

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

In the Matter of the Appeal of

ARTHUR M. SKOLNIK, et al.

FILE NO. W-77-011

from an environmental determination  
of the Superintendent of Buildings

The decision of the Superintendent is AFFIRMED  
and the appeal is DISMISSED.

Introduction

The appellants, Arthur M. Skolnik, individually and as chairman of the United South Slope Residents, filed an appeal with regard to the adequacy of a final environmental impact statement (EIS) prepared for a proposed two building condominium complex at 5th Avenue West and West Roy Street. Procedural issues with regard to the preparation of the final EIS were also raised by the appellants. The Queen Anne Community Council also filed an appeal but failed to make any appearances in the case and is found to have abandoned the appeal.

The appellants exercised their right to appeal pursuant to Section 20, Ordinance 105735, which integrates into City programs and policies the procedures of the State Environmental Policy Act of 1971 (SEPA).

This matter was heard before the Hearing Examiner on June 6, 1977

Parties to the proceeding were: the appellants, represented by Susan Agid; the Superintendent, represented by Ted Gacek; and the project developer (the Oden Investment Company), represented by Steve Tangen.

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 Oden Investment Company proposes to construct a two building condominium complex on the southwest corner of West Roy Street and 5th Avenue West. The legal description is as follows: Kinnear Park addition to the City of Seattle, Block E, Lots 4, 5, 6, 7 and 8.

2. An 8-story condominium structure containing 37 units and 18 parking stalls (identified as building B) is proposed to be located on the southwest corner of West Roy Street and 5th Avenue West. To the south of building B, along 5th Avenue West, is building A, a seven story condominium structure with 31 dwelling units and 150 parking stalls. In the Draft EIS  
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the proposal was described as two apartment buildings containing 83 units but in the final EIS the proposal is described as two condominium buildings containing 68 units.

3. The site is presently developed as follows: a house and garage at 501 West Roy Street, a house at 619 5th Avenue West, and a house at 617 5th Avenue West. These structures would be demolished prior to construction. Approximately 5,000 cubic yards of earth will be moved.

4. The elevation of building A from sea level to roof line is 193.67 feet and the elevator shaft roof line is 211 feet above sea level. For building B, the roof line is 180 feet above sea level and the elevator shaft is 197 feet above sea level.

5. At the time the applicant applied for a building permit the area was zoned Multiple Residence High Density (RMH 350) and the project meets the requirements of that zone. Subsequently the area was rezoned to Multiple Residence Low Density (RM 800) which permits fewer units and has a height limit of 35 feet.

6. A Draft EIS was issued on December 27, 1976 and a Final EIS was issued on April 11, 1977.

#### Procedural Issues

7. The appellants allege that the provisions of WAC 197-10-495 were not complied with since there was a substantial change in the proposal and significant new information became available after the Draft EIS had been circulated. With regard to new information, the appellants specifically cite the inclusion for the first time in the Final EIS of detailed technical data (see appendix G to the Final EIS) on air quality, noise and traffic. The appellants also allege that due to the reduction in the number of units and the change from apartments to condominiums that a new Draft EIS should be circulated.

8. WAC 197-10-495 provides in part:

- (1) A lead agency shall prepare an amended or new draft EIS whenever it determines:
  - (a) That substantial changes have been made in the proposal, or significant new information concerning anticipated environmental impacts has become available subsequent to the circulation of the initial draft EIS, and
  - (b) That circulation of a new draft EIS is necessary to provide further input and review on the proposal.

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9. The appellants also allege that the Superintendent failed to comply with WAC 197-10-460 by not distributing copies of either the Draft EIS or the Final EIS to all agencies having environmental expertise pertaining to the proposal and that this has deprived the public and the decision maker of the benefit of the expertise contained in those agencies. Specifically, the appellants allege that the EIS should be circulated to such agencies as the State Department of Social and Health Services. The distribution list for the Final EIS is contained on page ii.

10. The appellants raised numerous issues with regard to the adequacy of the treatment and analysis of topics contained in the Draft and Final EIS. A list of those issues follows: aesthetics, view blockage, Queen Anne Community and Seattle

2000 goals, land use, housing, mitigation, impact of the rezoning from RMH 350 to RM 800, storm and sewer facilities, parking and traffic access, noise, geology and soils, and air quality.

### Conclusions

1. Although the Final EIS contains additional technical information, there has been no showing that this information is significant or that it addresses any anticipated environmental impacts not already disclosed in the Draft EIS. The additional technical information was filed in response to requests for additional details from persons commenting on the Draft EIS. To require a re-circulation under these circumstances would have a detrimental effect on the SEPA process by discouraging applicants from responding to requests for additional details in the fear that a re-circulation would be required. WAC 197-10-495 requires a re-circulation only when significant new information concerning anticipated environmental impacts becomes available, which was not the situation in this case.

2. With regard to the allegation concerning the change in the scope of the project, it is recognized that there has been a large reduction. However, it is important to note in this case that the change results in a reduction of the number of units rather than an increase so that some of the anticipated environmental impacts will be reduced to a degree. It has not been shown that the demographics of condominium and apartment dwellers are substantially different. In summary, although the scale of the project has been reduced, the framework for the environmental analysis and the basic nature of the project has not been substantially changed.

3. WAC 197-10-460(c) requires that a Draft EIS should be sent to each agency having environmental expertise pertaining to the proposed action as defined by WAC 197-10-465. With regard to both air quality and noise, the Department of Social and Health Services is described as having expertise. It is not clear that each state agency should be automatically sent a copy of a Draft EIS if its expertise is listed as in any way relating to the project since this could result in wasteful duplication. The record in this case indicates the local agencies having expertise in the area were sent copies of the Draft EIS so there was adequate opportunity for technical review. The responsible official has not abused his discretion in this instance and in any event such a minor procedural omission would not provide a basis for re-circulation.

4. In this case numerous issues were raised as to the adequacy of the EIS. Such issues must be judged by the application of the rule of reason. Cheney v. Mountlake Terrace, 87 Wn.2d 338 (1976). In essence then, "(t)he court's task is to determine whether the EIS was compiled with objective good faith and whether the resulting statement would permit a decision maker to fully consider and balance the environmental factors." Sierra Club v. Morton, 510 F.2d 813, 819 (1975). Based on this standard, the Final EIS contains a reasonably thorough discussion of the significant aspects of the anticipated environmental consequences. A review of the record in this case demonstrates that the appellants have failed to show what elements of the environment were so inadequately considered as to require a remand and re-circulation. The SEPA Guidelines do not dictate form. The subject EIS is certainly no model of clarity but in the final analysis it contains a full disclosure and reasonable analysis of the anticipated environmental impacts.

Decision

The appeal is DENIED and the determination of the Superintendent is AFFIRMED.

Entered this 22nd day of June, 1977.



William N. Snell  
Hearing Examiner

Notice of Appeal

The decision of the Hearing Examiner in this case is the final administrative determination. Any appeal must be made to the courts. Section 12, Ordinance 102228, the Administrative Code, sets forth the procedure for staying enforcement of an administrative order or decision pending judicial review.