

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

SHIRLEY JEFFERS

FILE NO. MUP-81-057

from a determination of the Director
of the Department of Construction
and Land Use on a master use permit
application

Introduction

Appellant, Shirley Jeffers, appeals the determinations by the Director of the Department of Construction and Land Use (Director) that the environmental impact statement for the Columbia Center proposal is adequate and to issue the permit with conditions.

The appellant exercised her right to appeal pursuant to the Master Use Permit Ordinance, Chapter 24.84, Seattle Municipal Code.

Parties to the proceedings were: Appellant, pro se; the Director represented by the City Attorney, Elizabeth A. Edmonds, assistant; Martin Selig, project sponsor, represented by John W. Hempelmann, Diamond and Sylvester.

This matter was heard before the Hearing Examiner on November 4, 5, 6, 9 and 10, 1981.

After due consideration of the evidence elicited during the public hearing, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner with respect to the issue raised regarding the adequacy of the environmental impact statement.

Findings of Fact

1. An environmental impact statement (EIS) consisting of a draft EIS (DEIS) and final EIS (FEIS) was issued by the Department of Construction and Land Use for a proposed action described as "Development of high-rise office building including landscaped plaza, multilevel shopping arcade, and underground parking." (DEIS, p. iii)

2. The proposal, as described in the DEIS, p. 17, was to contain about 650 parking stalls. An alternative to the proposal with 1,000 parking spaces was analyzed in the DEIS.

3. The FEIS addressed a proposal changed to contain 650 parking stalls with valet parking service to increase the parking supply by 350 to 450 vehicles, an entrance on Columbia Street and exit on Cherry Street with both ramps to operate in a reversible fashion during morning and evening peaks.

4. Appellant urges that the changed proposal requires reevaluation and recirculation of the EIS.

5. The Director found the analysis of the proposal accommodating 1,000 vehicles sufficient to apprise him of potential adverse impacts.

6. The opinion of Diane White, an expert in the preparation and evaluation of EIS's, is that the change in the proposal did not amount to a substantial change nor has new information concerning anticipated impacts become available so she believes that an amended or new EIS need not have been prepared.

7. No competent evidence was adduced which showed that an increase in space available for short term parking would have a significant adverse impact on traffic and circulation. It is probable that the increased ability to accommodate more vehicles will have a mitigating effect.

8. The DEIS, p. 67, discusses the State Department of Transportation, SC & DI, referred to as FLOW in the hearing, improvements to I-5. The discussion includes a statement that the Cherry/Columbia reversible ramp is not likely to be affected. The EIS does not state that queuing from the Cherry Street on-ramp could occur on 7th Avenue, which the witness stated, but the system is designed to increase the metering rate to avoid affecting local streets, as explained by Kern Jacobson, traffic engineer, State Department of Transportation, appellant's witness.

9. Levels of service on surrounding streets as now exist, as would exist with the addition of traffic generated by Columbia Center and as would exist with traffic generated by Columbia Center plus that generated by growth in floor space projected by Puget Sound Council of Governments (PSCOG) is analyzed in the EIS. No competent evidence was adduced which disagreed with the conclusions of that analysis.

10. The EIS describes improvement options to the transit system being studied and considered by METRO. The conclusions, in the EIS, with regard to impacts on the transit system, do not appear to be based on the implementation of any of the options.

11. Federal funding of a transit mall and terminals, two of the options, is not certain. Up to \$300 million in revenue over operating expense would be available for improvements. An additional 202 articulated busses have been ordered and payment already has been made.

12. Figure 21, DEIS, p. 86, does not list some bus routes on 3rd Avenue.

13. The transit system, as it exists plus certain improvements, will not experience significant adverse impacts from the increased patronage resulting from Columbia Center, as concluded in the EIS.

14. Officer Art Van Pymbrouck, Seattle Police Department, a witness called by appellant, is satisfied that concerns expressed in the Police Department's comment letter received response in the EIS.

15. David Gordon, Director of Municipal Office Services, Department of Administrative Services, called by appellant, indicated that the response in the EIS to concern raised by that department regarding a parking deficit was responded to satisfactorily.

16. Rodney G. Proctor, Manager, Environmental Planning Division, METRO, a witness called by appellant is satisfied that his comments in METRO's letter were responded to adequately.

17. Robert N. Santos, Executive Director, International District Improvement Association, expressed concern about potential new demand for parking in the International District from Columbia Center and other new buildings and about failure of the EIS to analyze an area larger than the two block radius studied for negative parking impacts.

18. The response, p. 91, FEIS, states that parking demands will be required to be met on-site so that the International District should experience little impact.

19. The impact of traffic beyond the immediate area of a proposed project in an area such as downtown Seattle is not usually studied in depth because the traffic from one building is dispersed to the point that the proportion of the whole may no longer be measurable and the ability to forecast reliably is diminished.

20. The EIS contains a description of measures to mitigate the traffic and parking impacts from the project and comments on those measures such as that of the Commuter Pool at pp. 56, 57, FEIS.

21. Appellant contends the EIS is inadequate in that it fails to analyze whether the van and carpool measures would be effective. The competent evidence showed that if properly marketed and managed there is no reason to believe the measures would not be effective.

22. The EIS contains two statements about air quality impacts that appear to be contradictory. At p. 33, DEIS, the EIS states that "...the proposal will not delay attainment of the NAAQS by 1987." The next sentence states "(h)owever, traffic congestion during the p.m. peak hour will cause periodic violations of the 1-hour standard for CO." While apparent conflict has not been resolved, a change in vehicle emission standards by the U.S. Environmental Protection Agency since the issuance of the DEIS, but not known with specificity at the time of the FEIS, allowed a statement at p. 18, FEIS, that the CO impacts would be less than estimated in the DEIS.

23. The standards published and available after the FEIS show the estimate in the DEIS to be approximately four times higher than would be the case so the violations mentioned in the DEIS would not occur.

24. Seattle City Light commented on the DEIS in the FEIS. Lloyd Hettiger, senior electrical engineer, Electrical Distribution Division, appellant's witness, expressed a concern about the estimated load expected from consumption of 323 billion BTU's per year. The response, p. 32, FEIS, provided a figure of 7,370 kW for peak monthly demand but with no substantiation for this figure which is a low amount compared to other buildings' demand. The explanation and supporting data are found in Appendix A, FEIS.

25. Stephen Pool, program manager for the commercial/industrial conservation program in the Conservation and Solar section at City Light, called by appellant, was responsible for comments in the City Light comment letter regarding potential for heat sharing with the adjacent building and the building shell. The response at p. 33, FEIS, addressed his comments regarding the building shell to his complete satisfaction. He is "90 percent" satisfied with the response as to his heat sharing comment.

26. Mr. Santos' letter commented that the DEIS "did not take into account the cumulative impacts Columbia Center and adjoining new projects will have (on land use)." His concern was specifically for potential development pressures on and increased land value in the International District which are not addressed in the EIS and could defeat the District's goal of producing new units of low income housing.

27. The International District has special protections through the special review district overlay zoning. New controls are being considered and should be adopted in 1982.

28. Appellant alleges that certain statements in the EIS and responses to comments are vague, incomplete or no reply. Examples cited are: 1) the use of "is considering" in the sentence "(t)he sponsor is considering the possibility of providing a link between the proposal and the Columbia House offices", p. 3, FEIS. Further, she contends that the link should be described and analyzed.

2) The use of "may" in the sentence "(t)he sponsor may build a construction barrier in the vicinity...." p. 119, FEIS. 3) Discussion of protection only from dropped or falling objects at p. 117, FEIS, in response to comment at p. 114, FEIS. 4) Response at p. 117, to comment at p. 114, FEIS, addressing interior of Columbia House and not other buildings in the surrounding area. 5) Answer in response number 3, p. 26, to Seattle Police Department's comment at p. 25 discussing only the construction period. 6) Answer in No. 5, p. 31, to City Lights' comment No. 4, p. 27, regarding peak electrical demand. 7) Response to Commuter Pool at p. 60, FEIS. 8) The answer that "(t)he impact is noted and unavoidable" to Victor Steinbrueck's comment at p. 160, FEIS, regarding shadows from surrounding buildings. 9) Mistake pointed out by Puget Sound Air Pollution Control Agency letter that the McMicken Heights monitoring station was discontinued in 1979 and that new emission standards should be used. 10) Nomenclature wrong in Figure E-6 at p. E-6, FEIS. 11) Failure to list all bus routes on 3rd Avenue.

29. The DEIS at p. 3 further defines the possible "link" between Columbia Center and Columbia House as a "low-level structure and/or a pedestrian way".

30. "May" was used in example 2) above because the construction barrier referred to is just one possible step to ensure access to the Hillis law firm's office.

31. No threats, other than dropped or falling objects, during excavation and erection phases which should have been discussed were suggested by appellant.

32. The construction period was the primary concern of the Police Department's comment.

33. No evidence regarding which nomenclature in Figure E-6 is wrong was proffered.

34. The EIS considers the impacts of the proposed project cumulated with those caused by existing development and those projected for known, and some possible, future projects on each element of the environment.

Conclusions with Regard to Adequacy of the EIS

1. The adequacy of the document is to be judged by the "rule of reason", i.e., whether "a reasonably thorough discussion of the significant aspects of the probable environmental consequences..." is provided. Cheney v. Mountlake Terrace, 87 Wn.2d 338, 344, 345, 552 P.2d 184 (1976).

2. The only evidence supporting the contention that the EIS is inadequate is the missing bus routes and the somewhat confusing statements about air quality. While the EIS did not provide an analysis of impacts on the International District it is required to discuss only probable environmental consequences. Since no impacts were established as probable, no discussion is required. The remainder of the evidence conclusively established the adequacy of the document and showed that it went well beyond the minimum requirements of the law.

3. WAC 197-10-495 does not require the Director to prepare an amended or new draft EIS since the accommodation of the greater number of vehicles does not amount to a substantial change.

Decision

The Director's determination that the EIS is adequate is AFFIRMED.

Notice of Right to 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 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981). Should an appeal be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court.

After due consideration of the evidence elicited during the public hearing the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner with respect to issues raised regarding the Director's decision to conditionally grant the master use permit.

Findings of Fact

1. The Columbia Center proposal before the Director is to develop a 76 story office building with a four level base structure in the central business district on a 1.2 acre block bounded by 4th and 5th Avenues and Columbia and Cherry Streets. The building is to contain up to 1,500,000 sq. ft. of office space, 650 parking spaces which, with valet parking, can accommodate at least 1,000 vehicles, 52,000 sq. ft. of retail and commercial space, a shopping arcade of about 70,000 sq. ft. and a plaza of about 26,900 sq. ft. around the building. The action taken by the Director was to conditionally grant the master use permit.

2. Appellant contends that the Director failed to consider permanent adverse impacts as follows: "traffic congestion, pedestrian movement and congestion, bus congestion and other impacts such as overloading, maintaining schedules, additional costs of operation, etc., such as increased noise and exhaust emissions from auto and bus congestion, additional costs because of increased driver time and fuel consumption, etc.; and pollution; very serious traffic problems cited in Seattle Police Department comments; interference with police and fire communications which will require radio and microwave transmissions facilities requiring the City to lease space on top of the proposed building and to purchase facilities for radio and microwave transmissions adding to costs for support services, e.g., an additional cost to the City created by this project; destroying the quality of life in downtown Seattle; creating crowded urban conditions Downtown which cause stress to employees and visitors alike...; costs of providing City Light electrical equipment to meet the peak demands -- a capital investment which could ultimately result in higher rates to the rate payers...."

3. The Director read the letters commenting on the DEIS when they were received by his department, read the EIS prepared for the proposed action, reviewed the draft decision proposed by the staff member assigned to the proposal and discussed that draft with the staff member. He then looked for significant adverse environmental impacts and the recommended mitigating measures or alternatives to determine how to eliminate or reduce those impacts so that they are no longer significant. He then imposed mitigating measures as conditions to reduce adverse impacts where appropriate. He finally weighed and balanced the adverse impacts remaining which could not be eliminated against the benefits of the proposed project. His decision is embodied in the ten page document, Exhibit No. 1.

4. The adverse impacts identified in the EIS were considered by the Director in making his decision. Others listed above were not identified in the EIS nor proven at hearing.

5. Conditions imposed to mitigate the impacts from the traffic and parking demand to be generated include provision of vans for vanpooling, setting aside 290 spaces for carpool parking with reduced fees, providing a transportation coordinator, operating the two garage ramps in-bound during the morning peak hour and out-bound during the evening peak hour, use of valet parking, sufficient space for queuing of 36 vehicles within the garage, synchronization of Cherry Street exit ramp traffic control lights with those at 5th and Cherry, subjecting the allocation of parking spaces to a review in 24 months, etc. Competent evidence indicated that these and other measures imposed have a substantial likelihood to reduce the impact on traffic, circulation and parking to a non-significant level.

6. Jeff Hamm, Seattle-King County Commuter Pool, is satisfied that the conditions for car and vanpooling contain all the elements of a successful mitigating program.

7. No significant adverse impact on traffic beyond the immediate area was shown so no mitigation was needed.

8. The mechanical system and building envelope to be utilized are "state of the art" technology to reduce energy requirements of the building.

9. No competent evidence was adduced showing that the benefits attributed is the proposed action would not be beneficial.

10. Many allegations were made regarding adverse impacts which were not support by the evidence.

11. Seattle's Growth Policies, adopted by Resolution 25533, Policy No. 10, Office Development in the Central Business District, provides:

Seattle shall encourage construction in the Central Business District outside the retail core as long as:

- a. Due consideration is given to traffic, topography and view corridors; and
- b. additional taxes resulting from new development exceed City expenditures for supporting facilities and services. The City should encourage Central Business District office construction primarily by speeding up and simplifying the review process for approval of specific projects and specifying any conditions that such development must meet.

12. Policy No. 7b, Regional Employment, provides:

The City shall support efforts within the region to direct economic growth into the existing developed areas in order to more efficiently utilize public and private investments in existing facilities and utilities, avoid unnecessary consumption of currently undeveloped lands, preserve the area's natural resources, and maintain the accessibility of employment opportunities for City residents.

13. The EIS (p. 120, DEIS) found the proposal to be consistent with Growth Policies Nos. 10 and 7b. No competent evidence controverted that finding. Evidence was adduced showing sound basis for Policy 7b.

14. Appellant urges that the Director is required to do a cost benefit analysis for the proposed action before making his decision. The expense and difficulty involved in assigning service costs to an individual building and computing value of the benefits would be great and not warranted by the reliability of the results.

Conclusions

1. Section 25.04.190, Seattle Municipal Code, authorizes the Director to deny or reasonably condition the proposed only on the basis of adverse environmental impacts identified in the environmental documents. A proposal may be denied only if there are significant adverse impacts which cannot be prevented or substantially mitigated. He is to weigh the merits against the adverse impacts.


2. The record show clearly that the Director used mitigating measures as appropriate as conditions for approval, that no significant adverse impact remains and that he carried out his duty to weigh the adverse impacts against the merits.

3. No error in the decision was shown.

Decision

The Director's decision to conditionally grant the proposed action is AFFIRMED.

Entered this 23rd day of November, 1981.


M. Margaret Klockars
Deputy Hearing Examiner

Notice of Right to Appeal

Pursuant to Section 20A of the SEPA Ordinance (105735, as amended, Chapter 25.04.210, Seattle Municipal Code), a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the 15th day after the date the decision appealed from is filed with the SEPA Public Information Center. The appeal must be filed with the City Clerk on the 1st floor of the Municipal Building. Rules have been adopted by the City Council governing the appeal procedure and should be reviewed prior to filing an appeal.

The City Council will only review issues related to compliance with Section 19, Ordinance 105735, as amended, Chapter 25.04.190, Seattle Municipal Code. Section 19 relates to substantive authority to condition or deny a proposal on environmental grounds.