

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

CARTER MOTORS, INC.

FILE NO. MUP-84-045(W)  
APPLICATION NO. 8401720

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

#### Introduction

Appellant, Carter Motors, Inc., appeals the decision of the Director, Department of Construction and Land Use, to grant a master use permit subject to a condition requiring landscaping pursuant to SEPA for property at 5226 Leary Avenue N.W.

The appellant exercised its 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 July 30, 1984.

Parties to the proceedings were: appellant by Wade Carter, president; the Director by Amy Luersen, land use specialist.

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. Carter Motors, Inc. (Carter Volkswagen), applied for a master use permit to establish the use of an automobile storage lot for future construction at 5226 Leary Avenue N.W. The Director issued a declaration of non-significance (DNS) and the permit subject to two conditions. Appellant filed an appeal objecting to that portion of the landscaping condition requiring a three foot wide strip of planting along Leary Avenue N.W.

2. The subject property is now vacant and would be used to extend the existing car sales lot. The existing lot is not landscaped along its Leary periphery.

3. The site is within a General Industrial (IG) zone which continues at least one lot to the northwest and on to the south and across Leary to the west. The site abuts a residential (MR) zone to the northeast. Landscaping will be provided on the northeast and northwest boundaries of the lot.

4. Appellant objects to the condition for the reasons that customers would not have the direct and easy access from the sidewalk that they normally enjoy at used car lots; the unusual appearance of the planting strip on just the new section of the car lot; possible customer hazard in getting through the planting. Mr. Carter also mentioned the cost involved in establishing and maintaining the plantings as a drawback.

5. The environmental checklist (Exhibit 1) prepared by Wade Carter and reviewed by Rosemary Horwood, environmental specialist for the Department of Construction and Land Use (DCLU), shows probable impacts from "disruption, compaction and overcovering of earth," air emissions and odors, changes in water absorption rates, construction noise and added vehicular traffic. No impacts were noted for land use or aesthetics.

6. A DNS was issued as part of the decision of the Director. Environmental impacts mentioned are "disruption, compaction, and overcovering of soil, air emissions, noise, light and glare, and added vehicular traffic." (Exhibit 3).

7. Ms. Luersen testified that the landscaping condition was based on Section 25.04.530, the SEPA policy on landscaping, and intended to provide a buffer between the car lot and the sidewalk.

### Conclusions

1. Section 25.04.190, Seattle Municipal Code, provides:

- A. Under SEPA, the city and its departments have, and shall exercise where appropriate, the authority to deny or reasonably condition any proposal so as to mitigate or prevent adverse environmental impacts.
- B. Any proposal may be reasonably conditioned on environmental grounds only on the basis of adverse environmental impacts on the elements of the environment defined in WAC 197-10-444 or Section 25.04.150 and identified in the environmental documents prepared pursuant to SEPA. (emphasis supplied).


2. The new state statute, RCW 43.21C.060, reaffirms the requirement that the impacts be express where it states "(s)uch action may be conditioned only to mitigate specific adverse environmental impacts which are identified in the environmental documents prepared under this chapter."

3. Though appellant's objections do not show the condition to be unreasonable as the plantings could be designed to allow pedestrian access and could be extended into the existing lot to eliminate the lack of continuity, the environmental documents, checklist and DNS, did not identify any adverse environmental impact which could be mitigated by the landscaping condition. The Director, therefore, exceeded the authority conferred by Section 25.04.190. As there was no impact identified, the landscaping policy of Section 25.04.530 cannot be used. The decision should be modified to remove the condition requiring the three foot strip of planting along the Leary property line.

Decision

The decision is hereby modified by the deletion of the words in Condition No. 1, "and a three foot strip of low planting along the property line at Leary Avenue N.W."

Entered this 31st day of July, 1984.

  
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CONCERNING FURTHER REVIEW

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 fourteenth 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 first floor of the Municipal Building. The City Council should be consulted regarding their appeal procedure. If an appeal is taken pursuant to Section 25.04.210 the time for judicial review of the underlying governmental action and/or other SEPA issues is stayed until the City Council renders a final decision on this Section 25.04.190 appeal.

If no appeal is taken pursuant to Section 25.04.210, the decision of the Hearing Examiner in this case is final and is not subject to reconsideration except to correct errors on the ground of fraud, mistake, or irregularity in vital matters. 2 Am. Jur. 2d., Admin. Law Section 524. Any request for judicial review of the decision must be filed in King County Superior Court within fourteen days of the date of this decision. Seattle Municipal Code Section 23.76.36.(B)(11); Akada v. Park 12-01 Corporation, 37 Wn. App. 221 (1984); JCR 73.

If the Superior Court orders a review of the decision the person seeking review must arrange for and bear the cost of preparing a verbatim transcript of the hearing, but will be reimbursed if successful in court. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104.