

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

In the Matter of the Appeal of

SUSAN AND MARC GJURASIC AND
DIANE AND BUZZ BENSON

FILE NO. S-81-005

from a determination of the Director,
Department of Construction and Land
Use

Introduction

Appellants, Susan and Marc Gjurasic and Diane and Buzz Benson, appeal the determination of the Director of the Department of Construction and Land Use (Director) to issue a demolition permit for structures at 12 and 18 Ward Streets.

The appellants exercised their rights to appeal pursuant to Section 25.40 of the Zoning Ordinance (86300, as amended).

Parties to the proceedings were: Appellants represented by Stephen J. Crane, Crane, Stamper, Boses, Dunham and Daily; the Director represented by Elizabeth A. Edmonds, Assistant City Attorney; Ames Pirie, applicant, represented by Jerry Kindinger, attorney at law.

This matter was heard before the Hearing Examiner on February 19, 1981.

For purposes of this decision, all section numbers, unless otherwise indicated, refer to the Zoning Ordinance (86300, as amended).

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 Director's decision to issue a demolition permit for property at 12 and 18 Ward Street was published January 30, 1981.

2. Appellants filed their Notice of Appeal of that decision February 2, 1981. Prior to hearing on the instant appeal a Motion to Dismiss was granted as to issues not subject to review by the Hearing Examiner for lack of jurisdiction.

3. The structures to be demolished are two large, structurally sound, single family residences which are tenant occupied.

4. A declaration of non-significance (DNS) was issued December, 1978, for the proposal to demolish the two existing structures and construct a nine unit condominium structure.

5. Appellants urge that conditions to mitigate an adverse impact on housing from the demolition of the structures should have been imposed. Conditions suggested were requiring: the structures' occupation as long as possible; provision of alternative housing; payment of relocation costs; redesign of the proposed condominium structure to retain at least one of the houses; rehabilitation of the existing structures; moving the structures to another location.

6. The environmental checklist on which the DNS was based answered in the affirmative the question "Will the proposal affect existing housing, or create demand for additional housing?" The explanation stated:

The existing two houses will be demolished prior to commencement of construction. In place will be nine new dwelling units. Nine occupants will fill the new building leaving seven vacant dwelling units in nearby or other areas. Seven units will be added to the existing housing stock.

7. The environmental specialist assigned to analyze the proposal found that because of the steep streets in the area, the number of overhead electrical wires and the inability of the Seattle Housing Authority to find available vacant property, moving the existing houses to a new location was impracticable. No evidence was produced to rebut that findings.

8. By administrative ruling, the Department of Construction and Land Use has determined that the good faith effort by an applicant for a demolition permit to locate housing acceptable to the tenants of low-rent units as required by Section 9, Ordinance 107678, in cases where the demolition is not exempt from the Housing Preservation Ordinance, is met by compliance with that Ordinance, providing relocation assistance notice and application forms to the tenants and giving four months notice to the tenants.

9. The applicant provided notice and application for relocation assistance forms to the tenants of the houses.

10. No evidence to refute the applicant's opinion that it would not be economically feasible to rehabilitate the existing two residences, maintain "affordable" rent levels, and achieve the goals of the project was provided.

11. Two units in the proposed condominium are to be low-medium priced units, i.e., \$65,000 for the lower priced one.

12. The Queen Anne Community Council is concerned with the preservation of low income housing on Queen Anne in order to maintain a mix of housing opportunities in the community.

13. The environmental specialist testified that the Department of Construction and Land Use cannot consider the Housing Assistance Plans (HAP) of the City when evaluating an application for demolition permit. Her testimony indicated that at the time Appendix A to Ordinance 107678, the SEPA Policies Ordinance, was adopted, the HAP, although included in the appendix, was never intended to be used. She, therefore, did not consider the HAP in evaluating the instant application.

14. The environmental specialist stated that housing goals under Seattle 2000 and the Comprehensive Plan, both a part of Appendix A to Ordinance 107678, may not be, and were not, considered.

15. The 1981 HAP lists several policies and strategies to increase the supply of low rent housing and preserve existing housing stock. The HAP proposes to prevent the displacement of low-income homeowners by continuing the utility rate program, and funding Homesharing for Seniors. To improve the conditions of low-income, single family, owner-occupied housing the HAP proposes to continue to provide low cost repair services. To increase the supply of low cost housing the strategy is to use federal allocation under federal housing assistance programs, provide incentives for private development by improving the permit system, make a decision on the requirement of below market rate housing inclusion in private development, to develop funding

sources for multi-unit projects, use funds for SRO housing, encourage non-profit organizations to produce low cost housing and to change land use policies. To minimize displacement the strategies are utilization of the Housing Preservation Ordinance and use of block grant funds to provide low interest loans for restoration of buildings.

Conclusions

1. Section 19, Ordinance 105735, as amended, allows the denial of a permit only where significant adverse impacts which cannot be mitigated by reasonable conditions have been identified in the environmental documents. Imposition of reasonable conditions may be used to mitigate adverse environmental impacts.

2. Since no significant adverse impact was identified, the Director may not deny the application for demolition permit.

3. Section 1, Ordinance 107678, provides that the City official shall use "SEPA, all policies, guidelines and regulations adopted pursuant to SEPA ... and other environmentally related policies adopted by the City Council in the form of resolutions, codes, ordinances, regulations or plans identified in Appendix A" in assessing impacts and determining the need for conditioning a proposal.

4. The Director's position, as explained by the environmental specialist, that certain policies listed in Appendix A cannot be considered where the body of the legislation addresses a particular environmental impact is not supported by the clear language of Ordinance 107678, which allows, if not requires, the consideration of all policies recognized under SEPA.

5. Even if the answer to the checklist's question as to the proposal's effect on housing is construed as acknowledgment of an adverse impact, which for this decision it will be, the Director may only impose reasonable mitigating conditions, not deny the permit, as discussed above. The strategies found in the HAP provide for no authority for mitigating conditions beyond those already considered by the Director in the instant case. Therefore, remanding the matter for consideration of the HAP would be a useless and wasteful act.

Decision

The decision of the Director of Construction and Land Use is AFFIRMED.

Entered this 2nd day of March, 1981.


M. Margaret Klockars
Deputy Hearing Examiner

Notice of Right to Appeal

Pursuant to Section 20A of the SEPA Ordinance (105735, as amended), a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the fifteenth (15th) day after the date of the decision appealed from is filed with the SEPA Public Information Center. The appeal must be filed with the City Clerk on the 1st floor of the Municipal Building. Rules have been adopted by the City Council governing the appeal procedure and should be reviewed prior to filing an appeal.

The City Council will only review issues relating to compliance with Section 19, Ordinance 105735, as amended. Section 19 related to substantive authority to condition or deny a proposal on environmental grounds.