

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeals of

EDWARD TRIMAKAS and
NORTHGATE CENTERS, INC.

FILE NO. MUP-86-020(W)
FILE NO. MUP-86-021(W)
APPLICATION NO. 8506357

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

Introduction

The appellants exercised the 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 May 15, 1986.

Parties to the proceedings were: appellant, Edward Trimakas, pro se; appellant, Northgate Centers, Inc., represented by attorney, Gary Huff; and the Department of Construction and Land Use Director (DCLU), represented by land use specialist, Jay Laughlin.

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 these appeals.

Findings of Fact

1. Ackerley Communications proposes to erect and maintain a single-faced billboard advertising sign at 338 Northeast Northgate Way. DCLU issued a declaration of no environmental significance and appellants herein filed separate appeals.

2. The subject site is within an alley easement which is located between the Trolley Tavern and a second building. Both of these buildings face N.E. Northgate Way. Located within the Community Business zone, the site is one half block west of 5th Avenue N.E. and directly north of the Northgate Mall.

3. The proposed sign would stand on a single steel post 60 ft. from grade and measure 14 by 48 ft.

4. The subject vicinity is one of mixed scale commercial uses and apartment complexes. The residential developments are principally north and west of the proposed sign site. Appellant Trimakas presented, and the Hearing Examiner finds, that the subject area, particularly near the subject site, is one that was the object of an \$8+ million beautification effort. Among other items, trees have been planted, sidewalks installed and utilities undergrounded. Planted at heights of 12 to 15 ft. the trees will grow to a height of approximately 60 ft. Cooperative efforts were noted between district property owners and the City of Seattle.

5. There is no other billboard within the immediate strip where the proposed sign will be located. The proposed sign would be larger than most, if not all, of the signs that are present in the general vicinity.

6. The sign as proposed is permitted by the Zoning Code. It is one that would be relocated to the subject site from a prior Ackerley site in accord with a stipulation between the applicant and the City of Seattle.

7. The DCLU Analysis and Decision reported that no public comments were received regarding the proposal. Appellant Trimakas presented that no comments were submitted because the DCLU required sign was located along the side of a building, facing the alley easement and was not visible to passersby. Trimakas therefore urges the Hearing Examiner to remand the application for proper DCLU notice; to alternatively require an environmental impact statement; or to condition the proposal so as to mitigate anticipated adverse impacts on the subject area. Northgate Centers Inc. also requested imposition of mitigation measures such as landscaping or reduction in the size of the sign.

Conclusions

1. The Hearing Examiner has jurisdiction of these proceedings pursuant to Chapters 23.76 and 25.05, Seattle Municipal Code.

2. The Hearing Examiner is required to give substantial weight to the DCLU Director's environmental determinations. Accordingly, appellants must show the DCLU determination to be clearly erroneous. Norway Hill Preservation and Protection Association v. King County Council, 87 Wn.2d 267, 552 P.2d 674 (1976).

3. Although the proposed sign will inject a new height and size element into the area, the record fails to show that the effects will be significantly adverse. The sign will not necessarily enhance the efforts of the property owners and City to beautify the area. On the other hand, the effects of the sign will be of no more than a "moderate effect" on the quality of the environment. The site is located within an area of mixed commercial development, and is immediately north of the Northgate Mall. The sign will be oriented away from the vicinity residential uses. As there will be no significant adverse impact, no environmental impact statement is required. Consequently, the proposal may not be denied pursuant to SEPA.

4. Mitigation measures must be based on specific policies, plans or similar items formerly designated in Seattle Municipal Code Section 25.05.902 and must be related to specific, adverse environmental impacts that are identified in an environmental document.

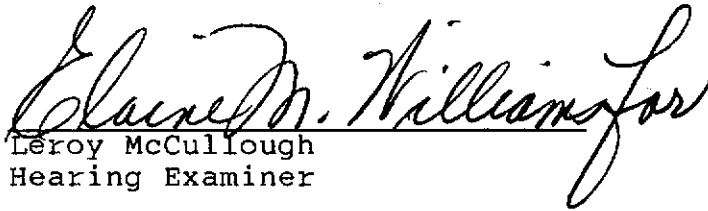
5. The Hearing Examiner is not persuaded that a sign at the height proposed will affect parking or traffic such that mitigation may be properly based on these impacts. Landscaping may be used to mitigate adverse environmental impacts. It may, for example, be used to reduce erosion or to promote aesthetic compatibility between uses. In this case the proposed street trees will grow to a height of at least 60 ft. Thus, it is not "reasonable", Seattle Municipal Code Section 25.05.660(1)(c), to require that the proposed sign be reduced from its height of 60 ft. The Hearing Examiner has reviewed the other suggested bases of mitigation and concludes that no mitigation of the proposal may be required pursuant to Chapter 25.05, Seattle Municipal Code. Whether applicant voluntarily reduces the vertical and other dimensions of the sign is not for Hearing Examiner deliberation.

6. Finally, the Hearing Examiner is not persuaded that a remand is required for renotification by DCLU. While the sign could have been placed in a more prominent location the sign sufficiently accorded with the provisions of Chapter 23.76, Seattle Municipal Code, and appellants' cases were not adversely affected by the notice given. The DCLU is affirmed.

Decision

The decision of the Department of Construction and Land Use is affirmed.

Entered this 30th day of May, 1986.


Leroy McCullough
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.