

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

In the Matter of the Appeal of

ACKERLY COMMUNICATIONS

FILE NO. MUP-87-059(W)
APPLICATION NO. 8704219

from a decision of the Director,
Department of Construction and
Land Use

Introduction

Ackerly Communications appeals the decision of the Director, Department of Construction and Land Use, to impose a height limit as a SEPA condition on its proposed billboard at 13720 Aurora Avenue North.

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 November 25, 1987.

Parties to the proceedings were: appellant by Andrew Sutcliffe, director of communications, 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. The applicant, Ackerly Communications, proposed a 12 ft. by 25 ft. billboard at 13720 Aurora Avenue North to stand 45 ft. high. The Director issued a determination of non-significance (DNS) and imposed a condition pursuant to SEPA limiting the height to 32 ft. but allowing for increase in height when the surrounding scale of development increases. The applicant appeals the condition.

2. The Director based her decision to condition on the environmental impact of the sign on aesthetics, i.e., the scale of development in the area. The basis for the condition was Section 23.55.001. The intent of the condition was to bring the sign into harmony with the surrounding development but to allow for enough height for the billboard to be seen by motorists.

3. Ed Somers, the land use specialist, determined that a 32 ft. height limit is appropriate based on his estimate that the adjacent "Fireplace Shop" sign is 20 ft. high. Adding 12 ft. for the signface would place the billboard above the "Fireplace Shop" sign making both visible.

4. Andrew Sutcliffe viewed the "Fireplace Shop" sign and estimated its height to be 28 ft. The 32 ft. height limit would not allow the face to clear that sign if it is 28 ft. high.

5. The parties agreed that the condition may be modified to restrict the height to no greater than 13 ft. (one foot is needed for a cross member) higher than the top of the "Fireplace Shop" sign.

Conclusions

1. The Hearing Examiner has jurisdiction over these parties and this subject matter pursuant to Section 23.76.022C.


2. The Director is granted authority to impose conditions to mitigate the environmental impacts from a proposal. Section 25.05.660. The condition to mitigate an identified impact, must be based on policies or regulations designated in Section 25.05.902 as available for such use and be reasonable. Section 25.05.660A1., 2. and 3. The aesthetic impact on scale has been identified. The Land Use Code is included in Appendix A to Section 25.05.902 and, with the agreement reached between the parties, the condition is reasonable.

Decision

Condition No. 1 is modified to read:

The overall height of the billboard shall be no higher than 13 ft. above the top of the "Fireplace Shop" sign, located on the lot abutting the subject property, to be compatible with the scale of surrounding development. As the heights of the buildings adjacent to the sign increase, the sign at the subject site may also be permitted to be increased in height to remain complementary to and harmonious with surrounding development, however, a new SEPA application will be needed to allow for public comment and review of impacts of a higher sign at this location.

Entered this 2nd day of December, 1987.


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 for 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.