

FINDINGS AND DECISION
BEFORE THE CITY OF SEATTLE HEARING EXAMINER

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In the Matter of the Appeals of

SUNNY ARMS COOPERATIVE ASSOCIATION,
TRAMMEL CROW COMPANY,
CONCERNED CITIZENS OF WASHINGTON AND
GREATER DUWAMISH NEIGHBORHOOD COUNCIL

FILE NUMBERS:

W-89-008
W-89-009
W-89-010
W-89-011

from a threshold environmental determination
by the Director of the Department of
Construction and Land Use

Introduction

Applicants challenge a determination of nonsignificance issued November 16, 1989, by the Department of Construction and Land Use for proposed text amendments to the Land Use Code (Chapter 23 of the Seattle Municipal Code) relating to "adult cabarets."

The appellants exercised their rights of appeal pursuant to Section 25.05.680 of the Seattle Municipal Code.

Parties to the proceeding were appellants: Sunny Arms Cooperative Association, represented by Karen Guzak; Trammel Crow Company, represented by its attorney, Larry J. Smith; Concerned Citizens of Washington and Greater Duwamish Neighborhood Council, represented by Shirley Mesher; and the Director of the Department of Construction and Land Use, represented by Robert J. Tobin, Assistant City Attorney.

This matter was heard before the Hearing Examiner on February 20 and 21, 1990. The record was kept open until March 9, 1990, for submission of any further identified exhibits and submission of written argument. During the interim a site visit was made by the undersigned.

All section numbers below refer to the Seattle Municipal Code, unless otherwise specified.

After 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. The City Council proposes to amend the Land Use Code to establish a new category of use to be known as "adult cabaret" and to regulate this use in commercial, industrial and downtown zones.

2. The latest proposal evaluated by the DNS appealed and reflected in Council Bill 107705 confines adult cabarets to specific portions of the Downtown and Duwamish industrial area, provides a dispersion criteria, and terminates adult cabaret uses in zones where they are now permitted. The only permitted downtown zones under this proposal are the Downtown Retail Core (DRC), the Downtown Office Core 1 (DOC 1) and the Downtown Office Core 2 with a 300 foot height limit (DOC 2/300). In the industrial zones adult cabarets would be permitted only in portions of the IG1 and IG2 zones in the Duwamish area bounded by S. Holgate Street, East Marginal Way S., S. Dakota Street (extended), and Interstate 5. Together, these areas encompass more than 900 acres. About 750 acres of these are in the affected Duwamish industrial zones.

3. Adult cabarets would not be permitted in any commercial zones. Existing adult cabarets located in non-permitted zones except for those located downtown would be terminated within nine months of the effective date of the ordinance.

4. The dispersion proposed as a development standard requires lot lines for adult cabarets to be located 900 feet or more from the lot lines of other adult cabarets for the industrial area. In the downtown area, they are to be located 900 feet away from lot lines of other adult cabarets, adult motion picture theaters, or adult panoramas.

5. Under present codes, adult cabarets are not categorized as a use. However, since 1986 they have been regulated under the category of "performing arts theaters", which is under "places as public assembly" as a commercial entertainment use. Under the present code, performing arts theaters are authorized in all commercial zones (except NC1) and in all industrial zones.

6. As regulated as performing arts theaters under present practices, adult cabarets would be permitted presently in the Duwamish industrial zones affected. However, none have located there or in other industrial zones of Seattle to date.

7. Adult motion pictures theaters and adult panorams are categorized separately under "places of public assembly." However, they are presently permitted only in certain downtown zones; they are not permitted in any of the industrial zones or commercial zones.

8. Council Bill 107705 is one of two proposals before the City Council on adult cabarets and other adult uses. There is also Council Bill 107261 which, essentially, would prohibit adult cabarets in all industrial zones as well as all commercial zones and allow them only in certain downtown zones in common with other adult uses. This has been termed the "downtown alternative." It has a dispersion requirement of 600 feet and terminates non-conforming adult cabaret uses within 1 year after the effective date of the ordinance. This bill was presented in April of 1989. DCLU acknowledged that it is still alive in the Council. See Council Resolution 27983 (Exhibit 45).

9. The proposed land use ordinance amendments were prompted by citizens' concerns about the increasing number of topless dancing establishments and their impacts on more residential communities. In the two years preceding introduction of the first Council Bill, topless dancing establishments had increased from two to seven and were locating primarily in commercial neighborhoods outside of the downtown areas and near or adjacent to residential communities. As a result, in November of 1988, the Council placed a 180-day moratorium on licensing any new adult entertainment uses in certain zones, and in December of 1988, the City Council asked the Executive to analyze the problem and make recommendations for amending the land use code.

10. On March 24, 1989, DCLU issued its first report on the problem. That report recommended a new land use category for adult cabarets and recommended their location only in downtown Seattle in zones where other adult uses were permitted. A public hearing was held on this April 10, 1989. This prompted further Council requests to enlarge Council options in regulating adult entertainment land uses.

11. On May 8, 1989, the Council asked DCLU to investigate and study the impacts of restricting all adult entertainment uses to the Duwamish industrial area, to evaluate methods to minimize adverse impacts of such adult uses, and to conduct an environmental review thereon. Resolution 27983 (Exhibit 45). Thereafter, on May 24, 1989, Ordinance 114531 was enacted imposing a limited 140-day moratorium on the issuance and acceptance of use and building permits for adult premises.

12. DCLU issued a second report on August 7, 1989. In it, three alternatives were discussed: (1) the downtown alternative (DCLU's recommendation of March 24, 1989), (2) a Duwamish industrial alternative, and (3) a combined downtown and Duwamish alternative. The analysis was premised on permitting all three adult uses in each of the various alternatives. The downtown and industrial zones and boundaries in which the uses would be permitted in the various alternatives were substantially the same as those of C.B. 107705. Although various impacts and options for each alternative were discussed, no recommendations on alternatives were made by DCLU in this report. The cover letter to the report indicated that an environmental review of the Duwamish Industrial Alternative was in process.

13. A second public hearing on the subject was held on September 6, 1989.

14. The environmental review requested by Resolution 27983 of the Duwamish only alternative, apparently, was never completed. Instead, an environmental analysis of a variation of the combined alternative in the August report was done. This resulted in a determination of nonsignificance published November 16, 1989.

15. In early December, 1989, Council Bill 107705 was introduced before the City Council. This is the combined alternative discussed in the DNS, with

some modifications. This Council Bill along with its predecessor is awaiting final action, pending the resolution of these appeals. To prevent the establishment of new adult cabarets in the interim, a moratorium through June 30, 1990, was enacted by Ordinance 114862.

16. These appeals of the DNS were filed on December 1, 1989. Two of the appellants are neighborhood groups. One represents a Duwamish group, the other a Georgetown group. One of the appellants is a property manager and developer of industrial and commercial property nearby. The fourth is a cooperative of artists who own, work and live in a building in the Duwamish industrial zones affected.

17. The appeals on the DNS are very similar. All groups object to the location of adult cabarets in the Duwamish area. They do not object to their location in the downtown zones. All groups claim the DNS inadequately reviewed and addressed various significant environmental impacts to the Duwamish area. All groups seek further evaluation and an EIS. Their two main specific concerns are with the impacts of the proposal on safety and security of persons and property in the area and on the incompatibility of adult cabarets in the industrial area and with the type of businesses there. Secondary specific concerns relate to noise, traffic, parking, light and glare, effects on public services, business and employment, aesthetics, and property values.

18. These groups claim the proposal is contrary to and inconsistent with the land use policies and goals for industrial areas, as well a contrary to earlier environmental analysis thereon, and that the land use impacts thereby are significant.

19. Greater Duwamish Neighborhood Council (Greater Duwamish) also alleges procedural defects, namely that the DNS checklist were not circulated as required by Section 25.05.340B.2, that the checklist was insufficient and did not include known information, that the threshold environmental review generally was so deficient it did not meet SEPA requirements. Greater Duwamish also alleged that the proposal was not mitigated adequately.

20. The DNS of November 16, 1989, depended on a checklist dated November 7, 1989 of potential impacts prepared by the department, on the experience of DCLU in reviewing similar legislative proposals, and on the information contained in the previous Director's reports on the subject. Prior to this DNS, there had been an environmental review for the downtown alternative. This earlier review also resulted in an DNS. A checklist prepared by the department dated January 18, 1989, was used for the earlier DNS. No appeals were taken from the first DNS.

21. Both checklists provide little information relating to impacts of the proposal on elements of the environment. In fact, the two are virtually identical in their responses and types of information provided. Both checklists provide only cursory and summary information in very few areas. The checklist of November 7, 1989, briefly discusses noise, light and glare, street improvement needs, and some impacts related to traffic and public services. Little land use information was provided beyond a statement of the applicable zoning and mitigation philosophies for neighborhood zones. As to mitigation for the industrial zones, it was noted only that impacts on land use would be geographically confined by limiting the industrial area to a specific portion of the Duwamish. Mostly, the checklist response to requested information on various elements of the environment was "Does not apply." For the one in January, 1989, the response was "Not applicable."

22. In preparation for the Director's first report on adult cabarets for the downtown alternative and related environmental analysis, a number of City offices and departments were consulted and requested to comment. Later, the DNS, checklist and draft Director's report to the Council were circulated to them. These departments were Fire, Licensing, Police and DCD. Consultation with and circulation to these or other City departments did not occur for the combined alternative report or subject DNS being appealed.

23. At the hearing, the Director indicated the environmental analysis on the proposal was more cursory than it would be for a project specific review because the proposal under review was a non-project action. Therefore, the department concluded that environmental impacts would only be speculative. When questioned about project-specific review, however, the Department conceded that proposals for new development in the industrial area under 12,000 square feet would be exempt from SEPA analysis and review. For the

downtown area, that exemption is 4,000 square feet. (The testimony was uncertain as to whether there would be an environmental review for changes of use.) Most adult cabaret development would not equal 12,000 square feet. Therefore, in most cases of specific proposals for adult cabarets within the industrial area, there would be no further environmental review.

24. The DNS appealed contains some assumptions about the proposal which are different from the Council bill on the combined alternative. Specifically, the DNS is predicated on permitted downtown zones being DOC1/450', DOC2/300' and DRC with a dispersion requirement anticipated of 600 to 900 feet. Council Bill 107705 permits adult cabarets in all of the DOC1 zone as well as the DOC2/300' and DRC zones. It contains a dispersal requirement of 900 feet. In the industrial zones, the DNS contemplated a dispersal requirement of 1000 feet between adult cabarets. The distance in the C.B. proposed is 900 feet.

25. The Duwamish industrial area affected extends south from S. Holgate Street (about three very large blocks south of the Kingdome) to South Dakota Street (one very large block south of S. Spokane Street. It extends from E. Marginal Way on the west to the freeway on the east.

26. This area is generally flat topographically and platted into large parcels of land. The average lot size is 1.5 acres for unimproved sites and 1.1 acres when improved. There are many dead-end streets and large dark open storage areas for goods and trucking needs. Numerous railroad lines and switch yards intersect the area. The Alaskan Way Viaduct cuts through on the west mostly blocking access to E. Marginal Way. The freeway is a formidable barrier to access from the east. The viaduct, freeway, railroad facilities and large storage areas and lots all make access difficult to and in the area.

27. The area is developed primarily with a mix of manufacturing, warehousing, transportation facilities, storage yards and heavy commercial. Offices, restaurants, taverns and retail sales and services also exist there, but are located primarily along the north-south arterials of the area.

28. Some residential use exists in the area. Sunny Arms Cooperative is one of those. It is a 5-story, 35,000 square foot building which combines artist studios with dwellings. Others include the Ontario Hotel (a mix of artists and writers' studios and dwellings) and the Sunset Electric Buildings (a comparable use) on S. Dakota Street. The Lander Building at First South and South Lander also contains 25 artists studios, however this building does not include dwellings.

29. The Terminal annex of the U.S. Post Office, a City Light Utility Substation and distribution center, Trailways Bus Station, Rainier Brewery, a new School District warehouse, and a large Sears retail facility are among the uses located in the area. A Metro transit vehicle base is just north on the perimeter and a large Costco facility is on the edge to the south. As a rule the industrial development is large and bulky.

30. As a general rule, the Duwamish area is fairly quiet at night and relatively devoid of people on the streets, except for Kingdome events. Nevertheless, there are still people there because not all the establishments in the industrial area operate solely in the daytime. For example, the artists who work at the Lander Building often work in the evening. Seventy-five percent of these are women. According to the person who leases this building, these artists relocated to the Lander Building from downtown on assurances that the area was quiet and secure. Other known places with night and evening work are the Post Office terminal annex at 4th South and S. Lander, City Light's Substation, the Trailways Bus Terminal, Rainier Brewery (occasionally), and various industrial manufacturing and distribution centers as the need arises. It is not known how many people work there or use the streets or other facilities during the evening hours, as this was not studied.

31. The north-south arterials in the area are First South, Fourth South, Sixth South and Airport Way; east-west they are South Lander, South Spokane, South Holgate, and Industrial Way. Street right-of-ways are generally unimproved, mostly without sidewalks or curbs and are not pedestrian friendly. Parking is on the shoulders. Generally the streets in the industrial area are below street surface standards and are below width standards. There are few present public funds for street improvements, according to the Director of Engineering Services for the Seattle Engineering Department.

32. DCLU did not request an evaluation of lighting in the industrial

area. Numerous witnesses testified that street lighting and general lighting of the area is substandard. A City Light Supervisor of Street Lighting and Pole Design Standards testified at the hearing. He indicated that the Duwamish area was much darker than downtown. Downtown is lit to 4 foot candles, whereas, the Duwamish area is lit from 2 to 3 foot candles. While the arterial streets meet national lighting standards, the local streets of the Duwamish area do not.

33. Lighting standards, are based on vehicular use of the streets, not on general use of the area. Many large open storage areas, such as at the City Light facility, are not well lit and have many dark "nooks and crannies." He estimated that improved lighting for street use would require about 1000 street lights and even then the lighting would be less than downtown. In his opinion, even with a request for more lighting the impact of providing this lighting on City Light facilities was not considered significant by the Supervisor.

34. The Director's environmental decision and underlying reports on the two proposals cite public safety hazards as the most significant and troublesome impact associated with adult entertainment uses. These uses are recognized by the Council Bills and DCLU reports as creating safety risks to the neighborhood in which they are placed.

35. Adult cabarets are expected to create the same impacts as other adult uses. Various studies from other cities are cited which reveal a higher incidence of crime and serious crime complaints in areas where adult uses are located. Such studies cite a doubling or tripling of crime rates over the city-wide average where adult uses exist.

36. In Indianapolis, in 1984 major crimes were 23 percent higher; sex-related crimes were 77 percent higher than city-wide averages. In Austin, Texas, sex-related crimes in adult areas were 2-5 times higher than city-wide averages where there was only one business. With more such businesses, they were 66 percent higher in adult use areas. Prostitution arrests were 15 times greater than city-wide averages in Los Angeles. The Kent study cites a doubling of robberies and rapes in adult use areas in Cleveland. Those crimes were four times as great where there were concentrations of 10 adult uses. Phoenix, Arizona, cites a 300 percent higher incidence of sex-related crimes where adult uses are concentrated. The Boston experience of a seven-acre concentration of adult uses is referred to as the "combat zone" and has a higher incidence of crime than other business districts of the city. The sex-related crimes in the studies included rape, indecent exposure, obscene conduct, molestation, and commercial sex.

37. The customers of adult businesses tend to come from outside the city limits, according to the studies cited by DCLU in its report. It is likely that adult cabarets would attract a similar regional clientele. These studies conclude that a regional clientele increases the risk of less inhibited personal behavior and less concern for the neighborhoods and districts in which the establishments exist. This is illustrated by beer bottle throwing, littering, fighting, lewd remarks and conduct, and rowdy behavior. Vandalism and property damage are also known problems with such uses.

38. The Duwamish area is not well-policed now, according to neighbors and property managers of businesses nearby. The police presence is minimal and considerably less than other areas of the City, according to the Director's report of August 7, 1989. That same report indicated that in the industrial area:

An increase in police presence in the area would reduce some impacts but public safety would continued to be at risk. The development pattern and activities in the area create an environment which will inherently be more difficult to patrol than other areas in the city. The impacts of adult entertainment uses in the Duwamish area will not easily be mitigated by an increase in police presence.

DCLU concluded in the August report that public safety risks had the potential of being more severe in the Duwamish area than downtown and that "administration of law enforcement strategies would be less effective in this large area." (Exhibit 4, page 20.)

39. It is anticipated by the Police Department that adult cabarets would generate more police calls and require more police services than are presently required in the Duwamish area. The percentage of such increase or the numbers were not provided. The spokesman for the Police Department agreed that adult cabaret operations increase crime, in particular those of assault, prostitution, and indecent exposure. Other testimony indicated an increase in drug trafficking also. As the numbers of such establishments increased and the numbers of patrons increased, these crimes would increase and require even more police presence and response.

40. The Police spokesman indicated that adult cabarets in Seattle had already consumed considerable time of the Vice detectives of the department, although other police personnel, such as patrol, were not too affected. He indicated that involvement of the police in adult cabaret complaints under the City's licensing enforcement provisions had been significant. Nevertheless, it was his opinion that the impact of the proposal on police services in the Duwamish area would not be significant.

41. It was indicated that while police activity would be increased over that presently in the industrial area, there were sufficient police services to handle the increased activity. However, response time for calls would probably be increased. This spokesman did not foresee much difference in the effects of adult cabarets for one location to another.

42. The South Precinct serves Georgetown and parts of the Duwamish area. In Georgetown, crime was up 32 percent in 1989 over 1988. This was the highest neighborhood increase in the City. Residents there have three major concerns: (1) that adult cabarets will attract more people who will engage in more criminal activity and that such criminal activity will spill over into their residential community; (2) that calls for police service to the Duwamish in response to the presence of adult cabarets will reduce police service to Georgetown (which, according to Georgetown residents is already slow and inadequate); and (3) that persons who live in Georgetown and work in the Duwamish or who pass through the Duwamish on their way to downtown on foot or bicycle will be subjected to criminal activity generated by the adult cabaret use.

43. There are seven adult cabarets currently in operation within Seattle. All seven are located in zones which, as a result of either of the proposed amendments, would make them nonconforming uses. Only one, that located downtown in the DMC, would be allowed to remain by the termination provisions of the proposal. The others are in neighborhood commercial zones or in commercial zones where they would be prohibited and required to terminate use within nine months from the effective date of the ordinance.

44. In the DNS appealed and at the hearing, DCLU claimed the proposal would not create a new use within the industrial area; rather, it would restrict existing potential use because the boundaries for permitted use would be more restrictive than before. The department concluded, therefore, that the proposal Code amendment was consistent with land use policies for the area and that the impact on land use in the industrial area by establishment of adult cabarets would not be significant. It concedes, however, that the adult cabarets terminated by the proposal are more likely to locate in the Duwamish than downtown if they stay in the City, because the Duwamish would be cheaper and there is more area in which to locate.

45. Adult businesses (including adult cabarets) are known to have a blighting effect on property and the districts in which they exist. This effect becomes more predominant with concentration of these establishments. Seattle's own experiences with adult cabarets and panoramas verify this fact. Visually and aesthetically, these establishments are not pleasing. Signage tends to be very bold, brightly colored and large. Many are large neon signs. Signage is explicit about what goes on inside, for example, signs claiming "Live Girls" or "Table Dancing, Texas style" are common. This type of signage contributes to the blight of the area. The buildings also tend to be boldly painted.

46. Vandalism and property damage are also known to accompany adult uses. Littering of the area by patrons is a known problem. The blighting effect and the increase in disruptive and criminal behavior cause many businesses leave the districts where the adult businesses exist with resulting vacancies occurs.

47. Concurrent with the blight is an impact on property values. Both the

blight and property value impact is of concern to the businesses within and adjacent to the industrial area and to those managing and selling property there. These persons are also concerned that increased criminal activity in the area will extend to their businesses and property and make upkeep and maintenance more difficult. Two experience developers and property managers testified that commercial and industrial development would not locate there; nor would they recommend industrial or commercial development of property in the Duwamish area with adult cabaret or other adult uses present.

48. Industrial land in the city is recognized as a scarce commodity. The Duwamish district includes the majority of the city's industrial land of approximately 3,000 acres. About 750 acres of these, or 25 percent, are contained within the industrial area proposed for adult cabarets.

49. An experienced real estate broker and property manager for the area indicated that opportunities for expansion in the industrial area were very limited; that the vacancy rate there is under 5 percent. Presently and historically there has been more demand than supply of available space. He indicated that adult cabarets would not enhance the area for industrial use, and, in his opinion, that such use was inconsistent with the area's needs and the City's declared concerns for preserving industrial activity. He indicated the area was already losing industrial uses because of competition for space from other uses. The proposal would exacerbate this problem and cause relocations of industrial use to other areas. In his experience, a perceived problem (whether or not actual) made a difference in a company's decision to locate.

50. In the Director's report of August 7, 1989, DCLU recommended against permitting adult entertainment uses in the Duwamish industrial area, in part for the following reasons stated:

The intent of the Industrial Area Land Use Policies has been to provide protection to viable industries from competing uses. The policies recognize the importance of industrial businesses to the City's economy. With a limited supply of these large parcels of land zoned for industrial use in the City, care must be taken to protect it from factors which would negatively affect investment in the area.

The Duwamish study area is particularly vulnerable to negative impacts of adult entertainment businesses since the incentives for industrial concerns to remain or to establish themselves are few. Employers report that it is often difficult to recruit employees because of perceived public safety risks that accompany these isolated areas. Many streets are not paved. There is often inadequate parking. The public transportation system does not address the needs of shift work schedules. Outlying suburban locations often provide more incentives at lower costs. These factors often discourage investment in the area.

If permitted, adult entertainment businesses would not necessarily compete directly for sites with industrial uses, but rather for those scarce sites where other commercial businesses prefer to locate.

Industrial uses are dependent on certain commercial uses for support. Areas where commercial development can most economically operate need to be reserved for businesses that provide direct support services to industrial uses. Allowing the location of adult entertainment uses could negatively affect the desirability of those sites for industrial support functions.

...

The economic vitality of the Duwamish industrial areas is dependent on maintaining the incentives for industrial businesses to remain in the City. Incentives which encourage employment, customer and support services should not be eroded. Allowing adult enter-

tainment businesses to locate in the study area could negatively impact these incentives. The potential negative impacts on public safety and property values could eventually contribute to the outmigration of industrial businesses from the City.

51. The present industrial area policies were developed over a number of years, beginning sometime in the early 1980's. They were finally adopted by resolution in October of 1987. At that time the exclusion of adult motion picture theaters and adult panorams from the industrial areas was affirmed, the same not being deemed relevant to or consistent with the industrial purposes. In addition, their confinement to the downtown zones had already been dealt with by the Neighborhood Commercial Policies. The establishment of adult cabarets in the industrial areas of the city was not an issue at the time. Such uses did not come up in any discussions about adult entertainment uses or commercial uses of the industrial area.

52. As to traffic impacts, the DNS concluded there would not be a significant impact from expected traffic due to the proposal, but did not provide specifics. At the hearing, the Land Use Specialist involved with the DNS testified that if adult cabarets located in the industrial area there would be an increase in traffic, but that traffic impacts would not be significant because they were not coincidental with hours of the traffic for existing uses there. The peak period of traffic for present uses was identified by her as 9:00 a.m. to 2:30 p.m. Hours of operation for adult cabarets were identified as usually from 10:30 a.m. to 2:30 a.m., with peak traffic occurring between 7:00 p.m. to 2:30 a.m. The extent of such impact was not addressed, however, because no traffic study or analysis of the number of vehicular trips generated by adult cabarets had been made. At the hearing, the Director of Engineering Services for SED indicated that adult cabarets should have no significant effect on the streets in the industrial area, assuming their operation was from 6:00 p.m. to 2:00 a.m. If they operated in the day, under a worst-case scenario the cumulative effects of a large noontime crowd with existing traffic in the area could be significant. The actual number and location of the adult cabarets would also affect their impact on traffic.

53. As to parking needs, again, there were no specifics in the DNS, only a conclusion on nonsignificance. Testimony from DCLU at the hearing was that there would be some increase and adverse impact, but this impact would be lessened because of the differing hours of use. The adult cabaret need would be greater after working hours of the other present uses. The parking demand for existing uses was not thought to be substantial after working hours. DCLU concluded that there was no significant impact on parking in the area because of the differing hours, because adult cabarets would be required to have off-street parking, and because of the proposal's dispersion requirements for such establishments. No parking study was done of the area or of the parking pattern for the adult cabaret uses in existence. Persons from the area testified that Kingdome events brought considerable parking as far south as Lander and that parking was crowded at such times. They indicated there was no paid parking in the area.

54. Air quality impacts of the proposal in the industrial area would be minor and relate mostly to emissions from traffic.

55. Light and glare impacts would increase within the industrial area due to the brightly lit nature of the signage for these establishments, due to lights from increased vehicular traffic mainly in the evening and early morning hours, and due to the flashing lights of emergency and police vehicles responding to complaints.

56. Noise impacts would increase. The City's experience with adult cabarets operating in other areas demonstrates considerable outside late-night and early-morning noise from patrons coming and going, racing their cars, squealing their brakes, and lounging outside drinking and yelling; from sirens of police and emergency vehicles; and from the sound systems of the cars and within the cabarets. DCLU concluded that, although adverse, these impacts were not significant.

57. Numerous letters were received from members of the public following the hearing on this case. They have been included in the files on appeal. All are opposed to use of the Duwamish for the same reasons as appellants.

Conclusions

1. The Hearing Examiner has jurisdiction over the parties and the subject matter pursuant to Section 25.05.680.

2. An environmental impact statement (EIS) is required for major actions significantly affecting the quality of the environment. Section 25.05.330. As a threshold determination, the responsible official (in this case the Director) is to "determine if the proposal is likely to have a probable significant adverse environmental impact." Section 25.05.330A.2. If it may, an EIS is required. Section 25.05.330D. Otherwise a determination of nonsignificance (DNS) is appropriate. Section 25.05.340A. For the purposes of SEPA, "significant" means "...a reasonable likelihood of more than a moderate adverse impact on environmental quality." Section 25.05.794A.

3. The Hearing Examiner is required to accord substantial weight to the determination of the Director and the burden of establishing clear error is on the appellants. Section 25.05.680B.3, Brown v. Tacoma, 30 Wn. App. 762 (1981). A decision is clearly erroneous only if the Hearing Examiner is left with a definite and firm conviction that a mistake has been committed. Brown, supra, at 764.

4. In the instant matter, appellants have challenged the adequacy of the DNS as to its evaluation and information on impacts on the Duwamish industrial area and seek an EIS. The primary question before the Hearing Examiner, then, is whether the appellants have met their burden of showing that probable significant adverse impacts are likely from the proposal. Here, the appellants are concerned primarily with the impacts of the proposal on land use in the industrial area and on public safety issues. Their secondary concerns relate to traffic, parking, noise, light and glare, public services, aesthetics, and impacts on property values. Procedural defects have been raised also as to insufficiency of the checklist and failure to properly notify local agencies or agencies with jurisdiction and circulate the environmental documents.

5. In making a threshold determination, the Director is to review the checklist and any supporting documents and determine if the proposal is likely to have a probable significant adverse environmental impact based on the proposal, the checklist and any additional information he has. Section 25.05.330A. He is to consider mitigation measures the agency will implement. Section 25.05.330B. In assessing the significance of an impact, agencies are to consider whether the proposal may have a significant adverse impact in one location but not in another, whether it would establish a precedent for future actions with significant effects, or may effect public health and safety, among others. Section 25.05.330C.1 and 5.

6. Procedural provisions of SEPA require consideration of the impacts to the elements of the environment identified in Section 25.05.444. Section 25.05.060D.1. Environmental factors are to be considered in a manner sufficient to establish prima facie compliance with the procedural requirements of SEPA. Sisley v. San Juan County, 89 Wn.2d 78 (1977). Part of these procedures require that attention be given those impacts that are likely, not speculative. Section 25.05.060D.1. Agencies are to consider short-term and long-term impacts, and the indirect as well as the direct impacts of a project. Section 25.05.060D.3 and 4. Impacts include those effects caused by growth as well as the likelihood the proposal will serve as a precedent for future actions. Section 25.05.060D.4.

7. Procedural defects in the adequacy of the checklist and failure to circulate the documents to and consult with local agencies or agencies with jurisdiction are raised here. The Examiner agrees that the checklist is unusually conclusionary and contains little or no information on probable or known impacts of the projected use in the industrial area. In usual SEPA analysis, one would require and disclose additional information before making a threshold determination. Under such circumstances the checklist would have been a more full public disclosure document and the supporting documentation would have provided readers with a better understanding of the conclusions reached in the DNS. However the checklist is only a tool to assist the decisionmaker in making threshold determinations. Section 25.05.315. If the agency is not satisfied with the sufficiency of the information for a threshold determination it may, but is not required to consult with other agencies with special expertise on potential impacts, perform further studies, field investigations, or take other such means to supplement the information to aid in the determination. Here the checklist was not the only tool used

for the threshold decision. The DNS references the Director's reports of March 24, 1989, and August 7, 1989, the records and files of the agency and the experience of the agency. When the checklist is considered with these other reports and information, it is adequate to meet procedural requirements.

8. The notice and circulation requirements of SEPA were also met. Section 25.05.502F and 25.05.510. DCLU was not required to circulate the DNS and environmental checklist to city departments pursuant to Section 25.05.340B.2, because the DNS was not issued pursuant to Section 25.05.340B.1. While it may have been advisable to solicit comments and information from such city departments, it was not required under the SEPA procedural provisions. As to other agencies with jurisdiction, there were none. See Section 25.05.714C.

9. The more important procedural issue is whether the information submitted as a whole establishes that environmental factors were considered in a manner reasonably sufficient to establish prima facie compliance with SEPA under Sisley, supra, and Sections 25.05.330 and 25.05.335. Although the threshold analysis was more cursory than it would have been under a site specific proposal, when considered as a whole with the information on the checklist; the prior environmental analyses; the background reports of March 24, 1989 and August 7, 1989; the underlying studies of those reports; the public hearings and comments over the course of the previous year; and the agency's own experiences and involvement with adult cabarets and similar uses, the Hearing Examiner concludes that environmental factors were considered adequately for procedural compliance with SEPA, except as provided and discussed below.

10. The Hearing Examiner concludes that the DNS fails to adequately address or mitigate the adverse impacts of adult cabarets on industrial land use and public safety due to the known attendant crimes (including related problems of public services, access, lighting, and street use and conditions) in the Duwamish Industrial area. Most of the reports and environmental discussion focused on downtown impacts and commercial neighborhood impacts. The specific problems this proposal would have in the industrial area were largely unaddressed except for the Director's report on August 7, 1989, wherein hazards and impacts to the industrial area were noted.

11. In the instant appeals, DCLU has admitted that its environmental analysis of the proposal on the Duwamish area was cursory. Its explanation of this is that the proposal is a nonproject action and that the impacts on the Duwamish therefore were speculative. It is true that the DNS need not identify and evaluate all remote and speculative consequences of an action and that a better assessment of environmental consequences of future projects would normally be deferred until specific plans are presented. Nevertheless, an "agency cannot close its eyes to the ultimate probable environmental consequence of its current action." Short v. Clallam County, 22 Wn. App. 825, 834 (1979); SEAPC v. Cammick II Orchards, 49 Wn. App. 609, 614 (1987).

12. The ultimate probable environmental consequences of the proposal on the Duwamish industrial area are not so speculative and remote so as to have an undiscernible ultimate probable environmental consequence. Since six of the seven existing adult cabarets are to be terminated by the proposal, they would have to move somewhere or go out of business entirely. If they remain in the City, many would more likely than not relocate to the Duwamish industrial area, since the land there is cheaper than downtown and there is more area for the businesses and off-street parking. DCLU conceded this at the hearing. The worst case scenario immediately is that all six would locate to the industrial area. Once established, other adult uses such as massage parlors, adult bookstores, and other uses similarly not prohibited in the zones would tend to congregate, as the evidence discloses. Furthermore, new adult cabarets may open and locate there in the future. A worse case scenario of the known impacts of adult cabaret uses specific to the industrial area could have been done, but was not.

13. Moreover, it is particularly important that environmental review of the proposal be as thorough as possible at this stage of the process for the industrial area, unless it is mandated that later environmental review will occur. DCLU indicated in the hearing that in the industrial area, development under 12,000 square feet would be exempt from SEPA review. Development under 4,000 square feet would be exempt from further review in the downtown areas. There is some questions as to whether change of use would trigger an environmental review later. The parties appear to agree that most adult cabaret uses are under 12,000 square feet. Therefore, there is a serious

likelihood that no site-specific environmental review will occur to address the specific impacts of adult cabarets which seek to locate at a particular site in the industrial area, absent some condition or technique applied to trigger such review in the proposal. This is not the case or circumstance where phased review would be adequate or assist in the decisionmaking process, as is presented as an option under SEPA in Section 25.05.060E.

14. The evidence establishes that the presence of adult cabarets in any community is likely to increase crime there. Where there is a concentration of adult establishments and increased patronage, the crime rate increases further. Adult cabarets are a known public safety problem now in other Seattle communities. Adult cabarets already consume considerable time of the Vice detectives of the Seattle Police Department. The police spokesman indicated that police involvement in adult cabaret complaints under the City's licensing enforcement provisions had been significant. He was not specific with numbers or other quantifiers. It is not foreseen that police involvement would decrease with a shifting of the locations of adult cabarets from the neighborhood commercial areas to downtown or the industrial area. In fact, the evidence is persuasive that the opposite result may obtain, particularly if adult cabarets locate in the industrial area.

15. Studies from various other cities around the country which have analyzed adult entertainment use impacts on the communities in which they exist indicate that crime significantly increases where adult uses are established, even where there is one adult use only. Where adult uses are congregated, crime is even higher.

16. In the instant appeals, evidence establishes that if adult cabarets were to locate in the Duwamish industrial area there would be a need for increased police presence, better access, better streets and increased lighting, both on the streets and generally in the areas where adult cabarets located. These would be necessary to minimize the public safety risks to employees, patrons, passerbys and persons working or living in the area; to reduce the opportunities for vandalism and other property crimes; and to provide for quicker and safer police response to complaints of criminal or disruptive and disorderly behavior there. It is possible there could be a spillover of the cited increased criminal activity in the Georgetown residential community or the commercial community in the Duwamish area to the south. The evidence, however, at this point is mostly speculative. Less speculative, however, would be the reduction of police presence and increased response time to crime complaints within the Georgetown community, unless considerably more police were assigned to these areas. The Georgetown community had the highest crime increase in the Seattle area for 1989. Their needs for police presence and assistance is evident. These needs would be adversely impacted with increased criminal activity in the Duwamish area once adult cabarets are established there.

17. In the DCLU report in August of 1989, Director indicated that public safety impacts on the industrial area by the siting of adult uses there were serious and greater than for the downtown alternative. He indicated this was so particularly because of the development pattern in the Duwamish of large lots, large blocks, deadends, difficult access, lack of adequate lighting, the layout of the sites, open lots and open storage, lack of oversight by other activities occurring there at night, lack of police presence, and greater difficulty in patrolling. In his opinion then, the impacts of adult cabarets in the industrial area could not easily be mitigated by increased police presence. Further, he indicated the risk of the unknown as there were no adult cabarets in that area at present. Therefore, he recommended against use of the industrial zone for any adult entertainment uses. Such a position is inconsistent with the Director's present statement in the DNS at issue that the environmental impacts of the proposal (which include public safety and police services) are minor in nature and limited in scope.

18. The earlier reports included all adult uses, not just adult cabarets. Nevertheless, DCLU and the Council both recognize that adult cabarets are adult entertainment uses just as adult motion picture theaters and adult panorams are, and that all have similar effects. Adult motion picture theaters and adult panorams are presently prohibited in the industrial zones; they are recognized in the industrial policies and codes as incompatible land uses for such zones. They are not considered commercial uses supportive of the industrial functions there. The same can be said for adult cabarets. Such uses neither support the industrial functions nor contribute to the health and prosperity of the industrial uses present there. They do not encourage greater industrial use developments and employment, but discourage it by

taking up valuable industrial space. The evidence is persuasive that such uses have a blighting effect on the areas in which they exist and whose very presence persuades other businesses to leave or not locate near them. Such use would conflict with the industrial policies for the zones.

19. Industrial land in the City of Seattle is a scarce commodity. There is a need to preserve as much land in the industrial zones for the preferred industrial and manufacturing uses. Considering the commonality of adult cabarets with other adult uses, considering the inconsistency of adult uses in the industrial areas and the attendant public safety and land use impacts related thereto, DCLU recommended against permitting adult cabarets in the Duwamish industrial zone and recommended they be allowed only downtown within the same zones permitted for other adult uses. DCLU has not retreated from this recommendation.

20. At the hearing and in the DNS, DCLU stated that the land use impacts resulting from adult cabarets in the industrial area would be mitigated by restricting the boundaries within which they could be located within the Duwamish area. The Hearing Examiner is not so persuaded. While the impacts on the rest of the industrial land would be decreased by the absence of adult cabarets in industrial areas outside the zones, the impact within the permitted industrial zones would be increased, inasmuch as such uses would be congregated there. All the harms attendant to concentration of such establishments would occur and increase with growth of these or related uses. The dispersion requirement would mitigate this cumulative impact but not eliminate it.

21. DCLU also contends that the proposal is not inconsistent with present industrial policies adopted in 1987, claiming the current policies and code permit the entertainment use under which adult cabarets have been regulated. Therefore, DCLU contends the establishment of the use as proposed would not be significant. Present industrial policies for IG1 and IG2 favor industrial use and contemplate permitted uses other than industrial only to the extent such uses reinforce the industrial character of the area and do not conflict with industrial activity. Industrial Policies, Implementation Guideline 5. Commercial uses which encourage industrial development and employment opportunities in the area are to be permitted outright. Certain uses, such as artist studio/dwellings, high impact uses, large fast food restaurants, and lodging are designated as administrative conditional uses to ensure compatibility and public safety and welfare. Implementation Guideline 5. The Industrial policies do not mention adult entertainment uses. The Land Use Code for IG1 and IG2 permits certain commercial entertainment uses, including performing arts theatres. Section 23.50.012. Adult cabarets are not mentioned as such a use; adult cabarets and panoramas are, however, and are prohibited. It is therefore concluded that the proposal is inconsistent with present industrial policies.

22. From the evidence presented and with the information disclosed, the Examiner is persuaded that adult cabarets pose a serious adverse public safety impact and land use impact by location in the Duwamish industrial area, and that unless additional mitigation measures are applied to proposal, those impacts would be significant. However, the Examiner is also persuaded that adequate environmental study of the public safety and land use impacts of these uses on the Duwamish area was not done sufficiently for the threshold environmental analysis on these issues. A more complete evaluation of the adequacy of police services, lighting, street access and other transportation concerns as well as information on the number of businesses operating at night, a projection of the number of persons employed at night there and an understanding of the transportation and streets used is also needed to address the public safety issues to fully consider the proposal's impacts in the industrial area. While there was evidence introduced at the hearing supplementing the information in some of these areas, such evidence was often conclusionary and mainly unsupported by specific facts and details. Therefore a more detailed study of these areas needs to be done and a supplemental threshold environmental analysis prepared.

23. Such supplemental analysis should also evaluate in more detail potential mitigating measures, pursuant to Section 25.05.330A.3. In this regard, it is suggested that DCLU examine an administrative conditional use possibility or other measures which could ensure later site-specific environmental review, and consider possible mitigation to accomplish signage controls to reduce blight, to increase police presence and response time, upgrade lighting, improve access (perhaps by a location restriction to those streets providing adequate police and emergency access). DCLU should also


consider applying dispersion to prevent siting of such uses in close proximity to present residential buildings within the industrial area.

24. For the foregoing reasons and in accordance with Section 25.05.680B.3, this matter should be remanded to the Director for further evaluation and study on the issues and requests raised and for preparation of a supplemental threshold environmental analysis.

Decision

The Director's decision is REMANDED for further studies and environmental analysis related to the Duwamish industrial area in accord with the foregoing and for preparation following of a supplemental threshold analysis.

Entered this 2nd day of April, 1990.



Dona Cloud
Deputy Hearing Examiner