

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-76-007B

from an environmental determination
of the Department of Community Development

This matter is remanded to the Department of Community Development for preparation of a new threshold determination in accordance with SEPA guidelines. The Department is required to specifically address the impact grading of the slope would have on the stability of the area.

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. 67th Street to N.W. 70th Street.

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 petitioners, William Hanson and Kenneth Maxwell.

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 petitioners, William Hanson, Kenneth Maxwell and Patrick Hudson, requested a rezone of the subject property from Single Family Residence High Density (RS 5000) to General Commercial (CG) to allow them 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 the petitioners and obtaining their agreement to some of them, DCD issued a DNS and determination that no EIS would be required based on the amended proposal.

2. The subject property is owned by Burlington Northern and would be leased by petitioners. It constitutes a strip of land 40 feet wide situated on the east side of Seaview Avenue N.W., from N.W. 67th Street to the south margin of N.W. 70th Street, a distance of some 940 feet.

3. The subject property is level on the west for a width varying between 10 and 40 feet and then rises on the east side in a grade of approximately 50% to the railroad tracks.

4. On the west side of Seaview N.W., across from the subject property, is located Port of Seattle moorage and parking facilities. To the east is the heavily vegetated slope rising to the railroad track plateau and then to a residential area. South, approximately one mile is the Hiram Chittendon locks and to the N. some 2000 feet is the Port of Seattle Shilshole Bay facility with boat launching area. Farther north is Golden Gardens. The property itself is undeveloped, lightly vegetated land with a small stream creating a marshy area.

5. 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 recreational facilities in the area. Parking areas are provided by all facilities but during periods of heavy use on-street parking occurs.

6. The boat sales business does not attract a large volume of business. Petitioner's business would be competing with other boat sales businesses in the area for customers. Therefore, no significant increase in traffic or parking congestion can be foreseen to be generated by this proposal.

7. Petitioners will construct some type of sales building on the subject property. The proposed contract restrictions limit the height of any buildings to 35 feet so under the proposal there will be no visual impairment of the views from the residential area above the subject property.

8. The subject property receives public recreational use by various strollers, joggers, dog-walkers, bicyclists, etc. A 6 foot wide right-of-way next to Seaview Avenue N.W. is owned by the city so no significant adverse impact on these uses is foreseen.

9. No slide activity was found above this area although there is an area of sensitive soil contact between clay and sand above the subject property. Because the application involves a 40 foot wide strip and the level area may be as narrow as 10 feet at some points it is reasonably foreseeable that the grading of the slope will be necessary for construction of buildings or display. Extensive grading could have a significant adverse impact on the stability of the hillside. The Department of Community Development assumed that no grading would be done so did not include an analysis of potential effects of grading of the slope.

10. An undetermined amount of hard surfacing is foreseeable in the subject area. This will have an impact on the absorption rate of water and runoff. Further, a small stream is located in the subject property which produces a marshy area. The proposal could foreseeably have a significant impact on this ground flow. A question also remains as to the availability of storm sewer inlets.

11. Some of the natural flora on the subject property will be eliminated whether or not the area is hard surfaced. One large tree will be removed. No unique, rare or endangered species was noted. Many species of animals and birds have been sighted in this greenstrip area, however, because of the light vegetation and moderate activity in this flat strip most sightings have occurred in the higher regions of the strip. The proposal would remove a transitional zone between the area of high activity and the heavily vegetated slope, constricting the area available for fauna.

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

13. The commercial enterprise proposed can be foreseen to have an adverse aesthetic impact on the environment.

14. Various economic and other possible impacts were raised by appellant which are beyond the scope of the environmental check list. 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 of Law

1. This matter should be remanded to the Department of Community Development for preparation of a new threshold determination. The determination is regarded as prima facie correct unless the appellant sustains the burden of demonstrating that a significant error or oversight has been committed by the lead agency. In this instance, the failure of the Department to analyze the effects of potential grading of the slope is a sufficient oversight to require a redetermination.

Decision

This matter is remanded to the Department of Community Development for preparation of a new threshold determination in accordance with SEPA guidelines. The Department is required to specifically address the impact grading of the slope would have on the stability of the area.

Entered this 7th day of February,
197⁷/₆.

Margaret Klockars
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Hearing Examiner Pro Tempore