

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of the
SOUTH PARK COMMUNITY CLUB, INC.,

84
FILE NO. W-83-001

from an environmental determination
by the Director, Department of
Construction and Land Use

Introduction

The above-entitled matter is before the Hearing Examiner to review further objections by appellant South Park Community Club after remand for compliance with SEPA. Parties agreed to have the matter decided on written briefs.

Having considered the record and file herein, the Addendum to Environmental Impact Statement, additional objections of appellant and written memoranda, the Hearing Examiner hereby enters the following findings of fact and conclusions.

Findings of Fact

1. An environmental impact statement (EIS) was prepared by the Department of Construction and Land Use (DCLU) for a proposal by Ivor and Jack Jones, petitioners, to rezone property known as "Catholic Hill" from SF 5000 to Multi-Family Residential, Lowrise 2. The South Park Community Club, Inc., challenged the adequacy of the EIS by an appeal filed with the Office of the Hearing Examiner.

2. On October 12, 1983, the following order was entered in the case:

The EIS is remanded to DCLU for full compliance with WAC 197-10-440(12)(e) by identifying the City's objectives and considering alternative sites which could reasonably meet those objectives whether or not zoned Lowrise 2. DCLU may also correct other defects in the EIS.

3. At the request of appellant, and after comment by the parties, an order, Procedures on Remand, was entered setting out the procedures for comment and objection by the parties.

4. A document entitled "Addendum to Environmental Impact Statement for South Henderson Street Land Use Map Amendment (Rezone)" was "issued for public comment" December 7, 1983, and "issued with public comments and responses to comments included" January 27, 1984, according to the cover of the document, hereafter referred to as "Addendum."

5. Appellant filed Appellant's Objections to "Addendum" to Environmental Impact Statement" February 10, 1984, within the time allowed by the Procedures on Remand schedule. Appellant alleges that 1) DCLU failed to follow the appropriate recirculation procedure for a revised EIS; 2 and 3) the change to request a contract rezone is not sufficiently formal or specific so cannot avoid the necessity of considering all potential uses; 4) the PRD alternative is not fully explored; 5) the discussion of the public interest in services is unclear and biased; 6) DCLU

has chosen to discuss the draft community plan which supports its bias; 7) alternatives outside the County and the County's policies were not considered; 8) land cost figures used are because they are not adjusted for after-rezone values; and 9) responses to comments are inaccurate.

6. The Addendum explains that DCLU treated the proposal as a contract rezone in preparing the EIS. To clarify the situation the petitioners have amended the petition by their letter "specifically requesting a contract rezone to construct multi-family structures on the site." p.5.

7. The letter amending the petition is from John P. Lynch, Jack Lynch and Associates, petitioners' agents, and is included in the appendix to the Addendum. The final paragraph reads:

We are, therefore, requesting that the original petition for our rezone project so state that a contract rezone is being requested to allow ground related multi-family structures to be constructed on the Catholic Hill site.

8. The Addendum states that the City's objectives for residential rezones are to:

1. Preserve and maintain the physical character of single family areas;
2. Increase opportunities for new housing development while ensuring that new development is compatible with neighborhood character.

The third objective is specific to South Park, i.e.,

3. Strengthen the residential component of South Park by increasing the livability of the existing single family neighborhood and adding to the residential housing stock.

9. The Addendum addressed, as additional alternatives, the rezone of sites not zoned Lowrise 2. An explanation was given as to why all sites selected are in South Park within the Seattle City limits. The three alternative sites are discussed and measured against the City's objectives.

10. The Addendum also corrects the information given in the EIS about the cost of street improvements required for single family development in response to questions raised in the initial appeal hearing. The Engineering Department allows a street 23-25 ft. wide instead of the 32 ft. assumed.

Conclusions

1. While several deficiencies or errors were found in the EIS as a result of the review occasioned by South Park Community Club's appeal, the only correction required by the Hearing Examiner for compliance with the SEPA guidelines and Municipal Code was a statement of the City's objectives and consideration of alternative sites regardless of zoning which could reasonably meet those objectives. WAC 197-10-440(12). The Addendum's coverage of these alternatives is sufficient to remedy the deficiency so that the EIS is adequate under the law. As to appellant's argument that DCLU must also consider sites outside the City limits, the cases require consideration of regional impacts of proposals but do not specifically mandate consideration of alternatives to the proposal over which the

decision-maker would not have jurisdiction. It can be assumed that there is no such requirement.

2. Appellant argues that the request to amend the petition to request a contract rezone is not sufficiently formal or specific to avoid consideration of the full range of uses allowed in the zone. Reading the final paragraph in context with the remainder of the letter, the petitioners' intent, as stated by their agent, is clear and DCLU properly considered the petition amended. Without deciding whether the Council could grant a rezone without imposing this limitation, which is the fear stated by appellant, the Hearing Examiner's decision can reflect the judgment that the EIS is adequate for the amended proposal.

3. The decisive issue then is whether the "appropriate recirculation procedure" was followed by DCLU when it issued the Addendum. Appellant urges that the remand, in effect, requires a new EIS so that WAC 197-10-495 comes into play requiring compliance with WAC 197-10-450-197-10-490. DCLU maintains that WAC 197-10-495 governs when the lead agency determines that one of the criteria applies, i.e. substantial changes or significant new information and circulation is necessary for further input and review. It is DCLU's contention that a Hearing Examiner remand is not an automatic trigger and, in the judgment of DCLU, no substantial change has been made which would make recirculation necessary.

4. Appellant cites two cases to show that under federal law recirculation is required, Natural Resources Defense Council v. Callaway, 524 F.2d 79 (2d Cir. 1975) and I-291 Why? Association v. Burns, 372 F. Supp. 223 (D.Conn. 1975). In the first, use of an addendum to evaluate a substitution of dumping sites (where the decision was made before the addendum issued) to correct a deficient EIS was found to be permissible recognizing that it analyzed the impacts of the change and was properly circulated. In the second, reports issued after the EIS at the individual initiative of the defendant were not circulated in accord with procedures necessary to comply with NEPA and so could not remedy an inadequate EIS. The CEQ guidelines referred to in NRDC v. Callaway (40 CFR 1500.11(b)), require the agency which proposes to supplement or amend a draft or final EIS to consult with the CEQ to determine "the possible need for or desirability or recirculation of the statement for the appropriate period." In the case of I-291 Why? the Federal Highway Administration Policy and Procedure Memorandum mandated that a supplemental EIS be processed in the same way as a new EIS. PPM 90-1. Unlike these guidelines under NEPA, SEPA Guidelines provide no clear direction as to the treatment of a supplement to an EIS found to be inadequate.

5. Appellant points to the handling of the supplemental EIS prepared after the remand in the Westlake Property Disposition and Development proposal. The Department of Community Development chose to use WAC 197-11-660, Use of a previously prepared EIS for a different proposed action, as a procedural model. It can be assumed this was done in the absence of clear direction in the SEPA Guidelines.

6. The Procedures on Remand order by the Hearing Examiner, even with concurrence of the parties, certainly cannot supplant procedural requirements of SEPA. Where there are no provisions directly applicable to the situation, the remand is for additional sites all of which are within appellant's area and parties have had an opportunity to comment, recirculation, through desirable, would not seem to be required.

7. The EIS with its Addendum should be found adequate as a matter of law.

Decision

The EIS with its Addendum is adequate as a matter of law for the proposed rezone to Lowrise 2 with uses limited to single family or multi-family residences.

Entered this 28th day of March, 1984.



M. Margaret Klockars
Deputy Hearing Examiner

Concerning Further Review

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any request for court review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418(1977); JCR 73 (1981).