

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

In the Matter of the Appeal of

DONN BODINE

FILE NO. W-88-002

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

Introduction

Donn Bodine appeals the determination of non-significance issued by the Director, Department of Construction and Land Use, for the proposal by John Bachman to downzone property on Francis and Dayton Avenues North between North 42nd and North 43rd Streets from L-3 to SF 5000.

Parties to the proceedings were: appellant, pro se; the Director, Department of Construction and Land Use, by Faith Lumsden, land use specialist, and the petitioner, John Bachman, represented by Richard Gordon, attorney at law.

This matter was heard before the Hearing Examiner on June 21, 1988.

After due consideration of the evidence elicited during the public hearing, the following findings of fact and conclusions shall constitute the the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. A petition for a downzone of some 3.4 acres of L-3 zoned land to SF 5000 was filed by John Bachman. The proposed rezone would cover generally the blockfronts facing Francis Avenue North and Dayton Avenue North between North 42nd and North 43rd Streets.
2. The Director, Department of Construction and Land Use, issued a determination of nonsignificance (DNS) for the proposal. The decision cited loss of potential future housing units but found that impact to be minor.
3. Appellant calculated the potential loss of some 250 multifamily dwelling units based on 550 sq. ft. of land per dwelling unit.
4. The land use specialist estimated that the potential for some 130-150 multifamily units would be lost.
5. The record does not contain sufficient facts to allow a determination of which figure of lost potential is more accurate.
6. A proposed downzone on Greenwood Avenue North, one block away, if granted, would reduce the potential for multifamily development in the city by 110 units.
7. Appellant asserts that an environmental impact statement is needed to consider alternatives to the proposed action of, for instance, creating a buffer along North 42nd of L-1 zoning and rezoning the remainder of the proposed rezone area to L-2.

Conclusions

1. The Hearing Examiner has jurisdiction over these parties and this subject matter pursuant to 25.05.680B.
2. The Director is to issue a determination of significance (DS) if she decides the proposal may have a probable significant adverse enviromental impact. Section 25.05.360. Otherwise a DNS

is appropriate. Section 25.05.340. A "significant" impact is present when there is a "reasonable likelihood of more than a moderate adverse impact on environmental quality." Section 25.05.794A.

3. The Hearing Examiner is to give substantial weight to the Director's determination. Section 25.05.680B.3. The appellant must prove that the decision is clearly erroneous to overcome that weight. Brown v. Tacoma, 30 Wn.App. 762, 637 P.2d 1005 (1981).

4. Appellant contends that the loss of potential for some 250 dwelling units is a significant adverse impact, especially when cumulated with loss from other potential downzones. He argues that since the addition of 400 units would require an EIS, the loss should as well.

5. There is not sufficient proof in the record to conclude that the Director's calculation of lost development potential is wrong. But even if it is shown to be, the greater number does not rise to a significant adverse impact where it is very speculative that that potential would ever be realized and where development potential in the city's multi-family zones is so great.


6. Though appellant is undoubtedly correct that the addition of 400 dwelling units, in one proposal, probably would require an EIS, the reason would be the impacts of those uses on the traffic flow, parking, scale, etc., all effects that would not be present where the proposal is to restrict the number of units built.

7. The appellant has not shown the issuance of a DNS to be clearly erroneous.

Decision

The determination of the Director is affirmed.

Entered this 6th day of July, 1988.


M. Margaret Klockars
Deputy Hearing Examiner

CONCERNING FURTHER REVIEW

Judicial review under SEPA shall without exception be of the decision on the underlying governmental action together with its accompanying environmental determinations. RCW 43.21C.075(6)(c). SEPA issues may be added to the request for review of the underlying decision within 30 days after the date of official notice of that decision if a notice of intent to seek judicial review of SEPA issues is filed with the Director, Department of Construction and Land Use, 408 Municipal Building, 600 4th Avenue, Seattle, Washington 98104, with the time limit set for appealing the underlying governmental action. Seattle Municipal Code Section 25.05.680(D)(4).

If the Superior Court orders a review of the decision, the person seeking review must arrange for and bear the cost for preparing a verbatim written transcript of the hearing but will be reimbursed if successful in court. Instructions for preparation of the transcript are available in the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington, 98104. In the alternative, RCW 43.21C.075(6)(b) provides that a tape may be used for the court review. If a taped transcript is to be reviewed by the court the record shall identify the location on the taped transcript of testimony and evidence to be reviewed. Parties are encouraged to designate only those

portions of the testimony necessary to present the issues raised on review, but if a party alleges that a finding of fact is not supported by evidence, the party should include in the record all evidence to the disputed finding. Any other party may designate additional portions of taped transcript relating to issues on review.