

## FINDINGS AND DECISION

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

In the Matter of the Appeals of

SQUIRE PARK COMMUNITY COUNCIL AND  
GOLDIE LONDON

FILE NO. MUP-83-055(W) and  
MUP-83-057(W)  
APPLICATION NO. 83-382

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

#### Introduction

Appellants, Squire Park Community Council and Goldie London, appeal the issuance of a declaration of non-significance by the Director, Department of Construction and Land Use for a proposal by Providence Medical Center to construct a cancer treatment center at 500 17th Avenue and failure to impose conditions on the permit.

The appellants exercised their 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 7, 8, 9, and 10, 1983. Closing arguments were submitted November 28, 1983.

Parties to the proceedings were: appellant Squire Park Community Council represented by William Knowles; appellant Goldie London represented by Peter J. Eglick, attorney at law; the Director, represented by Ed Somers; and Providence Medical Center, represented by Robert J. Walerius and Christopher Marsh of Moriarty, Mikkelsen, Broz, Wells and Fryer.

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 decision of the Hearing Examiner on this appeal.

#### Findings of Fact

1. Providence Medical Center (Providence) applied for a master use permit to construct a cancer treatment center addition to the existing hospital at 500-17th Avenue.

2. The Director, Department of Construction and Land Use (Director) issued a declaration of non-significance (DNS) with conditions and "conditioned the project as applicable." Appellants filed timely appeals of these decisions.

3. The Cancer Treatment Center (CTC), referred to in some exhibits and testimony as the LINAC (linear accelerator), is proposed to be a one level building below the existing grade with approximately 7,300 sq. ft. gross floor area located adjacent to and south of the west wing of the Center Building. The proposed site is currently a surface parking area for physicians containing 75 spaces. Forty spaces would be removed in the construction of the CTC. The selection of this site was based upon a study by the John Graham Company and an earlier one, the Walsher report.

4. In 1976, Providence proposed a planned unit development (PUD) for phase 1 of its long range redevelopment program. The petition for a residential PUD was approved subject to a property use and development agreement which provided, inter alia, restrictions on the use and development of certain areas.

5. With the code implementation of the Major Institutions

Policy, Providence was designated as a major institution and zoning boundaries were adopted. The site of the proposed CTC is within those boundaries and was rezoned from a residential designation to I4/L3.

6. The new major institutions policies apparently caused Providence to rethink or replan its redevelopment program. The PUD, with its restrictions, was apparently considered abrogated and studies considered use of the subject site.

7. While the CTC is Providence's highest development priority, two other projects are being considered, a patient treatment tower and a professional office building (POB). A feasibility study for the POB was conducted by Providence by Ellerbe (Exhibit 7) based on assumptions provided by Providence. The study involved both conceptual feasibility and economic feasibility. Preferred locations have been selected for the other two projects.

8. Providence had not decided, at the time of hearing, whether to construct a POB. It has been determined that the site of the CTC is the preferred location and to design the CTC building to structurally support a POB. Determining a workable ownership or management structure and conducting a market survey are the two main steps that must be taken before the decision is made. No date has been set for making the decision but the hospital's administrator, Peter Bigelow, expects that the decision will be delayed 2-4 months beyond the December 31, 1983, date in the project development schedule, Exhibit 64, proposed by consultants.

9. Besides studies regarding feasibility and location, the architects have prepared a series of drawings up to the beginning of the final phase or working drawings. An artist's rendering has been prepared for marketing purposes.

10. Test borings were done to study soils makeup as part of the planning and preparation process for the CTC and possible other building on the Saint Peter Clavier Center site.

11. The foundation of the CTC building is designed to accommodate a POB 105 ft. tall. Footings and columns are larger and columns are to be topped with steel plates embedded in the roof to connect to the addition; the south and east walls are to be strengthened; and the roof is to be more substantial to act as a future floor. The footings are also designed so that the mechanical core of the POB could be close to the existing wall.

12. It is not uncommon, and is a sound practice, to overbuild to provide maximum flexibility for future development or expansion.

13. Providence has designed the CTC structure to support the POB as a cost savings measure as well. John Graham and Company estimates that the extra cost to halt treatment activities and remodel the structure to provide sufficient foundation if it is not provided initially is \$300,000. Another approach if the strength is not initially provided would be to build the POB nearby and cantilever it over the CTC at an additional cost of \$1.5 million.

14. None of the other buildings on the campus have been designed to allow for vertical expansion.

15. The mechanical and electrical services to the CTC are designed for it alone. Service for a POB would be separate. No elevators would be installed in the CTC. Elevators on the plans are for the POB and would be in its core next to the CTC.

16. The entrance to the CTC will be off of 16th Avenue. A drive-thru will be provided with six loading spaces so drivers can stop to assist the patient into the CTC before moving the car.

17. Providence submitted an expanded environmental checklist (Exhibit 22) for the proposal to the Director. Ed Somers, the environmental specialist assigned to handle the environmental evaluation, reviewed the checklist. Ed Somers received letters and telephone calls before he did the environmental evaluation about plans for a POB in addition to the CTC. He followed up by calling the applicant's consultant at John Graham and Company who referred him to Jim Hunt at Providence. He was told that Providence was investigating future additions and expansion but that no plans or funding are available.

18. To checklist question "J" "(d)o you have any plans for future additions, expansion or further activity related to or connected with this proposal," Providence responded, "(p)ossible development/redevelopment sometime in the future of any portions of Providence Medical Center's campus that are currently less intensively developed."

19. Somers testified that had he been aware of the site planning studies for the POB he would have seen that they were referenced as instructed in the introduction to the environmental checklist.

20. The checklist, as revised by Somers, shows potential impacts on the elements of earth, air, water, flora, noise, land use, transportation/circulation, energy, and public services and utilities. He found the impacts on the environment not to be significant and imposed a condition to require that landscaping be provided "per plan."

21. At the time of the threshold determination, Somers believed the parking space loss to be 20-21 spaces because Providence planned to replace some of those removed. It was later determined that the current Land Use Code would not permit the replacement of the parking spaces since Providence provides more spaces than permitted.

22. Somers evaluated the change and determined it would not result in a significant impact since on-site parking spaces, by his observation, were not all used.

23. Appellant London owns and operates the Golden Heart Boarding Home for handicapped persons at 525 17th Avenue. The main entrance to Providence is directly east of her property. Other hospital-owned property surrounds her. During times of shift changes at the hospital her way is often blocked by parked cars despite "no parking" signs. Her light and air comes from the south and southwest toward Jefferson. She does not intend to sell her property and, in fact, has plans to expand.

24. The CTC site had once been the site of the St. Peter Clavier Center, used most recently as a community center, and CARITAS, a residence for members of a Catholic order.

25. In 1975, when Providence was proposing the vacation of James Street and part of 17th, statements were apparently made by Providence officials to the effect that it would avoid building on the Clavier site because of potential adverse impact on residences on Jefferson Street and 15th and 16th Avenues.

26. Neighbors remember that when Providence announced that the St. Peter Clavier Center was to be demolished, promises were made to the community that the site would be used temporarily for parking and then a park-like setting would be created.

27. The house owned by Irene Jewdoschenko at 1522 East Jefferson, just to the west of the subject site, is not listed as a landmark on City records but may have historical significance. It is believed to have been built between 1890 and 1900 by a lumberman during the gold rush.

28. The draft EIS for Phase 1 of the PUD (Exhibit 6) looking at development of a proposed new medical building on this site as an alternative location, recognized negative impacts in the

form of "considerable intrusive influence on the residential area to the south of Jefferson Street;" and "the complete surrounding of the Boarding Home by the noise and disruption of major construction." p. I-7.

29. The CTC would provide treatment rooms, two examination rooms, bathrooms, changing rooms, reception area, nurses station, technicians area physician's office, viewing room and secretary's station.

30. Currently, a Cobalt 60 unit is used at Providence for cancer therapy. The floor space utilized is approximately 1100 sq. ft. The CTC would allow upgrading of the service.

31. The removal of the Cobalt 60 unit will not be hazardous as no residual radiation is present. The source is replaced every few years. The handling is regulated by the federal Department of Transportation.

32. The linear accelerator produces X-rays electromagnetically. No radiation is produced unless the machine is operating. Various safety devices are in the design of the unit and room to assure protection. The process does not create radioactivity as a by-product. The limits of exposure to radiation are set by law at 5 rem per year for occupationally exposed individuals and .5 per year (500 millirems) for non-occupationally exposed. Natural exposure in Seattle is 80-100 millirems per year. An operator of a LINAC gets one-tenth of the permitted exposure. The machine will be shielded by some 56 inches of concrete and the radiation is further attenuated by distance.

33. The CTC is expected to treat four patients per day over the 20 now being treated according to one Providence official and another predicts a 25-33% increase to 5500-6000 in the first twelve months of operation. Of the total, 85-90% are out-patient.

34. One additional employee, or FTE, is expected to be needed for the CTC.

35. An informal traffic count on 16th Avenue conducted by Providence using parking garage attendants showed an estimated 800 vehicles per day using 16th -- 675 doing business with Providence and 125 unrelated to Providence.

36. Any increase in traffic from use of the street by new or continuing patients who have altered their routes would not be significant.

37. Some 995 parking spaces are provided on the Providence campus. Under the Major Institutions Code, Providence is entitled to have 610 spaces. After construction of the CTC it may have up to 612 spaces.

38. Providence's parking garage is not filled to capacity even at peak periods. The manager of the parking garage estimates that 300 spaces are vacant during those periods. Ed Somers reported seeing vacant spaces on his visits.

39. Providence expects no disruption of traffic on 17th Avenue during construction of the CTC since mobilization and construction staging is to be conducted from 16th.

40. Plans for the CTC were not finalized when Providence submitted its master use permit application. Some changes in the structural plans may have been made since the application was filed.

### Conclusions

1. Three issues are raised by appellants which are within the jurisdiction of the Hearing Examiner, pursuant to a master use permit decision and appeal. Chapter 23.76. The first is whether the POB is to be treated under SEPA as part of the "total proposal" which must be considered by the Director in making the threshold decision. The second is, if the CTC may stand alone for environmental assessment, whether the environmental impacts of the CTC are such that an environmental impact statement (EIS) is required. The final issue is whether the Director erred in not imposing certain conditions on the permit for the CTC.

2. Section 23.76.36 B(7) requires the hearing examiner to give substantial weight to the Director's decisions. The burden is on the appellants to prove clear error in those decisions. See, Norway Hill v. King County Council, 87 Wn.2d 267 (1976).

3. WAC 197-10-360(1) directs the lead agency to apply the environmental checklist questions to the total proposal to assess whether it will result in a significant adverse impact on the environment. WAC 197-10-060 explains that

(2) The total proposal is the proposed action, together with all proposed activity functionally related to it. Future activities are functionally related to the present proposal if:

(a) The future activity is an expansion of the present proposal, facilitates or is necessary to the present proposal; or

(b) The present proposal facilitates or is a necessary prerequisite to future activities.

4. The Director treated the development of the CTC as the total proposal, without actually considering whether there is a functional relationship between the POB and the CTC, as the answers given by Providence to the environmental checklist and to Ed Somers did not disclose the nature of the future plans. Examination of the relationship between the two projects is appropriate in this review to determine whether the Director should have also examined potential impacts from the POB.

5. The future activity does not facilitate the CTC nor is it necessary to the CTC's operation. The CTC is clearly not a necessary prerequisite to the POB. Remaining is whether the future activity is an "expansion" of the present proposal or whether the present proposal "facilitates" the future activity. If the "present proposal" were merely to construct a building, the future construction of a building above it could be considered an "expansion" of the present proposal. The present proposal is, however, to construct a CTC addition to a hospital. The future activity of constructing a POB or of providing professional offices is not an expansion of a CTC. Likewise, constructing the CTC building as proposed so it can support additional height facilitates the construction of the later addition however the construction of a CTC does not facilitate the future activity or use of a POB.

6. Various Washington and federal cases have been cited by appellant London and by Providence to support each position. The Court in Cheney v. Mountlake Terrace, 87 Wn.2d. 338 (1976), looked at the relationship between the proposed urban arterial and possible development of private property and found at p. 343 that completion of the road was "in no way dependent upon or intertwined with the development of the property." The Court said that the agency cannot avoid considering the ultimate, probable consequences of the current action. It compared the situations to those in Trout

Unlimited v. Morton, 509 F.2d 1276 (9th Cir. 1974), and City of Davis v. Coleman, 521 F.2d 661 (9th Cir. 1975). In the former, there were two phases to a project authorized by Congress, the first a dam, reservoir, and disposition of some reservoir capacity, the second the disposition of the remaining reservoir capacity. There the Court found the first was substantially independent of the second. The Court looked at whether the relationship would make it "irrational, or at least unwise, to undertake the first phase if subsequent phases were not also undertaken." Trout, p. 1285. In Davis, a freeway interchange was proposed specifically to stimulate industrial development. There the relationship between the two was sufficient to require that they be considered at the same time. Applying the tests used by the federal court in those cases, the POB would not have the kind of relationship that would require that it be considered at the same time as the CTC.

7. Many of the federal cases considered whether environmental analysis of other or later projects was required at the same time as the earlier one by assessing whether an irreversible and irretrievable commitment of resources will follow from approval of the first one. See, California v. Block, 690 F.2d 753 (9th Cir. 1982), and Conservation Society of Southern Vermont, Inc. v. Secretary of Transportation, 508 F.2d 927 (2d Cir. 1974). Using this test, again the inclusion of the POB would not be required as the approval of the CTC does not commit the City to a future approval nor is the investment such that Providence must complete a POB.

8. Finally, in Sierra Club v. Callaway, 499 F.2d 982, 990 (5th Cir. 1974), the court recognized that the compatibility of a reservoir project with the Trinity River project did not make them interdependent. Though they were compatible the reservoir was not a "mere component, increment or first segment." The two were found to serve separate needs. This is true of the CTC and POB.

9. The other state cases are inapposite. Downtown Traffic Planning v. Royer, 26 Wn.App. 156 (1980), involved a consideration of whether a series of actions together can constitute a "major action." There is no question here that each project would be a major action requiring at least a threshold determination under SEPA. In Short v. Clallam County, 22 Wn.App. 825 (1979), the issue involved the categorically exempt change of use of a categorically exempt structure and whether future, indefinite plans could change the categorical exemption of the present change of use.

10. No Washington case interpreting "total proposal" in light of the current SEPA Guidelines analysis was cited. That provision then means that the POB is not part of the total proposal. The federal cases, not interpreting the same "total proposal" definition but looking at the relationship of the various projects, would lead to the same conclusion.

11. Providence suggests that even if the POB were part of the total proposal plans are not definite enough to allow evaluation of the potential impacts. The record is clear, however, that there is sufficient specificity to allow environmental impact assessment.

12. The Director must require an EIS if the proposed project is likely to have significant adverse impacts. RCW 43.21C.030. That has been interpreted to mean that an EIS is required when the probable effects on the environment will be more than moderate. Norway Hill v. King County Council, supra. Appellant London urges that the land use impact from change of use of the site to institutional and commitment of the site to institutional use where L3 uses are still permitted is significant. She also cites cumulative impacts, looking to those of 105 ft. building, and traffic. Appellant Squire Park Community Council urges, also, that these impacts are significant.

13. The record does not show adverse impacts from the CTC alone that are likely to be more than moderate. No error was shown in the Director's determination as to land use. The uses in the surrounding area are described in the checklist. The "planned" use for the site has not changed. One type of use has been chosen over the other permitted in the I4/L3 zone, the site is within the major institution boundary and has been used as an use accessory to an institution.

14. The prior statements in the PUD EIS regarding potential impacts on land use from the development of this site, can be attributed to Providence. They are in relationship to much more intensive or larger scale development than the CTC. They should be more useful to appellants' position when a POB on that site is under consideration.

15. Finally on the land use impact, it appears that Providence may have made offers in the past regarding this site it has reneged on (see finding no. 22) and, more recently, has not been totally candid with the community (and City) about its plans. The master use permit process cannot address the former. The lack of candor could affect the permitting process but, because of the facts regarding the CTC, does not affect the result here. Because total disclosure was not voluntarily provided the Director should expend additional time on investigation and verification on future applications. It is understandable why Squire Park Community Council desires a master planning process for Providence's future plans.

16. The Director is to consider the existing environment in assessing possible impacts. Even considering the level of development and activity at Providence, the cumulative impacts, looking at the addition of the CTC and not a POB, would not be significant.

17. As to traffic circulation, Mrs. London suffers from her limited access and proximity to the main entrance to Providence. It was not shown that the CTC would appreciably worsen the situation.

18. Finally, as to impacts, appellants did not show that the loss of parking spaces would have more than a moderate adverse effect given the great number of spaces available in the parking garage.

19. Under Section 25.04.190 the Director has authority to impose reasonable conditions, based upon policies adopted pursuant to SEPA, to mitigate adverse impacts disclosed in the DNS and checklist. Appellants urge that the Director should have required Providence to prepare a master plan to mitigate the land use impact, among others. While the Land Use Code is one of the policies in Appendix A to Section 25.04.500 on which the Director may rely for imposition of conditions, Chapter 23.80 of that code, Major Institution Master Plan, sets forth specific circumstances which would require preparation of such a plan. Those circumstances were not shown to have occurred. Moreover, Section 23.80.20C precludes any administrative appeal of the Director's decision. Appellant London urges that the SEPA Policies provide an alternative means of requiring the master planning process and, therefore, failure to impose that condition may be appealed to the Hearing Examiner. The conundrum may be the result of oversight. Since the Code is the policy and its language is clear that the Director's decision is final, the hearing examiner must find that the Council has removed that issue from the jurisdiction otherwise conferred. While no findings have been entered as to the evidence regarding the baseline data used by the Director to determine if the master plan process had been triggered, since there is some question as to the accuracy the Director may wish to verify the figures being used and determine for Chapter 23.80 purposes what the "proposal" should be. Appellant London asks for a conclusion as to the constitutionality of selective revocations of the right to appeal. The Office of Hearing Examiner,

as a quasi-judicial administrative body, is without authority to determine the constitutionality of the ordinances it administers. See, Yakima County Clean Air Authority v. Glascam Builders, Inc., 85 Wn.2d. 255 (1975).

Decision

No error having been shown which requires reversal or remand, the decisions of the Director are affirmed.

Entered this 5<sup>th</sup> day of December, 1983.

M. Margaret Klockars  
M. Margaret Klockars  
Deputy Hearing Examiner

Concerning Further Review of the DNS

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any request for court review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981). Should such request 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 Failure to Condition or Deny

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 the decision appealed from is filed with the SEPA Public Information Center. The appeal must be filed with the City Clerk on the 1st floor of the Municipal Building. The City Council should be consulted regarding their appeal procedure.