

FINDINGS AND DECISION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

TRIDENT IMPORTS, INC.,

FILE MUP-86-043(W)
APPLICATION NO. 8506198

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

Introduction

Appellant challenges the decision of the Director, Department of Construction and Land Use, to impose conditions pursuant to SEPA on a proposal to convert an attic to office use at 1101 Alaskan Way.

The appellant 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 September 9, 1986.

Parties to the proceedings were: appellant, Trident Imports, Inc., by Charles Peterson, president, and William Jordan, architect, and the Director by Ed Somers, 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. Trident Imports, Inc., applied for a master use permit to remodel a second floor attic space and convert it to office use. The permit was granted subject to two conditions. Appellant challenges those conditions.

2. The structure is located on Pier 55 in the central waterfront. The site is zoned DH1-45' and is in the US/CW shoreline environment.

3. The space to be remodeled is some 4,797 sq. ft. which, added to office space previously approved, would total 10,662 sq. ft.

4. An environmental checklist was submitted by the applicant and a determination of non-significance (DNS) issued by the Director pursuant to SEPA.

5. The staff person reviewing the environmental checklist added a statement that "(t)he site is deficient in present landscaping, and street trees could be provided to make the site compatible with other waterfront properties to the north and south, and to improve aesthetic appearance of the site."

He also noted

(I)ncreased office use & numbers of people accessing (sic) the site will result from the proposal, and increased landscaping in the form of street trees could be required to offset the present situation where the site is deficient in landscaping with regard to pre-

sent landscape standards. Other properties to the north & south provide street trees, and the street trees would make the site compatible with other development in the area and reduce aesthetic impacts.

Exhibit 2.

6. The condition imposed by the Director to mitigate identified aesthetic impacts is as follows:

1. Four street trees shall be provided in the sidewalk at the front of the site in line with the existing parking meters, subject to Engineering Department approval prior to occupancy of the proposed office space.

Exhibit 1.

7. The sidewalk in front of the building gets heavy pedestrian usage including passengers from tour busses loading and unloading.

8. Appellant fears that the grates and shields around the trees will interfere with the safe passage of pedestrians.

9. Appellant maintains hanging baskets in front of the existing building and planters and other landscaping at the next pier.

10. The new office space is expected to accommodate an additional 28 to 40 persons.

11. No parking is required by the Land Use Code and no parking is proposed by appellant.

12. Demand for parking in private parking lots in the area and public parking under the Alaskan Way viaduct exceeds capacity.

13. To mitigate the parking impact the following condition was imposed by the Director:

2. New tenants to the office portion of the building shall offer a minimum of 50 percent Metro transit pass subsidy to all employees of the office space for the life of the building. Tenants of the office space shall be informed about the transit pass subsidy through lease or rental agreement, and employees shall be informed about the subsidy at the time of employment. Seattle Commuter Services shall be permitted to provide a semi-yearly promotion on high occupancy vehicles to the employees of the office, and at that time employees shall be informed again about the transit pass subsidy by the employer.

Exhibit 1.

14. The Director relied upon Section 25.05.902(5) for authority to impose the landscaping condition and on Section 25.05.902(4) for authority to impose the transit pass subsidy condition.

15. Transit pass subsidies have been required as a condition of a number of permits in downtown Seattle to mitigate the impact of increased parking demand.

16. The Director's practice is to require landscaping when an existing building which does not meet the current landscaping standards is converted to a different use.

Conclusions

1. The Hearing Examiner has jurisdiction over these parties and of this matter pursuant to Chapter 23.76.

2. The Director's decision in the matter is to be given substantial weight. Section 23.76.022(C)(7).

3. The Director is authorized by Section 25.05.660 to impose mitigating measures as conditions on the permit subject to certain limitations. Those are: 1) the mitigating measure must be based on a SEPA policy; 2) the mitigating measure must be related to a specific, clearly identified adverse environmental impact; 3) the mitigating measure must be reasonable and capable of being accomplished; and 4) the responsibility for effecting the measure may be imposed only to the extent attributable to the identified adverse impact of the proposal. Section 25.05.660.

4. The Director identified increased demand for parking without increased supply as an adverse environmental impact. Section 25.05.902(4) is a SEPA policy providing authority for the imposition of conditions requiring measures to mitigate the adverse impact. That transit pass subsidy is offered as an alternative to providing long term parking, Section 23.49.016(B)(1) and (3), shows that the measure is reasonable and capable of being accomplished. Finally, The nature of the measure, i.e., the cost involved relates directly to the number of commuting employees, assures that it relates directly to the degree of impact. Appellant has not shown the Director to have erred in imposing this condition.

5. For the condition requiring street trees the Director relies on Section 25.05.902(5), the SEPA policy on landscaping, for authority. Three subsections indicate when landscaping is an appropriate mitigating measure:

(i) Landscaping may be required when it can provide a buffer between incompatible land uses or zones such as between parking areas and pedestrian ways.

(ii) Landscaping may be required when it can reduce the potential for erosion or excessive storm water runoff.

(iii) Landscaping may be required for new development to reduce the site coverage by impervious surfaces and to add to the beauty of the city.

6. No incompatible land uses or zones have been identified. Since the proposal is for an interior remodel, erosion and runoff would be unaffected. No new development is proposed so site coverage would not be increased. Finally, since new development is not proposed the situation triggering the "to add to the beauty of the city" reason for requiring landscaping does not exist. There seems to be no policy basis for authority to impose the condition.

7. A further requirement is that the condition must be related to a "specific, adverse environmental impact" which has been identified in the environmental document. "Increased office use and number of people accessing (sic) the site" is one of two adverse impacts of the proposal mentioned in the checklist which the Director determined needed mitigation by landscaping. The other is that "(o)ther properties to the north & south provide street trees". The inference intended is that a site without street trees is incompatible with those which have street trees. This cannot be considered as an "impact" of the proposal since the condition exists and would be unchanged.

8. SEPA requires a reasonable relationship between the impacts and the mitigating measure. The impact from the added office use is more people. Accepting for the purpose of this decision that the Director's determination that more people in itself is an adverse impact since that was not disputed, the issue is whether four street trees mitigate that impact when the record shows concern about the trees adding to pedestrian hazard or congestion. The policy intent gives an idea of what can be expected from trees or other landscaping, i.e., they can provide separation between incompatible uses, improve aesthetics, reduce storm water runoff and erosion. Section 25.25.902(5)(a). The policy, then, does not suggest that trees can reduce the impact of a greater number of people. Further, no rationale was offered by the Director's witness as to what the relationship would be between the perceived impact and the trees. It is concluded that the condition is not reasonably related to the impact.

8. Since there is no policy basis for the condition and the condition is not reasonably related to the impact, the Director erred in requiring street trees.

Decision

Condition No. 1, street trees, imposed by the Director is stricken. The Director's decision to impose Condition No. 2 is affirmed.

Entered this 24th day of September, 1986.

M. Margaret Klockars
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.