

BEFORE THE HEARING EXAMINER

CITY OF SEATTLE

In the Matter of the Appeal of

MADISON PARK COMMUNITY COUNCIL

FILE NO. W-80-022

from an environmental determination
of the Department of Community
Development

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER GRANTING
MOTION TO DISMISS

Findings of Fact

1. This case was originally heard on June 5, 1980, under File No. W-80-006. The appellant claimed that a Declaration of Non-Significance (DNS) prepared by the Department of Community Development (DCD) was insufficient. The DNS itself concerned an application to construct townhouses at 2003-2011 - 42nd Avenue E. in the Madison Park community of Seattle. That case was not finally resolved. The decision of the Hearing Examiner remanded the matter to DCD for further consideration in light of a finding by the Examiner that there was likelihood that approval of the project would lead to a trend of more townhouse development in the zone in which the project was to be located. That trend, coupled with the predominately single family residences in the small RD 5000 zone, could potentially prevent a rezone of the area to RS 5000. Such a rezone is and was a goal of appellant.

2. On October 28, 1980, a revised DNS was issued by DCD. Appellant has again objected to the DNS and a further hearing was held under this cause number on December 29, 1980. At that hearing, the president of the Madison Park Community Council read a prepared statement, a copy of which is in the file. No other testimony or evidence was presented by appellant or on its behalf. A representative of the appellant earlier stated in a prehearing conference that the appellant would present oral and documentary evidence at the hearing. On that representation, the Hearing Examiner took under advisement a motion by the respondent to dismiss the case. The motion was apparently premised upon appellant's failure to prosecute the action.

3. An attachment to the DNS dated October 22, 1980, sets out the Department's position with respect to anticipated future growth in the zone in question and its immediate vicinity. Said attachment appears in the file as part of the DNS and is incorporated herein as if fully set out. The contents of said attachment have not been impeached. Appellant merely concludes that it disagrees with the conclusions stated therein, although appellant failed to present any evidence of its own as to why the attachment is deficient or in what way its methodology is suspect. The attachment shows, among other things, a decrease in population of the zone during the last decade although there has been an increase in the number of dwelling units in the same area.

4. Said attachment, referred to in the preceding finding, supra, also shows that 91% of the housing stock of the zone in question is currently in single family residences (SFR's). In order for there to be a rezone from the current RD 5000 status to that of RS 5000, it is generally necessary that no more than 70% of the structures in a zone be SFR in nature. It is plain from the attachment and the DNS itself that the proposed project will not diminish prospects for rezoning the area.

5. Because of common ownership of contiguous lots in the zone, there is the prospect for further townhouse development. DCD estimates that there is a potential for no more than 18 or 19 additional townhouse-type dwelling units. Even assuming these potential sites are to be developed into townhouses, 82.8% of the structures in the zone would be SFR.

6. At this time, there is a possibility for a limited trend towards further construction of townhouse type housing in the zone in question. However, that potential is limited by land ownership patterns. In other words, the potential for such development is not infinite. There is no evidence that land ownership patterns are changing so as to encourage common ownership of contiguous lots thereby increasing likelihood of townhouse development. In addition, the development of townhouse housing will not have a significant impact on the community in view of (1) the decrease in the community's population generally, and (2) the low number of additional persons who would reside in the community if such development proceeds to the maximum extent envisioned by DCD.

Conclusions of Law

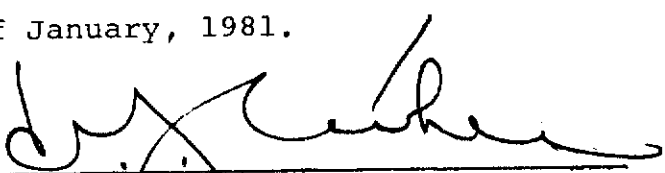
1. The actions of DCD must be presumed to be correct. The burden is on the appellant to demonstrate improper or incorrect action. Ordinance 105735, Section 20(7). Appellant, by failing to come forward with evidence, failed to meet its burden. However, because this matter appears on remand from an earlier decision which was, in part, favorable to the appellant, it can be claimed that appellant's burden is, perhaps, mitigated in view of the above findings that it is improbable that the proposed project will have more than a moderate impact on the environment.

2. After review of the evidence in the file, including the DNS and attachments thereto, it appears that the DNS process of DCD was adhered to and that the DNS is factually and substantively correct in its projections and findings. The finding that the proposed project will not have a significant adverse impact on the environment is proper.

3. In view of the foregoing, the motion of the City to dismiss the appeal is GRANTED, and the action of the DCD with respect to the remand of this matter in File No. W-80-006 is hereby held to be proper and lawful.

4. Any portion of the preceding opinion in this matter under File No. W-80-006 which interprets ordinances of the City of Seattle to require that 70% of the dwelling units in a zone be SFR in order to obtain a downzone to RS classification is hereby withdrawn as erroneous.

Entered this 20th day of January, 1981.


Kelby D. Fletcher
Hearing Examiner Pro Tempore

Notice of 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 20 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977).

If a use permit is required for this proposal, it is subject to a separate administrative appeal pursuant to Section 25.40 of the Zoning Ordinance (86300, as amended).