

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

RICHARD GORDON AND
HELEN PAULY

FILE NO. MUP-83-035(W)
APPLICATION NO. 83-212

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

Introduction

Ackerly Communications proposes to erect a billboard advertising sign at 4237 Fremont Avenue North. Appellants contest the Director's failure to deny or condition the proposal on environmental grounds and also challenge the Director's failure to require an Environmental Impact Statement (EIS).

The appellants exercised their right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code and pursuant to Chapter 25.04, Environmental Policy, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on August 2, 1983.

Parties to the proceedings were: Appellants, attorneys-at-law, by Richard Gordon, pro se; the Director of the Department of Construction and Land Use (Director) by Leslie Durkee. No representative of Ackerly Communications appeared at the hearing.

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 the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. On April 26, 1983, Ackerly Communications applied to the Department of Construction and Land Use to erect a "billboard advertising sign per plan" at 4237 Fremont Avenue N. The subject billboard, already constructed, is currently at Fourth and Battery. It is to be relocated as part of an agreement struck between Ackerly and the City of Seattle by which Ackerly would relocate or remove signs made nonconforming by the adoption of the City of Seattle Sign Code. No overall (programatic) environmental review accompanied the agreement.

2. Also on April 26, applicant submitted an environmental checklist which among other items briefly describes the proposal:

...Display face will measure 12' x 25'. Structure will measure 12' high from ground level to the bottom of our display face. Total height: 24'. One display surface facing north.

3. The Fremont Avenue site is at the southwest corner of N.E. 43rd (north adjacent) and east adjacent Fremont Avenue N. It is paved and is used for parking. A vacant building and a two story laundromat are south and west adjacent, respectively. The property is located in the south end of a strip of Community

Business (BC) zoned land surrounded with Lowrise (L-) 3 zoning and developed with small service uses and a variety of single and multi-family structures. Applicant proposes to locate the billboard near the south end of the site and 5 feet west of the east adjacent sidewalk.

4. Approximately May 4, 1983, a Master Use Permit large sign (notice board) was placed on site. No application number appeared. The project illustration was provided on 8½ by 11 inch paper. One opposing witness testified that by rule the Director's minimum diagram size is 3 ft. by 3 ft.

5. By a letter dated May 17, 1983, confirming a telephone conversation with the Department of Construction and Land Use, the Fremont Neighborhood Council asserted that the absence of a Master Use Permit application number violated Director's Ruling No. 22-82.

6. By letter dated May 18, 1983, the Director's representative advised applicant that as the sign did not display the application number and since the address was not readable, a new 14 day comment period was required, to commence upon receipt of a certificate that indicated that corrections had been made.

7. The Director received at least three comment letters opposing the subject application prior to May 18, 1983. The majority of comment letters and petitions were received by the Director from mid May through August 2, 1983, the date of hearing. In essence, the comments protested the proposed sign's "incompatibility" with the character of the neighborhood.

8. On June 17, 1983, the Director issued a declaration of non-significance (DNS) with "project conditioned as applicable." The Director imposed no conditions. Appellants then submitted this appeal.

9. Specifically, appellants asserted that the existing sign is not illuminated; is a total of 24 ft. wide; and begins 9 ft. 6 inches from the ground. In light of the City Council policy and intent to strictly regulate billboards, appellants argued, any "relocation" of the billboards should be circumscribed, i.e. the relocated billboard should not be allowed to be illuminated, increased in height from the ground, nor increased in width. Further, appellants claim that the sign will be incompatible with neighborhood development.

10. The Director's witness did not measure or review the existing sign but assumed it to be illuminated. She was also uncertain whether the 25 ft. width of the existing sign included or excluded borders.

11. The environmental checklist prepared by the applicant was reviewed by the Director prior to the Director's issuance of the DNS. That checklist noted that the proposal would produce no new light and glare. The Director inserted no comment regarding this checklist item. In hearing, however, the Director's witness indicated that the non-comment was an oversight and that a condition that lighting be directed and shielded would not be opposed.

12. The checklist further indicated that no alteration of the present or planned land use of the area would result from the proposal. As to aesthetics the checklist noted that the proposal would not result in the obstruction of any scenic vista or view open to

the public. The Director modified the applicant's responses by noting that the sign would be considered offensive to some people.

13. Fremont Avenue is not a scenic route.

14. The proposed sign is allowed outright in the BC zone.

Conclusions

1. Appellants assert that the proposed sign would be incompatible with the neighborhood character and would effectively constitute a visual blight. Further, that since no overall detailed environmental review occurred when the issue of relocating existing billboards was raised that the more detailed review should now occur.

2. The Director's environmental determination is accorded substantial weight, Section 23.76.36.B.7, and the burden is on appellant to overcome that weight. A negative threshold determination, as was here issued by the Director, will be upheld on review unless it is shown to be clearly erroneous. Brown v. Tacoma, 30 Wn.App.762 (1981). No Environmental Impact Statement (EIS) is required unless the proposed action would have a significant adverse impact on the environment, i.e. unless more than a moderate effect on the quality of the environment is a reasonable probability. Norway Hill Preservation and Protection Association v. King County Council, 87 Wn.2d 267 (1976). Washington Administrative Code (WAC) 197-10-360 provides in relevant part as follows:

The lead agency shall apply the questions in the environmental checklist to the total proposal... to determine whether the proposal will result in a significant adverse impact upon the quality of the environment. The threshold decision shall be based solely upon this process. The questions contained in the environmental checklist are exclusive, and factors not listed in the checklist shall not be considered in the threshold determination. (emphasis added).

3. Based on the foregoing the Director's threshold determination is upheld even though the evidence of record shows that the proposed board will introduce new light and glare into the area. The Director noted that the sign might be offensive to some people. The site is properly zoned for the sign. Fremont Avenue is not a scenic route. Will the sign then have a significant adverse impact on the subject site? The Hearing Examiner concludes it would not. Appellants may wish to consider investigating whether any change in the sign violates the terms and spirit of the agreement between the City of Seattle and the project applicant. In the challenge to the DNS, however, the checklist items are exclusive, and the weight accorded the Director's decision has not been overcome.

4. Appellants also question whether the approval should have been denied or conditioned based on environmental impacts. Section 25.04.190 provides that under the State Environmental Policy Act (SEPA):

...any proposal may be denied where significant adverse impacts have been identified in the environmental documents prepared pursuant to SEPA which cannot be substantially mitigated or prevented by the imposition of reasonable conditions...

As no significant adverse impacts have been identified the Director was without authority to deny the proposal based on SEPA grounds.

5. Section 25.04.190 also provides that:

any proposal may be reasonably conditioned on environmental grounds only on the basis of the adverse environmental impacts on the elements of the environment defined in WAC 197-10-444...

i.e. the topics of the environmental checklist form (emphasis added).

Based on the evidence of record the proposal will introduce new light and glare to the area which may well affect surrounding residential properties. Accordingly, the proposal should be conditioned on the shielding and directing of the illumination away from surrounding properties.


6. Assuming the existence of a Director's valid rule that MUP sign diagrams be a minimum of 3 ft. by 3 ft., should this matter be remanded for compliance therewith? Where notices are challenged in zoning cases, the underlying basis for "waiver" or "excuse" of noncompliance has been the absence of prejudice to the parties entitled to notice. See 38 ALR 3d 167 and cases cited. Courts have considered lack of injury, actual notice, and whether a litigant has had the ability to fully state his or her case. In North State Tel. Co., Inc. v. Alaska Utilities Commission, the court saw the question as whether the party had sufficient notice and information to understand the nature of the proceeding. 522 P.2d 711 (1974).

7. By analogy, the record of this proceeding is replete with comments from concerned neighbors. The specific appellants have not alleged injury or prejudice because of the sign and have stated their case fully before the Hearing Examiner. In view of the entire record, a remand with directions for additional signage is not required.

Decision

The decision of the Director is affirmed as modified herein.

Entered this 16th day of August, 1983.


Heroy McCullough
Hearing Examiner

Notice of Right to Appeal Threshold Determination

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.

Notice of Right to Appeal Decision

Regarding Compliance with Section 25.04.190

Pursuant to Section 25.04.210, Seattle Municipal Code, a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the 14th day after the date of the decision appealed from is filed with the SEPA Public Information Center. The appeal must be filed with the City Clerk on the first floor of the Municipal Building. City Council procedures governing the appeal should be reviewed prior to submitting the appeal.