

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

In the Matter of the Appeal of

MORRIS PIHA COMPANY

FILE NO. W-78-023

from an environmental determination  
of the Superintendent of Buildings

The appeal is GRANTED and the determination of the  
Superintendent is reversed.

Introduction

The appellant, Morris Piha Company, filed an appeal challenging the issuance of a Declaration of Significance for property at 99 West Thomas.

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

Parties to the proceeding were: the Superintendent, represented by Ross Radley; Morris Phia, represented by John Hempelman; and the Displacement Coalition, represented by Janet Quimby.

This matter was heard before the Hearing Examiner on December 28, 1978, January 17, 1979, and January 31, 1979. By agreement of the parties James D. Braman submitted an affidavit after the hearing and an affidavit in response by Jan Arntz followed. Written arguments were submitted on February 28, 1979.

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 appellant, Morris Piha Company, proposes to demolish a two-story, 38-unit apartment building located at the northeast corner of 1st West and Thomas Street (99 West Thomas). The building (known as the Aqua Vista Apartments) is of a wood frame and stucco construction.
2. The Aqua Vista Apartments contain 38 units but in the past few years only 36 units have been in a condition suitable to be rented. In the year 1978 about 20 units were rented. The units are relatively small in size and contain about 400 square feet each.
3. The appellant proposes to construct on the existing site a 4-story office building with retail space on the first floor. Construction of the office building would not begin immediately and a surface parking lot is planned for the interim.
4. The Aqua Vista Apartment building is located two blocks east of the Seattle Center in a General Commercial (CG) zone. The properties in the immediate area are primarily business and commercial with two restaurants located nearby and a few scattered apartment structures.
5. On November 20, 1978 the Superintendent entered a Declaration of Significance (DS) with regard to the proposed action which requires the preparation of an Environmental Impact Statement (EIS). The DS states that the proposal may

have significant adverse impacts particularly with respect to the change in land use and the loss of existing housing units. Other elements of the environment which may be significantly affected are transportation/circulation and earth. The Superintendent made it clear at the hearing that the sole basis for issuing the DS was the loss of low income housing units.

6. On December 4, 1978 Morris Piha Company filed a timely appeal challenging the issuance of the DS. The Displacement Coalition was permitted to intervene as a party in this proceeding.

7. The appellant contends that the demolition of the Aqua Vista Apartments will not have an impact on the housing stock of the City and that even if the building should be considered part of the housing stock that demolition would have an insignificant impact on housing.

8. The Aqua Vista apartment building is a severely dilapidated structure. Water is leaking into the ceilings and walls causing severe deterioration. Portions of the retaining walls and some of the bearing walls are structurally unsound. The electrical and plumbing systems do not comply with modern code requirements. The existing boiler would need to be replaced since it is no longer capable of repair and as a result there was constant interruption of hot water flow and heat during the last few months the apartments were rented. Rodent infestation has been a common problem in the building.

9. Rehabilitation of the structure would require a major expenditure of funds and raises a question as to whether rehabilitation would be an economically sound investment. The building has an assessed value as of 1978 of \$45,800. The Building Code requires that if rehabilitation work exceeds one-half of the assessed value then the entire structure and all its systems must be brought up to current code requirements. See Section 104(e) of Ordinance 106350. The record shows that the type of rehabilitation required would clearly exceed half of the assessed value and that would require complete code compliance. The environmental analyst, Ms. Marlowe, testified that it might have made a difference in her determination if it had been shown that the building was beyond rehabilitation.

10. The City has adopted policies to implement SEPA. Section 9(a)3 of Ordinance 107678 provides as follows:

3. Demolition or rehabilitation of low rent housing units or conversion of housing for other uses can cause both displacement of low income persons and a reduction in the supply of housing, it is the policy of the City to assess the loss of housing and displacement of persons due to such housing and displacement of persons due to such proposed demolition, rehabilitation, or conversion and to apply mitigation measures as described below.

(b) Policies

1. The city official or authorizing agency shall require any permit applicant who proposes to demolish, rehabilitate or convert housing to other uses to specify the monthly rent for each housing unit occupied at any time during the one year period prior to the date of permit application.
2. When the city official or authorizing agency finds that the average rent of any housing unit occupied at any time during the one year period prior to the date of permit application was at

or below the federal Section 8 and Existing Fair Market Rent levels and the proposed project results in the eviction of tenants from such units, the city official or authorizing agency shall require the permit applicant to make a good faith effort to locate housing acceptable to tenants of such low rent units on or before the date the tenants vacate.

11. The rent for units in the Aqua Vista Apartments ranged from \$75 to \$85 a month. The appellant stipulated that the rent was low and that it was at or below Federal Section 8 existing fair market rent levels.

12. The appellant in anticipation of demolition of the structure began vacation of the building. The tenants were on a month-to-month basis and were requested to vacate the building. Written notice was provided to all tenants. At the time the DS was issued on November 20, 1978, only 13 units were occupied (Appellant's Exhibit 13). As of December 15, 1978 the building was totally vacant.

13. Many of the tenants of the building were elderly and had various physical, psychological and social problems. The record shows that the resident manager of the building, at the direction of the owners, made extensive efforts to relocate the tenants. The building manager contacted public, private, religious and charitable organizations to assist in this relocation.

14. Letters in the record from the Washington Department of Social and Health Services, the Geriatric Evaluation Team and the American Red Cross show that these agencies were contacted to provide assistance in relocation. See Appellant's Exhibits 10, 11 and 12.

15. According to the appellant some consideration was given to the construction of new housing on this site but due to the nature of surrounding uses, the small size of the site, and the high rent levels that would be required the proposal was abandoned.

16. Governmentally subsidized housing appears to be the only means of retaining low income rental units on the site. The objective of the appellant is to construct an office building.

17. If an EIS is prepared alternatives are required to be analyzed but WAC 197-10-440(e) provides that when "the proposal is for a private project on a specific site, the alternatives considered shall be limited to the "no-action" alternative plus other reasonable alternative means of achieving the objective of the proposal on the same site or other sites owned or controlled by the same proponent."

#### Conclusions

1. An EIS is required by the State Environmental Policy Act (SEPA) (RCW 43.21c) only when there is a major action significantly affecting the quality of the environment. The Supreme Court, in establishing a guideline as to what is significant, has held that "the procedural requirements of SEPA...should be invoked whenever more than a moderate effect on the quality of the environment is a reasonable probability." Norway Hill vs. King County, 87 W.2d 267, 522 P.2d 674 (1976).

2. The purpose of SEPA is to provide full disclosure of adverse environmental impacts so that the deciding official will have available environmental information to consider in arriving at a decision.

3. This case is focused upon a very sensitive and important policy issue involving potential impacts on the low income housing stock of the city. It is acknowledged that low income residents of the city are having an increasingly difficult time finding affordable housing due to complex social and economic changes in the housing market. The Superintendent has made it clear that the sole basis for his decision to require an EIS is the potential impact of this proposal on low income housing.

4. The basic issue to be decided in this appeal is whether there is a reasonable probability that the proposed demolition of the Aqua Vista Apartments will have more than a moderate effect on the quality of environment with specific reference to the low income housing stock of the city.

5. Given the number of units (38), their location in an area where there is a shortage of low income housing, and the low rental vacancy rate in the City, it would initially appear that the Superintendent's determination to require a DS is correct. This was the rationale relied upon by the Superintendent but it does not go far enough. WAC 197-10-330 requires the Superintendent to base his threshold determination upon information reasonably sufficient to determine the environmental impacts of the proposal. In this case the Superintendent did not properly evaluate information relating to the proposal which shows that a DS is not required.

6. Unrefuted evidence in the record clearly shows that the Aqua Vista Apartments are in such a stage of deterioration that the cost of rehabilitation, even if feasible, would be so great that the rental charges would have to be increased beyond the existing low income rent levels. A determination as to whether a building can be rehabilitated in a reasonable manner is not usually easily arrived at and in most cases will be a disputed issue but this case clearly presents an exception in that the signs of deterioration are visible from the exterior and could easily be confirmed by further investigation and inquiry of the owner. The record available to the Superintendent prior to the issuance of the DS contains letters from a structural engineer and architect attesting to the poor condition of the building and indicating the high cost of rehabilitation. Although the policy of the city is to preserve low income housing that does not mean substandard housing which the evidence in this case clearly indicates is the condition of these units.

7. WAC 197-10-365 provides that in making a threshold determination the questions appearing in the environmental checklist are exclusive. Evaluation of the impacts of a proposal on housing does not preclude a reasonable inquiry into the condition of the existing housing.

8. Even when substantial weight is accorded the decision of the Superintendent, the record does not support the Superintendent's determination. Facts relating to the condition of the rental units and the potential for rehabilitation were before the Superintendent and clearly would have alerted a reasonable person to the substandard condition of the housing units. If the Superintendent did not find the available information adequate he had a responsibility under WAC 197-10-330 to request additional information in order to reasonably assess the adverse environmental impacts of the proposal. To require the appellant to conduct a detailed study of the loss of low income rental units would be of little value, since the record shows that for all intents and purposes the Aqua Vista units are no longer a part of the housing stock and the cost of rehabilitation would result in rent levels in excess of current low income rent levels. By failing to consider and evaluate the information on the condition of the existing housing or requesting additional information, if necessary, the Superintendent made a clearly erroneous decision. Given the condition of the existing housing and the increase in rent levels that would result from rehabilitation, a declaration of nonsignificance should

have been entered with regard to the proposal.

9. A benefit of an EIS is the consideration of alternatives but the record shows that due to the cost of new construction low income rent levels could only be maintained if the units were subsidized. Since it is not the objective of the appellant to construct subsidized housing such an alternative would not have to be considered since it would not meet the appellant's objectives. See WAC 197-10-440(e).


10. It is strongly emphasized that this decision is limited to the facts of this case. This decision does not require the Superintendent in future applications for the demolition of housing units to conduct an extensive investigation as to whether or not the units are capable of being rehabilitated in an economically sound manner. WAC 197-10-360(4) only requires additional research or field investigation when the available information is not sufficient to make a determination regarding potential adverse environmental impacts. In this case information on the condition of the housing was readily available and clear and convincing.

11. Although the issue of mitigating conditions cannot be considered in determining whether a proper threshold determination was made, this case is somewhat unusual in that the required mitigation has already taken place. Section 4(b) of Ordinance 107678 requires a good faith effort be made by a project proponent to locate housing acceptable to tenants who have been displaced by the demolition of low income housing. The record shows that a good faith effort was made and that all tenants who desired assistance were provided it.

#### Decision

The Superintendent is directed to issue a Declaration of Nonsignificance with regard to the subject proposal.

Entered this 16<sup>th</sup> day of March 1979.

  
William N. Snell  
Hearing Examiner