

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

KYLE SHAW

FILE NO. W-82-003

from an environmental determination of  
the Director of the Department of  
Community Development

#### Introduction

Appellants filed an appeal from a declaration of non-significance (DNS) issued by the Department of Community Development (DCD) with regard to a proposed action to construct five townhouse units at 3020-64th Avenue S.W.

The appellants exercised their right to appeal pursuant to Section 25.04.200, Seattle Municipal Code, Section 20, SEPA Ordinance 105735, as amended.

Parties to the proceedings were: appellants Kyle Shaw, et al., appearing pro se; proponent by Glenn J. Amster, Hillis, Phillips, Cairncross, Clark and Martin; DCD by Gordon Crandall, assistant city attorney.

This matter was heard before the Hearing Examiner Pro Tempore on September 8, 1982.

After due consideration of the evidence elicited during the public hearing, the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner Pro Tempore on this appeal.

#### Findings of Fact

1. The proponent, Craig and Lawson, Architects, on behalf of the Carkonen family proposes to build a five unit townhouse structure to be called the Carkmen Townhouses in the 3000 block of 64th Avenue S.W. in Seattle. The site is nearly level and is located approximately one-half block from Alki Avenue in West Seattle.

2. Individual townhouse units are three stories in height and would contain approximately 1,876 sq. ft. each. The lot size is 82 ft. by 120 ft.

3. The proposed townhouse units would have individual entrances and courtyards, roof gardens, and yards. The structural design has each unit stepped back a bit further from the next on 64th Avenue S.W. to approximate front yard setbacks of adjacent and nearby structures. Each unit includes a private garage; there are five additional spaces in front of the garage entrances, all of which provide off-street parking. The design plan anticipates three bedrooms (one of which could be a hobby room), a dining room, a kitchen, a living room, two bathrooms and a fireplace.

4. In June, 1982, Craig and Lawson, on behalf of the Carkonens' applied for a Master Use Permit for the project and submitted a completed environmental checklist to DCD.

5. On June 24, 1982, DCD issued a Declaration of Non-significance (DNS), determining that the proposal will not have a significant adverse effect on the environment that would require the preparation of an Environmental Impact Statement (EIS). The DNS was filed with the SEPA Public Information Center and published in the SEPA register. The appellant, Kyle Shaw, et al., filed an appeal of that threshold determination on July 13, 1982.

6. The reasons cited for the appeals are as follows:

- (a) The Environmental Checklist shows that the proposal will significantly affect the quality of the environment;
- (b) The DCD did not adequately assess the effects of the proposal on land use, population density, transportation/circulation, air, noise, public services, light and glare and flora;
- (c) Irregularity in the processing of proponent's application by DCD.

7. The site vicinity contains a mixture of multi-family and single-family dwellings. Immediately to the south of the proposal site is a six unit apartment building. A triplex is proposed on the lot adjacent to the apartment building. Single-family dwellings occupy the remainder of the same side of 64th Avenue S.W. to the south. A single-family dwelling presently exists immediately adjacent to the proposal site to the north. In total, the neighborhood consist of 69 single-family dwellings, 33 duplexes and triplexes, and 7 apartment buildings.

8. The quality of the air will be minimally effected by the addition of five fireplace smokestacks. A minimal increase in shadows upon the single-family dwelling immediately north of the proposal site will occur due to the 35 ft. tall townhouse units.

9. The existing flora on the site consists of four evergreen trees. The spruce tree is diseased which requires its removal. The Poplar tree's roots have caused problems with the adjoining apartment building's sewer system, and will be removed for that reason. The other trees have not been well kept and contain a shallow root base which require their removal. The proponents intend to add Japanese and Norway maple trees, Dogwood trees and at least one Cherry tree for a total of between 16-18 new trees. The removal of existing trees and introduction of new planting material and trees was considered by the DCD analyst in the threshold determination and will minimally effect the environment.

10. The proposal will increase existing noise levels during the construction stage of the project. Otherwise, the proposal will have minimal effect on noise in the environment. The proposal will have minimal effect on light and glare in the surrounding environment.

11. In lieu of the numerous multi-family dwellings in the vicinity, the proposal will have a minimal effect on land use in the area. Although the new land use plan for the vicinity down-zones to single-family dwellings, this proposal was applied for while the existing zoning allowed for townhouse units.

12. Albert Crosetti, a demographic expert for the City of Seattle, testified in behalf of DCD. Mr. Crosetti testified and presented demographic data based on U.S. Census Bureau Block Statistics Reports for the City of Seattle and the approximate vicinity of this proposal site. Mr. Crosetti concluded that the average household size from this area has been reduced by 15 percent from 1970 to 1980. The population size of this area has been reduced by 7 percent between 1970 and 1980. The housing units have increased dramatically in this study area between 1970 to 1980. Mr. Crosetti testified that an average of 1.8 persons would occupy each of the proposed townhouse units. The population increase by the proposal would have a minimal effect on the environment.

13. Steven Gorcester, a Transportation Planner for TDA, testified on behalf of the proponent. Mr. Gorcester visited the proposed site, made a parking supply estimate and a vehicle traffic increase estimate which would result from the proposal.


9. Our Court of Appeals upheld a DNS for a 34 unit apartment building, 44-64 ft. in height above the street level who's surrounding included single-family residential area. The Court acknowledged that the proposal would have some impact upon the environment but found that this impact did not entail more than a moderate effect on the area. Brown v. City of Tacoma, 30 Wn.App. 762, 768, 637 P.2d 1005 (1981).

10. Appellants have not shown DCD's clear error or that there would be more than a moderate effect on the quality of the environment as a reasonable probability, on all points, including air, flora, noise, light and glare, land use, population, transportation planning/circulation, and public services.

#### Decision

The determination of the Department of Community Development is AFFIRMED.

Entered this 21<sup>st</sup> day of September, 1982.

  
Al Velarde  
Hearing Examiner Pro Tempore

#### Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981). Should an appeal be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court.

A conservative estimate of the vehicle traffic increase resulting from the proposal would be 36 trip-ins per day (one way trip or two per round trip) which would cause an increase of 9.7 percent during peak hour trips. Five hundred and twenty feet on both sides of 64th Avenue S.W. of available parking spaces exist. Sixty-fourth Avenue Southwest is 25 ft. wide. James Carkonen testified on behalf of the proponent pertaining to a survey of on-street parking at 64th Avenue S.W. in the 3000 block beginning on September 3, 1982, through September 7, 1982, at various hours of the day. The maximum amount of vehicles parked on-street was 25 on Labor Day at 8:00 p.m. The proposal will result in a moderate impact upon parking and transportation due to the vehicular increase by five additional living units.

14. No increase upon public services due to the proposal is expected in the surrounding environment.

15. No credible evidence was presented pertaining to irregularity in the process of this application by DCD.

### Conclusions

1. The Office of the Hearing Examiner has jurisdiction pertaining to this appeal. Seattle Municipal Code, Section 25.04.200; Articles I and III of the Hearing Examiner Appeal Rules.

2. The Hearing Examiner must accord substantial weight to DCD's determination. The burden of establishing a contrary determination is on the appellant. The scope of review requires a de novo hearing. Seattle Municipal Code, Section 25.04.200; Section 3.7 of the Hearing Examiner Appeal Rules.

3. Issues are limited to the issues cited in the notice of appeal. Seattle Municipal Code, Section 25.04.200(C).

4. Seattle Municipal Code 25.04, et seq. adopts by reference the Environmental Impact Checklist found in WAC 197-10-365 as used in proponent's application.

5. The State EPA guidelines provide certain exemptions from government approval, such as, the construction of any residential structure of four dwelling units or less. WAC 197-10-170(1)(a). The environmental agency must make a threshold determination, for all nonexempt actions, whether the proposed action will significantly affect the quality of the environment and require an EIS. WAC 197-10-360. An environmental checklist pursuant to WAC 197-10-365, must be completed for any proposed major action. WAC 197-10-310. The questions appearing in the environmental checklist are exclusive, and consideration which does not appear in it may not be used to make the threshold determination. WAC 197-10-365. The government agency then reviews the checklist and determines whether the proposed action will significantly affect the quality of the environment. If the answer is affirmative, an EIS is required. RCW 43.21C.030(c); WAC 197-10-360.

6. SEPA does not require an EIS for all major actions since many such actions will not significantly affect the quality of the environment. Eastlake Community Council v. Roanoke Associates, Inc., 82 Wn.2d 475, 491, 513 P.2d 36 (1973).

7. A major action significantly affecting the quality of the environment has been defined as having reasonable probability of creating more than a moderate effect on the quality of the environment. Norway Hill v. King County Council, 87 Wn.2d 267, 278, 552 P.2d 674 (1976).

8. An EIS for an 83 unit apartment on 3.6 acres in North Richland was not required, although the Court noted that the project site had in the interim been rezoned to single-family dwellings. Richland Homeowners Association v. Young, 18 Wn.App. 405, 568 P.2d 818 (1977).