

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

In the Matter of the Appeal of

**SEATTLE COMMITTEE TO  
SAVE SCHOOLS ET AL.**

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

Hearing Examiner File:  
**MUP-14-011 (W)**

Department Reference:  
3015968

**Introduction**

Pursuant to the City's codification of the State Environmental Policy Act, Chapter 43.21C RCW, the Director of the Department of Planning and Development issued a decision approving with conditions an application by the Seattle School District to demolish Arbor Heights Elementary School. The Appellants exercised the right to appeal the Director's decision pursuant to Chapter 23.76 Seattle Municipal Code.

The appeal hearing was held on August 11, 2014 before the Hearing Examiner (Examiner). The Appellant, Seattle Committee to Save Schools et al., was represented by Chris Jackins, *pro se*; the Applicant, Seattle School District (District), was represented by G. Richard Hill, attorney-at-law; and the Director, Department of Planning and Development, was represented by Holly Godard, Land Use Planner. The record closed with the Examiner's site visit on August 16, 2014.

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 appeal.

**Findings of Fact**

1. The subject site, which is addressed as 3701 SW 104<sup>th</sup> Street, is 5.6 acre in size and zoned Single Family 7200. It is bounded on the north by SW 104<sup>th</sup> Street, on the south by SW 105<sup>th</sup> Street, and on the east and west by single-family residential development. Development across the two streets adjacent to the school is also single-family.
2. The site slopes from west to east and from north to south. There are mapped steep slope environmentally critical areas at the northwest and southeast corners, and an elevation change of 35 to 40 feet from the northwest to the southeast corner of the property. The site drops from SW 104<sup>th</sup> Street approximately 23 feet to a level shelf and then drops approximately 12 feet to SW 105<sup>th</sup> Street below.
3. Arbor Heights Elementary School was constructed on the graded level area of the site in 1949. It is 47,630 square feet in size and has an enrollment of 384 students and a staff of 34.

4. The property includes both conifers and deciduous trees, primarily around the site perimeter. There are two exceptional trees located on the south slope. Most of the remainder of the site is covered with hardscape and a play area.
5. The District proposes to demolish the existing school. The District also intends to construct a new, larger elementary school in approximately the same location on the site, but that proposal is being considered by the Department under a separate project number (3016830).
6. The parking and staging area during demolition and construction will be located on the existing hardscape and play area. Those areas will be closed to the public during work on the project.
7. When the new school is constructed, frontage improvements will be required along SW 105<sup>th</sup> Street, and the District will dedicate a 10-foot-wide strip of property in that location to the City. The two exceptional trees are located within the property to be dedicated, and prior to the dedication, SDOT will make a final decision on whether they can be retained. The arborist testified that 50 trees, including the two exceptional trees, will need to be removed for the construction project, and 83 trees will be replanted on the property. Ultimately, there will be an increase in the tree canopy.
8. Testimony from the arborist also confirmed that two 24-inch Douglas fir trees located in the northeast area of the site are not candidates for transplanting and can be saved.
9. The District prepared a landmark nomination for the Arbor Heights School to determine whether the structure or any of its components had historical or cultural significance. The Landmarks Preservation Board voted to deny the nomination.
10. The Washington State Department of Archaeology and Historic Preservation's Statewide Predictive Model shows the site at moderate to moderately low risk for the presence of prehistoric archaeological resources. The District's archaeological consultant conducted a cultural resources assessment of the site. She reviewed geotechnical information about the site and determined from soil borings that the original glacial till and outwash deposits were disturbed by cutting and filling during construction of the school. Only one boring, in the southern part of the site, included the original ground surface or "potential relic topsoil". The consultant also reviewed the prior uses of the site, noting that the property was cleared forest land that appeared to have been put to single-family residential or farm uses prior to construction of the existing school. Exhibit 8 at 2-3.
11. After studying the property, the archaeological consultant concluded that the likelihood of encountering historic archaeological resources is low and prepared an "Inadvertent Discovery Plan" for the project. The Plan includes communication protocols (including tribal notification) to resolve any archaeological resource matters that arise during project construction, orientation meetings, and directions on handling inadvertently discovered archeological resources and human remains. Exhibit 8 at 3, 7-11.
12. The District acted as lead agency for the demolition and construction projects for purposes of environmental review under SEPA. Because the two projects are closely related,

they were considered together in the same environmental documents. The District issued a Determination of Non-Significance (DNS) for the proposal in March of 2014. Exhibit 2. The DNS was appealed to the District's Pro Tem Hearing Examiner, who issued a recommendation that it be affirmed. Exhibit 4. The District Superintendent affirmed the DNS on May 16, 2014. Exhibit 4.

13. The Director reviewed the District's demolition application for purposes of imposing conditions to mitigate impacts identified in the DNS. The Director also reviewed the comment letters that were submitted during the public comment period, which closed on March 26, 2014, and other documents that were prepared for the District's demolition and construction projects, including the following: the traffic consultant's Transportation Impact Analysis and May 14, 2014 Supplemental Review of Potential Cumulative Impacts (exhibits 2 and 5); the arborist's tree assessment (exhibit 6); the Archaeological Resources Inadvertent Discovery Plan for the project (exhibit 8); and a geotechnical engineering study.

14. The Director considered the potential short-term impacts of the demolition proposal, including soil stability in light of grading/excavation, surface water and erosion control; air quality; construction noise, control of construction vehicles, and construction traffic and parking impacts; and greenhouse gas emissions. Exhibit 1.

15. The Director also considered the demolition proposal's potential long-term impacts, including potential impacts to the steep slopes on the site, air quality, plants/trees, environmental health, and historic preservation, as well as noise, light and glare, and traffic and transportation impacts.

16. The Director imposed a condition addressing the potential noise impacts of all construction activities, including demolition. With respect to other impacts, the Director determined that, in light of Code requirements and mitigation incorporated into the project, no additional mitigation was warranted pursuant to the City's SEPA policies. This appeal followed.

#### Applicable Law

17. SMC 25.05.660.A provides that "[r]esponsibility for implementing mitigation measures may be imposed upon an applicant only to the extent *attributable to the identified adverse impacts of its proposal*." SMC 25.05.660 A.4 (emphasis added).

18. The City's SEPA cumulative effects policy provides, in relevant part, that in some situations, "an action or project may be conditioned or denied to lessen or eliminate its cumulative effects on the environment: a. When considered together with prior, simultaneous or induced future development ... it is determined that a project will use more than its share of present and planned facilities, services and natural systems. SMC 25.05.670.B.2

#### Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant to Chapter 23.76 SMC. The Examiner must give "substantial weight" to the Director's substantive SEPA decision. 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 a 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).

2. The Appellants assert that the demolition permit and construction permit should have been reviewed in the same DPD decision, citing the need to consider the cumulative impacts of the two applications. The Appellants have not cited, and the Examiner has not found, anything in the Code that prohibits an applicant from obtaining a demolition permit in advance of submitting a construction permit. Because the demolition and construction proposals are so closely related as to be, in effect, a single course of action, SEPA required that they be considered together for purposes of evaluating their environmental impacts. See WAC 197-11-060(3). The evidence shows that the District complied with this requirement in completing SEPA review for the combined project. The Director's decision on the demolition permit also shows consideration of both demolition and construction impacts. There is no evidence in the record that the cumulative impacts of the demolition and construction projects require conditions not imposed by the Director.

3. The Appellants argue that the IDP is not adequate mitigation for potential impacts to archaeological resources and assert that it allows damage to archeological remains to occur and addresses it after the fact. The evidence is to the contrary. The cultural resource assessment of the site established that the likelihood of encountering such resources is low. The communication protocols included in the IDP include a requirement that the Duwamish Tribe be notified of the project schedule and invited to observe the work. As noted, the IDP also includes required orientation meetings and directions on handling inadvertently discovered archeological resources. The record establishes sufficient protection for potential archaeological resources on the site.

4. The Appellants allege that mitigation that would require the District to retain some elements of the school, such as the stage or other usable portions, would reduce impacts on energy and natural resources from the disposal of demolition debris. They presented testimony from an award-winning former teacher at Arbor Heights that the school stage is elaborate and uniquely suited to presenting large productions, including musicals. The desire to preserve such distinctive facilities is understandable, but under the Code, the Department can require their preservation only if the Landmarks Preservation Board approves their nomination for landmark status. See SMC 25.05.675.H.c. In this case, the Board did not approve landmark status for any part of the school. Further, there is no evidence in the record of identified adverse project impacts on energy and natural resources that would support the imposition of special conditions limiting the disposal of demolition debris.

5. The Appellants claim the SEPA Checklist erroneously states that neighbors will continue to be able to use the school site for recreation although a District witness made it clear that the site will be off limits to the public during demolition and construction. The Appellants cite section 12.b on page 18 of the Checklist. This claim should have been raised in the Appellant's challenge to the District's environmental determination. In any event, there is no conflict in the District's statements. Section 12.b states that the "proposed project would not displace any existing recreational uses. The informal use of the existing school grounds will continue to be available during non-school hours." When read in context, it is clear that the

Checklist is acknowledging informal public use of the existing school grounds and stating that they will remain available to the public following "the project," i.e., construction of a new elementary school on the site.

6. The Appellants note a "possible connection" between a seasonal stream that flows through a pipe beneath the site and into a storm drain and a small, Type IV wetland present at the west end of the site for which the Code requires no buffer. The Appellants argue that if the two are connected, a buffer would be required, which would affect use of the west part of the site for construction-related parking and staging. Without supporting technical documentation, this theory does not leave the Examiner with a definite and firm conviction that a mistake has been made.

7. The Appellants argue that because the two exceptional trees are located in an area that will be dedicated to the City, SDOT, as the new owner, must conduct a new environmental review on removal of the trees before the Director can issue a decision on the demolition permit. This argument reflects a misunderstanding of the dedication process, which normally requires completion of the frontage improvements, including any required tree removal and replanting of street trees, before the property is dedicated. The District's environmental documents will inform SDOT's final decision on the two exceptional trees in advance of the dedication. No additional environmental review is required for the Director's decision on the demolition permit.


8. In addition to the issues discussed above, the appeal included issues concerning construction vehicle hours of operation, construction dust and noise, and flooding problems on SW 105<sup>th</sup> Street. The Appellants presented no evidence or argument on these issues, and they are therefore waived.

9. The Director's decision was not shown to be clearly erroneous, and it should therefore be affirmed.

#### Decision

The Director's decision is **AFFIRMED**.

Entered this 19<sup>th</sup> day of August, 2014.

  
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. In accordance with RCW 36.70C.040, a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the decision is issued unless a motion for reconsideration is filed, in which case a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the order on the motion for reconsideration is 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.

**Appellants:**

Seattle Committee to Save Schools, et al.  
c/o Chris Jackins  
PO Box 84063  
Seattle, WA 98124

**Applicant:**

Seattle School District  
c/o G. Richard Hill  
701 Fifth Avenue, Suite 6100  
Seattle, WA 98104

**Department Director:**

Diane Sugimura, Director, DPD  
700 Fifth Avenue, Suite 1900  
Seattle, WA 98104