

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

ALLAN D. LOUCKS, et al.

FILE NO. W-79-001

from an environmental determination  
of the Department of Community  
Development

The appeal is GRANTED and the determination of the  
Department of Community Development is REVERSED.

#### Introduction

The appellants, Allan D. Loucks, et al., filed an appeal challenging the issuance of a Declaration of Nonsignificance with regard to a proposed rezone of property located on the northwest corner of 32nd Avenue West and West Barrett Street.

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

Parties to the proceeding were: John K. Stipek, represented by Stephen Crane; the appellants, represented by Allan D. Loucks; and the intervenors, Magnolia Community Club, represented by Joel Haggard.

This matter was heard before the Hearing Examiner on March 6 and 7, 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 project developer, John K. Stipek, proposes to construct a 46-unit building for housing low income elderly residents. The 4-story building would contain about 49,000 square feet and be known as the Auckland Arms. The building would not exceed 35 feet in height.

2. The development site measures 200 feet by 120 feet and is located on the northwest corner of 32nd Avenue West and West Barrett Street in the Magnolia area.

3. Thirteen off-street parking spaces will be provided. Item 13 of the environmental checklist indicates that a joint use agreement for additional parking with Our Lady of Fatima Church would be sought. The church has rejected a joint use agreement.

4. Vehicular access to the project would be limited to an alley on the western edge of the property that extends between West Dravus Street and West Barrett Street. The project developer stated that the reason for limiting access to the alley is to maintain as much landscaping on the site as possible since direct access from 32nd Avenue West would require a driveway.

5. The development site is zoned Single Family Residence High Density (RS 5000). The project developer proposes to rezone the site to Multiple Residence Low Density (RM 800) which would permit the construction of the proposed building. A rezone petition has been filed (X-78-450) and although the petition does not set out any conditions on the rezone the environmental documents refer to the petition as a contract rezone. Under a contract rezone, development is limited to

conditions enumerated in a written contract between the developer and the City.

6. To the west of the project site, across the alley, is Our Lady of Fatima Church and rectory. Extending to the north of the church is a playground and parochial school and recreational center. Many students attending the school use the alley that abuts the school and project site as a means of access.

7. To the south of the project site, across West Barrett Street, is the Magnolia Playfield that is public recreational area maintained by the Seattle Park Department. Large numbers of people utilize the playfield during the baseball, football and soccer seasons.

8. To the north and east of the project site is an area that is primarily developed with single family residences.

9. On January 3, 1979, the Department of Community Development issued a Declaration of Nonsignificance (DNS) with regard to the proposal. A timely appeal of the DNS was filed on January 18, 1979 by Allan Loucks and other residents of the immediate area. The Magnolia Community Club was subsequently permitted to intervene as a party in this proceeding.

10. The appellants allege numerous inadequacies in the DNS but the main issues that have been raised concern earth, land use and transportation/circulation.

#### EARTH

11. In the environmental checklist under item 1, there is no indication of any soils problems. A soils report was made available after the issuance of the DNS (Applicant's Exhibit #1).

12. The soils report indicates that the area in which the project is to be developed was formerly part of a broad valley or meadow in which a small stream meandered. A water table is presently located about 6 feet below the site grade and will vary in height depending upon the season of the year. Any footings for construction would have to be kept as high as possible or dewatering planned during construction.

13. The soils report did not evaluate material 7 feet below the site grade. A civil engineer, Mr. Nelson, testified that due to the equal-grained saturated soil condition on the site, liquefaction potential should be investigated by doing soil-boring work.

#### LAND USE

14. In the environmental checklist under item 8, it is stated that the proposal will result in the alteration of the present or planned land use of the area. It is also noted that the project will result in the development of low income elderly housing in the Magnolia area and that the Comprehensive Plan shows the area as most appropriate for one and two family development. Testimony in the record indicates that the proposed structure would be out of scale with the nearby single family uses.

#### TRANSPORTATION/CIRCULATION

15. Under item 13, Transportation/Circulation, the project is acknowledged to have impacts on the existing transportation system and will potentially increase traffic hazards.

16. West Barrett Street in the vicinity of the subject site has an accident rate probability about 30% higher than that of the Seattle average. Due to the nearby proximity of the school, extensive pedestrian and bicycle use is made of

the sidewalks and alley adjacent to the site which would be the primary access to the project. Parking in the area is extremely crowded due to the park, school and church uses.

### 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 requirement 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 Wn.2d 267, 522 P.2d 674 (1976).

2. The record of a negative threshold determination must "demonstrate that environmental factors were considered in a manner sufficient to amount to prima facie compliance with the procedural requirements of SEPA." Juanita Bay Valley Community Association vs. Kirkland, 9 Wn. App. 59, 510 P2d 1140 (1973). The record in this case does not show that full consideration or evaluation of environmental impacts was made by the Department of Community Development.

3. With regard to transportation and circulation, the Department of Community Development's representative testified that no information was obtained on traffic volumes in the alley even though this is the project's sole vehicular access and is used by a large number of children as a pedestrian and bicycle route. The vehicular accident rate in the immediate area is higher than the Seattle average. Due to the proximity of the church, school, recreation center, and Magnolia Playfield, parking in the area is extremely limited during many periods of the year but adequate information was not obtained on existing conditions. There is no basis for evaluating the impacts of the project without adequate information as to existing conditions.

The record shows that there is a reasonable probability that the proposal will have a significant environmental impact with regard to traffic and transportation. The potential for pedestrian/bicycle and vehicular conflict has been clearly shown in light of the proximity of the school and the fact that sole access to the project will be by way of the alley. An EIS will provide full disclosure in a very critical area where the lives of children may be safeguarded by proper planning.

4. The soils condition of the site below 7 feet raises issues with regard to the liquefaction potential that has not been considered by the Department of Community Development. Whether test borings are needed below 7 feet is not conclusively answered in the record but a full evaluation is required in light of the issues that were raised.

5. The size and scale of the project in relation to nearby single family residences also was not fully evaluated by the Department of Community Development nor the conflict with the Comprehensive Plan.


6. Even when giving substantive weight to the determination of the Department of Community Development one is left with a clear impression that the DNS decision was clearly erroneous. The traffic and circulation impacts that will be generated by the proposal are significant and require the preparation of an environmental impact statement (EIS). The impacts relating to soils and land use also trigger the EIS requirement.

### Decision

The Department of Community Development is directed to require an EIS for the subject proposal. The

elements of the environment relating to earth, transportation/circulation and land use must at a minimum be addressed in an EIS with the Department of Community Development exercising its discretion as to what other elements should also be addressed. The proposal should be clearly defined at the outset with regard to proposed conditions to be included in the contract rezone. Although the conditions to be included in a contract rezone may be altered during the public hearing process, that does not mean that the conditions proposed by the petitioner should not be clearly set out in the rezone petition in order to provide a clear definition of the total proposal.

Entered this 23rd day of March 1979,

  
William N. Shell  
Hearing Examiner