

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

GEORGE B. KOTOLARIS

FILE NO. MUP-85-059(W)  
APPLICATION NO. 8502622

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

#### Introduction

Appellant, George B. Kotolaris, appeals the decision of the Director of Construction and Land Use to issue a determination of nonsignificance for a proposal to demolish a single family residence and construct a four story, 15-unit apartment building.

Appellant exercised his right to appeal pursuant to the Master Use Permit Ordinance, Chapter 25.05, Seattle Municipal Code.

Parties to the proceedings were: George B. Kotolaris, pro se; the Director represented by Clayton Leming; and the proponent represented by Charles Thrasher.

This matter was heard before the Hearing Examiner on October 18, 1985.

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

#### Findings of Fact

1. The proponent proposes to demolish a single family residence and construct a four story, 15-unit apartment building.

2. The threshold determination pursuant to SEPA by the Director of DCLU was a determination of non-significance (DNS) with conditions.

3. Located in a large L-3 zone developed with a mix of single family residences, duplex residences and a variety of apartment buildings, the subject site is the second lot on the east side of 11th Avenue at the intersection of 11th and East Denny. Adjoining to the north is a four story, 38-unit apartment building; and adjoining to the south is a nursing home. West across the street is a parcel designated RM 800 which is developed with a water reservoir and park. To the east properties are zoned BC and the area is developed with small businesses, single family residences, duplex residences and apartment buildings.

4. The Director's representative states and the Hearing Examiner finds that the proponent, in compliance with Housing Ordinance 190220 as amended, Ordinance 109973, has applied for a demolition license, HPO 85-082.

5. The Hearing Examiner finds that appellant's and an interested party's concerns, as stated in their various submittals to the record, can best be characterized as an attempt to have the subject site and structure declared and preserved as an historic landmark not subject to demolition; or that just the structure itself be declared and preserved as an historic landmark and moved to another site.

6. Through credible testimony from both the proponent and opponents the Hearing Examiner finds that no application for establishing and preserving the property as a landmark has been undertaken. The Hearing Examiner finds that no testimony or evidence was introduced by appellant or witnesses in regards to any adopted policy in regards to moving such a structure to another site.

7. Testimony from other property owners found credible by the Hearing Examiner establishes their disagreement with the Director's determination of nonsignificant impacts of the proposal. Deterioration of property value, blockage of views, air, light and increased level and amount of noise to the adjoining apartment building tenants as suggested by the property owners was found not persuasive in that no evidence was presented that these impacts would be significant. No persuasive evidence was presented that property values would decrease as a result of the construction of a new apartment building next to an existing apartment building. Views to the west may be blocked but the Hearing Examiner finds that the proponents have comparable L-3 development rights as the existing apartment structure.

8. Proponent's testimony found credible by the Hearing Examiner indicated that an 11.5 ft. to 18 ft. separation will exist between the adjoining apartment building and the proposed apartment building and that the proposed apartment is in compliance with zoning requirements.

9. The record and credible testimony regarding parking demand and increased traffic generated by the proposal establishes that the 16 parking spaces as proposed is within code requirements and that the 30 to 32 vehicular trip generation can be absorbed by the streets serving the site. Broadway Avenue is two blocks west, east Denny Avenue is one-half block north, and 12th Avenue is one block east.

10. From the record the Hearing Examiner finds that public transit is available at Broadway and Denny.

11. From the record and credible testimony the Hearing Examiner finds a substantial increase in noise and air quality during construction but the impacts will be mitigated by the hours of construction and that the impacts will not be significant in that these impacts will be temporary.

12. The Hearing Examiner finds from the record that there will be an increase in the number of persons and their associated noises will increase the noise level in the area as will their vehicles and associated traffic noises but that these impacts are not expected to be a significant adverse impact.

13. From credible testimony the Hearing Examiner finds that flora will be reduced but that landscaping will be required of the proponent to meet code regulations.

14. From credible testimony the Hearing Examiner finds that lights and lighting for the building and windows will increase but that this impact is not expected to be a significant adverse impact.

15. The Hearing Examiner from credible testimony does not find that adjoining property owners will have their privacy invaded in any greater degree than at present. Testimony indicated that the structures as presently existing are in very close proximity to each other.

### Conclusions

1. An environmental impact statement is required if the responsible official determines that a proposal may have a probable significant adverse impact. Section 25.05.360. If the responsible official determines that there will be no probable adverse impact then the DNS is to be issued. Section 25.05.340. A significant impact is present "whenever more than a moderate effect on the quality of the environment is a reasonable probability". Norway Hill v. King County Council, 87 Wn.2d 267, 278, 552 P.2d 674 (1976).

2. The Director has found probable impacts but determined that none would be significant. The Hearing Examiner on review must give that determination substantial weight. Section 23.76.36(B)(7). The standard of review then is "clearly erroneous" which means that to overturn the Director's determination, the Hearing Examiner must have a definite and firm conviction that a mistake has been made. Hayden v. Port Townsend, 93 Wn.2d 870, 613 P.2d 1164 (1980).

3. In this case the appellant's testimony and testimony of witnesses dispute the Director's conclusion that the impacts would not be significant but there has been no showing that the facts relied upon by the Director are erroneous. Neither has evidence been introduced which contradicts the Director's conclusion. A difference of opinion, without more, is not sufficient basis for the Hearing Examiner to reverse the Director's decision given the standard of review.

4. The Hearing Examiner is without power to designate historic landmarks nor able to condition the SEPA determination by the Director to require landmark designation or to move the structure as requested.

### Decision

The Director's determination is AFFIRMED.

Entered this 31st day of October, 1985.

Roger Shimizu  
Roger Shimizu  
Hearing Examiner Pro Tempore

### Concerning Further Review

Pursuant to Section 25.05.680(2), 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 of the decision appealed from is filed with the SEPA Public Information Center. The City Council's review on appeal shall be limited to the exercise of the City's substantive authority to condition or deny the proposal under SEPA as authorized by Section 25.05.660. The appeal statement 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 25.05.680(2), the time for filing a request 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 25.05.680(2) appeal.

If no appeal is taken pursuant to Section 25.05.680(2), 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. Any request for judicial review of the decision on the underlying governmental action must be filed in King County Superior Court within fourteen days of the date of this Hearing Examiner decision. Seattle Municipal Code Section 23.76.36(B)(11). Judicial review under SEPA shall without exception be of the decision on the underlying governmental action together with its accompanying environmental determinations. RCW 43.21C.075(6)(c). SEPA issues may be added to the request for review within 30 days after the date of this decision if a notice of intent to seek judicial review of SEPA issues is filed with the Director of the Department of Construction and Land Use, 400 Seattle Municipal Building, Seattle, Washington 98104, within fourteen days of the date of this decision. Section 25.05.680(3)(d).

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 written 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, 5th Floor, Seattle, Washington 98104. As an alternative to the written transcript, RCW 43.21C.075(6)(b) provides that a tape may be used for court review. If a taped transcript is to be reviewed by the court, the record shall identify the location on the taped transcript of testimony and evidence to be reviewed. Parties are encouraged to present the issues raised on review, but if a party alleges that a finding of fact is not supported by evidence, the party should include in the record all evidence relevant to the disputed findings. Any other party may designate additional portions of the taped transcript relating to issues raised on review.