

SUPPLEMENTAL FINDINGS AND DECISION
OF THE HEARING EXAMINER CITY OF CITY

In the Matter of the Appeal of

JOHN T. O'BRIEN

FILE NO. MUP-89-069(W)
APPLICATION NO. 8902051

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

INTRODUCTION

The appeal involved an appeal by the neighboring property owner, John T. O'Brien, of the approval of a master use permit application with conditions to allow construction of two single family residences in an environmentally sensitive area at 3201 and 3209 Cheasty Boulevard South.

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

On January 29, 1990, the above case was affirmed in part and remanded in part for further environmental evaluation on the issues of earth stability and cumulative effects.

The supplemental analysis and decision of the Department of Construction and Land Use was issued March 29, 1990. The record remained open for additional evidence from the appellant until April 23, 1990. No supplemental memorandum or evidence was submitted by appellant, and a supplemental hearing was not conducted.

Parties to the proceedings were: Appellant, John T. O'Brien, attorney representing himself and an unnamed group of neighbors; the Department of Construction and Land Use Director by Land Use Specialist Ed Somers; and applicant by attorney Sarah Mack.

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 subsequent visual inspection of the site and vicinity and the supplemental information, briefs and the Department of Construction and Land Use decision, the following shall constitute the findings of fact, conclusions of law and decision of the Hearing Examiner on this appeal.

FINDINGS OF FACT

1. Applicant proposes to construct two single family residences in an area designated as environmentally sensitive. The Department of Construction and Land Use (DCLU) approved the master use permit and issued a determination of nonsignificance (DNS) with conditions. This Hearing Examiner Pro Tempore issued a decision on January 29, 1990, affirming the DCLU decision in part and remanding it in part on the issues of earth stability and cumulative effects. A supplemental analysis and decision of DCLU on the issues of earth stability and cumulative effects was issued on March 29, 1990. Construction-related conditions were attached to the permit pursuant to the State Environmental Policy Act (SEPA). Appellant, a neighbor of the proposal site, objects to the project as currently approved by DCLU.

2. The proposal site consists of two lots, rectangular in shape, located south of Hanford Street and west of Cheasty Boulevard South. The site is legally described a "Lot 1 and 2, Block 1, Cheasty Boulevard addition to Seattle..."

3. The subject lots are located south of Cheasty Greenbelt in an area that is designated as environmentally sensitive due to landslide potential. Seattle Municipal Code 25.05.908.

4. The general area of the proposal has had two landslides, which occurred in 1973 and 1986. The 1973 landslide was north and downslope of the intersection of Spokane Street and 24th Avenue South. The 1973 landslide occurred in an area of extensive groundwater. (Supplemental DCLU decision). The 1986 landslide was 200 feet south of the intersection of Spokane Street and 24th Avenue South. The 1986 mudflow resulted from a saturated illegal fill of a ravine. (Supplemental DCLU decision.)

5. The subject lots do not have either condition that led to the 1973 and 1986 landslides. The lots have neither an illegally filled ravine nor extensive groundwater. (Supplemental DCLU decision).

6. The record remained open until April 23, 1990 for additional evidence from the appellant. No supplemental memorandum or evidence was submitted by appellant following the supplemental DCLU decision.

7. Construction would need to accord with DCLU Director's Rule 2-87 (Exhibit 9), with Condition 2 of the DCLU decision and with the Grading and Drainage Ordinance. (Title 22, Subtitle VIII of the Seattle Municipal Code.)

8. The supplemental DCLU decision noted in the section on earth-related impacts that "...the geotechnical report, as supplemented by the September 15, 1989 letter and the February 12, 1990 letter, satisfactorily addresses all factors contained in the Site Evaluation Checklist, including items II(K) (landslide history) and III(A) (site stability and slide risks)..."

9. The supplemental DCLU decision also noted that "...future compliance with the requirements contained in Director's Rule 2-87 will constitute adequate mitigation of possible impacts to earth stability ... additional mitigation conditions are not warranted."

10. Director's Rule 2-87 governs development in potential slide areas. It requires submission of a geotechnical soils report prior to construction and special inspections during construction. It also includes a checklist that references items that should be contained in the geotechnical report, including II(K) landslide history and IIIA relative risks and slide potential to abutting land.

11. The drainage control plan for the alley is to collect run-off in a catch basin and siphon and run-off to a storage basin that would release the run-off at a rate controlled by the diameter of the opening in the pipe which connects to the existing city drainage system. The drainage plan for the roof would be similar to the alley in that all run-off would collect at one downspout that would release the run-off into the city drainage system.

12. The supplemental DCLU decision noted that there would be no significant negative cumulative effects because the site of the proposed multifamily project located at 2905 25th Avenue South "...has been purchased by the City for inclusion in the Cheasty Greenbelt system...[and] the cumulative impacts of new development in the area are expected to be minimal. The proposal for construction of two single-family residences does not, even when considered in conjunction with other single-family development in the area, present a likelihood of significant adverse cumulative impacts."

13. There was no specific testimony or evidence presented on any other identifiable new developments or proposals in the Cheasty Greenbelt area. No other addresses, other than the

present site and the multifamily projects, of any proposed developments were presented.

14. The DCLU restated the conditions in its supplementary decision as follows:

During Construction

The following conditions to be enforced during construction shall be posted at the site in a location on the property line that is visible and accessible to the public and to construction personnel for the street right-of-way. If more than one street abuts the site, conditions shall be posted at each street. The conditions will be affixed to placards prepared by DCLU. The placards will be issued along with the building permit set of plans. The placards shall be laminated with clear plastic or other water proofing material and shall remain posted on-site for the duration of the construction.

1. The order to further mitigate the noise impacts during construction, the owner(s) and/or responsible party(s) shall limit the hours of construction to between 7:30 a.m. and 6:00 p.m. on non-holiday weekdays.

2. In order to reduce potential drainage soils impacts, the impervious surface coverage (driveways/-parking) shall not exceed that which is shown on approved plans.

15. Appellant raised one general issue and five specific issues in his November 14, 1989 appeal letter. Those issues were as follows:

The DCLU DNS decision; notice; traffic at 25th S. and S. Hanford; disregard of a 48 unit project "down the block;" and basing the proposed project on the research of experts hired by the applicant.

The issue on remand was the DCLU DNS decision and whether that determination should be reversed in light of additional evidence relative to earth stability and drainage and cumulative effects of simultaneous developments.

CONCLUSIONS

1. The Hearing Examiner has jurisdiction of this appeal pursuant to Chapter 23.76, Seattle Municipal Code.

2. The Hearing Examiner must give "substantial weight" to the DCLU decision on this environmental matter. Seattle Municipal Code Section 23.76.022C.7. To overcome this deference the appellant must show that DCLU decision is "clearly erroneous" Brown v. Tacoma, 30 W. App. 762, 637 P. 2d 1005 (1981).

3. The specific environmental policies of Seattle Municipal Section 25.05.765 include such categories as air quality, construction impacts, height, bulk and scale and others. DCLU must review each of these environmental policies to determine whether the proposal has a probable significant adverse environmental impact. SMC 25.05.330 A1.2.

4. The substantive issue, the DCLU determination of nonsignificance as it relates to earth stability and drainage and cumulative effects of simultaneous developments, was remanded to DCLU on January 29, 1990.

5. The original DCLU decision and supplemental decision indicated that the environmental checklist (Exhibit 5) and Director Rule 2-87 was considered. The 1973 and 1986 landslides were analyzed and the conditions that caused the two landslides

were not found on the subject lots. Essentially the two landslide sites were distinguishable from the subject lots, because neither of the conditions that caused the two landslides is at the subject lots.

6. The proposed drainage control plan as presented would intercept, store and then release the run-off at a controlled rate from the paved alley to the existing city drainage system. When the drainage plan was considered in conjunction with the two landslides, it was determined by DCLU that no additional mitigating measures were required because the drainage plan together with condition #2, contained in both the original and supplemental DCLU decision, would limit the impervious surface coverage and the drainage plans would meet the drainage needs of the subject lots. SMC 25.05.675 C and D.

7. In addition, condition #2 set forth in the DCLU decisions should ensure that the drainage control system, remain adequate.

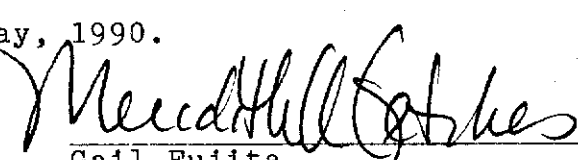
8. Regarding the cumulative effects of simultaneous development, SMC 25.05.670 provides that a project which by itself does not create undue impacts on the environment may create undue impacts when combined with cumulative effects of other developments. The evidence of the record does not indicate specific developments, other than the multifamily development. That development will not be built. DCLU determined that even considering other, nonspecific single-family developments in the area, there would not be a significant adverse cumulative effect.

9. In light of the fact that appellant did not present any additional evidence or submit a supplemental memorandum, the Hearing Examiner concludes based upon the credible evidence presented that the impacts of the proposal were not significant and adverse. Therefore, the Hearing Examiner concluded that an Environmental Impact Statement is not required. SMC 25.05.340.

DECISION

The decision of the Director, Department of Construction and Land Use, is Affirmed.

Entered this 9th day of May, 1990.


Gail Fujita
Hearing Examiner Pro Tempore

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 23.76.022(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 written 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 encourage 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.