

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

In the Matter of the Appeal of

JAMES E. VOILAND

FILE NO. W-76-007A

from an environmental determination
of the Department of Community Development

The appeal is DENIED and the determination
of the Department of Community Development
is affirmed.

Introduction

The appellant, James E. Voiland, filed an appeal from a declaration of non-significance, hereinafter DNS, prepared by the Department of Community Development, hereinafter DCD, with regard to a proposed action to rezone property generally located between Seaview Avenue N.W. and the Burlington Northern Railroad tracks, extending from N.W. 70th 1100 feet to the north.

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

This matter was heard before the Hearing Examiner on January 24, 1977.

Parties to the proceeding were the appellant; DCD, represented by Ross Radley; and the petitioner, William Klassen, represented by Roger Lageschulte.

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

Findings of Fact

1. The petitioner, Evvian Willis, agent for Bill Klassen, requested a rezone of the subject property from Single Family Residence High Density (RS 5000) to General Commercial (CG) to allow Mr. Klassen to operate a boat display and sale business. The DCD first issued a Declaration of Significance on or about October 6, 1976. After proposing various contract restrictions to Mr. Klassen and obtaining his agreement to some of them, DCD issued a DNS and determination that no EIS would be required, based on this amended proposal.

2. The subject property is owned by Burlington Northern and would be leased by the petitioner. It constitutes a strip of land running parallel to Seaview Avenue N.W. from the south margin of N.W. 70th Street to a point 1100 feet north and easterly from Seaview Avenue 50 feet.

3. On the west side of Seaview N.W. are located the Port of Seattle buildings, boat facilities and parking. To the east of the subject property is a heavily vegetated slope up to the railroad tracks, a distance of about 30 feet, a plateau, then a slope continuing to a residential section. To the south, approximately 1 mile is the Hiram Chittendon Locks. To the north about 1500 feet is the boat launching facility and about ¼ mile from the north end is Golden Gardens.

4. Seaview Avenue N.W. is designated as a scenic route. It is a heavily traveled arterial carrying a substantial amount of traffic to the restaurants, businesses and recreation facilities in the area. Parking areas are provided by all facilities but during times of heavy use on-street parking occurs. On some occasions, when parking at the boat launching area is full, boat trailers are parked on the subject property. The petitioner has operated a boat sales business known as "Off Shore Yachts" in the Shilshore area for approximately 6 years. The boat sales business does not attract a large volume of business. Seven employees are on premises on week days and three on weekends. No significant increase in traffic is foreseeable as a result of this proposal, nor any significant impact on the parking situation in the area.

5. The petitioner has hard surfaced part of the area and has a building on the subject property at this time from which he is continuing his boat sales business without necessary permits.

6. The subject property receives public recreational use by various strollers, joggers, dog-walkers, bicyclists, etc. A 6 foot wide right-of-way which is owned by the city will remain for public use so no significant adverse impact on these uses is foreseen.

7. No slide activity was found above this area although there is a level of sensitive soil contact between clay and sand about 90 feet above the subject property. DCD determined this to be of no consequence so long as the toe of the slope is left alone. It may be necessary to grade some 2 to 4 feet into the slope. The impact this may have has not been addressed but because of the gentleness of the slope is not likely to have a significant adverse impact.

8. Under the proposal, the subject property would be overcovered with a hard surface, causing change in water absorption rates and run off. Catch basins for drainage into the storm sewer are to be provided under the proposal, however, some question about the availability of adequate storm sewer inlets remains.

9. Surfacing would eliminate the natural flora on the subject property which consists of grasses, brush and some small deciduous trees. No unique, rare or endangered species was noted. The slope above the area is heavily vegetated. Many species of animals and birds have been seen in this green strip area. Because of the light vegetation and moderate activity in this flat strip most sightings have occurred in the higher portions of the strip. The proposal would remove this transitional zone between the area of high activity and the heavily vegetated slope, thereby constricting the area available for fauna.

10. No significant increase in demand for police and fire protection would occur under the proposal.

11. The commercial enterprise proposed with building, parking, hardsurfacing will be less aesthetically pleasing than the area in its natural state. Since the area is heavily developed and the water view is the chief scenic attraction, the negative visual impact on the vicinity would be moderate. The proposed contract restrictions include a height limit of any structure to a maximum height of 35 feet, so there would be no significant impact on views from the residential area above the subject property.

12. Various economic and other possible impacts were raised by appellant which are beyond the scope of the environmental checklist. WAC 197-10-360 directs that the questions contained in the checklist are exclusive and that factors not listed therein shall not be considered in the threshold determination.

Therefore, those impacts will not be considered in this review.

Conclusions

1. An environmental impact statement is required by the State Environmental Policy Act (SEPA, RCW 43.21C) only where there is a major action which would have a significant adverse impact on the environment. An adverse impact is "significant" whenever more than a moderate effect on the quality of the environment is a reasonable probability. The lead agency is required by WAC 197-10-370 to withdraw a declaration of significance and enter a DNS if a proponent modifies a proposal so that all significant environmental impacts resulting from that proposal are eliminated. In this instance the proposed rezoning as amended will not have a significant adverse impact on the environment and therefore the DCD has properly prepared and issued a declaration of non-significance.

2. In an appeal of this nature, the burden is on the appellant to demonstrate that a significant error or oversight has been committed by the agency which prepares and issues the declaration of non-significance. The determination by the lead agency is regarded by ordinance as prima facie correct and in this instance the appellant has not established that any significant error or omission has been committed in the preparation of the declaration of non-significance.

3. Despite the foregoing findings that there are foreseeable adverse impacts on the environment in the areas of flora and fauna and aesthetics and some questions remaining regarding water run off and slide control, the cumulative effect of these potential impacts are not sufficient to conclude that the DCD had committed a significant error in determining that the proposed action as amended would not have a significant adverse impact on the environment.

Decision

The appeal is DENIED and the determination of the DCD is affirmed.

Entered this 7th day of February, 1977.

Margaret Klockars
Margaret Klockars
Hearing Examiner Pro Tempore