. In addition, the DCLU has failed to evaluate master use permit number 8901317 within the larger context of the multi-family construction boom along the California Avenue S.W. and Fauntleroy Way S.W. arterials and the long term effects this development will have on the entire residential community. (sic)

5. The Analysis and Decision of the Director with respect to the application was received in evidence. It acknowledges the project will cause increased pressure on the adjacent residential area for traffic and parking. The Director's representative contends the project's effects have been mitigated to the extent possible and that the proposal as now mitigated is consistent with the requirements of the Seattle Municipal Code and enacted environmental policy.

6. DCLU, using data from an Institute of Traffic Engineering study, estimated that the project will generate an average of 153 vehicle trips each weekday, including seventeen trips an hour during the evening and rush hour. This estimate assumed that the commercial use would be for retail stores, an assumption that is consistent with other commercial establishments in the area. Retail use causes more traffic than administrative offices, but less than customer services, such as a restaurant. Zoning requirements for the project site would exclude a restaurant. The project would cause an estimated average of 342 trips each day, including 39 peak hours trips a day. There was no evidence of traffic caused by the existing development on the site. The appellant objected to the study because it was dated and assumed that commercial use would not use extend past 5:00 p.m. DCLU maintained traffic patterns have not measurably changed since the study was done. They also testified that the usual retail hours were assumed in projecting traffic effects after 5:00 p.m., that is, the stores would not all close at 5:00 p.m. but that some would remain open later.

7. The study used by the DCLU to estimate the effect on traffic by the project takes into account recent development in the area of the proposal site. It is based on data collected at a time and under conditions that allow accurate estimation of the traffic load that will exist when the project is completed and its facilities used.

8. Existing streets in the area can accommodate the added traffic without significant difficulty.

9. In the area of the project, California Avenue and Fauntleroy Way are major arterials.

10. The appellant contended that the alley should not be used to enter or leave on-site loading and parking facilities. He requested that as a mitigating condition vehicles be required to use a California Avenue passage. California Avenue is a main arterial in the area. Creating an entrance to parking and loading facilities off California would require a driveway across a sidewalk and would empty into the arterial between intersections.

11. The adjacent streets are not at capacity for parking. The project would not subject the adjacent streets to such increased parking that 85 percent of the available parking would be filled. The projections for parking effects submitted by the DCLU accurately measures the availability of parking in the adjacent area. Many residents in the adjacent area frequently park illegally in front of their homes on the grass strip off the streets. They do this for reasons other than the absence of legal parking within reasonable walking distance of the house.

12. The project will cause increased traffic between California Avenue and Fauntleroy on cross streets. Existing streets will adequately absorb increased traffic caused by the project. The appellant has requested as a further mitigating condition that a traffic circle be installed at the intersection of S.W. Raymond Street and 41st Avenue S.W. to slow or deter cross-street traffic. Although DCLU has acknowledged that traffic in that residential area warrants the use of a traffic circle, the volume of traffic there is not so extensive that DCLU may not observe budgetary constraints in deciding whether to construct the circle. Traffic circles slow or deter traffic, but they also impede fire protection vehicles.

13. Vehicles leaving the parking area from the project at night will cast their headlight beams onto several homes immediately across the alley from the project.

#### Conclusions

1. The Hearing Examiner has jurisdiction over this matter and these parties.

2. The declaration of nonsignificance is not contested per se; challenges the adequacy of the conditions imposed relating to traffic and parking. Issues of height, bulk and scale were not raised by the appeal. The issue of density was raised for its effect on parking and traffic volume, as was excessive glare.

3. The mitigating condition that requires use of the alley rather than California Avenue to provide an entrance and exit from parking and loading facilities for the project is reasonable and proper. In this case it is preferable to route traffic for the project to the alley rather than from a main arterial between intersections and across a sidewalk. Glare will be present, but both noise and glare have been minimized by the mitigating conditions set out by DCLU. The routing required by DCLU is consistent with Section 23.16.020IV(h) and Sections 23.47.032(b)(1) and (d)(1).

4. The project is in accord with the applicable zoning requirements.

5. There will not be significant adverse effects on adjacent residential streets from increased traffic in that the existing streets in the area can absorb the increase without significant difficulty.

6. The mitigating conditions set out in the Director's Analysis and Decision reasonably take into account the adverse affects of the project on the surrounding area in the light of existing development. In determining mitigating conditions for this project, DCLU is not required to anticipate or speculate on the effect of unknown future development.

7. DCLU calculated the effect the project will have on off-site parking with reasonable accuracy. The number of spaces it required for on-site parking, and the configuration of the parking area, adequately mitigate traffic flow in the alley, glare on the adjacent residential areas, and the burden on off-site parking by vehicles from the project.

8. It is proper that consideration of mitigating conditions be limited to the requirements of Section 25.05.

9. The DCLU should not be required as a further mitigating condition to create a traffic circle at the intersection of S.W. Raymond Street and 41st Avenue S.W. It is proper for DCLU to determine priorities for the construction of traffic circles based on traffic volume, frequency of accidents, and budgetary constraints. These have been reasonably applied in this case.

10. The conflicts between residential and commercial use necessarily occurring at the boundaries of residential and commercial zones have been adequately resolved by the mitigating conditions for this project.

11. The assumptions made by DCLU in estimating the effects of the project on traffic and parking were reasonable.

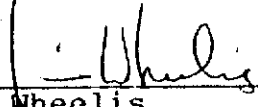
12. The mitigating conditions required by DCLU for this project are consistent with the policies enacted in Seattle Municipal Code Section 25.05. The Director's Analysis and Decision, and the determination of nonsignificance with mitigating conditions which it contains, must be given substantial weight by the Hearing Examiner. Section 23.76.022.C.7. It is the burden of the appellant to produce evidence showing the Director's decision to be clearly erroneous. Brown v Tacoma, 30 Wn.App. 762, 637 P.2d 1005 (1981). The appellant has not carried his burden of proof, having failed to supply evidence of sufficient weight.

13. The Director's decision should affirmed.

#### Decision

The determination of nonsignificance with mitigating conditions is AFFIRMED as issued.

Entered this 13<sup>th</sup> day of December, 1989.

  
\_\_\_\_\_  
Jim Wheelis  
Hearing Examiner Pro Tempore

#### 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.