

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

In the Matter of the Appeal of

ODEN INVESTMENT COMPANY

FILE NO. W-77-016

from an environmental determination
of the Superintendent of Buildings

The decision of the Superintendent is affirmed
and the appeal is DENIED.

Introduction

The appellant, Oden Investment Company, filed an appeal from the decision of the Superintendent of Buildings denying a building permit for two proposed condominium buildings at 5th Avenue West and West Roy Streets on the grounds that approval would result in significant adverse environmental impacts.

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

This matter was heard before the Hearing Examiner on August 9, 1977.

The United South Slope Residents, hereinafter U.S.S.R., were permitted to intervene as a party in the proceeding.

Parties to the proceeding were: the appellant, represented by Stephen D. Tangen, the Superintendent, represented by Ross Radley and the U.S.S.R., represented by Richard Coyle and John Dillow.

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 south slope of Queen Anne Hill. An eight-story building containing thirty-seven units is proposed at the southwest corner of West Roy Street and 5th Avenue West. The height of the building is 71 feet and the elevator shaft extends an additional 17.3 feet. To the south of the eight-story building, along 5th Avenue West, is the proposed location for a seven-story building containing thirty-one units. The height of the building is 77 feet plus an additional 17.3 feet for the elevator shaft. Parking will be provided for 68 vehicles.

2. An Environmental Impact Statement (EIS) was prepared for the proposed project and the Superintendent of Buildings, hereinafter Superintendent, was the responsible official. A Final EIS was issued on April 11, 1977. The United South Slopes Residents (U.S.S.R.), a community group, filed an appeal challenging the adequacy of the Final EIS and also raising procedural issues. In a decision, dated June 22, 1977, the Hearing Examiner dismissed the appeal and affirmed the determination of the Superintendent as to adequacy.

3. In a decision dated July 11, 1977, the Superintendent denied the building permit application of the Oden Investment Co. pursuant to Section 19, Ordinance 105735. The following elements were listed as the basis for the decision: relationship with comprehensive land use plans and zoning regulations, air quality, light and glare, land use, noise, microclimate, transportation/circulation, parking, aesthetics and community goals. The decision reads as follows: "The south slope of Queen Anne Hill is a unique and valuable asset to the City. Its uniqueness relates to location, architecture, character and views. It is my decision that the proposed project is inconsistent with the planned development for the area and will affect the ten above referenced elements singularly and cumulatively so as to cause a significant adverse environmental impact."

4. The Superintendent based his decision on the provisions of Section 19 of Ordinance 105735 which provides in part:

- (1) Under SEPA, the City and Departments have, and shall exercise where appropriate, the authority to deny or reasonably condition any proposal so as to mitigate or prevent adverse environmental impacts...
- (3) A proposal may be denied on environmental grounds only if it is a major action as defined in WAC 197-10-040(24), and only on the basis of significant adverse environmental impacts specifically identified and disclosed as such in the final EIS...

5. On July 15, 1977, the appellant filed a timely appeal alleging that the denial of the building permit was in violation of Section 19 of Ordinance 105735 for the following reasons: (1) the impacts listed in the denial are not significant adverse environmental impacts, neither singularly nor cumulatively; (2) the impacts were not identified in the Final EIS as being significant adverse environmental impacts; and (3) the cumulative impact of the project was not disclosed and identified as being a significant environmental impact.

6. In his decision the Superintendent listed ten impacts which he concluded singularly and cumulatively would cause a significant adverse environmental impact. A review of the listed impacts is contained in the following paragraphs.

A. Land Use & Zoning Regulations (Superintendent's Conclusions 1 & 4)

The appellant's proposed project does not conform to the present RM 800 zoning and the Final EIS (p. 16) discloses this fact. The rezoning of the area from RMH 350 to RM 800 and the impact of constructing two buildings that no longer conform to the existing zoning clearly has an impact on the environment.

B. Air Quality (Superintendent's Conclusion 2)

The Final EIS (pp. 15,23,25) discloses that the project would increase traffic circulation in the area and increase air pollution. Air quality is listed under section VIII of the Final EIS (p. 25) as an unavoidable adverse impact.

C. Light & Glare (Superintendent's Conclusion 3)

A very limited discussion of light and glare is contained in the Final EIS (p. 16) and the only noted impact is that illumination of the high-rise will produce greater light than now exists from the three houses. This impact is not listed as an unavoidable adverse impact (section VIII) or as an adverse environmental impact which may be mitigated (section VI).

D. Noise (Superintendent's Conclusion 5)

In the Draft EIS (p. 18) the increase in vehicular traffic and congestion is cited as resulting in an increase in nuisance noises. According to the Final EIS (p. 16) none of the predicted noise level increases would be expected to cause community complaints. This impact was not listed under section VIII as an unavoidable adverse impact.

E. Microclimate (Superintendent's Conclusion 6)

The effect of the project on shadows and air flow is listed under section VIII as an unavoidable adverse impact.

F. Traffic/Circulation (Superintendent's Conclusion 7)

An increase in traffic is noted in the Final EIS (p. 18) including a specific increase if 360 vehicles per day along Fifth Avenue W. Since the project has been scaled down from 83 to 68 units the number of trips will be reduced to 347 per day. This impact is listed under section VIII as an unavoidable adverse impact.

G. Parking (Superintendent's Conclusion 8)

One off-street parking space is proposed for each unit so additional parking may be needed to accomodate occasional parking demands. Under the "worst case" on-street parking could be reduced by 85-100 percent. See Final EIS (p. 18) and Draft EIS (p. 20). This impact is listed under section VIII as an unavoidable adverse impact.

H. Aesthetics & Community Goals (Superintendent's Conclusions 9 & 10)

In the Final EIS (pp. 22, 24, & 26) the blockage of views by the proposal is noted in detail. This impact is listed under section VIII as an unavoidable adverse impact. The proposed view blockage would be in direct conflict with the view preservation goal of the Queen Anne Community Council (Final EIS p. 32). Community goals can be considered as an element of the environment pursuant to Section 15 of Ordinance 105735.

Conclusions

1. The standard for reviewing the decision of the Superintendent is set forth in Section 20 of Ordinance 105735 as follows:

Appeals shall be considered de novo except that the determination appealed from shall be regarded as prima facie correct and the burden of establishing the contrary shall be upon the appealing party.

In this case the appellant has failed to sustain his burden and the decision of the Superintendent is affirmed.

2. The appellant's contention that the ten impacts upon which the Superintendent based his decision did not cumulatively consist of a significant adverse environmental impact is not supported by the record. Both the Draft and Final EIS contain adequate data to support the Superintendent's decision.

3. The significance and adverse nature of the impacts listed by the Superintendent in his decision were sufficiently identified in the Final EIS. Section 19(3) of Ordinance 105735 does not require that the EIS specifically state that the impacts which provide the basis for the denial are significant adverse environmental impacts. However, information must be contained in the EIS which would substantiate any finding that an impact will be significant and adverse. The format for the preparation of impact statements which is contained in the SEPA Guidelines has a section entitled: "unavoidable adverse impacts". Certainly it would aid in clarity if all of the impacts that the Superintendent relied upon in his decision were listed within this category. However, failure to include all of the impacts under this section is not a basis for reversal, provided that there is data in the EIS to support a finding of significant adverse impact.

4. The fact that certain elements of a project when considered together will have a cumulative impact that will be significant and adverse does not have to be labeled as such in the Final EIS. The EIS must, however, contain adequate data to support such a finding. In this case the Superintendent upon reviewing the EIS concluded that ten individual impacts would cumulatively have a significant adverse impact and there is adequate evidence in the record to support this conclusion.

5. The appellant in this case proposes to construct two high rise towers from 71 to 77 feet in height in an area which is presently zoned RM 800 and has a height restriction of 35 feet. The increase in density and bulk associated with such a development would impact air quality, increase noise, add to parking and traffic congestion, and block views. It is the Superintendent's considered judgment that the individual impacts related to such a project would cumulatively have a significant adverse impact on the environment and the record contains adequate evidence to support his determination.

6. As the responsible city official, the Superintendent has the duty under city and state law to consider environmental factors before making a decision.

[The environmental impact statement] is the basis upon which the responsible agency and officials can make the balancing judgment mandated by SEPA between the benefits to be gained by the proposed "major action" and its impact upon the environment.
Juanita Bay Valley Community Association v. Kirkland, 9 Wn. App. 59, 68, 510 P.2d 1140 (1973).

In this case the Superintendent was faced with a difficult balancing judgment but in the final analysis his decision is supported by substantial evidence and is therefore affirmed.

Decision

The decision of the Superintendent is affirmed and the appeal is DENIED.

Entered this 19th day of August, 1977.



William N. Snell
Hearing Examiner

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination and any further appeal must be made to the courts.