

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

In the Matter of the Appeal of

ADMIRAL COMMUNITY COUNCIL

from a SEPA determination issued by the
Director, Department of Planning and Development

Hearing Examiner File:
MUP-10-014 (W)

Department Reference:
3007538

Introduction

The Director of the Department of Planning and Development issued a Determination of Non-significance pursuant to SEPA for a proposed rezone from Neighborhood Commercial 1 zoning with a 30-foot height limit to Neighborhood Commercial 2 zoning with a 40-foot height limit. The Appellant exercised the right to appeal the Director's SEPA determination.

A consolidated hearing on the rezone application and SEPA appeal was held on August 18, 2010 before the Hearing Examiner (Examiner). The Appellant, Admiral Community Council, was represented by Dennis Ross; the Applicant represented himself; and the Director of the Department of Planning and Development (Director or Department) was represented by Shelley Bolser, Senior Land Use Planner. The record was held open for the Examiner's site visit and was briefly reopened for receipt of the Environmental Checklist. The record closed on August 23, 2010.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code (SMC or Code) unless otherwise indicated. Having considered the evidence in the record and inspected the site, the Examiner enters the following findings of fact, conclusions and decision on the SEPA appeal.

Findings of Fact

Site and Vicinity

1. The site consists of 30 parcels and is addressed as 3210 California Avenue SW. It is located at the southern end of the Admiral Residential Urban Village (Urban Village) in West Seattle, and includes three groups of parcels along California Avenue SW (see map in Exhibit 5 at 2).

The east parcels are included within the Urban Village and are bounded by SW Hanford Street to the north, California Avenue SW to the west, SW Hinds Street to the south, and single-family residential lots to the east.

The northwest parcels are also included within the Urban Village and are bounded by SW Hanford Street to the north, California Avenue SW to the east, SW Hinds Street to the south, and an alley to the west. Across the alley are single-family residential lots.

The southwest parcels are not included within the Urban Village and are bounded by SW Hinds Street to the north, California Avenue SW to the east, L3-RC-zoned lots to the south, and an alley to the west. Across the alley are single-family residential lots.

2. The subject property is developed with one- to four-story structures housing residential, mixed use and commercial uses including apartment buildings; medical, dental, real estate, law and insurance offices; restaurants; hair and nail salons; a frame shop; a fitness facility; a martial arts facility and others.
3. North of the site along the west side of California Avenue SW is NC2-40 zoning that is developed with one-to four-story structures housing commercial, mixed-use and residential uses, and Lafayette Elementary School, a designated historic landmark. Along the east side of California is a religious institution, West Seattle High School and Hiawatha Playfield, (both designated historic landmarks), and the Admiral Safeway store, which is zoned NC3-40. South of the site along California Avenue SW is NC2-40 zoning on the east side of the street with similar development to that on the north, and L3-RC zoning on the west side that is generally developed with three- and four-story residential and smaller commercial structures. To the east and west of California Avenue SW is single-family residential zoning that is predominantly developed with one- to three-story single-family residential structures. Madison Middle School, a designated historic landmark, is located approximately two blocks to the southwest of the site. Other nearby uses include a public library, theater, health care facility, pharmacy, churches, banks, restaurants, grocery stores, etc.
4. The site is located near the ridge of the West Seattle peninsula and slopes down to the west. There is approximately eight feet of slope across the northwestern and southwestern parcels. The slope across the eastern parcels averages approximately 18 feet, but varies along the block, with some of the adjacent single-family residences that front on 42nd Street SW sitting higher above the subject property than others.
5. The site is located within the Seattle Fault Zone, a broad seismic hazard area that encompasses most of West Seattle. It may also contain a steep slope critical area.
6. California Avenue SW is classified as a minor arterial, as well as a mixed use street and a major transit street. It is lined with numerous mature trees. East of California Avenue SW, SW Hanford Street is classified as a local connector, collector arterial, and minor transit street, and has an on-street urban trail bicycle classification. SW Hinds Street, 42nd, 44th and 45th Avenues SW, and SW Hanford Street west of California Avenue SW, are all classified as non-arterial streets. All streets are fully improved, and most allow parking on both sides. Parking on 42nd Street SW is restricted to one side

because the street serves as a fire lane for West Seattle High School. Parking in the area is also available in surface parking lots, and in structured and below-grade garages. The site is served by Metro transit.

7. The Applicant seeks a rezone of the subject property from Neighborhood Commercial 1 zoning with a 30-foot height limit (NC1-30) to Neighborhood Commercial 2 zoning with a 40-foot height limit (NC2-40). No development project is associated with the rezone.

Director's Review and Decision

8. The Director reviewed the short- and long-term environmental impacts of the proposed rezone and issued a Determination of Non-significance (DNS) for it. (Exhibit 5)

9. In the DNS, the Director determined that adopted City codes and ordinances, such as the Stormwater Grading and Drainage Control Code, the Energy Code, and the Land Use Code, would provide mitigation for most identified long-term adverse environmental impacts that would result from future development under the proposed zoning. However, the DNS includes some discussion of impacts on air quality, drainage, height bulk and scale, traffic and transportation, and parking.

10. The DNS acknowledges the increases in carbon dioxide and other greenhouse gases that result from extraction, processing, transportation, construction and disposal of materials and landscape disturbance (short-term air quality impacts); and transportation and energy demands created by new development (long-term air quality impacts). The DNS concludes that because future projects constructed at the site would make relatively minor contributions to greenhouse gas emissions, such impacts would not be significant and required no mitigation at the rezone stage other than compliance with applicable codes.

11. With respect to impacts of future development on stormwater, the DNS states that no drainage will be diverted to streets, and that an appropriate stormwater control system will be verified on construction plans.

12. Height, bulk and scale impacts are addressed in the DNS, which states that an additional 10 feet of building height adjacent to residential areas could result in shadowing and reduce light and air, and that setback requirements in the Land Use Code are intended to address some height bulk and scale impacts. It also affirms that for development which exceeds design review thresholds, mitigation for such impacts would be considered through modulation, articulation, landscaping and façade treatment, and through specific design guidelines for the Urban Village that address site planning, height bulk and scale compatibility, architectural elements and materials, the pedestrian environment, and landscaping.

13. To assess traffic and transportation impacts, the Director used the maximum probable development of the site and the Institute of Transportation Engineers (ITE) Trip Generation Manual to determine that the additional residential units would generate 49 new AM peak hour trips and 60 new PM peak hour trips. ITE trip generation rates are based on suburban development in which there is little transit use. The DNS concluded that in light of the location of the rezone on an arterial, and the opportunities for transit use, the additional residential units would not substantially increase the volume of traffic circulation or change the existing, acceptable level of service at nearby intersections compared to development already allowed under the existing NC1-30 zoning. The DNS acknowledged that the size of commercial uses could increase under the proposed zoning, but determined that any potential change in trip generation and traffic volumes would depend upon the specific development proposed, and that traffic and transportation impacts would be best evaluated as projects were brought forth.

14. The DNS also addressed parking impacts, noting that parking utilization in the vicinity appeared to be below capacity and that on-street parking could be found during daytime or evening hours. The DNS notes that SEPA prohibits the imposition of parking mitigation unless on-street parking is at capacity, as defined by the Seattle Department of Transportation, or a development itself causes parking to reach capacity. The DNS confirms that parking impact mitigation will be considered during SEPA review of future projects, and that such projects would be required to accommodate the parking demand they generate.

Appeal

15. The Appellant filed a timely appeal of the DNS. The appeal presents issues of whether the DNS failed to: 1) consider the rezone's impacts on the stability of the soils in the area of the rezone, particularly seismic stability; 2) consider the rezone's impacts on water and drainage, specifically SPU's capacity to supply water to development on the site, and any development impacts on stormwater capacity and discharge to Puget Sound; 3) consider the rezone's impacts on energy and natural resources, specifically City Light's capacity to meet the electric power demands of a development on the site; 4) consider the long-term noise impacts that would result from the larger buildings that could be constructed under NC2-40 zoning, from cellular telephone equipment and HVAC units that could be placed on the buildings, and from increased traffic, deliveries and retail uses; 5) consider the long-term and short-term impacts of the rezone on air quality, including traffic-related impacts, carbon dioxide and other greenhouse gases; 6) analyze the impact of an additional 60 p.m. peak hour trips on the neighborhood surrounding the rezone site, the actual service level of available transit, and the adequacy of existing traffic infrastructure in the vicinity of the site, specifically California Avenue; 7) accurately analyze parking capacity in the surrounding area, including the parking impacts that result from the lack of an alley adjacent to the eastern rezone parcels; and 8) consider the rezone's impacts on height bulk and scale in the neighborhood, specifically shading and shadows and the resulting impact on solar energy and available light.

Applicable Law

16. SMC 25.05.752 defines "Impacts" as "the effects or consequences of actions. "A proposal's effects include direct and indirect impacts caused by a proposal. Impacts include those effects resulting from growth *caused by a proposal*" SMC 25.05.060.D (emphasis added).

17. "Probable" is defined in SMC 25.05.782 as "likely or reasonably likely to occur" "Significant" is defined as "a reasonable likelihood of more than a moderate adverse impact on environmental quality." SMC 25.05.794.

18. An agency is to make the threshold determination "based upon information reasonably sufficient to evaluate the environmental impact of the proposal." SMC 25.05.335.

19. The City's SEPA overview policy states that many environmental concerns "have been incorporated into the City's codes and development regulations. 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 certain listed exceptions. SMC 25.05.665.D.

20. SMC 25.05.330 directs that in making a SEPA threshold determination, the responsible official is to determine "if the proposal is likely to have a probable significant adverse environmental impact" If the responsible official determines that there will be no such impact from the proposal, a DNS is to be issued. SMC 25.05.340.A.

21. SMC 25.09.020 is part of the Environmentally Critical Areas Code. It provides, in part, as follows: The following are environmentally critical areas designated by this chapter: seismic hazard areas ... In addition to liquefaction-prone areas described in subsection 2 above, seismic hazard areas are the following: ... b. The Seattle Fault zone"

Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant to Chapters 23.76 and 25.05 SMC.

2. The Hearing Examiner must give "substantial weight" to the Director's SEPA determination. SMC 23.76.022 C.7. Accordingly, the party appealing it has the burden of proving that it is "clearly erroneous". *Brown v. Tacoma*, 30 Wn. App. 762, 637 P.2d 1005 (1981). This is a deferential standard of review, under which the Director's decision may be reversed only if the Examiner is left with the definite and firm conviction that a mistake has been made. *Cougar Mt. Assoc. v. King County*, 111 Wn. 2d 742, 747, 765 P.2d 264 (1988).

3. The Appellant presented testimony and several newspaper and Internet articles and maps with information on the Seattle Fault and related soils in the West Seattle area, and information on earthquakes and resultant damage, also related to the Seattle Fault. The Appellant's evidence seems to assume that the Seattle Fault has not been designated a seismic hazard area under the Code, which is not correct. Further, the evidence shows that the design of structures relative to seismic hazards is regulated through the Seattle Building Code. Therefore, under the SEPA Overview Policy, environmental concerns related to seismic hazards have been incorporated into existing code and are presumed to be adequate to achieve sufficient mitigation. The Appellant presented no evidence to rebut that presumption.

4. The Appellant presented testimony to the effect that the City has an aging water and sewer system that has not been updated, that sewage sometimes overflows to Puget Sound, and that stormwater has at times not been properly contained. While acknowledging that the record shows the City has sufficient water and sewer capacity to serve a development on rezone site, the Appellant believes that probable significant adverse, though unarticulated, impacts were not addressed. This is not evidence sufficient to demonstrate that the DNS is clearly erroneous.

5. The Appellant testified that City Light has a serious backlog of maintenance issues and needs significant upgrades to its system, and that these issues were not considered in the DNS. However, the Appellant presented no evidence that a development on the proposed rezone site would have a significant adverse impact on electric service.

6. The Appellant presented testimony that increased density will lead to increased noise from new businesses, traffic and truck deliveries, and cell phone and HVAC equipment on rooftops, and that it will add to existing noise in the area. The Appellant's opinion could be correct, but no supporting technical evidence was presented to demonstrate that noise impacts would reach the level of significance under SEPA, or that the Noise Code would not provide sufficient mitigation.

7. With respect to impacts on air quality, the Appellant testified that it believes the increase in development capacity as a result of the rezone would lead to many more vehicle trips to the area, including truck traffic, and that the resulting increase in pollutants could increase the incidence of respiratory ailments among residents. However the Appellant presented no supporting technical studies or other reliable evidence. Again, this is not sufficient to demonstrate that the DNS is clearly erroneous.

8. The Appellant objects to the fact that the Director did not perform a traffic study to determine the impacts of possible development under the proposed rezone. However, the Appellant presented no evidence to dispute the Director's position that without further knowledge of what development will actually occur within the rezone area, use of the averages provided by the ITE Manual is the most reliable approach for assessing potential transportation impacts. The lack of a traffic study for the non-project rezone does not cause the DNS to be clearly erroneous.

9. The Appellant asserts that the transit service level to the rezone area is not as high as may have been assumed in the DNS. In support, the Appellant cited specific details about the five transit routes that serve the area. The Appellant also noted that Metro transit has serious funding problems, that Rapid Ride service in the area has been delayed and would not serve the Admiral area, and that recent improvements in transit service for West Seattle have not occurred in the Admiral area. The Appellant rates the transit service as less than moderate, and notes that several years ago, two transit stops in the rezone area were moved further north and south due to a lack of curb space in the area. The Appellant's assessment of the area's transit service is not disputed. However, because the Director used trip generation rates which assumed a low level of transit service, the Appellant's assessment does not contradict the Director's conclusion that the transportation impacts of the proposal would not be significant.

10. The Appellant points out that the additional truck deliveries that would result from the rezone would have to occur from the narrow alley between California Avenue SW and 44th Avenue SW, or from the center turn lane on California Avenue SW. The Appellant contends that this would cause a traffic back-up along California Avenue SW or the diversion of traffic to adjacent residential streets. The Appellant believes those streets are not designed to accommodate the diverted traffic, and that the Director should have evaluated whether the traffic from future development would exceed the capacities of the roadways included within the screenline for the area. However, the evidence shows that the delivery configuration described by the Appellant is an existing condition today, and is the same configuration that likely would be used for deliveries to the additional businesses that could be constructed under the existing zoning. Further, SEPA review of future projects will include analysis of their impacts on transportation concurrency thresholds. The Appellant has not shown that the DNS is clearly erroneous as to transportation impacts.

11. The Appellant contends that there is limited on-street parking on the site, particularly on the east side, and that residents already experience a significant amount of overflow parking on residential streets from retail customers, employees at the Swedish Medical Clinic and students at the High School, sometimes blocking residential driveways. There is concern that overflow parking will increase with the addition of more retail establishments. The Appellant's observations are based on existing conditions, for which an applicant cannot be required to provide mitigation. Further, the Appellants presented no evidence or technical studies that distinguished between parking impacts that would occur with full build-out under the existing NC1-30 zoning, and any additional impacts that may result from development under a rezone to NC2-40. As noted in the DNS, mitigation of parking impacts will be considered during SEPA review of proposed projects on the rezone site. There is no error here.

12. The Appellant states that a development to 40 feet in height will cast shadows on the backyards of adjacent single-family development on both sides of California Avenue SW thereby reducing property values and interfering with solar access, and will create a tunnel effect along California Avenue SW. The DNS acknowledged height bulk and scale impacts but determined that they would not be significant in light of Land Use Code


requirements on setbacks and design review. Again, the Appellants did not distinguish between the height bulk and scale impacts of potential development under existing zoning and those that would result from the rezone. Nor do they provide a shadow study or other technical evidence showing that the Director's determination was clearly erroneous.

13. The Appellants articulated many concerns about future development under the proposed zoning, but they did not meet their burden of proving that the DNS is clearly erroneous. The Examiner is not convinced that a mistake was made.

Decision

The Director's Determination of Non-significance is **AFFIRMED**.

Entered this 2nd day of September, 2010.


Sue A. Tanner
Hearing Examiner

Concerning Further Review

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources, to determine applicable rights and responsibilities.

The decision of the Hearing Examiner in this case is the final decision for the City of Seattle. A request for judicial review of the decision on the design review appeal must be commenced within twenty-one (21) days of the date the decision is issued, as provided by RCW 36.70C.040. Pursuant to SMC 23.76.052 J, the time period for requesting judicial review of the decision on the SEPA appeal does not begin until the Council has completed action on the rezone application for which the EIS was issued.

The person seeking review must arrange for and initially bear the cost of preparing a verbatim transcript of the hearing. Instructions for preparation of the transcript are available from the Office of Hearing Examiner. Please direct all mail to: PO Box 94729, Seattle, Washington 98124-4729. Office address: 700 Fifth Avenue, Suite 4000. Telephone: (206) 684-0521.

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