

FINDINGS AND DECISION
BEFORE THE CITY OF SEATTLE HEARING EXAMINER

RECEIVED

MAR 07 1990

In the Matter of the Appeal of

MIKE HICKEY, JR.

SEPA
PUBLIC INFORMATION CENTER

FILE NO. MUP-89-083(W)
APPLICATION NO. 8803292

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

Introduction

Appellant, Mike Hickey, Jr., challenges the Declaration of Non-significance (DNS) of the Director of the Department of Construction and Land Use (Director) on the referenced master use permit application relating to proposed construction of a mixed use building in the Belltown area of the Denny Regrade. Specifically, appellant objects to the razing of three existing buildings on the project site, claiming they could have architectural and historical significance and should be evaluated for historic landmark status.

The appellant exercised the right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code. This matter was heard, following proper notice, on February 22, 1990. A site visit was made by the Hearing Examiner thereafter and the record closed on February 23, 1990.

Parties to the proceedings were Mike Hickey, Jr., the appellant, appearing pro se; the Director of the Department of Construction and Land Use, appearing by his representative Corbett Loch, Land Use Specialist; and the applicant, William Matthews, appearing through his attorney, Melody McCutcheon.

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. William Matthews represents the owner of property to be developed at 2319 First Avenue. This property is on the west side of First Avenue and is south of Battery Street in the Belltown area of the Denny Regrade. It is within the Downtown Mixed Residential/Residential zone with a height limit of 85 feet and 65 feet, respectively (DMR/R 85/65'). Three lots have been combined for the development site.

2. The proposal is for development of an eight-story, 48-unit, mixed use building, including approximately 3,278 square feet of retail space. Two levels of parking containing 46 spaces are proposed.

3. The project includes demolition of three existing commercial buildings: the Seafarer's Tavern Building at 2317 First Avenue; the Bradish Building at 2319 First Avenue, and the Leader Newspaper Building at 2321 First Avenue. These buildings were all built in the late 1880's or the early 1890's. (Exhibit 3.) The Seafarer and Leader buildings existed on the site by 1890. The Bradish Building may have been moved to its present site around 1900. (Exhibit 14).

4. These buildings have not been designated as historic landmarks. In his environmental analysis, the Director determined that the buildings were not architecturally or historically significant and that demolition of them was not a significant adverse environmental impact on historic preservation. He declined to refer them to the Landmarks Preservation Board for consideration as historic landmarks. Before making this decision, the

Director had sought advice from and referred the proposal to the Historic Preservation Officer of the City, who had advised that the buildings would not meet the criteria for landmark designation from the information known about them. During this time, the Director was told by the applicant that negotiations were underway to preserve the facade of the Leader Building by donating it to Allied Arts for use elsewhere.

5. The proposed development and the existing buildings are across the street from two designated historic landmarks: the Austin Bell Building and the Masonic Lodge; they are south of the nearby Hall Building and just north of the Oregon Hotel, two other designated landmarks. Because of the proposal's proximity to nearby landmark structures, and because the brick face proposed in the project's design was not required by the Code and could be modified at a later stage, the Director required that brick be used as the primary exterior building material as a condition to issuance of the permit.

6. The appeal in this case does not challenge the condition imposed on the exterior materials (or other conditions imposed). However, it does challenge the Director's determination that demolition of the existing buildings will not have a significant adverse environmental impact. The appellant claims the buildings are architecturally and historically significant because of their age and proximity to other historical landmarks and that the buildings should be evaluated by the Landmarks Preservation Board to determine whether or not they should be preserved as historical landmarks. He seeks reversal or modification of the Director's decision or continuation of appeal proceedings until the landmark status of the buildings is decided by the Landmarks Preservation Board.

7. On January 22, 1990, appellant submitted nominations of the existing buildings to the Landmarks Preservation Board for consideration as historical landmarks. As of the hearing date on this case, the Board had not acted on those nominations, pending return of certain information on the buildings requested of appellant. No deadline has been established or agreed to for return of the requested information.

8. The Leader Building was nominated in 1977 to the Landmarks Preservation Board for designation as an historic landmark. At that time the Board did not approve the nomination for further designation proceedings. The Seafarer and Bradish buildings were not nominated then for historical landmark consideration. No nominations of these two buildings or further nominations for the Leader Building were made to the Board until appellant's nominations in January 1990.

9. Belltown is named for William Bell, one of Seattle's original pioneers. He homesteaded on the north side of Denny Hill and established a family business there. The neighborhood became known as Belltown, functioning as a company town. The block where the structures are located was designated "Bell's Block," according to a map of the area in 1884. William Bell lived in a house across the street from the site from 1875 until his death in 1887. Before his death, he had constructed a large hotel just north of the Austin Bell Building site. Neither his house nor the hotel, however, exist today. William Bell's son, Austin Bell, built the Austin Bell Building across from the proposal site, but died in 1890 before its completion. The building was completed that year by his widow and named after him. The Seafarer's Building had been built before William Bell's death; the Leader Building was built in the same year as the Austin Bell Building. Neither the architect nor the builder of these two buildings is known. In the 1880's and 1890's, the Seafarer's Building was a mix of retail at ground level and rented rooms upstairs. The Leader Building was a newspaper business. During William Bell's life and that of his son's, the area appeared to be a developing commercial area. Shortly thereafter, it declined in importance and activity as various major events occurred diverting attention from the area, including the fire of 1889 and the rebuilding of Pioneer Square. The Belltown area has been neglected over the years and has just recently begun to be revitalized.

10. The buildings of historical significance in the area are rich in architectural ornamentation, although not all are in good repair presently. Most of the buildings are faced with a particular color of red brick. The facade proposed by the design of the project is quite dissimilar to that of the historical landmarks and other buildings in the immediate area. It does not contain similar ornamentation or utilize design elements that reflect the historic structures across First Avenue. The planned and required brick exterior will improve the buildings integration with surrounding structures somewhat, especially if inclusion of sandstone materials, transom window details, punched window design and building modulations are maintained. However, more is needed.

11. The facade of the Leader Newspaper Building represents a unique example of a one-story Romanesque masonry style which was not commonly used in Belltown in the 1880's. According to an architect with whom appellant consulted, only the facade of this building is worth saving now. The Bradish Building facade is an interesting Victorian-style wood structure of two stories. The Seafarer's Building has a simple, plain two-story facade which has been covered with stucco. No evidence supports any architectural significance of the Seafarer's Building.

12. All buildings have been altered in some form since their construction. The Leader and Bradish buildings have had substantial portions of their back areas removed due to road condemnation. Other alterations have also been made to them over the course of the years.

13. The architect for the project indicates that agreement has been reached by him with the Historic Preservation Committee of Allied Arts to remove and store the facade of the Bradish Building until it can be reused elsewhere. The developer will pay for the cost of removal and move. The architect also indicated that he planned to incorporate some elements of the Leader Building into the project's First Avenue facade and sidewalk areas. Under the present plans, however, the facade of the Leader Building will be dismantled. Except for sandstone blocks, few elements of the facade will be used. The historical significance of those blocks will not be easily understood with the plans proposed.

14. The buildings to be demolished were inspected in 1988 and again more recently by a structural engineer who is an expert in rehabilitation of historic structures and who has been a past member of the Landmarks Preservations Board. He indicated the structures are in substantial disrepair. Many of their parts are not structurally sound. Some floors and roofs have failed, mortar is unsound, there are rotting supports, foundation walls are deteriorating and some are substantially inadequate structurally. Additionally, the facade of the Leader Building is inadequately attached and is a present risk to persons passing by on the sidewalk. In his opinion, the buildings are mostly unsafe in their present conditions. He estimated that rehabilitation would cost two times what new construction would cost instead of the usual costs for rehabilitation which are normally about the same as new construction.

15. The operators of the Oregon Hotel next door to the south support the demolition. They are concerned about the dilapidated state of the buildings and the safety threats posed to the residents of the hotel because of fires, vandalism and other illegal activity occurring in the vacant buildings. A number of residents of the area and other persons oppose destruction of the buildings as a loss to the sense of history of the area.

16. In the DNS, the Bradish and Seafarer buildings were incorrectly identified. At the hearing, this matter was corrected. The Bradish building is the Victorian-style building referred to and the Seafarers Building is that which was identified as the Bradish Building. Exhibit 10 correctly identifies them. Also, the age of the Victorian building was incorrectly stated. It is recognized now as over 90 years old, instead of the 40 years earlier thought. The Director's representative testified, however, that this newer knowledge would not change the Director's decision in this case.

CONCLUSIONS

1. The Hearing Examiner has jurisdiction of this appeal pursuant to Section 23.76.022.

2. The Hearing Examiner must give "substantial weight" to the Director's decision on this environmental matter. Section 23.76.022C.7. To overcome this deference, the appellant must show that the Director's decision is "clearly erroneous." Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981).

3. In the main, the appellant has not carried his burden of proof, having failed to supply evidence of sufficient weight that demolition of the existing buildings will have a significant adverse environmental impact on historic preservation so as to require an EIS. While not proving significant impact, the appellant has established by sufficient evidence that demolition of the facades of the Bradish Building and Leader Building would have an adverse environmental impact on historic preservation policies and that further conditioning beyond that required by the Director is needed under Section 25.05.675H of SEPA policy.

4. As to the Bradish Building facade, the agreement with Allied Arts to remove and store the facade of this building for use elsewhere at a later time is appropriate and should be required as a condition of this permit. Even if the facade would not meet the criteria as an historical landmark, it appears that it does have historical and architectural significance which should be preserved in the interests of retention of a living sense and appreciation of the past, pursuant to Section 25.05.675H.1.a and 2.a.

5. As to the Leader Building facade, this facade should be preserved in its major elements in contiguous configuration, rehabilitated, and incorporated into the facade or the sidewalk area of the proposed structure along First Avenue, and the architectural designs or plans for such purpose should be reviewed with and approved by DCLU and the Historic Preservation Committee of Allied Arts, all as a condition of the permit. This is necessary to preserve, in part, the uniqueness of the building's architecture and the significance of its place historically at the site as an early newspaper enterprise in the developing commerce of the Belltown area and thereby retain an appreciation of the past, add architectural character and ornamentation to achieve more compatibility with the landmark buildings in the area, and reduce the impact of the project's dissimilar design on the landmark sites across the street and nearby. Section 25.05.675H.1.a, 2.a, and 2.d.

6. The proceedings started by appellant's nominations of these buildings to the Landmark's Preservation Board should not be affected by this decision, since those proceedings are independent of this environmental review and are controlled by Chapter 23.12 of the Seattle Municipal Code. Because those proceedings have begun, there is no need for the Hearing Examiner to determine if the buildings to be demolished appear to meet the criteria for historical landmark designation. Therefore, no such determination will be made in this appeal.

7. The mitigating conditions required by the Director for this project relating to exterior materials of the project are also appropriate and consistent with Section 25.05.675H. Therefore, the Director's decision should be affirmed with the conditions imposed, but modified to add the additional conditions identified in these conclusions.


DECISION

The Director's determination of nonsignificance is AFFIRMED with the conditions imposed therein and MODIFIED to include the following additional conditions for issuance of a master use permit:

1. The facade of the Bradish Building shall be removed at the developer's expense and stored for use elsewhere at a later time pursuant to the agreement negotiated with the Historic Preservation Committee of Allied Arts and discussed in the hearing of this case;

2. The facade of the Leader Building shall be preserved in its major elements in contiguous configuration, rehabilitated, and incorporated into the facade or the sidewalk area of the proposed structure along First Avenue, and the architectural designs or plans for such purpose shall be reviewed with and approved by the Director and the Historic Preservation Committee of Allied Arts, and the design or plans as so approved shall be incorporated into the plans for construction of the proposed structure.

ENTERED this 6th day of March, 1990


 Dona Cloud
 Deputy Hearing Examiner
 1320 Alaska Building
 618 Second Avenue
 Seattle, Washington 98104
 Telephone: (206) 684-0521

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, 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 23.76.024, the time for filing a request for judicial review of the underlying governmental action and/or other SEPA issues is staying until the City Council renders a final decision on this 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 from the Office of Hearing Examiner, 1320 Alaska Building, 618 Second Avenue, 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.