

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeals of

FRANCIS E. MATHEWS and
CRAIG R. ROBERTS

FILE NO. MUP-86-016 and
FILE NO. MUP-86-017
APPLICATION NO. 8506354

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

Introduction

Appellants, Francis E. Mathews and Craig R. Roberts, filed appeals of the decision of the Director, Department of Construction and Land Use (DCLU), to issue a determination of nonsignificance with conditions for a second billboard face at 4750 Fauntleroy Way S.W.

The appellants exercised the right to appeal pursuant to Chapter 23.76, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on April 29, 1986.

Appellants, Francis E. Mathews and Craig Roberts, pro se; and the Director, DCLU, by Julia Gibb, land use specialist. The applicant, Ackerley Communications, did not appear.

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. Ackerley Communications applied for a master use permit to add a second display face to an existing billboard at 4750 Fauntleroy Way S.W. The Director issued a determination of non-significance with conditions for the proposal. These appeals were filed challenging that decision.

2. The site of the billboard is a lot developed with an auto transmission shop and offices in the CG zone along Fauntleroy, south of Alaska Street in West Seattle. The site joins SF 5000-zoned property at the alley to the east and faces CG zones property to the west. The CG zone extends at least 100 ft. south of S.W. Edmunds and continues north to Alaska Street. The billboard is approximately 50 feet north of Edmunds Street.

3. The proposal is to add a second face on the south side of existing billboard. The face would measure 12 ft. by 25 ft. and be lighted. The billboard is supported by three steel posts and is 39 ft. high.

4. Approximately 110 ft. south of the billboard site is the Fauntleroy Terrace Condominiums structure which is three stories high. The condominiums are partly within the CG zone and partly in the L-3 zone. Units on the north side would view the new billboard face.

5. A new billboard face was installed by the applicant without permit and its removal was required pending application and issuance of a permit. The billboard was lighted while it was up and the lights or glare from the lights disturbed the sleep of the residents of the condominium units.

6. Fauntleroy Way S.W., is a heavily travelled arterial.

7. The Director issued a determination of non-significance (DNS). The document disclosed potentially significant adverse environmental impacts from light, glare and the close proximity to residential development. To assure that these impacts would not be significant, the Director imposed certain conditions including the following:

2. Billboard message shall be confined to a 12' x 25' area. No stickouts shall be allowed beyond this point.
3. Billboard shall be lit only from below. No lighting shall be placed at sides or top edge of billboard. Lighting shall be shielded from a southern exposure.
4. A timing device shall be installed to regulate hours of illumination from dusk until 10:30 p.m. No photo cells shall be allowed.

8. The Director relied on the City's SEPA policy found at Section 25.05.902(I) and Section 23.16.02.B, Multi-family Residential Areas Policies, Policy No. 3 for Lowrise 3, Locational Criterion F, for authority to impose the above conditions to mitigate disclosed impacts.

9. Appellants urge that if the proposal cannot be denied, either the billboard sign not be permitted to be lighted or the hours of lighting be reduced to reflect a more realistic bedtime for elderly persons.

10. The Director chose the 10:30 p.m. time for termination of lighting by balancing presumed bedtimes against the applicant's need for lighting the sign.

11. Most billboards in Seattle are lighted until midnight.

Conclusions

1. The Director may deny permits for a proposal because of its environmental impacts only if there are significant adverse environmental impacts identified in a final environmental impact statement (EIS) which cannot be mitigated by reasonable mitigation measures. Section 25.05.660.A-6. In this case the Director issued a DNS instead of an EIS and the evidence did not show that decision to be in error. Therefore, the Director could not deny the proposal.


2. The Director has authority to impose conditions to mitigate impacts identified in the DNS based on policies designated in Section 25.05.902 as bases for the exercise of that authority. Section 25.05.660.A.1 and 2. The mitigating measures must also be reasonable. Section 25.05.660.A.3. The Director's decision with regard to the exercise of that authority is to be accorded substantial weight on review by the Hearing Examiner. Section 23.76.022.C.7. To overcome that weight, appellants must show that the decision is clearly erroneous. Brown v. Tacoma, 30 Wn.App. 762, 637 P.2d 1005 (1981).

3. Appellants urge more stringent mitigating measures based on the effect of the light on the residential units. The Director considered that effect but concluded that more stringent conditions would not be reasonable given the degree of impact and the needs of the applicant. Though the Hearing Examiner might select an earlier hour, i.e., 10 p.m. using the time established in the Noise Control Ordinance as the hour for reduction of maximum permissible sound levels, appellants have not shown that the Director's decision as to mitigation measures is clearly erroneous. Therefore, it must be affirmed.

Decision

The decision of the Director is AFFIRMED.

Entered this 14th day of May, 1986.


M. Margaret Klockars
Deputy Hearing Examiner

Concerning Further Review

Pursuant to Seattle Municipal Code Section 25.05.680(C), a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the fifteenth day after the date of the decision appealed from is filed with the SEPA Public Information Center. The appeal statement must be filed with the City Clerk on the first floor of the Municipal Building. The City Council's review on appeal shall be limited to the issue of compliance with Section 25.05.660. The City Council Land Use Committee should be consulted regarding further appeal specifics.

If an appeal is taken pursuant to Section 25.05.680(C), 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(C) appeal.

If no appeal is taken pursuant to Section 25.05.680(C), 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 fifteen days of the date of this Hearing Examiner decision. Seattle Municipal Code Section 23.76.22(C)(12)(c). 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 fifteen days of the date of this decision. Section 25.05.680(D)(4).

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 finding. Any other party may designate additional portions of the taped transcript relating to issues raised on review.