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FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

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In the Matter of the Appeal of

MARGARET COUGHLIN

FILE NO. MUP-88-040(W)
APPLICATION NO. 8607400

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

Introduction

Appellant, a neighborhood resident, appeals the adequacy of conditions imposed by the Department of Construction and Land Use Director pursuant to environmental impacts for a proposal to renovate and remodel Lawton Elementary School, 4017 - 26th Avenue W.

Appellant submitted this appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on July 19, 1988.

Parties to the public hearing were: appellant, pro se; applicant by Richard Hill, attorney at law; and the Director, Department of Construction and Land Use, by John Doan.

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. Seattle School District #1, applicant, is seeking master use permit approval for specific renovation and remodeling of the Lawton Elementary School. The project includes establishment of an on-site daycare center and a two-story addition to accommodate a child care, student and faculty population approximating 600. The street address is 4017 - 26th Avenue W.

2. The subject school property is located on the northeast side of Magnolia between W. Elmore Street on the north and on the east by 26th Avenue W. A western portion of the site fronts on 27th Avenue W. and another portion extends farther west to the Williams Avenue W. right-of-way.

3. Immediately south of the school site is the Lawton Park site. Thurman Street intersects 26th Avenue W. and extends east of the most northerly section of the Lawton Park boundary. Gilman Avenue W. is 1-2 blocks northeast of the site and is a principal access route serving Magnolia, Fort Lawton and Discovery Park.

4. Gilman Avenue W. is a minor residential arterial. The other streets serving the school are generally residential streets of 60 ft. rights-of-way but that are paved from 25-34 ft. of width.

5. The subject vicinity has some stark topographical features. Prior to school closure in the fall of 1987, the school busses and private vehicles unloaded and loaded along the west side of 26th Avenue W., adjacent to the school's main entrance. From the school south to Thurman Street, 26th W. increases in grade from approximately 12.5 to 20 percent. Thurman Street is also very steep and was prominent in bus routing.

6. Applicant's proposal is to relocate the school's main

entrance to 27th Avenue W., which is wider than 26th Avenue W. and relatively flat. Principal school bus traffic would be re-directed from 26th to 27th Avenue W. where an area for loading and unloading busses would be constructed. Private passenger unloading would remain on 26th Avenue West. The present cul-de-sac at the south end of 27th Avenue W. would be enlarged to accommodate a bus turnaround. Some 32 morning and 32 afternoon bus trips are expected. These will be occurring off usual traffic "peak" hours. The bus route was reviewed by the Seattle Engineering Department.

7. A child care center will be added to the southeast of the existing building. The entrance to the newly constructed center would be from 26th W. with a small "turnout" for access. The principal school addition proposed will be constructed north of the existing building to within some 70 ft. 6 inches of the north lot line. This 40,000 square ft., two story structure will be approximately 28 ft. tall to the top of the 8 ft. pitched roof and will be approximately 220 ft. wide. The new building would be sited where the hard surfaced playground area is currently located. Applicant proposes to remodel the existing gymnasium, lunchroom and auditorium. By the proposal, the net playfield area will decrease from 2.9 to 2.0 acres.

8. Some 32 new parking spaces are planned for the area west and north of the proposed new building. Additional on-site parking will be available on the new hard surface playground south of the existing building as the need and schedules dictate. Steel bollards are proposed for the west side of a service area that extends south of the 27th Avenue cul-de-sac. These bollards can be removed for access to that playground area parking.

9. South of the new playground area of basketball, tetherball and kickball is another play area at a higher elevation. The plans show a connecting stair at the west end of the lower play court. The plans also show an asphalt pathway, monkey bars and other features included in this more elevated area. Exhibit 24. As represented by the School District Program Manager, the school staff is of the opinion that playground supervision is "manageable" notwithstanding the topographical difference between play areas. There is nothing in the record to support a contrary finding.

10. Lawton Park includes play structures and a grass ballfield on the southeast portion of the Lawton School site which is used by the school and Park's Department. The proposal calls for no reduction in the size of the ballfield but may lead to an increase in its usage.

11. The proposed development will neither destroy or negatively disturb an existing path system that winds through Lawton Park.

12. Regarding vegetation and landscaping, the DCLU decision at issue imposed several conditions. "During Construction"

5. The owner(s) and/or responsible party(s) shall inform all contractors of the importance of retaining the existing on-site vegetation and shall work with the contractor to develop ways to minimize damage to existing trees.

Also "Prior to Occupancy"

7. The owner(s) and/or responsible party(s) shall provide landscaping according to the plan approved by the Land Use Specialist. The owner(s) and/or responsible party(s) shall submit to the Construction Inspector an affidavit from a landscape professional that the landscaping is installed per plan.

8. The owner(s) and/or responsible party(s) shall maintain the landscaping according to the approved plan.

13. The present landscape plan, Exhibit 21, includes perimeter lawn, shrubbery and trees. Some of the trees will be retained. A lawn area is also proposed for the center of the cul-de-sac. Along the school side of 27th Avenue W., applicant is proposing 9 Akebono Yoshino Cherry trees of 2 inch caliper that are expected to attain a 25 ft. height. The trunk would be clear to 6-8 ft. above ground.

14. Across 27th Avenue W. from the school site, west, are "up-slope" single family zoned and developed houses which have views over the school to Queen Anne Hill and the Cascades. There are also single family zoned and developed houses across 26th Avenue W. These nearby structures are primarily of the 1940-50's vintage.

15. The school site, zoned Single Family 5000, is at the northeast edge of a large Single Family 5000 area of Magnolia. With the exception of land to the south the site is surrounded by Single Family 5000 zoned and developed properties. Lawton Park is south adjacent to the school site. South of Lawton Park is a large Lowrise 3 (L-3) zoned area.

16. Appellant raised several credible points, including:

- a) that the Lawton Park Neighborhood is "Seattle's original planned model neighborhood."
- b) that Lawton School was originally part and parcel of an active neighborhood center.
- c) that the proposal will reduce the hard surface playground area from 1.8 acres to .9 acres," with consequent adverse impacts on outdoor recreational use of the property.
- d) that the School District should initiate restoration of a supervised recreation program for the site. (In 1969 Lawton site recreation was supervised, but the supervision had discontinued by the mid 70's. The neighborhood children now use the Blaine Center 2.5 miles away.)
- e) that landscaping should be consistent with existing species, should have "limited height potential," and should not shade the school ground.
- f) traffic and parking safety. (Appellant argued that the School District should have been required to do a site-specific traffic study from which appellant could have recommended particular project mitigation.
- g) the relationship of the Lawton Park plan to Seattle's Comprehensive Plan.

17. Appellant's concerns with the DNS process and the appeal that followed through the Seattle School District Hearing process were ruled as beyond the Seattle Hearing Examiner's scope of review and jurisdiction.

18. Exhibit 27 is the Seattle Planning Commission's 1950 Lawton Neighborhood Recreational Study. Within the document Lawton is recognized as one of three Magnolia Community District neighborhoods. It was recognized that the Lawton School was not centrally located within its "service area" and was "isolated from the majority of the child population by steep topography unimproved streets, and undeveloped property."

19. The Planning Commission Study concluded with recommendations that a neighborhood playground park be acquired, developed and maintained, and secondly that "the joint School-Park Staff Committee give consideration to, and make recommendations to their Boards on" acquisition of the site and "the joint use of the new school gymnasium - auditorium by the permit method." at p. 5.

20. Evidence of historical citizen - city cooperation on

this issue is in the record. By letter dated November 15, 1955, to then - Parks Superintendent Paul V. Brown, the Comptroller - City Clerk advised that the full City Council had adopted its Parks and Public Grounds Committee recommendation that supervision of a working party of local residents "be furnished by the Park Department during the cleaning and brush cutting in the vicinity of 28th Place West and West Thurman Street..." Exhibit 13.

21. As the Hearing Examiner understands appellant's position on the Comprehensive Plan question, the Lawton Park Neighborhood Plan was adopted by the City Planning Commission in 1956 and was adopted by the City Council in 1957 by resolution as part of the Comprehensive Seattle Plan. Lawton Park at that time was, as recalled by J. D. Braman, "a good example of a neighborhood...-(with)...a neighborhood center comprised of an elementary school and adjacent recreation area." Exhibit 2, attachment. The Hearing Examiner understands appellant's suggestion to be that the neighborhood center theories and concepts of the 1950 Recreation study were part and parcel of the Lawton Park Plan adopted in 1956-57. Appellant's further position is that "Lawton Park has been added to the list of Council-adopted Neighborhood plans by the Land Use Committee of the City Council on January 27, 1988, and appears in current revisions;" and that, the School District and DCLU discussions of the Comprehensive Plan fail to give Lawton Park and its plan a proper place in Appendix A of Seattle Municipal Code Section 25.05.902.

22. The School District represented and the Hearing Examiner finds that the school auditorium, gymnasium and other recreational space will be available for public use "when not in use by the school district under the auspices of the City Park Department. Exhibit 26 is An Agreement for the Joint Use of Facilities between the School District and the Seattle Department of Parks and Recreation dated March 15, 1985. This agreement gives the Parks Department priority use of unused School District property, inclusive of the Lawton Elementary building and grounds, and includes guidelines and procedures for the joint use by the two respective entities.

23. Resolution 25785 passed the City Council and received Mayor Royer's signature on April 24, 1978. The subject resolution calls for a replacement of the then - existing Comprehensive Plan by a set of Land Use Policies. Section I, "Status of Policies," provides:

The existing Comprehensive Plan Map is hereby designated an interim guideline pending final adoption of Seattle's Land Use Policies. In recognition that these policies will be adopted incrementally, each adopted policy will take precedent when adopted insofar as there is a conflict with the Comprehensive Plan Map.

Exhibit 22.

Conclusions

1. The Hearing Examiner has jurisdiction of this appeal pursuant to the procedures of Chapter 23.76, Seattle Municipal Code.

2. Seattle Municipal Code Section 23.76.022(C)(7) provides that the DCLU Director's determination on environmental matters shall be given "substantial weight." It is therefore appellant's burden to show that the DCLU decision at issue, i.e. to condition the project, was "clearly erroneous." Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981).

3. To restate, the matter of the project DNS and the appeal therefrom has been through the Seattle School District environmental review process, inclusive of the District's appointed hearing examiner procedure. The issue before this City Hearing Examiner is whether DCLU properly considered the identified environmental impacts and imposed adequate conditions on the project to respond to those impacts.

4. Seattle Municipal Code Section 25.05.660(A) provides that any non-exempt public or private proposal may be conditioned under SEPA to mitigate environmental impacts subject to specific limitations. Section 25.05.660(A)(1) provides that the mitigation measures must be based on formally designated policies, plans, rules or regulations formally designated in Seattle Municipal Code Section 25.05.902. Seattle Municipal Code Section 25.05.902(B)(2) states that

In assessing the environmental impacts of a proposal and in determining the need for conditioning....pursuant to Seattle Municipal Code 25.05.660, the City official...shall utilize SEPA, and shall use other environmentally related policies adopted by the City Council in the form of resolutions...or plans identified in Appendix A...

5. Mitigation measures must also be related to specific adverse environmental impacts that are "clearly identified" in an environmental document on the proposal. Seattle Municipal Code Section 25.05.660(A)(2). Also, mitigation measures be "reasonable and capable of being accomplished." Section 25.05.660(A)(3).

6. The Hearing Examiner will first examine appellant's concern with traffic. As suggested in Finding 16 above, appellant bristled at the prospect of having to address mitigation measures without having a base, site specific traffic study. However, whether the School District should have supplied a site specific study is considered an issue before the District Hearing Examiner and not the City Hearing Examiner. Even without the benefit of a study, appellant stated general concerns with parking and traffic impacts of the proposal.

7. Appellant failed to sustain her burden of proving that the project should have been further conditioned on the basis of specific, identified adverse parking or traffic impacts. The proposal will add 32 parking spaces on-site and will offer access to additional on-site parking as needed on the playground area that will be separated by removable bollards. The proposal will remove bus loading and unloading from the steep 26th Avenue W. - Thurman Street configuration to the more level 27th Avenue W. area which will feature a landscaped and improved cul-de-sac and turnaround. The school's main entrance will also be from 27th, which means that the private vehicle and child care traffic along 26th will be generally separated from the principal school traffic. The primary arrival and departure times for the busses will not conflict with customary peak hour traffic. There is no evidence of record that the route suggested is unsafe, nor that "reasonable access and flow" will be impeded. Seattle Municipal Code 25.05.902(D)(1)(a).

8. Regarding landscaping, appellant has urged the City to require compatible species of vegetation that will avoid shading of the playground area and that will minimize view obstruction. The DCLU decision at issue requires that the applicant "inform contractors of the importance of retaining the existing on-site vegetation," and further that owner or applicant provide and maintain landscaping per the DCLU Land Use Specialist's pre-approval. The evidence of record shows a plan which includes new lawn areas and which integrates existing trees and vegetation with new shrubs and trees. Specifically, the new ornamental cherry trees proposed will not exceed the building's height and will have bare trunks to 8-10 ft. above ground. The view from the upslope residences to the west will remain over the Lawton site. Appellant has failed to show the DCLU decision as to mitigation and landscaping to be "clearly erroneous." Seattle Municipal Code Section 25.05.902(E). Neither is there evidence of record that the landscaping as proposed or that will be reviewed and approved by DCLU will cause mitigable shadow impacts on the school site or on the south adjacent park.

9. The third and major bone of contention appears to be that relating to the Comprehensive Plan. DCLU and applicant argue that the Comprehensive Plan was superseded by the Single Family 5000 zoning. DCLU specifically references Resolution

25785, Exhibit 22.

10. As the Hearing Examiner understands appellant's position, the Lawton Park Plan is a living, vital part of Appendix A. That plan, continues appellant's argument, incorporates and restates the need for a viable neighborhood center. Accordingly, appellant concludes, DCLU should have conditioned the proposal to, inter alia, require the School District to initiate a return to supervised recreation on-site. Appellant also expressed grave and sincere doubts that the proposal would comport with elements of the Lawton Park Plan which underscore preservation of pedestrian pathways through and to the Lawton School site via south adjacent Lawton Park.

11. The Hearing Examiner concludes that no adverse impact on the vicinity pathways will result from the proposal. The proposal is also consistent with the thrust of the 1950 Lawton Recreational Study recommendations, particularly since a neighborhood park has been acquired and since "joint use of the new school gymnasium - auditorium..." and other school property amenities is a prominent feature of the 1985 joint use agreement between the Seattle Parks Department and the Seattle School District. Thus, appellant has failed to show that the proposal indicates any damage to the model neighborhood image of Lawton Park, or to the Comprehensive Plan consideration of the neighborhood.

12. The Hearing Examiner recognizes that there will be a reduction and relocation of the hard-surfaced play area. However, without a showing of an adverse, specific impact clearly identified in the environmental document, Seattle Municipal Code Section 25.05.660(A)(2), the proposal cannot be further mitigated. The Hearing Examiner further concludes that while supervised recreation of public use of the site is a good idea, imposing such a condition on the applicant in the context of this record would not be "reasonable." Seattle Municipal Code Section 25.05.660(A)(3). This is particularly so where a joint use agreement with the Seattle Department of Parks and Recreation is already of record.

13. Foregoing conclusions 11-13 assume, arguendo, that the Lawton Park Plan should be considered within the context of Appendix A's reference to the "Comprehensive Plan and modifications and updates thereafter, including neighborhood improvement plans." Seattle Municipal Code Section 25.05.902. There is some support for this assumption in a reading of Resolution 25785, Section I, which states that adopted Land Use Policies will supersede the Comprehensive Plan Map "insofar as there is a conflict with the Comprehensive Plan Map (emphasis added)." There is no specific conflict noted between the Lawton Park Plan and the Single Family 5000 designation which succeeded the Land Use Policies. Further, by decision dated July 5, 1988, the City Council acknowledged that

The Goals and Policies of the Queen Anne Community adoption by the Council on July 7, 1980...are by their own terms appropriate for 'consideration' in the environmental review of projects. We believe these policies are also incorporated in Appendix A as a neighborhood improvement plan.


In the Matter of the Request of the Victoria Tower Apartments to the City Council to review the Decision of the Director of Construction and Land Use and the Hearing Examiner in Denying Victoria Apartments application for a Master Use Permit, C.F. No. 293623, File Nos. 82-080, 82-085.

14. Whether or not the Lawton Park Plan and elements are considered a part of Appendix A, the DCLU ultimate decision must be affirmed. (The affirmed decision includes a condition that the applicant provide maximum on-site parking space for storage of construction materials and equipment, DCLU Decision, p.9)

Decision

The DCLU decision is AFFIRMED.

Entered this 3rd day of August, 1988.


LeRoy McCullough
Hearing Examiner

CONCERNING FURTHER REVIEW

Pursuant to Seattle Municipal Code Section 23.76.024, 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, 5th Floor Municipal Building, telephone 684-8322. The decision is filed with the SEPA Public Information Center the same day that the decision is signed by the Examiner. 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 25.76.024, 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 the City Council appeal.

If no appeal is taken to the City Council, 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. 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. See Chapter 43.21C, RCW and Chapter 25.05, Seattle Municipal Code.

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.