

DEC 6-1983

## FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

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In the Matter of the Appeal of

DANIEL T. TRAINOR

FILE NO. MUP-83-074  
APPLICATION NO. 83-489

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

Introduction

Appellant, Daniel T. Trainor, appeals the decision of the Director, Department of Construction and Land Use, to issue a master use permit with a declaration of non-significance for a proposal at 748 North 95th Street.

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

Parties to the proceedings were: appellant, with assistance from Paul Patterson, the Director represented by Leslie Durkee and the applicant Chia-Tai Investments, Inc., represented by Ted Gacek.

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. An application for a master use permit to demolish a single family residence and construct a 10-unit condominium apartment building at 748 North 95th Street was filed by Chia-Tai Investments, Inc. The Director issued a declaration of non-significance pursuant to SEPA and conditioned the permit for landscaping. Appellant filed a timely appeal of these determinations.

2. The subject site is in a Lowrise 2 (L-2) zone which extends to the property on the east side of Linden Avenue North and to west of Fremont. A Lowrise 3 (L-3) zone encompasses 2 lots to the east of the L-2 zone along 95th. To the east of the L-3 zone is the General Commercial (CG) zone along Aurora Avenue North.

3. Neighbors participating in the hearing had been unaware of the City-wide rezoning which affected the subject property.

4. The applicant proposes to construct a 10-unit apartment building to be sold as condominiums, if possible. The building would be 3 stories above and one partially underground. Parking for 11 vehicles is proposed to be provided in the basement. All Land Use Code requirements would be met.

5. An environmental checklist was prepared by the applicant and revised by Leslie Durkee for the Director. The checklist showed that additional vehicular movement will be generated, there will be demand for new parking and there will be alterations to present circulation patterns. These changes were recognized in the declaration of non-significance but found not to be significant.

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8801-0061 A Bekins Moving and Storage facility is located on Aurora a block east of the subject site. Little employee parking, approximately five spaces, is provided on that site so employees park on the neighborhood's streets. Trucks use 95th Street to get in and out of the facility. Trucks must come down 95th to get in position to use the scales.

7. Appellant and his witnesses from the area testified as to heavy parking congestion and many accidents at the intersection of North 95th with Linden North.

8. A parking count made by applicant's representative, Ted Gacek, on a week day at 5:15 p.m., showed no cars parked on Linden between North 95th and 96th and ten on North 95th between Linden and Fremont. Another count made on a Saturday morning showed no cars on Linden between North 95th and 96th and ten on North 95th between Linden and Fremont. Leslie Durkee visited the site on a weekday morning and found an adequate supply of on-street spaces.

9. The Engineering Department's accident records show a total of four at the intersection of Linden and North 95th over the period from January 1, 1978, to July 31, 1983. Neighbors report seeing many more, often not reported to the Police Department.

10. The most recent traffic count done by the Engineering Department was in 1979. On North 95th west of Linden the average weekday traffic was 666 vehicles. On Linden, south of North 97th, the average weekday traffic was 530 vehicles.

11. North 95th Street is used as a shortcut from Aurora to 8th N.W. for those not wishing to use 85th or 105th Streets.

12. The church located one block north generates heavy parking demand on Sundays and during special events.

13. McCall Oil Company tankers and delivery trucks use North 95th in going to and from its depot on Fremont Avenue.

14. Appellant urges that the number of units be reduced so that parking demand can be accommodated on-site. He also suggests a traffic circle or divider may be required to reduce the hazard at the intersection to which additional traffic would contribute.

15. Appellant's witnesses believe that most owners or tenants will have more than one car and that some will have recreational vehicles or boats.

16. The applicant will try to find a way to accommodate more parking on-site.

17. Appellant and neighbors feel the 10-unit building would be out of scale with the other residential development.

#### Conclusions

1. The Director's master use permit determinations are to be accorded substantial weight. Section 23.76.36. Appellant has the burden of proving that the decision was clearly erroneous. See, Norway Hill v. King County Council, 87 Wn.2d. 267 (1976).

2. An environmental impact statement (EIS) is required only when the proposed action would have a significant adverse impact on the environment. "Significant adverse impact" has been interpreted by our courts to mean that more than a moderate impact is a reasonable probability. Norway Hill, supra.

3. While appellant has produced the observations of neighbors of the site, those observations are not sufficient to overcome the weight to be given the decision when the applicant and Director's representative show actual numbers supporting the decision. Therefore, the decision not to require an EIS, the DNS, must be affirmed.

4. Under SEPA, the Director has authority to impose reasonable conditions to mitigate adverse impacts disclosed in the DNS based on policies adopted pursuant to SEPA. Section 25.04.190. The Land Use Code is one of those policies. Since Section 23.45.32 requires one off-street parking space per unit and provides specifically that the Director may require up to 1.25 spaces per unit for structures of more than 20 units, it is questionable whether he has authority to require additional spaces in this case, even if necessary to avoid an adverse impact. The evidence at hearing does not show that such a condition is reasonably necessary. Any overflow can be accommodated on-street. Applicant's efforts to place additional parking on-site will mitigate the situation further.


5. It cannot be determined from the evidence at hearing that the additional traffic generated by the proposed project would make a traffic diverter, suggested by appellant, necessary. Members of the community should approach the Engineering Department with their concerns about traffic circulation and hazards in the area.

6. The Director does not appear to have authority to require a reduction in the number of units where the project meets all Land Use Code standards.

#### Decision

The Director's determinations are affirmed.

Entered this 6th day of December, 1983.

  
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.