

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

In the Matter of the Appeal of

LAKE UNION ASSOCIATION AND  
SEATTLE SHORELINES COALITION

FILE NO. W-79-034

from an environmental determination  
of the Department of Engineering

The appeals are DENIED and the Declaration of  
Non-Significance is AFFIRMED.

Introduction

Appellants, Lake Union Association (the "Association") and the Seattle Shorelines Coalition ("SSC") appealed the Declaration of Non-Significance ("Declaration") entered by the Building Department ("Department") regarding the Lake Union Bikeway ("Bikeway").

Appellants filed their appeals pursuant to Section 20 of the SEPA Ordinance (105735, as amended).

Parties to the proceeding were: SSC, represented by Janet E. Quimby; the Association represented by Stephen Tangen, and the Department represented by Ross Radley.

This matter was heard before the Hearing Examiner on November 5, 6, and 13, 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 Department proposes to complete the construction of the Bikeway which consists of three sections:

Section 1: N. Northlake Way to the Fairview Bikeway via Westlake, Valley, Fairview Avenue N. The new bikeway will connect with the existing Northlake Bikeway at Northlake Way and Densmore Avenue No., continue to the west to the Fremont Bridge, continue south parallel to and east of Westlake Avenue N. to the intersection of Valley Street and Terry Avenue North, continue along the north side of Valley Street to Fairview Avenue N., where it will connect with the Fairview Bikeway.

Section 2: Mallard Cove: At Mallard Cove (north of east Roanoke Street) a short dock or boardwalk will be constructed and two easements through existing parking areas will be used.

Section 3: University Bridge: Improvements for bicycles will be made on the bridge, and connections to existing facilities will be constructed or improved at the north and south ends of the bridge.

2. In 1978, the Department contracted with Transportation Planning and Engineering ("TP&E") for the preparation of concepts, plans, written analyses, evaluations and justifications for the Bikeway. After holding a series of public meetings, TP&E delivered its study to the Department on May 31, 1979 ("TP&E Study").

3. On September 6, 1979, after reviewing the TP&E Study, the Department entered the Declaration.

4. On September 21, 1979, the Association, filed its appeal of the Declaration. The Association is a Washington non-profit corporation organized, in pertinent part, to promote the development, beautification and improvement of Lake Union and to advance, conserve and protect the business activities and interests of its members. Certain members of the Association own property or operate businesses which might be affected by the Bikeway.

5. On September 24, 1979, SSC filed its appeal of the Declaration. SSC is a Washington non-profit corporation organized, in pertinent part, to monitor and engage in land use decisions concerning Lake Union. Certain members of SSC own property or operate businesses which might be affected by the Bikeway.

6. Substantially all of the evidence produced by Appellants on the potential environmental effects of the Bikeway pertain to the section parallel to and east of Westlake Avenue N. The Department proposes to locate the Bikeway through the right-of-way on the east side of Westlake Avenue N. which currently is being used for parking by the various businesses in the area (the right-of-way is referred to as the "Parking Area"). The Bikeway will consist of an approximately 12 ft. wide path through the Parking Area and will be located in the first traffic circulation lane in the Parking Area to the east of Westlake Avenue N. Parking parallel to the Westlake Avenue N. will be allowed immediately to the west of the path and angle parking will be allowed immediately to the east side of the path.

7. In 1978 various persons with businesses utilizing the Parking Area communicated certain development proposals to officials of the City of Seattle. These proposals included the construction of additional moorage slips along the shoreline of Lake Union east of the Parking Area. In 1978 and 1979, several of these persons applied to the City for Substantial Development Permits for these proposals. In response to these proposals and applications, the City, acting through the Department of Community Development, suggested that a study of the Parking Area be conducted to ascertain the usage of the Parking Area and to recommend methods for using the Parking Area more efficiently. The Transpo Group completed the study in May, 1979 ("Transpo Study"). The Transpo Study contained, in pertinent part, an analysis of existing parking conditions and recommendations for increasing parking in the Parking Area. Two of these recommendations were to close unnecessary curb cuts and to restripe the Parking Area.

8. The City has not approved the above described projects because parking in the Parking Area is already inadequate. These projects will not be approved until off-street parking outside of the Parking Area is found.

9. During the peak use period (the noon hour or early afternoon on weekdays), occupancy of portions the Parking Area exceeds 100 percent of capacity. Other portions of the Parking Area are used near to capacity at various time of the day. Parked vehicles and vehicles waiting to exit the Parking Area to Westlake Avenue N. often are parked or waiting in the area where the Bikeway will be located.

10. As part of the Bikeway's construction, the Department plans to close all but 8 of the curb cuts into the Parking Area along Westlake Avenue N. The Department has no plans for restriping the Parking Area.

11. Construction of the Bikeway will result in a net increase of approximately 63 new parking spaces in the Parking Area.

12. Skill levels among operators of bicycles range from low/amateur to high/expert. Bicycle operators can be divided into two groups: commuters who commute (usually during rush hours on weekdays) to and from work by bicycle and recreational riders who use their bicycles for recreational purposes. There is a higher percentage of expert riders among commuters than among recreational riders, and higher percentage of amateur riders among recreational riders than among commuters. Recreational riders often use their bicycles during weekends or on weekdays during the middle of the day (not during rush hours).

13. Approximately 235 bicyclists daily now use Westlake Avenue N. and 145 now use Dexter Avenue. Most of these bicyclists are commuters. It is probable that some bicyclists who now use Dexter will use the Bikeway upon completion.

14. It is probable that at least 300 commuter bicyclists daily will use the section of the Bikeway through the Parking Area and that most of these commuters will have a high degree of operational skill.

15. Each curb cut along Westlake Avenue N. from the Parking Area is a potential point of bike/auto conflict and a hazard for bicyclists using Westlake Avenue N. Since reduction in the number of the curb cuts is part of the project, construction of the Bikeway will enhance the safety of bicyclists using Westlake.

16. The Parking Area is currently being used by both commuters and recreational bicyclists. Portions of the Parking Area are now unpaved or poorly paved, creating a safety hazard for these bicyclists. Construction of the Bikeway will result in a well paved, clearly defined pathway which will enhance the safety of bicyclists using the Parking Area. The reduction in the number of curb cuts will further enhance their safety since each curb cut represents a potential bike/auto conflict within the Parking Area.

17. There will be at least a moderate increase in recreational bike traffic through the Parking Area as a result of the Bikeway's construction. Pedestrian traffic will increase also.

18. There will be a high level of interaction between vehicles using, entering or exiting the Parking Area and bicyclists using the Bikeway.

19. Bicyclists should have a moderately high degree of skill to safely use the Bikeway through the Parking Area.

20. Frank Yanagimachi, Jr. is Project Engineer for the Bikeway. Mr. Yanagimachi, Mark Clemmons and Paul Wiatrack signed the Declaration for the Department.

21. In July or August, 1979, Mr. Yanagimachi prepared for Mayor Royer's signature a letter to the City Council endorsing the Bikeway and a resolution for the Council providing, in pertinent part, funds for the Bikeway.

22. For planning purposes, Mr. Yanagimachi assumed that no Environmental Impact Statement would be required for the Bikeway.

23. Mr. Yanagimachi is unfamiliar with the standards of SEPA and SEPA Guidelines. Other persons who reviewed the Declaration within the Department are familiar with those standards.

24. While completing the checklist, Mr. Yanagimachi was generally familiar with the desire of the businesspersons to further develop the Lake Union shoreline east of the Parking Area.

### Conclusions

1. Standard of Review. A Declaration of Non-Significance is subject to review by the courts under both the "arbitrary or capricious" test and the "clearly erroneous" test. Norway Hills Preservation and Protection Association v. King County, 87 Wn.2d. 267, 552 P.2d 175 (1976).

2. Environmental Impact of Bikeway. Whenever there is a reasonable probability that a project will have more than a moderate effect on the environment, an environmental impact statement should be done. Norway Hills, supra.

3. Burden of Proof. The Declaration is to be accorded substantial weight and the burden of establishing the contrary is upon the appellants. Ord. 105735, as amended, Section 20.

4. Timing/Prejudgment. Appellants argue that the Department prejudged the merits of the Bikeway and decided long before the checklist was completed that no environmental impact statement was necessary. In support of this argument, they point to the fact that, before completing the checklist, the Project Engineer prepared a timeline showing that no environmental impact statement was needed and a letter to the City Council for the Mayor's signature endorsing the Bikeway and urging the enactment of a resolution to fund it.

However, the record shows that the Department considered the impact of the Bikeway as part of completing the checklist. In this connection, the Department reviewed the TP&E Study before completing the checklist. The timeline and the letter do not in themselves support an inference of prejudgment.

5. Independent Judgment. Appellants argue that the Department improperly relied upon the TP&E Study. The SEPA Guidelines, however, allow lead agencies to consider consultants' reports. WAC-197-10-310, 320. Moreover, the TP&E Study does not address specifically the environmental impact of the Bikeway nor the application of the SEPA Guidelines to the project. There was no evidence that the Department failed to independently assess the environmental impact of the project.

6. Environmental Impact - Safety Hazard. Appellants argue that an impact statement should be required because a new safety hazard is being created in the Parking Area. Clearly, the creation of a new circulation system within the busy Parking Area raises a safety issue. Yet the project does not involve the type or degree of environmental impact caused by projects like those in Norway Hills or in other cases where impact statements have been required. Moreover, any safety hazard created in the Parking Area appears moderate, at most, when the character of the Bikeway users and the speed of vehicles in the Parking Area are considered. Recreational bicyclists are more likely to use the Bikeway on week-ends or holidays when the Parking Area is not being used to capacity. Motor vehicles in the Parking Area will be traveling slowly and adequate sight distance will be provided for vehicles entering the Parking Area from Westlake Avenue N. Finally, in view of the absence of any dependable technique for forecasting the number of persons using the Bikeway (except those methods used by the Department and TP&E) there is no feasible method for estimating the safety hazard more accurately than has the Department.

Appellants have failed to prove that the safety hazard is significant, that the Declaration was entered in disregard of any information or data found in the administrative record or that the Department might have conducted other tests or surveys to better estimate the safety hazard.

7. Environmental Impact - Restriping. Appellants argue that an environmental impact statement should be completed, because construction of the Bikeway will require restriping of the Parking Area and restriping will cause a reduction in the number of parking spaces. The record shows the Department has no plans for restriping the Parking Area. Although restriping may become necessary or desirable in the future, there is no evidence that the Department willfully disregarded restriping in order to reduce the apparent environmental impact of the Bikeway or that restriping will be necessary in the future.

8. Environmental Impact - Plans by Others. Appellants argue that the "plans" in the Transpo Study and the various plans by business persons in the vicinity of the Parking Area to develop the Lake Union's shoreline should have been taken into account by the Department in response to Question No. 11 of the checklist.

The conclusions and recommendations in the Transpo Study are not plans. As to the other plans, the record shows that no part of the new moorage slips or other projects will be built on the Bikeway route and that the Parking Area will not be used to provide parking for these new projects.

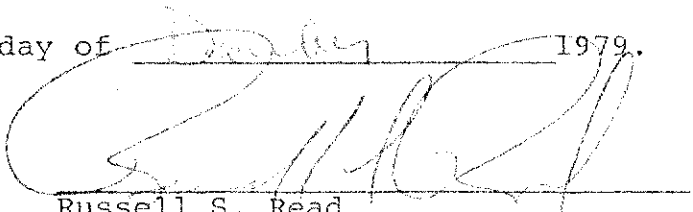
While the cumulative effect of these other plans with the Bikeway might be to increase traffic congestion in the Parking Area, there is no evidence that such congestion would be significant. Moreover, since parking other than in the Parking Area must be found before these projects can proceed and since such parking is extremely limited, it is doubtful that these other projects will ever be completed. The construction of the Bikeway does not make these other projects less feasible.

9. Clearly Erroneous. A review of the record in its entirety indicates the Declaration was not clearly erroneous.

#### Decision

The appeals are DENIED and the Declaration of the Non-Significance is AFFIRMED.

Entered this 13<sup>th</sup> day of January 1979.

  
Russell S. Read  
Hearing Examiner Pro Tempore

#### Notice of Right to Appeal

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