

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

In the Matter of the Appeal of

CASCADE COMMUNITY COUNCIL

FILE NO. S-76-019

from a ruling of the Superintendent
of Buildings

The appeal is DENIED and the interpretation of the
Superintendent of Buildings is affirmed.

Introduction

The appellant, Cascade Community Council, filed an appeal from an interpretation of the Superintendent of Buildings concerning property located at 116, 118, and 120 Fairview Avenue N. The appellant appeals from the decision of the Superintendent to conditionally grant a demolition permit applied for by the Seattle Times.

The appellants exercised their right to appeal pursuant to Section 25.40, Ordinance 86300, as amended by Ordinance 104795.

This matter was heard before the Hearing Examiner on August 26, 1976.

After due consideration of the evidence elicited during the public hearing, the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The Seattle Times (hereinafter permittee) filed an application for a demolition permit for certain structures with the Superintendent of Buildings (hereinafter Superintendent). On August 6, 1975, the Superintendent issued a Declaration of No Significant Impact with regard to this proposal. This declaration was challenged by the appellant in a court test and on October 30, 1975, a Writ of Mandate was issued by the Superior Court of the State of Washington for King County (#799613) which directed the Superintendent to prepare an environmental impact statement (EIS) prior to the issuance of the requested permit. The final EIS prepared pursuant to the Writ of Mandate was issued by the Superintendent on June 28, 1976. The Superintendent on July 27, 1976, issued a decision which conditionally approved the demolition permit. The appellants filed their appeal on August 9, 1976, challenging the adequacy of the EIS.

2. The subject property is located at 116, 118, and 120 Fairview Avenue N. in a General Commercial (CG) Zone. The general vicinity is commonly known as the Cascade Neighborhood. Dwelling units are permitted in the CG zone only as council conditional uses or as an existing nonconforming use. The Seattle Comprehensive Plan designates the subject property and its surrounding area as a commercial area for wholesaling and general services.

3. The subject property consists of three contiguous lots which are developed with a single-family residence, a seven-unit apartment building, and a building which is used for commercial purposes on the first floor and a dwelling unit on the second floor. These structures have a nonconforming status due to their prior residential use. The buildings have not been occupied since August 1, 1975.

4. The Writ of Mandate which directed the Superintendent to prepare an EIS stipulated that the EIS would be limited to an assessment of the cumulative environmental impact of the loss of the housing units on low income housing in the Cascade community.

5. With respect to a discussion of the alternatives to a proposal in an EIS, the SEPA guidelines at WAC 197-10-440(12)(e) state in part as follows:

In those instances where the proposal is for a private project on a specific site, the alternatives considered shall be limited to the "no-action" alternative plus other reasonable alternative means of achieving the objective of the proposal on the same site or other sites owned or controlled by the same proponent...

6. The objective of the permittee's proposal is to demolish the existing structures and to subsequently level the site. The permittee has no specific plans for either an interim or a long term use for the subject property subsequent to completion of this proposal. The permittee does not intend in the foreseeable future to utilize the property as an off-street parking area.

7. The EIS prepared with regard to the permittee's proposal discusses the following three alternatives to the proposed action: the "no-action" alternative; the requested demolition with open space or parking as an interim use; and sale and removal of the existing structures to another site for residential use. The final EIS included comments from persons in the community and other interested persons which brought out and discussed other alternatives considered to be available to the permittee. However, the alternatives proposed by the appellant go beyond the scope of the objective of the permittee and are, in fact, inconsistent with the purpose of the proposed action. These alternatives reflect the desires of the appellant and their inclusion in the EIS is not required.

8. The EIS properly did not discuss the development of a parking lot on the subject property since this was not a specific and concrete proposal of the permittee and would have gone beyond the direction of the court's mandate.

9. A discussion of the impact of the proposed project on the sense of community of the persons residing in the Cascade neighborhood and the impact of the destruction of this community on the city as a whole go beyond the court's mandate which narrowly restricted the subject matter to which the EIS was to be directed.

10. The proposed demolition by the permittee, in concert with other similar demolitions in the past and those which may occur at some time in the future, will have the effect of further lessening the desirability of the Cascade neighborhood as a residential area. Fewer dwelling units will be available, thereby necessitating that those who reside or wish to reside in the area will have to search elsewhere for dwellings.

11. The proposed demolition is inconsistent with several sections of Goals for Seattle (Seattle 2000). Specifically, under the title "Downtown as a Place to Live", on page 48, the following goal is specified: "There should be several inviting residential communities within the downtown meeting the needs and desires of all ages, classes, and lifestyles." This goal and others have been adopted as official goals for the city and are to be implemented in a Comprehensive Policy Plan. To date, this plan has not yet been formulated.

Conclusions

1. The appellant has not met the burden of proof of overcoming the prima facie correctness which is attributed to the Superintendent's decision and, further, the appellant has not established that the interpretation and decision of the Superintendent is clearly erroneous. The EIS was prepared at the direction of a court mandate, which restricted its scope, adequately brings out the matters which the court considered the most critical with regard to the proposed demolition. The EIS adequately discussed the reasonable alternatives to the project and properly omitted discussing others which would not have been consistent with the objective of the permittee. The matters which have been omitted from the EIS have been omitted since they were not required by the court mandate and would not have been of relevant assistance in determining whether the requested permit would be issued. The EIS is therefore consistent with the court mandate and is a full and adequate discussion of the relevant factors.

2. The appellant, in effect, argues that the Superintendent has some discretion in the areas of policy determination and can liberally construe city policy concerning the Cascade Neighborhood. This, however, is not the law in this state in that it is a well-established rule that administrative authorities are properly concerned only with compliance with an ordinance and not questions of policy, which could invite discretion and potentially lead to violations of the equal protection of the laws. State ex. rel. Ogden vs. Bellevue 45 W. 2d 492, 275 P. 2d 899 (1954) and Eastlake Community Council vs. Roanoke Assoc. Inc. 82 Wn 2d 475, 513 P. 2d 36 (1973). Consequently, the Superintendent can properly only deal with existing policy as it is created by the City Council by ordinance. To go beyond that existing policy is not within the scope of the Superintendent's authority and would be clearly unlawful.

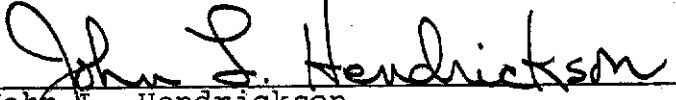
3. The existing city policy with regard to the Cascade Neighborhood is to discourage residential use and encourage commercial development, although Seattle 2000 clearly dictates a long term goal of establishing a well-balanced downtown area that would encourage residential uses in the Cascade area. However, these goals have not been implemented through specific incorporation into the Comprehensive Plan or into the zoning for the area, so that dwellings remain a discouraged use in this area. Consequently, the proposed project is consistent with existing city policy, although it appears that this policy is uncertain for the future and may, in fact, be changing. The Superintendent, however, does not have the discretion to look towards future policy, but may apply only the policy which appears by ordinance at the present.

4. The appellant seeks a goal of preserving residential use in the Cascade Neighborhood, which cannot be achieved by the Superintendent on a permit-by-permit basis. Legislative direction and action is necessitated through a modification of the Comprehensive Plan designation and zoning for the area. If the City Council members determine that the appellant's goal is an advisable one, the council can take several steps to ensure that the goal is realized. This was done in the Denny Regrade area and could be similarly accomplished in this area.

Decision

The appeal is DENIED and the interpretation of the Superintendent of Buildings is affirmed.

Entered this 7th day of September, 1976.


John L. Hendrickson
Deputy Hearing Examiner