

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

In the Matter of the Appeal of

CAPITOL HILL COMMUNITY COUNCIL

FILE NO. W 77-024

from an environmental determination
of the Superintendent of Buildings

The appeal is DENIED and the Environmental Impact
Statement is found to be adequate.

Introduction

The appellant, the Capitol Hill Community Council, filed an appeal challenging the adequacy of the Environmental Impact Statement (EIS) prepared for a proposed condominium at the northeast corner of 13th Avenue E. and E. Republican Street.

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

Parties to the proceeding were: the appellant, represented by Roger Leed, the project developer, represented by Peter Buck, and the Superintendent, represented by Ross Radley.

This matter was heard before the Hearing Examiner on November 15, 22, 29 and December 8, 12, and 13, 1977.

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. Mountain Pacific Development Company has proposed to construct an 18 story condominium structure (Somerset House) containing 60 dwelling units and a two level parking facility for 60 vehicles. The ground floor would be a potential site for two retail shops containing 500 square feet each. The site is located at the northeast corner of 13th Avenue E. and E. Republican Street on Capitol Hill. Volunteer Park is located several blocks to the north.

2. The site contains approximately 18,000 square feet and is developed with two older wooden frame buildings and a detached garage. Until recently the 20 apartments have been utilized as rental units. The existing structures would be demolished.

3. An extensive amount of trees and vegetation is located on the site, especially in the southern portion which is largely undeveloped. Most of the existing vegetation would be removed and replaced under the proposed development.

4. The site is zoned Multiple Residence High Density Variable Height (RMV 200). The RMV 200 zone extends generally from East John to East Mercer and from 13th Avenue E. to within one half block of 15th Avenue E.

5. The area adjacent to the project site is primarily developed with multiple dwellings, many of which consist of converted former single-family dwellings and three-story apartment buildings. Directly to the north is an 11 story 126 unit building (Capitol Park Tower) for low-income elderly persons.

6. A Final EIS was issued on the proposed project on September 27, 1977. The appellant filed a timely appeal on October 12, 1977. The following paragraphs will consider specific issues raised by the appellant on appeal.

Zoning Code & Comprehensive Plan

7. The Comprehensive Plan is discussed at p. 25 of the Final EIS. It states that the subject area was found by the Planning Commission to be consistent with RMV 200 zoning when a map amendment to the present zone was approved in 1968. It is acknowledged that the 1968 rezone includes property outside of the area designated on the Comprehensive Plan for high rise development. The appellant alleges that the site is not in conformance with the Comprehensive Plan and that the discussion in the EIS is misleading.

8. A discussion of the applicability of the project to the zoning code is contained on p. 27 of the Final EIS, which states that generally the requirements of the zoning code are met. The appellant in a letter, dated November 14, 1977, (exhibit 4) requested the Superintendent for an interpretation of certain zoning code bulk provisions with reference to the proposed project. The response of the Superintendent has not been entered into the record.

Community Goals and Seattle 2000

9. The applicability of the project to the Goals for Capitol Hill is discussed on pp. 31-32 of the Final EIS. The purpose of Goal A is: "The provision of housing for a wide variety of incomes, household sizes and living patterns". This goal contains seven subordinate objectives which include the following:

Maintain and rehabilitate existing housing in multi-family and business areas unless and until appropriate and compatible redevelopment occurs.

Insure that adjoining but differing uses, such as single-family, multi-family residential and non-residential are compatible in their design and operation.

At p. 31 the project is cited as being in conformity with Goal A but possibly not being in conformance with the objectives set out in the preceding paragraph since they depend on subjective judgments for which standards have not been developed. The appellant alleges that this discussion is inadequate and avoids the discussion of obvious conflicts of the project with the goals.

10. A discussion of Goals for Seattle is set forth on pp. 28-31 which concludes that conformance of the project with certain goals involves subjective evaluation in areas without, as yet, firmer guidelines. The appellant alleges that this discussion fails to show goal conflicts and is not a reasonable interpretation of a policy document.

Precedent of Project

11. The appellant claims that the Final EIS is deficient in that it fails to acknowledge that approval of this project would be a significant precedent for future high rise development

in the area. At p. 59 of the Final EIS is a discussion of the number of potential high rise sites in the RMV 200 zone and that the project may cause the population to increase at a more rapid rate if other high rise sites in the area are developed.

Traffic and Parking

12. A traffic analysis for the project was prepared by the Transpo Group, a private consultant, hired by the developer and is on pp. 107-129 of the Final EIS.

13. In the traffic analysis it is assumed that traffic volumes on the non-arterial neighborhood streets would remain generally constant or decrease. Witnesses for the appellant, Kruger and Heller, indicated that traffic volumes on the neighborhood streets are increasing. The record shows that there is inadequate data available to reach a firm conclusion since the Engineering Department rarely conducts traffic counts on neighborhood streets although such counts are done frequently on arterials.

14. The travel routes used by prospective residents is discussed at pp. 117-121. The record shows that the route for persons going north and seeking access to Interstate No. 5 is in error. The most probable travel route is to the Roanoke access point. This error would effect 15% of the 25 vehicle trips or 4 vehicle trips.

15. The project is proposed to provide one off-street parking space for each of the 60 units. The method used for arriving at this ratio of parking spaces to dwelling units was challenged by the appellant. The traffic consultant stated that a survey of local conditions was made although this was primarily based on condominiums in Bellevue and the survey itself was never introduced into the record to provide a means of verification. Although Mr. Markly, the consultant, acknowledges that automobile ownership increases with family income he stated that his analysis was based on the assumption that the residents of Somerset would reflect the socio-economic characteristics of the area. The record shows that the Somerset House is termed a luxury condominium and that the area in which it is located has a high percentage of low income persons. The Final EIS at p. 54 contains a full discussion of the Engineering Department's disagreement with this ratio and at p. 123 discloses that on-street parking is near capacity.

View Blockage, Shadows & Vegetation

16. At p. 62 the Final EIS states that residents on the west side of the Gresham Apartments have no view beyond the property line. This was acknowledged to be in error by the author of the statement, who stated that his reason for the oversight was denial of access to the Gresham Apartments.

17. The Final EIS at p. 49 contains a discussion of the shadow and heating effects of the project. The appellant alleges that the shadow and heating effects are minimized in order to pass off the reduction in sunlight as minimal.

18. An inventory of existing trees was prepared by a landscape architect, Mr. Johnson. Witnesses for the appellant showed that the inventory was inaccurate in some instances and understated the size of certain trees. Mr. Hunt, one of the consultants, stated that the amount of vegetation to be removed will be at least 8,500 square feet instead of the 8,000 square feet shown on p. 89 of the Final EIS.

Community Response

19. At p. 31 of the Final EIS community response is described as follows: "The project is not maintaining the existing structures; it is not felt by members of the community to be entirely 'compatible' or 'appropriate', though others feel it definitely is". The EIS does not disclose that a petition in opposition to the project containing over 300 signatures was delivered to the Superintendent at the public hearing on the Draft EIS. A petition to rezone an area, which includes the subject site, to a lower density is not referred to in the EIS.

Alternatives

20. A discussion of alternatives is provided on pp. 80-87 of the Final EIS. The testimony of Mr. Green, manager of the existing buildings, indicated that with some rehabilitation the buildings could be made profitable.

Preparation of EIS

21. Private consultants hired by the project developer prepared the EIS. The Superintendent's representative, Ms. Arntz, stated that the preparation was done under her supervision and control although she did not write any significant portion of the EIS. She stated that she directed the consultants to make changes in wording and the analysis of certain topics.

22. RCW 43.21C.030(d) provides that the responsible official is to make a detailed statement. WAC 197-10-100(4) authorizes an applicant to prepare an EIS under the direction of the responsible official if the agency's governing regulations permit. Section 14(2) of Ordinance 105735 provides:

In the event an EIS is to be prepared by someone other than the responsible official, the responsible official shall assure that the EIS is prepared in a responsible manner and with appropriate methodology. The responsible official shall direct the areas of research and examination to be undertaken, as well as the organization of the resulting EIS.

23. The appellant alleges that the adequacy of an EIS prepared by an applicant must be subject to vigorous scrutiny because of the inherent danger of bias.

Conclusions

1. The appellant has failed to show that the EIS for the Somerset project does not set forth sufficient information to enable the decision maker to consider and balance the environmental factors involved or that it was not compiled with objective good faith. The EIS contains minor errors and certain of the impacts will be slightly different or greater than disclosed but in no significant degree.

2. With reference to the Comprehensive Plan, this discussion could have been stated with more clarity but is not misleading. The citing of the findings of the Planning Commission, which was one of the agencies involved in the 1968 rezone process, is clearly relevant. The important consideration is that the EIS points out that the Somerset site is not within the actual high rise boundary designation on the Comprehensive Plan and consequently the decision maker is alerted to a potential conflict.

3. The record does not show that there will be any deviations from the zoning code requiring a variance, special exception or other discretionary relief. In the event such an application must be filed, it would be the responsibility of

the Superintendent to evaluate the change or new information in light of WAC 197-10-495 and determine whether or not an amended or new draft EIS should be prepared.

4. The discussion of goals is complicated by the fact that goals are general in nature and there are not always clearly defined standards against which to measure a project. In the EIS there is a tendency to term goals or objectives that might conflict with the project as subjective instead of proceeding with a straightforward analysis. However the discussion of goals taken as a whole contains sufficient disclosure on differences of opinion as to enable the decision maker to consider possible conflicts of the project with the community goals.

5. The potential precedent of the project is discussed in sufficient detail to enable the decision maker to consider the impacts.

6. The discussion of traffic volumes, accidents, and points of destination shows an honest disagreement as to methodology and approach among traffic experts, but there is no substantial evidence to support the allegations that the traffic analysis was not an objective, good faith attempt to disclose the impacts. The one clear error relating to the failure to show that certain vehicle trips would use the Roanoke access point to Interstate 5 is very minimal in nature, since it only effects 4 vehicle trips and would not require a substantial revision of the traffic analysis.

7. The data base and methodology used by the traffic consultant to arrive at the ratio of one vehicle per dwelling unit is questionable. However, the comments by the Engineering Department and the discussion of the existing disagreement at p. 54 of the Final EIS is sufficiently adequate to alert the decision maker to potential adverse impacts relating to on-street parking which is near capacity in the area.

8. The discussion of view blockage, shadows and vegetation contains errors. However the errors are not of sufficient magnitude in relation to the overall discussion and available data to support a finding of a lack of disclosure or objectivity in the analysis.

9. With reference to community response, it would have been advisable if the petition in opposition and rezone petition had been referred to in the EIS. This information however is included in the record of this hearing and will be available to the decision maker. Given the nature of the omitted information, which does not relate to specific adverse environmental impacts, it was not an error to fail to include it.

10. The discussion of alternatives is sufficiently detailed and adequate to permit the decision maker to be aware of the feasibility of the various alternatives.

11. Both WAC 197-10-100(4) and Section 14 of Ordinance 105735 authorize the preparation of an EIS by a private applicant. The issue raised by the appellant is well taken that such an EIS must be subject to vigorous scrutiny because of the inherent danger of bias. The record in this case shows that Ms. Arntz supervised, discussed and directed the preparation and changes in the EIS. Although she may not have written any significant portion of the EIS that is not the test established by ordinance to measure compliance.

12. Other issues were raised by the appellant but insufficient evidence was presented to support the allegations. Therefore,

based on an absence of corroborating evidence these issues are dismissed.

13. The test for judging the adequacy of an EIS in Washington is the rule of reason. Cheney v. Mountlake Terrace, 87 Wn. 2d 338, 552 P.2d 184 (1976). In applying this test to a suit filed under NEPA the Court of Appeals in County of Suffolk v. Secretary of the Interior, 7 ELR 20637 (2d Cir., August, 1977) stated:

In making such a determination a court is governed by the "rule of reason", under which an EIS need not be exhaustive to the point of discussing all possible details bearing on a proposed action but will be upheld as adequate if it has been compiled in good faith and sets forth sufficient information to enable the decision-maker to consider fully the environmental factors involved and to make a reasonable decision after balancing the risks of harm to the environment against the benefits to be derived from the proposed action, as well as to make a reasonable choice between alternatives.

Based on a review of the record, the EIS contains a reasonably thorough discussion of the environmental impacts as required by SEPA.

Decision

The appeal is DENIED and the Environmental Impact Statement is found to be adequate.

Entered this 22nd day of December, 1977.


William N. Shell
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.