

**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-14-017 (DD,W)

Department Reference:
3016830

Introduction

The Director of the Department of Planning and Development issued a decision approving an application by the Seattle School District to allow an elementary school in an environmentally critical area. The Director's decision approved development standard departures and imposed conditions on the project pursuant to the State Environmental Policy Act (SEPA) as adopted by the City of Seattle in Chapter 25.05 Seattle Municipal Code. The Appellants exercised the right to appeal pursuant to Chapter 23.76 of the Seattle Municipal Code.

The appeal hearing was held on February 2, 2015, before the Hearing Examiner (Examiner). The Appellants, Seattle Committee to Save Schools, et. al., were represented by Chris Jackins; the Applicant, Seattle School District (District), was represented by G. Richard Hill, attorney-at-law; and the Director, Department of Planning and Development (Director or Department), was represented by Holly J. Godard, Senior Land Use Planner. The record closed with the Examiner's site visit on February 7, 2015.

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 viewed the site, the Examiner enters the following findings of fact, conclusions and decision on the appeal.

Findings of Fact

Site and Vicinity

1. The subject site, which is addressed as 3701 SW 104th Street, is 5.6 acre in size and zoned Single Family 7200. It is bounded on the north by SW 104th Street, on the south by SW 105th 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 104th Street approximately 23 feet to a level shelf and then drops approximately 12 feet to SW 105th Street below.

3. Arbor Heights Elementary School was constructed on the graded level area of the site in 1949. It had an enrollment of 384 students and a staff of 34. The site included 5 parking spaces that were accessed from SW 104th Street. Regular school buses loaded and unloaded in the right-of-way along SW 104th Street. Special education buses loaded and unloaded on SW 105th Street. The school was approved for demolition in 2014.

Proposal

4. The District proposes to construct a new, three-story elementary school, with associated parking and outdoor play fields, that could accommodate up to 660 students and 75 staff members. The proposal includes a total of 55 parking spaces located on the northeast and southeast corners of the site. Vehicle access for parking and drop-off would be via a one-way driveway from SW 104th Street at the northeast corner of the site. Vehicles would exit the site to SW 105th Street at the southeast corner of the site. Bus loading and unloading would remain in its prior locations. The proposal includes street improvements, including curbs, gutters and sidewalks, on both SW 104th and SW 105th Streets.

5. The property includes both conifers and deciduous trees, primarily around the site perimeter. Forty-three trees, many of them smaller varieties, are slated for removal. A Pacific madrone that met City standards for an exceptional tree and other trees were removed due to extensive grading required to widen the SW 105th Street right-of-way. The District and City are discussing mitigation for removal of the Pacific madrone. Two Douglas fir trees at the northeast corner of the site will be retained in place. According to the District's arborist, the planting plan for the project shows that 113 new trees will be planted. At maturity, 40 of the new trees will be large, and 48 will be medium-sized. In time, the tree canopy on the site will be much larger than it was before the project.

6. 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. The consultant 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 9 at 2-3.

7. 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 9 at 3, 7-11. The District will also

contact the Duwamish, Muckleshoot, Snoqualmie, Suquamish, and Tulalip Tribes in advance of construction and invite them to observe the work.

8. The District's transportation consultant prepared a transportation impact analysis (TIA) for the proposal. Exhibit 3, Appendix B. The TIA analyzed future trip generation and parking demand for the proposed school and associated impacts on six off-site intersections and parking availability. The counts for traffic generation and parking were done on two different days, one when school was open and the other when it was not. The study area intersections were projected to continue to operate at an overall level of service (LOS) B during the peak 20 minutes during the normal drop-off and pick-up hours. *Id.* at 23-24. The TIA states that the 463 on-street parking spaces available within an 800-foot walking distance of the subject property have a typical utilization rate of approximately 30% during midday on school days and 32% on weekday evenings. *Id.* at 15. The on-street parking supply was determined sufficient to accommodate any spillover parking demand from the school, although during large school events, parking was projected to be congested along roadways closest to the school. *Id.* at 25.

9. 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 3. When the DNS was appealed to the District's Pro Tem Hearing Examiner, the District's transportation consultant became aware that a new private school, Westside School, would be relocating to a church approximately 800 feet east of the subject property.

10. The District's transportation consultant issued a supplemental review of the potential cumulative transportation impacts from the two schools. Exhibit 5. After considering projected enrollments, and assuming the schools would continue existing start and dismissal times, the consultant projected a potential 20 minute overlap of 50% to 60% of the schools' traffic. During the morning drop-off period, the overlap could degrade operations for eastbound turns from SW 104th Street onto 35th Avenue SW to LOS E or F for approximately 10 to 15 minutes. Other delays would occur but would not reduce operations below LOS D. Exhibit 5 at 2.

11. As noted by the transportation consultant at hearing, and by the District's Pro Tem Examiner, LOS D is the lowest overall intersection LOS acceptable to the City, but individual turning movements may have a lower LOS. *See* Exhibit 4, Finding 17. Nonetheless, the transportation consultant recommended several measures to reduce cumulative transportation impacts, including changing the intersection of SW 104th Street and 35th Avenue SW to a four-way stop. With this change, the intersection is projected to operate at LOS B, and all approaches are projected to operate at LOS C. Exhibit 5 at 2-3.

12. The District's Pro Tem Examiner issued a recommendation that the District's DNS be affirmed, and the District Superintendent affirmed it on May 16, 2014. Exhibit 4.

13. At hearing, the Appellants presented a preliminary site plan for an application by Pacific Charter School Development for a charter school to be located at 9601 35th Avenue SW, approximately three-quarters of a mile north of the subject site. Exhibit 6. The preliminary

site plan shows 87 on-site parking spaces. The application was filed in December of 2014, and there is not yet any available data on the proposed charter school's projected transportation impacts.

Development Standard Departures

14. The District requested departures from certain City development standards to allow: 1) less than required off-street parking; 2) continued on-street bus loading and unloading; 3) inclusion of changing image capabilities for an otherwise-allowed reader board sign; and 4) less than required structure modulation.

15. The Department of Neighborhoods convened a Development Standards Departure Committee to consider the requested departures. The Committee met on February 18, 2014, to hear public comment, deliberate, and develop its recommendations on the departures in accordance with the criteria listed in SMC 23.79.008.C.1.

16. Both the District and the neighborhood wished to retain as much open space as possible on the subject site, and the Committee determined there were no real problems with the existing practice of on-street bus loading. Therefore, it recommended that the departure to allow continued on-street bus loading and unloading be approved without condition. Exhibit 7 at 10.

17. Concerning the requested departure to allow a total of 55, rather than the required 71 on-site parking spaces, the Committee recommended approval with conditions requiring that: 1) allocation of the spaces be weighted toward staff parking; 2) the traffic pattern through the site maximize safety and efficiency, with a preference for a one-way pattern; and 3) parking be made available to the general public during all after-hour school and community events, and during non-school periods, at the discretion of District security. Exhibit 7 at 10.

18. The Committee recommended approval of the departure to allow inclusion of changing image capabilities for the reader board sign, noting that the design and placement of the sign mitigated possible negative impacts on the surrounding neighborhood, and that it would be an important tool for communicating with the neighborhood. Exhibit 7 and 10-11. However, the Committee expressed the need for reasonable limits on the hours of operation and level of illumination. Therefore, the Committee recommended that the departure be approved subject to conditions requiring: 1) "that the sign be illuminated only between the hours of 7:00 AM to 7:00 PM on days when school is in session, except for special events approved by the School Principal;" 2) "that the sign not be operational during the summer break;" and 3) "that the sign be on a dimmer that adjusts illumination levels to the ambient light levels." Exhibit 7 at 11.

19. Concerning the requested departure to allow less than required structure modulation on the 104th Street façade and the north wall of the gymnasium, the Committee listed specific factors that led them to conclude that the design was sufficiently respectful of the surrounding neighborhood. But the Committee conditioned its approval on the District's

using "various other design elements to soften façades such as trees and other landscaping and window treatments etc., especially along the north wall of the gymnasium." Exhibit 7 at 13.

Director's Decision

20. The Director reviewed the proposal and issued a decision on it on October 23, 2014. The Director's decision evaluated the Committee's report and recommendations on the requested departures in accordance with the Code-required criteria and granted all departures with the conditions recommended by the Committee.

21. The Director also reviewed the environmental impacts of the proposal as disclosed in the District's environmental documents. It is clear from the decision that the District and the Seattle Department of Transportation (SDOT) are still working together to determine the appropriate mitigation for the cumulative transportation impacts from the proposal and the Westside School project, and that mitigation may include installation of the four-way stop at the intersection of 35th Avenue SW and SW 104th Street that was suggested by the transportation consultant. Exhibit 1 at 13 (mislabelled Page 2). The Director included in the decision a requirement for that improvement, if approved by SDOT, as well as a condition requiring installation of signage to direct one-way traffic on and off the site, and the inclusion of access instructions in public documentation, parent information, and the neighborhood communication plan. Exhibit 1 at 19.

Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant to SMC 23.79.012 and SMC 23.76.022. The Hearing Examiner must give "substantial weight" to the Director's decision. SMC 23.79.012.D; SMC 23.76.022.C.7. Accordingly, the party appealing it has the burden of proving that the decision is "clearly erroneous". *Brown v. Tacoma*, 30 Wn. App. 762, 637 P.2d 1005 (1981). This means that the Examiner must be left with a definite and firm conviction that a mistake has been made. *Moss v. Bellingham*, 109 Wn. App. 6, 13, 31 P.3d 703 (2001).

2. The Appellants challenge the accuracy of a statement in the Director's decision that says "two 24" Douglas firs will be relocated to the future main entrance". As noted above, that information was updated at the hearing. The two 24 inch Douglas fir trees at the northeast corner of the site will be retained in place.

3. The Appellants ask that the Examiner establish required mitigation for the removal of the Pacific madrone tree from the SW 105th Street right-of-way. As noted, the District and City are discussing that issue. There was no evidence presented concerning the environmental impact of the tree's removal or the appropriate mitigation for its removal. Mitigation for removal of the tree is a matter that requires some specialized expertise, and it should be determined by the City's and District's experts. The Examiner will include a condition to that effect.

4. The Appellants assert that the Duwamish tribe should be contacted by the District prior to any digging at the site. As noted above, the District has committed to contacting the Duwamish and other native tribes in advance of the construction work.

5. The Appellants state that the proposed school is unreasonably large for the subject site, primarily citing traffic and parking impacts, and ask that the requested departures from development standards therefore be denied. The Appellants point to the cumulative transportation impacts from the proposal and the Westside School relocation. However, the evidence in the record shows that the traffic impacts from both schools would degrade the operation of the SW 104th Street/35th Avenue SW intersection but would not necessarily be considered significantly adverse under City standards. Nonetheless, the City and District are evaluating them and determining whether the proposed intersection improvements are warranted. There is no clear error here.

6. The Appellants also ask that a decision on the proposal be delayed until the additional impacts of the recently submitted charter school project can be analyzed, but they have cited nothing in SEPA that would require or authorize that result. As noted by the District's transportation consultant at hearing, the transportation impacts of the District's proposal and the Westside School project will be considered as background information in the transportation analysis for the proposed charter school, which he has been retained to prepare.

7. The Appellants assert that if the departures are not denied, the Examiner should compel that the City require construction of a four-way stop at the intersection of 35th Avenue SW and SW 105th Street, the street to which the Arbor Heights school traffic would exit. However, there is no evidence in the TIA, the Supplemental Review, or anything else in the record to support such a requirement. Consequently, it would be contrary to SMC 25.05.660.A.4, which 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.*" (Emphasis added.)

8. The Appellants contend that if the departures are not denied, the Examiner should require more on-site parking. The Appellants note that in one paragraph of the Committee's report on the District's off-street parking departure request, it states that members of the Committee "noted that the proposal increases on-site (sic) parking from only 5 to 63". Exhibit 7 at 9. However, if one reviews the complete report, it is clear that the number "63" is either a misperception by one or more members during their discussions or a typographical error. Later in the report the requested departure, "to locate a total of 55 on-site parking spaces instead of the 71 spaces required by Code" is clearly stated along with the Committee's recommendation that it "should be approved" subject to the listed conditions. Exhibit 7 and 10. The Director's decision approving this departure was not shown to be clearly erroneous.

9. The Appellants assert that if the departures are not denied, the Examiner should require further mitigation for the electronic sign. Specifically, they ask that in addition to the Committee's recommended conditions for the sign, the Examiner include as

conditions the Committee's reported reasons for why they believed the requested departure was needed. See SMC 23.79.008.C.1.b; Exhibit 7 at 11. The Examiner finds Code authority for such an addition.

10. The Director's decision approving the departures with conditions recommended by the Committee, and imposing conditions pursuant to SEPA, was not shown to be clearly erroneous. However, the decision should be modified to account for the potential mitigation for removal of the Pacific madrone tree.

Decision

The Director's decision approving the development standard departure is **MODIFIED** to revise the conditions of approval to read as follows:

CONDITIONS - SEPA

Prior to Issuance of Certificate of Occupancy

1. Install signage to direct one-way traffic on and off the site at the east parking lot with entry on SW 104th Street and exiting on SW 105th Street. Include site access instructions in public documentation and parent information and the neighborhood communication plan.
2. The District shall install stop signs to create a four-way stop at the intersection of 35th Avenue SW and SW 104th Street if SDOT gives approval.
3. The District shall complete any mitigation approved by the City for removal of the Pacific madrone tree from the south side of the subject site.


CONDITIONS – DEVELOPMENT STANDARD DEPARTURES

For the Life of the Project:

1. Encourage staff parking on site, create one-way traffic and allow public parking after school hours at the discretion of the School District, and include the parking and access instruction in parent, neighborhood, and employee communications.
2. The electronic school sign shall be illuminated only between the hours of 7AM and 7PM on days when school is in session, except for special events as approved by the School Principal; the sign will not be operational during summer break; and the sign will be on a dimmer that adjusts illumination levels to ambient light levels.
3. Soften facades without code required modulation through additional landscaping, building materials and/or fenestration.

As modified, the Director's decision is **AFFIRMED**.

Entered this 9th day of February, 2015.


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:

c/o Chris Jackins
PO Box 84063
Seattle, WA 98124

Applicant:

Seattle Public Schools
c/o G. Richard Hill
701 Fifth Avenue, Suite 6600
Seattle, WA 98104

Department Director:

Diane Sugimura, Director, DPD
PO Box 34019
Seattle, WA 98124

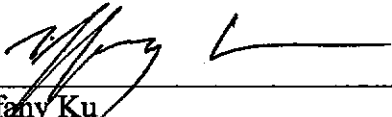
**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached Findings and Decision to each person listed below, or on the attached mailing list, in the matter of Seattle Committee to Save Schools, et al., Hearing Examiner File MUP-14-017, in the manner indicated.

Party	Method of Service
Chris Jackins Seattle Committee to Save Schools P.O. Box 84063 Seattle, WA 98124	<input checked="" type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
G. Richard Hill McCullough Hill Leary PS 701 5 th Avenue, Suite 660 Seattle, WA 98104 rich@mhseattle.com Laura Counley lcounley@mhseattle.com	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
Holly Godard DPD SMT-18-00 holly.godard@seattle.gov	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger

Dated: February 9, 2015



 Tiffany Ku
 Legal Assistant