

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

In the Matter of the Appeal of

LAKE CITY COMMUNITY COUNCIL

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

Hearing Examiner File:
MUP-90-037(W)

MUP Application: **9000893**

Introduction

Appellant exercised the right to appeal pursuant to Chapter 23.76, Seattle Municipal Code.

This matter was originally scheduled to be heard on August 21, 1990. Appellant requested and was granted a continuance to allow the parties to negotiate a settlement. In response to the Hearing Examiner's request for a status report in January 1992, the applicant requested that the matter be set for hearing. On March 9, 1992 the appellant requested an indefinite continuance. This request was denied.

Present at the proceeding were: the appellant, represented by Jordan Brower; applicant Ackerley Communications by its attorney Kevin Swan; and the Director, Department of Construction and Land Use, by Art Ward, land use specialist. The record was closed on May 5, 1992, following the Examiner's inspection of the site and surrounding vicinity.

For the purpose of this decision, all section numbers refer to the Seattle Municipal Code (SMC) unless otherwise indicated.

After due consideration of the evidence elicited during the hearing and as a result of the personal inspection of the subject property and surrounding area by the Hearing Examiner, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner.

Findings of Fact

1. The subject property is addressed as 11717 Lake City Way NE and is located on the west side of the street between NE 117th Street and NE 120th Street, in the Lake City neighborhood.

2. The applicant, Ackerley Communications, seeks a Master Use Permit to erect and maintain an externally illuminated single-faced sign on an existing billboard having an overall height of 33 ft. The proposed second sign face, measuring 12 ft. X 24 ft., with the message facing toward traffic traveling north on Lake City Way NE, would be added to the existing billboard which has a sign face oriented toward traffic traveling south.
3. Both sides of Lake City Way NE in the vicinity are zoned for and developed with commercial uses. Lake City Way NE is a busy arterial with a right-of-way width of at least 100 ft. The subject site is zoned Commercial One, with a 40 ft. height limit (C-1/40). There is a fast food restaurant located in the southern portion of the property.
4. Thornton Creek, which is located approximately 15 ft. north of the billboard, flows from the northwest, under Lake City Way NE, to the southeast. The billboard is on the creek bank, approximately 20-25 ft. above the creek itself.
5. The Director of DCLU issued a Determination of Non-significance (DNS) declaring that the project would not have a significant adverse impact upon the environment and that no environmental impact statement (EIS) is necessary.
6. Appellants appeal the DNS, asserting that there will be adverse impacts relative to light and glare, proliferation of signs, and blockage of views and aesthetics. At hearing, the representative for appellant indicated that there could also be impacts to Thornton Creek.
7. Proposals may be conditioned or denied under the City's SEPA Ordinance (SMC 25.05) subject to several limitations including: conditioning or denial must be based on policies, plans, rules or regulations formally designated as bases for the exercise of substantive authority; mitigation measures must be related to specific, adverse environmental impacts clearly identified in an environmental document; and, mitigation measures must be reasonable and capable of being accomplished. (SMC 25.05.660.A)
8. The City's SEPA Ordinance provides that proposals may be conditioned or denied in order to protect certain views from along the scenic routes identified in "Exhibit 1, Attachment 1" of the Ordinance.
9. Lake City Way is designated in "Exhibit 1, Attachment 1" as a scenic route but there are no views of any protected scenic features in any direction from or through the subject site.
10. SMC 25.05.675K provides that projects can be conditioned or denied based upon adverse impacts due to light and glare.
11. There are no residences in the vicinity which could be impacted by the external

lighting proposed. The appellant asserts that there might be some adverse impact in the form of light and glare impacting drivers traveling on Lake City Way due to lights used on the sign itself if lights were used as part(s) of future advertisements. No information was presented as to the likelihood of lights being used in this way or, if they were, what the level of impact might be.

12. No SEPA policies were noted that address "proliferation of signs."

13. At hearing the appellant asserted that there might be some soil problem. The permit issued for the existing billboard contained a note "check soil condition" but no information was presented to define or clarify that remark. The appellant did not present information regarding soil type, erosion potential, slide history, structural problems, or any other geotechnical data that would suggest a basis for concern regarding soil impacts.

14. The Environmental Checklist annotated by the DCLU land use specialist was not in the DCLU file at the time of hearing. The Checklist, prepared by the applicant and then annotated by the DCLU land use specialist, was available in the file until the time of the originally scheduled appeal hearing (August 1990), but subsequently has been missing from the file. The whereabouts of the annotated Checklist is not known.

15. Neither the applicant-prepared Environmental Checklist, nor the Director's Analysis and Decision mentions the proximity of Thornton Creek.

16. No information was presented at hearing to explain or suggest how the creek might be adversely impacted by the proposed addition or maintenance of a second sign face on the existing billboard.

17. An EIS is to be required where a proposal is found to have a probable significant adverse environmental impact. (SMC 25.05.360 and .736) "Significant" is defined to mean a reasonable likelihood of more than a moderate adverse impact on environmental quality. (SMC 25.05.794)

Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant to Chapter 23.76, SMC.

2. The Hearing Examiner must give "substantial weight" to the DCLU Director's decision. (SMC 23.88.020.E.1) The burden is on an appellant to overcome this weight by proving that the decision is "clearly erroneous." Brown v. Tacoma, 30 Wn. App. 762, 637 P2d 1005 (1981). Under this standard of review, the decision of the Director can be reversed only if the Hearing Examiner is left with the definite and firm conviction that a mistake was been made. Cougar Mt. Assoc. v. King County, 111

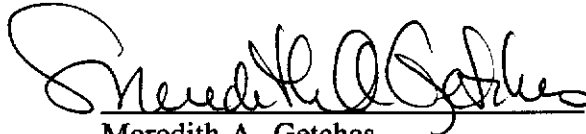
Wn. 2d 742, 747, 765 P.2d 264 (1988).

3. There is no credible evidence that there would be adverse light and glare impacts or soil impacts.
4. There is no potential for adverse impacts to views protected by the SEPA policies because there are no views of any designated feature from the subject property.
5. The subject of "proliferation" of signs as an aesthetic impact is not addressed by the SEPA ordinance.
6. There is no basis to believe that this proposal will result in probable significant adverse environmental impacts or that any mitigation of the proposal is justified or authorized by SEPA policies.
7. The absence of the annotated Environmental Checklist is troublesome. However, it was available at the time the appeal was filed and at the time the originally scheduled hearing was to be held, giving appellants almost four months to review it after the time of the publication of the Director's Analysis and Decision. Further, and more important, the Director's Analysis and Decision is the subject of the appeal and the two years this matter has been pending have provided more than ample opportunity for appellant to prepare an appeal and perfect objections to that decision. The lack of the annotated checklist did not prejudice the appellant in this appeal.

Decision

The decision of the Director is AFFIRMED

Entered this 27th day of May, 1992.



Meredith A. Getches
Hearing Examiner

CONCERNING FURTHER REVIEW

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult appropriate Code sections to determine applicable rights and responsibilities related to subsequent appeals.

Pursuant to SMC 23.76.024, a party to the hearing before the Hearing Examiner may file an appeal regarding decisions to approve, deny, or condition 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, Dexter Horton Building, Suite 200, 710 Second Avenue, 684-8322. The appeal statement must be filed with the City Clerk on the first floor of the Municipal Building.

The City Council review on appeal is limited to the issue of compliance with SMC 25.05.660. The City Council Land Use Committee should be consulted regarding further appeal specifics.