

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

RICHARD C. HEDREEN AND THE  
R.C. HEDREEN COMPANY

FILE NO. W-78-011

from an environmental determination  
of Superintendent of Buildings

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

#### Introduction

The appellants, Richard C. Hedreen and the R.C. Hedreen Company, filed an appeal from a declaration of nonsignificance prepared by the Superintendent of Buildings, hereinafter Superintendent, with regard to a proposed project to construct a 20 story office building at the southwest corner of 6th and Madison Street.

The appellants exercised their right to appeal pursuant to Section 20, Ordinance 105735.

Parties to the proceeding were: the appellant, represented by William D. Rives, and the Superintendent, represented by Ross Radley.

This matter was heard before the Hearing Examiner on June 27, 1978.

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 R.C. Hedreen Company, the project developer, proposes to construct a 20 story office building including a ground level retail shopping arcade and 4 to 5 levels of below grade parking. Office use would be located in 19 stories of the building. Approximately 140 parking stalls would be provided.

2. The site (measuring 120 feet by 120 feet) is located at the southwest corner of 6th and Madison. The present use consists of a surface parking lot.

3. The site is zoned Metropolitan Commercial (CM) which permits the construction of high rise office structures. In the same block as the subject property are two 4 story apartment buildings, a 4 story college club building and the mid-rise Washington Education Association Building. To the north of the site is the Federal Courthouse which rises 14 stories above grade. One block to the west is the 40 story Bank of California Center. The Interstate #5 Freeway is located across the street and to the east.

4. The Superintendent reviewed the proposed project and on May 16, 1978 entered a Declaration of Significance. The Superintendent determined that this proposal has or may have a significant adverse impact upon the environment and that an environmental impact statement (EIS) is required.

5. On May 26, 1978, Richard C. Hedreen and the R.C. Hedreen Company filed an appeal challenging the Declaration of Significance. The appellants took exception to and objected to the determination by the Superintendent that the proposal will have a significant impact upon, air, transportation and circulation and aesthetics.

6. The environmental checklist contains questions with regard to impact of the project on air. Item 2a shows that the proposal may result in air emissions or deterioration of ambient air quality. Item 2c shows that the project may alter air movement, moisture or temperature or change in climate either locally or regionally. No issue was raised as to 2b which involves the creation of objectionable odors. The appellants also attached to the checklist some further explanations with regard to air.

7. At the hearing the appellants presented an expert witness, Earl Nelson. Mr. Nelson concluded that the maximum increase in carbon monoxide concentrations will be approximately .2 parts per million due to the traffic generated by the project. He further concluded that although violation of the .9 parts per million carbon monoxide standard may occur in the vicinity of the site, an increase in carbon monoxide levels attributed to the project are negligible. James R. Pearson, the expert presented by the City, stated that he was unable to definitely determine the impact on air quality without additional information being provided in the transportation section.

8. Item 13 of the checklist addresses transportation and circulation issues. Items 13a & b show that the project will result in the generation of additional vehicular movement and affect existing parking facilities or demand for new parking. A possible impact upon existing transportation systems is shown in item 13c. Item 13d is answered as possibly altering present patterns of circulation or movement of people and goods. Item 13e was not at issue since it relates to waterborne, rail or air traffic. Item 13f is answered as not increasing traffic hazards to motor vehicles, bicycles or pedestrians. Attached to the checklist is a separate explanation concerning parking and transportation impacts.

9. The appellants called a traffic expert, David Markley. He testified that the traffic volumes at the busiest intersection near the subject site would remain at level of service C, or better after construction of the building; that there should not be a noticeable change in traffic flow on the freeway ramps; and that there would be sufficient parking capacity nearby to meet all overflow parking demands. Don Carr, the traffic expert called by the City, testified that there was insufficient information available to assess the impacts.

10. Under item 18, aesthetics, it shows that the proposal may result in the obstruction of the scenic vista or view open to the public. No issue was raised that the project would result in the creation of an aesthetically offensive site open to public view. In the additional information submitted with the checklist the appellants claim that there will be no significant view disruption.

### Conclusions

1. The standard of review to be applied by the Hearing Examiner to the Superintendent's decision must be determined. The standard of review which applies to an appeal from lower to higher courts does not apply here. "The scope and nature of an administrative appeal or review must be determined by the provisions of the statutes and ordinances which authorize them". Messer v. Board of Adjustment, 19 Wn.App. 780, 787(1978).

2. The SEPA Ordinance (105735), as amended, provides that the determination of the Superintendent is to be considered prima facie correct. In other words the Superintendent's decision stands unless contradicted or overcome by other evidence. To overcome the presumption, the trier of fact must find from a fair preponderance of credible evidence that the findings and decision are incorrect. Allison v. Department of Labor and Industries, 66 Wn.2d 263, 401 P.2d 982(1965).

3. One of the primary purposes of the State Environmental Policy Act (SEPA) is to require the City to consider environmental factors when taking "major actions significantly affecting the quality of the environment". RCW 43.21C.030(2)(c). In stating a general guideline as to when an environmental impact statement is required the Washington Supreme Court in Norway Hill v. King County Council, 87 Wn.2d 267, 552 P.2d 674(1976) stated:

Generally, the procedural requirements of SEPA, which are merely designed to provide full environmental information should be invoked whenever more than a moderate effect on the quality of the environment is a reasonable probability (citing case).

4. WAC 197-10-330 provides that the threshold determination must be based upon information reasonably sufficient to determine the environmental impact of a proposal.

5. WAC 197-10-450 and 455 provide for informing the public of the availability of a draft EIS and for circulation of the draft EIS among governmental agencies.

6. The appellants have not brought forward sufficient evidence to contradict and overcome the prima facie correctness of the Superintendent's determination. Although experts presented by appellants testified that they did not consider the impacts relating to air, transportation and circulation and aesthetics to be significant, a fair preponderance of the credible evidence does not show that the determination of the Superintendent is incorrect.

7. Having reviewed the record in light of the policy of SEPA, it is clear that there is a reasonable probability that the project will have more than a moderate effect on the quality of the environment. The very size of the project makes it a major action. The change in use in the property from a surface parking lot to a 20-story office building is one of major intensity.


8. In each of the areas cited by the Superintendent as being a basis for the Declaration of Significance the record shows that there is a need for additional information and analysis. The disagreement among the expert witnesses presented by the parties is a strong indication of the need for an in depth analysis and review which can only be supplied in an EIS.

9. SEPA calls for full disclosure and public review regarding the environmental impacts of a proposal if it is determined to be significant. When an EIS is prepared there is adequate opportunity for public review, and also of critical importance an opportunity for other governmental agencies to comment on the EIS. It is only when there is full disclosure of environmental information in an EIS that environmental matters can be given proper consideration during decision making. Furthermore, potential problems that are disclosed in an EIS can be mitigated by the imposition of appropriate conditions. If the threshold for triggering an EIS is set at too high of a level, the public policy and purpose behind SEPA is defeated.

Decision

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

Entered this 28th day of July 1978.

  
William N. Snell  
Hearing Examiner

Notice of Right to Appeal

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