

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

In the Matter of the Appeal of

CASLON MANAGEMENT GROUP

FILE NO. MUP-89-004(W)
APPLICATION NO. 8803806

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

Introduction

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 March 2, 1989.

Parties to the proceedings were: appellant by C.M. McCune, attorney at law, Tina Crossen, witness; and the DCLU Director by Cheryl Waldman, 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. Ackerly Communications applied for a master use permit to erect and maintain a single-faced, externally illuminated billboard advertising sign on property addressed as 4512 11th Avenue N.E. DCLU issued a determination of nonsignificance (DNS) and appellant submitted this challenge to the DNS.

2. The subject property is located on the east side of 11th Avenue N.E. near the northeast corner of N.E. 45th Street and 11th N.E. The sign would be erected along the south border of a 90 ft. by 105 ft. paved parking lot. South of the spot for the sign is a 3 ft. high retaining wall that separates the subject lot from the more southerly parking lot owned by appellant. The project site is approximately 115 ft. north of the intersection.

3. The proposed sign is 27 ft. high and would be supported by two steel posts. The sign face would be oriented south, would measure 12 ft. by 25 ft. and would be illuminated by dusk-midnight fluorescent lighting.

4. The subject site is in the Neighborhood Commercial, 85 ft. maximum building height (NC3/85') zone, and has been used for parking for approximately 23 years. While this commercial zone includes "a few apartment units," no residences are immediately adjacent to or near the project site.

5. In general, the vicinity zoning along N.E. 45th is NC3 and the height limit varies from 40-85 ft. Similar zoning is also present along 11th Avenue N.E.

6. Appellant, Caslon Management Group, has its office in a six-story building addressed as 1107 N.E. 45th. This building is at the southeast corner of 45th and 11th N.E. and has views to and across the project site to the north.

7. Other vicinity development includes banks, restaurants,

gas stations, theaters, and other office space. One and two story buildings are located along the north side of N.E. 45th Street. A 24 ft. "Rainier" Bank pole sign is at the northwest corner of N.E. 45th and 11th. A 30 ft. high Shell sign is at the southwest corner. Union 76, University Bank, Shell oil and other elevated signs of varied heights mark the vicinity as generally defined between Roosevelt Way N.E. to the west and 12th N.E. to the east. Illustration, Exhibit 7. North of the site on 11th N.E. is a 19 ft. high sign.

8. Appellant offered several bases for its appeal. Appellant initially observed a previous environmental determination that limited the overall height of a sign, for the present project site, to 19 ft. (Application 8705253, decision issued by DCLU October 15, 1987). According to the DCLU representative, the current application is reviewed under amended State Environmental Policy Act (SEPA) policies. The Hearing Examiner here enters such a finding.

9. Secondly, appellant protested that the cumulative effect of the presently-applied for sign was inadequately considered. Third, appellant argued that

The addition of visual stimuli intended to be read by drivers will greatly increase the risk of accidents, both pedestrian and vehicular, at and near this intersection.

Appeal letter.

10. Appellant submitted no data or evidence connecting billboard utilization with designated accidents or accidents in general. One advertiser, however, did encourage motorists to waive to a gentleman postured in the billboard for a coffee ad. To appellant witness's consternation, Jockey underwear has also used the billboard space.

11. As property manager, she further testified that approval of this application and the ensuing use of the billboard would cause rental rates in her building to be reduced by \$3.00 per sq. ft. of office space.

12. N.E. 45th Street and 11th Avenue N.E. are both "principal arterials." The traffic flow on 11th is one way north. Roosevelt Way N.E., one block west parallel to 11th N.E., is also a principal arterial and has a one way flow (south).

13. Many commuters proceed north along 11th N.E. to N.E. 45th Street where they turn left to access the Interstate 5 on-ramp located to the west. For vehicles exiting the garage that is south adjacent to appellant's building site, quick maneuvers are often required in order to move from the far right to the far left lane for turning west onto N.E. 45th Street. P.M. peak hour data shows some 380 vehicles turning left from 11th N.E. to N.E. 45th; 160 vehicles turning right; and 1000 vehicles proceeding through 11th. Exhibit 6.

14. Although the afternoon peak hour level of service is C at the N.E. 45th - 11th N.E. intersection, the LOS is at level F at the unsignalized N.E. 47th - 11th N.E. intersection. The N.E. 47th - 11th N.E. intersection is considered a Seattle Engineering Department "high accident location" (5.0 accidents per year average). Although it averages 7.3 accidents per year, the N.E. 45th - 11th N.E. intersection is not labeled as a high accident location.

15. Neither the view to or from the project site is a "protected" view of landmarks or from designated public spaces.

16. The proposed sign meets the dispersion and other criteria of the Seattle Sign Code, Chapter 23.55, Seattle Municipal Code, including height and size.

Conclusions

1. The Hearing Examiner has jurisdiction of this appeal pursuant to Chapter 23.76, Seattle Municipal Code.
2. Environmental determinations of the DCLU Director are to be accorded "substantial weight." Seattle Municipal Code Section 23.76.022(C)(7). Thus, appellant has the burden of proving that the DCLU decision here at issue was "clearly erroneous." Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981).
3. Appellant would like to see the application denied. At this juncture, the application cannot be denied because there is yet no "final or supplemental environmental impact statement" (EIS) prepared under Chapter 25.05, Seattle Municipal Code. Seattle Municipal Code Section 25.05.660(A)(6)(a). In addition to the requirement of an EIS - identified adverse, environmental impact, the proper agency must find that "reasonable mitigation measures are insufficient to mitigate the identified impact." Seattle Municipal Code Section 25.05.660(A)(6)(b).
4. If it is determined that the proposal may have a probable significant adverse environmental impact, "...the responsible official shall prepare and issue a determination of significance" which means that an EIS must be prepared. Seattle Municipal Code Section 25.05.360 et seq.
5. Mitigation of the proposal is possible at this stage, however, pursuant to Seattle Municipal Code Section 25.05.660. Any mitigation measure must be related to specific, adverse environmental impacts "clearly identified in an environmental document on the proposal..." Seattle Municipal Code Section 25.05.660(A)(2). Mitigation measures "shall be reasonable" and are to be imposed upon an applicant "only to the extent attributable to the identified adverse impacts of its proposal." Seattle Municipal Code Section 25.05.660(A)(3)(4). Finally, mitigation measures must be based on particularized, specifically designated policies, plans, rules or regulations. Seattle Municipal Code Section 25.05.660(A)(1).
6. Appellant has not met its burden of proving that the impact of the proposed sign is "significant." Seattle Municipal Code Section 25.05.794 defines "significant" to mean "a reasonable likelihood of more than a moderate adverse impact on environmental quality." The proposed sign would be sited in an urban, busy environment of office buildings, other signs, and principal arterials. No residences are near the site. There is a suggestion but no evidence that the billboard would contribute to a decline in traffic or pedestrian safety. Although the impact of another billboard with questionable content could be considered a negative impact, it will yield no more than a moderate impact on the quality of the environmental, singly or in conjunction with existing signage.
7. Therefore, no EIS is required. Since no EIS is required or present the proposal cannot be denied pursuant to SEPA. See Conclusion 3, above.
8. Nor has appellant met its burden of proving that the sign, as proposed, should have been further conditioned pursuant to SEPA. The project site is some 115 ft. north of the N.E. 45th - 11th N.E. intersection within the NC3, 85 ft. height limit zone. The proposal meets the dispersion and other criteria of the sign code.
9. Neither the view to or from the site is protected by SEPA. Seattle Municipal Code Section 25.05.675(P).
10. No safety impacts have been identified which could conceivably fall within the SEPA conditioning ambit of infrastructure - cumulative effects, Section 25.05.670; public services and facilities, Section 25.05.675(O); or the traffic and transportation policy of Section 25.05.675(R).

11. Since there is no policy basis to condition the proposal the DCLU decision must be affirmed.

12. Seattle Municipal Code Section 25.05.665(D), adopted in 1988, provides that

...Where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation...

subject to such exceptional circumstances as unusual topographic or physical conditions; unusual design or other features; location on the edge of a zone; or undue cumulative effects.

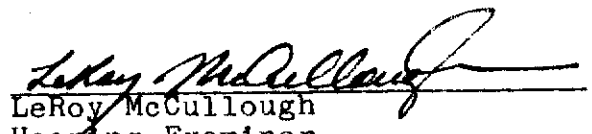
13. DCLU asserts that the sign ordinance, Chapter 23.55, Seattle Municipal Code, is a City regulation adopted to address the environmental impact of signs. The Hearing Examiner concurs with the conclusion that no exceptional circumstances, Section 25.05.665(D), are here presented.

14. The decision on the previous application, 8705253, was signed October 15, 1987. This and the DCLU presentation indicate that the application and decision thereon were governed by provisions predating Section 25.05.665.

Decision

The DCLU decision is AFFIRMED.

Entered this 17th day of March, 1989.


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 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.