

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeals of

JAMES KOH

FILE NO. W-79-012

and

ASHLEY SUN

FILE NO. W-79-013

from environmental determinations
of the Superintendent of Buildings

The appeals are DENIED and the determinations of
the Superintendent are AFFIRMED.

Introduction

The appellant, James Koh, filed an appeal from the issuance of a declaration of significance (DS) for property at 4218-26 8th N.E. Ashley Sun filed an appeal from an issuance of a DS for property at 4230-8th N.E. For purposes of this appeal, the matters were consolidated for hearing.

The appellants exercised their right to appeal pursuant to Section 20 of the SEPA Ordinance (105735, as amended).

This matter was heard before the Hearing Examiner on May 8, 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 these appeals.

Findings of Fact

1. James Koh proposes to demolish three wood frame buildings and a garage located at 4218-26 8th N.E. He proposes to construct on the site a 3-story, 24-unit apartment building with 24 off-street parking spaces. The proposal has 40 bedrooms and 6 study rooms. A common driveway would be shared by the building next door at 4230-8th N.E.

2. Ashley Sun proposes to demolish one wood frame single family building and construct an 11-unit apartment building and provide 11 off-street parking spaces. The proposal has 13 bedrooms and 2 dens. A common driveway would be shared with the Koh property at 4218-26 8th N.E.

3. Changes in the number and configuration of units were made in both the Koh and Sun proposals prior to the final submission of plans on which the DS was based. The appellants also submitted parking surveys (Appellants' Exhibits H & I) at the request of the Superintendent.

4. On March 31, 1979, the Superintendent entered a DS with regard to both the Koh and Sun proposals. The Superintendent stated that due to physical proximity and other similarities, the Koh and Sun applications were treated as essentially one proposal. The sole basis for requiring an environmental impact statement (EIS) in each of the above proposals is the Superintendent's finding that a significant adverse impact would result from the generation of increased on-street parking demand in the University District.

5. On April 5, 1979, James Koh filed a timely appeal challenging the issuance of the DS. On April 6, 1979, a similar appeal was filed by Ashley Sun with regard to his proposal. Both of these matters were consolidated for hearing since they involve adjacent properties and similar issues.

6. At the request of the Superintendent, a study (Superintendent's Exhibit 6) of parking characteristics, which is dated February 7, 1979, in the southwest portion of the University District was prepared by the Engineering Department, hereinafter referred to as the UD Parking Study.

7. The Engineering Department submitted a questionnaire to the managers of apartment buildings in the area bounded by N.E. 45th on the north, N.E. 40th Street on the south, 7th Avenue N.E. on the west and Roosevelt Way N.E. on the east. Fifty-seven questionnaires were returned for a return rate of 39.3 percent.

8. As a result of the UD Parking Study, it was concluded by the Engineering Department that off-street parking requirements for apartments to accommodate tenants and guests should be based on the number of bedrooms and that the following ratio should be provided:

No Bedroom (Studio) Units	1.25 to 1.50 parking spaces per unit
1-Bedroom Units	1.50 to 1.75 parking spaces per unit
2-Bedroom Units	2.50 parking spaces per unit

The study also shows that little, if any, on-street parking space is available to meet additional parking demand.

9. The Superintendent concluded after reviewing the information contained in the UD Parking Study that the Koh and Sun proposals would have a significant adverse impact since they were not providing an adequate number of off-street parking spaces and that almost no on-street parking is available.

10. The appellants allege that adequate information on the parking situation has already been provided in the UD Parking Study and by the appellants, and that the determination of the Superintendent is not consistent with other decisions involving similar projects in the area.

11. Across the street from the Koh and Sun proposals is the Ryan proposal at 4231-8th N.E. for which a permit has been granted and no EIS required. Ryan proposes to construct an 8-unit apartment building and provide 9 off-street parking spaces. Ryan made no substantial changes in his proposal from the time of original submission and requested an early decision from the Department even if it were adverse. The Superintendent's representative stated if the determination on the Ryan proposal was made at the same time as the Koh and Sun determinations then an EIS would have been required.

12. Section 197-10-360(3) of the WAC Guidelines provides: "The question at the threshold determination level is not whether the beneficial aspects of a proposal outweigh its adverse impacts, but rather if the proposal involves any significant adverse impacts upon the quality of the environment. If it does, an EIS is required. No test of balance shall be applied at the threshold determination level."

13. In Ordinance 107678, the City adopted policies to govern the substantive implementation of SEPA. Section 3 deals with parking but does not provide any specific dwelling unit to parking space ratios.

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 on the merits of the proposal.

3. The standard of review to be applied by the Hearing Examiner to the Superintendent is determined by the applicable ordinance. Ordinance 105735 provides that substantial weight shall be given to the determination of the Superintendent. The Court of Appeals has recently held that substantial weight should be accorded an affirmative threshold determination and that it should be overturned only if arbitrary and capricious or contrary to law. Short v. Clallam County, 22 Wn.App.825(1979).

4. The record shows that the appellants are providing one off-street parking space per dwelling unit which is all that is required under the Zoning Ordinance. The UD Parking Study shows that the proposals will generate a parking demand in excess of the number of parking spaces to be provided and that on-street parking is at capacity. Given the number of units involved and the existing on-street parking situation, the Superintendent's determination is supported by substantial evidence in the record. The Superintendent is not permitted to use a balancing test at the threshold level. If such a test were permitted, it might produce a different result.

5. The record does not support the allegations that the Superintendent has been inconsistent in the application of SEPA standards to other projects in the area. Most of the projects cited by the appellants were approved substantially before the new information became available in the UD Parking Study in February, 1979. The one exception is the Ryan proposal which was approved just prior to the entry of the Koh and Sun DS determinations. The record shows that the Ryan proposal was approved before a final policy position had been taken by the Superintendent and that a different decision would be made today. Also the Ryan proposal includes a smaller number of units and provides one parking space in excess of the required number.

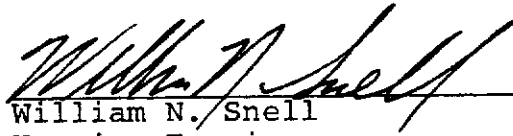
6. Although the Superintendent's determination is correct under the law, certain important policy issues should be noted. The Superintendent's representative admitted at the hearing that future substantial proposals that do not provide the number of parking spaces indicated in the UD Parking Study could also be required to prepare an EIS. Once an EIS is prepared, it may be determined after a balancing test is applied, that takes into consideration the need for housing and the cost impact of providing additional parking,

that no parking spaces in addition to the Zoning Code minimum are required. However, the balancing test can only be applied after an EIS is prepared so there could easily be an elaborate requirement for the preparation of an EIS when the end result will show little benefit. This clearly seems to be an area where the City Council should be requested to set a policy. If a higher parking ratio per dwelling unit is to be consistently applied in the University District, then the City Council should make that decision. The availability of transit, the cost of housing, predicability for developers, the imposition of charges for off-street parking and many other relevant factors should be addressed before a district-wide policy is established.

Decision

The appeals are DENIED and the determinations of the Superintendent are AFFIRMED.

Entered this 24th day of May, 1979.


William N. Snell
Hearing Examiner

Notice of Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 20 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977).

If a use permit is required for this proposal, it is subject to a separate administrative appeal pursuant to Section 25.40 of the Zoning Ordinance (86300, as amended).