

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

CHILDREN'S HOSPITAL AND MEDICAL
CENTER AND LAURELHURST COMMUNITY
CLUB

FILE NOS. MUP-87-060(W) and
MUP-87-061(W)

APPLICATION NO. 8602396

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

Introduction

Laurelhurst Community Club appeals the decision of the Director, Department of Construction and Land Use, on a permit application for the construction of a medical office pavilion by Children's Hospital and Medical Center at 4800 Sand Point Way N.E. Children's Hospital and Medical Center appeals the imposition of one part of a mitigation measure imposed on the approval.

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 April 4, 5, 6, 7, and 11, 1988.

Parties to the proceedings were: Laurelhurst Community Club represented by its attorney, Peter J. Eglick; Children's Hospital and Medical Center represented by Mitchell J. Olejko and John Keegan, Davis Wright & Jones; and the Director, Department of Construction and Land Use, represented by the City Attorney, Michael P. Monroe, assistant.

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. Children's Hospital and Medical Center ("Children's") applied for a master use permit to construct a medical office pavilion addition ("pavilion") to the main building on Children's campus. The pavilion is to contain 65,235 gross sq. ft. of floor area and be four-stories high. The proposed uses for the building include basement storage, two-stories of medical office use and two-stories of research and diagnostic laboratories.

2. Pursuant to Chapter 25.05 the Director of the Department of Construction and Land Use ("Director") issued a determination of non-significance ("DNS") and imposed conditions to mitigate environmental impacts of the proposal. The conditions relevant to these appeals are:

1. The owner(s) and/or responsible party(s) shall revise and have approved by all parties the existing Transportation Management Plan to include the following elements in addition to any of the elements existing in the plan that are not altered by the below listed conditions:

A. Prior to occupancy of the subject medical office building the hospital shall provide: a

66 percent subsidy of the cost of employee bus passes (this will include an equivalent dollar subsidy to vanpool riders), designation of 120 carpool parking spaces in the covered parking garage, and free carpool parking to all hospital employees who carpool (a carpool being two or more people of which at least one is a hospital employee). The hospital also shall not replace the 34 parking spaces lost as a result of the medical office building's construction. In addition, the monthly parking rate for single occupancy vehicles shall be increased by 5 dollars per month and a \$10 monthly bonus incentive shall be provided to all CHMC staff members who carpool. These actions shall be in addition to all others previously provided for in the Transportation Management Plan. To reduce the impacts of the institutional growth on the Montlake Bridge, the applicant shall also implement a van shuttle service between the CHMC campus and the 520 Montlake bus station. The van shall operate during the AM and PM traffic peaks on non-holiday weekdays and shall be coordinated with the major shift changes of the institutional staff. The bus ride shall be free of charge and shall be available to all CHMC employees. Non-CHMC employees can use the service and may be charged a reasonable fee. Other institutions or organizations can participate in the shuttle service provided it does not deter from the efficiency of the service making it undesirable for CHMC riders. The shuttle shall provide a minimum of 3 round trips from the institution and back per hour during peak times. The institution shall be responsible for the development, implementation, organization, funding, operation and maintenance of the entire program. The program shall be approved by DCLU prior to occupancy. The TMP shall include a provision to allow review of the van shuttle after 18 months of operation. If there is insufficient demand for the shuttle, as determined by the City and the TMP has achieved reduction in CHMC trips such that there are no increases on the Montlake Bridge over present levels, the institution may discontinue the van shuttle operation.

B. If after 18 months following occupancy CHMC has failed to achieve the goals of the Transportation Management Plan CHMC shall within 3 months increase the monthly parking rate for single occupancy vehicles by 7 dollars per month and shall either (a) provide for an automatic payroll deduction of the cost of parking for all CHMC employees unless the employee can demonstrate that they are utilizing alternative means of transportation other than the single occupancy vehicle or (b) provide full financial support for a Residential Parking Zone around the CHMC campus subject to the approval of the Seattle Engineering Department and the affected neighbors.

If after 30 months following occupancy, the institution has failed to achieve the goals of the TMP, the institution shall record a covenant on the property prohibiting further expansion of the institutional campus or expansion of the institutional Gross Floor Area as exists on the date of publication of this decision. The

covenant shall remain in effect until either the goals of the TMP are achieved or the institution completes an institutional Master Plan pursuant to the procedures of SMC 23.80.

If at any time CHMC achieves the goals of the Transportation Management Plan no further modifications to the Plan are required and the plan will remain in affect with the elements that were included at the time the goals were achieved. At any time prior to CHMC achieving the goals of the Plan, CHMC can implement additional or increased incentives in an attempt to achieve the goals of the Plan. Such additional elements shall not supersede or negate the requirements above unless such actions result in CHMC achieving the goals of the Plan. The changes apply not only to the new medical office building employees but to all hospital employees.

5. The owner(s) and/or responsible party(s) shall implement the initial phase of the revised Transportation Management Plan.

8. The owner(s) and/or responsible party(s) shall implement and maintain the revised Transportation Management Plan.

3. Appellant Laurelhurst attempted to present evidence as to the environmental impact of the interaction between the pavilion and a proposed helipad. During the hearing that issue was dismissed on the basis that it is appropriately reviewed as an impact of the helipad proposal and not the pavilion proposal.

4. Appellant Laurelhurst presented evidence on the issues of transportation and parking impacts. Appellant Children's presented evidence addressing its appeal of a portion of Condition 1 prohibiting further expansion of the campus or floor area if the goals of the transportation management program were not met within 30 months following occupancy.

5. The Director used the traffic impact analysis prepared by the Transpo Group, Children's consultant, to assess the probable transportation and parking impacts of the pavilion.

6. Laurelhurst did not dispute the accuracy of the projected volume of traffic to be generated by the pavilion. The Hearing Examiner therefore adopts the figures in the traffic impact analysis, i.e., the pavilion would generate 2,070 daily vehicle trips, 1,760 of those from the medical office use. Approximately 70 trips would occur in the AM peak and 180 in the PM peak.

7. Traffic volume and levels of service were forecast for the year 1990, the expected year of occupancy, without the project. Children's consultants increased existing counts by two percent per year as a growth factor based on trends along Sand Point Way and added traffic from three other projects: Washington Retirement Park, Springbrook Medical Office expansion and the Navy Home Port Activity at Sand Point. The current level of service at the hospital entrance on Sand Point Way and Sand Point Way at N.E. 45th Street are B and would remain B with the growth projected by Children's consultant.

8. Laurelhurst's traffic consultant, Terry Gibson, utilized more recent traffic volume figures in his analysis and concluded that the appropriate growth factor should be five to six percent instead of two percent. He also disagreed with the percentage of home port trips allocated to the south and therefore his forecast for 1990 traffic without the project would reduce the level of service at the entrance to C and at Sand Point and N.E. 45th Street to D for the westbound approaches in each case.

9. The growth rate projected by Children's consultants is

acceptable for the peak hour, the critical period.

10. The projected trip distribution of the home port facility traffic of 24 percent to the south based upon the Navy's analysis of personnel involved, income level and likely housing and the relationship of the facility to the Everett facility is found by the examiner to be more reliable than the 39 percent suggested by Laurelhurst's consultant which he based on the Puget Sound Council of Government's model for the general population in the four-county area.

11. Children's consultants determined that the trips generated by the pavilion would have no effect on the level of service at the Sand Point entrance and no effect on the level of service at the intersection of Sand Point Way and N.E. 45th Street. The consultants' conclusion was that traffic from the pavilion would not change the level of service at any intersection in the vicinity.

12. Laurelhurst's consultant disagreed with Children's conclusions finding that the level of service of the westbound approach at the hospital entrance to Sand Point Way would be lowered to level of service D from C and the westbound approach at the Sand Point Way and N.E. 45th intersection would be D instead of the projected B; however, the baseline volume as calculated by him would result in D not the project itself. The consultant projected a higher volume of employee trips during the PM peak hour based on a change from an assumption of 12 percent of the employees using car/vanpools to 5.4 percent, which was the current level. Since the projected volume was based on ITE trip generation assumptions rather than the 12 percent car/vanpool split found in a Metro study, there should not have been any adjustment in the peak hour volumes and hence the level of service.

13. On Sand Point Way at the entrance to Children's, the percentage of peak hour traffic attributable to the pavilion is projected to be nine percent.

14. The level of service of the westbound approach at the Sand Point Way and N.E. 45th Street intersection and the efficiency of the Sand Point and N.E. 50th Street intersections are of special importance to the Laurelhurst community as they represent two of only three or so exits from the neighborhood. The traffic generated by the pavilion would not effect the operation of those intersections.

15. The Montlake Bridge corridor is congested during peak hours and is a part of the City's transportation system which has received considerable attention because of the congestion.

16. Children's consultants project that 60 vehicles from the pavilion would use Montlake Boulevard in the PM peak hour with 25 crossing the Montlake Bridge. Fewer are projected to cross the bridge during the AM peak hour. Children's consultants opined that this number would cause no noticeable effect on traffic flow.

17. Laurelhurst's consultant projected a higher number because of his use of a different mode split and his assumption that all traffic on Montlake Boulevard would use the bridge. The examiner rejects his projection.

18. The Findings and Decision of the Director on Martin Selig's proposed building at 4501 15th Avenue N.E. discusses the effect of up to 25 vehicles generated by that project during the PM peak hour using the Montlake Bridge. It finds that the intersection of Montlake Boulevard with N.E. Pacific Street operates at level of service F currently and that additional volumes would exacerbate an already unacceptable condition.

19. The vanpool shuttle required by the Director's condition should reduce the traffic impacts of the pavilion on the Montlake Corridor so that fewer than 25 trips would use the bridge during

the PM peak hour and further it should reduce existing traffic from the hospital which now uses that corridor.

20. Laurelhurst's traffic consultant observed the queuing characteristics at the exit from Children's to Sand Point and projected 1990 conditions with the project. He observed average queues of 5.9 cars or 118 ft. and maximum queues of 10 vehicles or 200 ft. His projection for 1990 is an average of 11.5 cars or 230 ft. and a maximum of 25 cars or 500 ft. In his opinion this could interfere with access to the parking garage and the delay could result in more employees and visitors parking on neighborhood streets. His calculations were erroneous because the average was based on cars continually arriving and joining the queue when car queue only during the red portion of the cycle.

21. In the average queue condition, the queue would back cars to the level one driveway to the parking garage, the visitors entrance. In the maximum queue condition, the queue would reach the second driveway, an employees entrance, and would extend beyond that only one signal cycle once per hour. This condition should not interfere with the internal circulation pattern as, during the peak hour employees are attempting to exit the garage. Moreover, the queue would dissipate during every signal cycle.

22. The short delays to exit the campus at peak hours is not likely to influence employee parking patterns given the greater time necessary to walk from surrounding streets.

23. Under the proposed TMP the parking rates are to be increased from the current \$7 per month to \$12 per month and then to a possible \$20 per month after 18 months. In addition to the new \$5 disincentive to drive an SOV from the first increase, there would be a \$10 per month bonus as an incentive to carpool. The effect of taxes and FICA on this amount had not been calculated.

24. The intersection of N.E. 50th Street with Sand Point Way is approximately 100 ft. from the entrance to Children's. Laurelhurst's consultant observed the functioning of the intersections and found a significant traffic problem at that intersection, unrelated to the pavilion. The problem is the result of the volume on Sand Point Way and the configuration of the two intersections with the traffic medians. The two intersections are not functionally related in that N.E. 50th serves the residential area and the Children's entrance serves only the hospital campus. Very few vehicles related to Children's would enter that intersection from N.E. 50th Street. The only effect of the project on that intersection would be from greater numbers of vehicles utilizing the free right turn from the Children's campus onto Sand Point Way which could reduce the number of gaps available for N.E. 50th traffic to enter Sand Point Way.

25. Laurelhurst's consultant found that the sight distance for motorists turning from N.E. 50th to Sand Point southbound to be some 250-350 ft. short of the standard. That condition could be improved by the removal of vegetation and lowering the median.

26. Children's consultants found that the Engineering Department identified no locations as high accident locations as of 1985. Laurelhurst's consultant expressed concern about the intersection of Sand Point Way with N.E. 50th, however that intersection as had an average of two accidents per year for the three year period ending June 30, 1986 and for the three year period ending August 31, 1987, that average had risen to 2.7. Since the Engineering Department considers an unsignalized intersection to be a "high hazard" intersection when it has had an average of five accidents per year or greater, the intersection does not qualify for special treatment.

27. Children's currently has a total of 1,361 parking spaces on the campus located in a parking garage and several lots. Thirty one of those parking spaces would be eliminated by the pavilion project. Based on current utilization of the campus

parking, the supply is adequate to accommodate all demand from the pavilion, however only 64 spaces designated as employee/-doctor parking would be available for a demand of approximately 142 vehicles. There would be approximately 180 spaces designated for visitors unused where no more than 75 would be required.

28. Children's requires that its employees park on campus and enforces this policy through periodic security patrols of the neighborhood with notices placed on employee cars that disciplinary action may be taken and with the requirement of authorizing a payroll deduction for the parking fee or signing a statement that the employee uses means of transportation other than driving a vehicle to work.

29. A serious on-street parking problem in the neighborhood was alleviated when Children's constructed its parking garage. Witnesses report that visitors to the hospital are occasionally seen parking on neighborhood streets. Children's responds to complaints about hospital-related parking creating problems.

30. The parking survey conducted by Children's consultants showed that the utilization rate for on-street parking was approximately 34 percent for the afternoon and evening counts in the area. Errors in the survey were identified by Laurelhurst's consultant such as streets across Sand Point Way included in the study which should not have been, certain streets within the study area left out and an inflated supply on one street. Those changes would affect the utilization rate very little.

31. Given the on-site supply of parking, the low on-street utilization rate and Children's policy regarding employee parking, the pavilion proposal should have little effect on on-street parking.

32. A memorandum of agreement ("MOA") was entered into by Children's in 1985 related to traffic resulting from the then proposed short stay surgery unit. The MOA provided for a transportation management program ("TMP") was the goal of reducing single occupancy vehicles ("SOVs") to 50 percent of the commuter trips within a three year period. To achieve this goal the 50 percent discounts on parking charges were to be given to carpools of two persons and 75 percent for carpools with three or more persons. Vanpools were to be allowed to park free. Children's provided a discount of 12.5 to 13.9 percent on transit passes. The MOA had provisions for a transportation coordinator, promotional activities and reporting. Implementation was begun in 1985. However, because occupancy did not begin until April, 1986, and there was reference in the attachment F to the MOA, a worksheet, to achieving the goal by 1989, the transportation coordinator assumed that the real term for the MOA was from 1986 to 1989.

33. DCLU found Children's to be in compliance with the MOA's TMP because of progress made even though the goals had not been realized.

34. The goals of the MOA's TMP for the end of the third year were 66 transit trips, 427 carpool trips (122 cars) and 20 vanpool trips (two vans). In 1985 Children's quarterly report showed 13 carpools, one vanpool and 48 discounted transit pass users. At the end of 1987, the second year, the quarterly report showed 36 carpools, one vanpool and 43 discounted transit passes. The number of carpools dropped in the first quarter of 1988. When an actual staff survey was conducted the number of transit riders (not all taking advantage of the discounted passes) was 58 and there were slightly more carpoolers than had been shown in the quarterly reports. At the last survey in early 1988 a total of 293 employees were traveling to work by means other than SOV. These figures show that Children's progress toward achieving the overall goal of the MOA TMP has not been substantial.

35. Providence Medical Center, which is a similarly situated institution, showed slow progress toward its goal of 50 percent SOV reduction until the administration voluntarily made adjust-

ments in parking rates, etc. At that point Providence experienced rapid acceleration in conversion to non SOV modes.

36. The provisions for the new TMP are considered quite aggressive. Two experts on TMP's agree that the goal of the TMP can be achieved but not without strong commitment from Children's administration. While the transportation coordinator is well qualified and his commitment to the success of the TMP is clearly strong, the commitment of the administration officials appears to the examiner to be less than enthusiastic.

37. Greater effort is needed for the success of Children's TMP than for one in a downtown location where transit is better and parking is limited and costly.

38. Parking charges are the most significant factor in discouraging use of SOV's. The evidence was inconclusive as to whether the small increase in the parking rate along with discounts and bonus would be enough to cause drivers to convert to carpools.

39. Children's has adequate procedures in place to assure that employees who drive use on campus parking.

40. Of the vehicle trips generated by the pavilion, the great majority would be associated with the medical offices and only a small portion of those trips would occur during the peak hours.

Conclusions

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

2. Unless there are probable significant adverse environmental impacts from a proposal, the Director is required to issue a DNS. Section 25.05.340. "Probable", as used in SEPA, means "likely or reasonably likely to occur...". Section 25.05.782. "Significant" means "a reasonable likelihood of more than a moderate adverse impact on environmental quality." Section 25.05.794. Laurelhurst's position is that the traffic and parking impacts of the proposed pavilion when cumulated with prior Children's development and other growth and development in the area amount to a significant adverse environmental impact. The record does not show the parking and traffic impacts from the pavilion to be significant. In fact, there is no showing of impact on on-street parking and that the level of service at no intersection would be changed because of the pavilion traffic even prior to mitigation. The Director did not err in issuing a DNS.

3. Laurelhurst requests that the decision on the master use permit be reversed and the application for construction of the pavilion be denied or that further conditions of approval be imposed including the required preparation of a master plan, the elimination of the medical office use in the pavilion and that no additional master use permits be issued to Children's until the goals of the TMP be met. A proposal may be denied only if it would be likely to result in significant adverse environmental impacts which have been identified in an environmental impact statement and that the identified impacts cannot be mitigated. No environmental impact statement was prepared for this proposal so the application cannot be denied pursuant to SEPA. Section 25.05.660A.6.

4. The Director has authority to impose as conditions mitigation measures based on policies designated as a basis for the exercise of substantive authority in Section 25.05.902, related to adverse environmental impacts identified in the environmental document, which are reasonable and capable of being accomplished and to the extent that the applicant is responsible for the adverse impact. Section 25.05.660A.1, 2, 3, and 4.

5. The environmental document, the DNS, disclosed the additional volume of traffic from the pavilion over the Montlake

Bridge, and described the impact as adverse and requiring some degree of mitigation. The shuttle service was shown to be adequate to mitigate that impact. No other adverse effects from the traffic were identified. Since the Director is authorized to impose mitigation measures only to the extent that they are reasonable and assign responsibility for only impacts attributable to the proposal, and the record shows that the level of service at the intersections would not be degraded and there would be no increased traffic hazard, it does not appear that there would be authority to impose any additional mitigation measures beyond the aggressive TMP that is already required. Even if the goals of the TMP are not achieved within the three year period, which appears to be likely unless the administration itself becomes much more aggressive in its support of the TMP, the gross impacts of the proposal do not warrant additional mitigation.

6. Children's challenges the condition imposed by the Director which would require the institution to record a covenant prohibiting further expansion of the campus or expansion of the gross floor area if the goals of the TMP are not achieved in 30 months. The covenant would be removed if the goals of the TMP were achieved or an institutional master plan was adopted. The Director relied on the parking and traffic SEPA policy, Section 25.05.902D, as the policy basis for this condition. The DNS concluded that there were adverse impacts on traffic so impacts have been identified in the environmental document. The record shows however that even without mitigation the impacts on traffic would be minor and on parking virtually nonexistent so the measure exceeds the Director's authority in that measures may be imposed "only to the extent attributable to the identified adverse impacts of its proposal." Section 25.05.660A.4. Therefore, the paragraph of condition 1 imposing that measure should be stricken.

Decision

Paragraph 4 of Condition 1, requiring a covenant restricting further expansion is hereby stricken and the remainder of the Director's decision is affirmed.

Entered this 16th day of May, 1988.

M. Margaret Lockars
M. Margaret Lockars
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 decision is filed with the SEPA Public Information Center the same day that the decision is signed by the Examiner. The SEPA Public Information Center telephone number is 684-8322. 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.