

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

In the Matter of the Appeal of

HESTER McLAWS

FILE NO. W-76-001

from an environmental determination
of the Superintendent of Buildings

The matter is remanded to the Superintendent
for the preparation of a new threshold determination.

Introduction

The appellant, Hester McLaws, filed an appeal from a declaration of non-significance prepared by the Superintendent of Buildings, hereinafter Superintendent, with regard to a proposed action to construct an animal control shelter at the northeast corner of N. 125th and Stone Avenue N. (Haller Lake site).

The appellant exercised her right to appeal pursuant to Section 20, Ordinance 105735.

This matter was heard before the Hearing Examiner on October 28, 1976.

Parties to the proceeding were the appellant, Hester McLaws, and the Superintendent, represented by Mary Jenny. The Haller Lake Improvement Club, Inc. and the Seattle Animal Control Commission were permitted to intervene as parties.

On November 19, 1976, a representative of the Superintendent indicated orally an intention to withdraw the threshold determination. Even if such an action is taken, a written decision is necessary in order to properly inform all parties of the issues to be resolved on remand.

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 Superintendent has the responsibility for evaluating appropriate sites for the construction of an animal control shelter to be operated by the City's Animal Control Division. The animal control facility is designed to serve the following functions: to receive unwanted, stray or dead animals, to care for stray pets until redeemed by the owners, to provide a place for euthanizing unwanted animals, to dispose of carcasses, to offer animals for adoption and to provide public information.

2. The proposed shelter would be one story in height and contain 7,000 square feet. A 25 vehicle parking area would also be provided on site. A staff of 12 to 13 would operate the facility during the daytime.

3. The site of the proposed shelter is vacant property that is located at the northeast corner of N. 125th and Stone Avenue N., about three tenths of a mile west of Haller Lake.

4. After evaluating the site the Superintendent prepared a threshold determination dated September 8, 1976, in which he found the proposed project would have a non-significant adverse impact on the environment and that an environmental impact statement is not required. In conjunction with the threshold determination, the Superintendent prepared an environmental assessment, dated September 3, 1976, that provided an analysis of the project.

5. A timely appeal was filed by Hester McLaws on September 21, 1976. Among the issues raised in her appeal were the following: lack of storm sewers in the area, travel times to shelter, noise, present use by the city agencies, access, and human health. The assessment prepared by the Superintendent adequately considered the issues raised in the appeal, except for land use.

6. The proposed site for the animal control shelter is zoned Manufacturing (M). In the environmental assessment (p. 2) it states that the location of the structure would comply with the zoning code. In the threshold determination (question no. 9) it states that the only governmental approval required is a building/use permit.

7. In this proceeding official notice is taken of the provisions of the Seattle zoning code. A commercial kennel is first permitted in the General Commercial (CG) zone (Section 26.36.050, Seattle Code) but a dog and cat pound is first permitted in the General Industrial (IG) zone, (Section 26.40.020, Seattle Code). Section 26.38.140, Seattle Code, prohibits as a use in the M zone a use permitted in a more intensive zone. Consequently, a dog and cat pound is not permitted in the M zone. Only one zone classification Heavy Industrial (IH) is more intensive than IG.

8. The term "commercial kennel" is defined by the zoning code in Section 26.06.120, Seattle Code, as any lot or building in which four or more dogs or cats at least four months of age are kept commercially for propagation or treatment. The term "dog and cat pound" is not defined in the zoning code. However, two authoritative sources define it as an enclosure for impounding stray animals, maintained by a local government. WORDS AND PHRASES, vol. 33, p. 198; WEBSTER'S DICTIONARY, 2nd ed., p. 1411.

9. The necessity of considering a rezoning in a threshold determination is clearly spelled out in the SEPA Guidelines WAC 197-10-060(3) provides in part:

The impacts of a proposal include its direct impacts as well as its reasonable anticipated indirect impacts. Indirect impacts are those which result from any activity which is induced by a proposal. These include, but are not limited to, consideration of impacts resulting from growth induced by the proposal, or the likelihood that the present action will serve as a precedent for future actions. (For example, adoption of a zoning ordinance will encourage or tend to encourage or tend to cause particular types of projects.)

Conclusions

1. An animal control shelter comes within the definition of a "dog and cat pound" which is first permitted in the IG zone. Since the site of the proposed shelter is zoned Manufacturing, a rezone would be required.


2. Both the threshold determination and the environmental assessment contain clearly erroneous statements with regard to land use and the need for a rezone.

3. WAC 197-10-060(3) which is specifically adopted in the SEPA Ordinance (105735) mandates a consideration of any zoning change in a threshold determination. The failure to consider the zoning issue requires the preparation of a new threshold determination.

Decision

This matter is remanded to the Superintendent for the preparation of a new threshold determination in conformance with the SEPA Guidelines. The Superintendent is required to specifically address the issue of any changes in the zoning classification and whether or not such a change would have a significant impact upon the environment.

Entered this 19th day of November, 1976.


William N. Snell
Hearing Examiner