

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

In the Matter of the Appeal of

EASTLAKE COMMUNITY COUNCIL

FILE NO. W-76-002

from an environmental determination
of the Superintendent of Buildings

The decision in this matter is as follows: (1) The Superintendent is required to prepare a supplemental environmental impact statement, pursuant to WAC 197-10-695, with regard to the elements of the environment set forth in conclusion no. two. (2) The September 20, decision of the Superintendent granting environmental approval is reversed. Final environmental approval can only be rendered after completion of the licensing (permit) process.

Introduction

The appellant, the Eastlake Community Council, filed an appeal from a decision of the Superintendent, dated September 20, 1976, granting conditional environmental approval for a proposed hotel to be located on the west side of Eastlake Avenue East between East Roanoke and East Edgar Streets. The appellant also alleges that the environmental impact statement, hereinafter EIS, was inadequate.

The appellants exercised their right to appeal pursuant to Section 20, Ordinance 105735, which integrates into City programs the policies and procedures of the State Environmental Policy Act of 1971 (SEPA).

This matter was heard before the Hearing Examiner on November 15, 1976.

Parties to the proceeding were the appellant, represented by Harold H. Green, the Superintendent represented by Mary Jenny, and the developer (Prisk/Nyquist & Associates) represented by Edward A. Rauscher.

After due 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 this appeal.

Findings of Fact

1. Prisk/Nyquist & Associates have proposed to construct a six-story, 72-unit hotel on the west side of Eastlake Avenue E. between East Roanoke and East Edgar Streets. The legal description is: lots 10, 11 and 12, Block 4, Denny Fuhrman Addition to the City of Seattle.

2. The building would be located on a 16,500 square foot site and have a height of 58 feet above medium grade. Along Yale Terrace the height of the structure would be 61 to 74 feet above grade. A 68-vehicle garage would be located on two levels of the building. The northern 100 feet of the site is zoned General Commercial (CG) and the southern 50 feet is zoned Multiple Residence (RM). A hotel is a permitted use in the CG zone.

3. Although no building or other permit was applied for, the Superintendent proceeded with an environmental

analysis of the proposal. The draft EIS is dated March 26, 1976, and the final EIS is dated August 24, 1976.

4. The appellant, Eastlake Community Council, a non-profit community organization, filed an appeal on October 4, 1976. The appellant alleges that the final EIS does not adequately discuss certain elements of the environment. In the following paragraphs the elements at issue will be considered.

5. The appellant alleges a failure to adequately discuss soils with specific regard to potential ground water problems. A resident of the area testified that he had personal knowledge of ground water problems but no technical data was provided to support this allegation. The Superintendent states that soils studies will be done at a later date.

6. In the EIS the problem of storm water runoff is recognized. During heavy storms the existing sewer system is inadequate to contain the runoff and there is flooding of intersections in the area. To mitigate this problem the need for a holding tank is acknowledged in the EIS. The appellant alleges that a discussion should have been contained in the EIS as to the amount of runoff that would be generated by the proposal and whether or not it would overload the existing sewer system.

7. The appellant alleges a failure to adequately discuss noise with specific reference to noise generated by a 68-car, two-level open parking garage facing low density residential properties along Yale Terrace. In the EIS at page 36 the Superintendent concludes that noise will be an unmitigated impact.

8. Light and glare is not discussed in the EIS except for a statement under unavoidable adverse environmental effects that: "The structure would cast some shadows on adjacent properties to the north, northwest, and northeast, varying in degree, depending on the time and season." The appellant alleges that a discussion of this element is required since the impact may be significant.

9. The elements of land use, population, and housing are not discussed in the EIS, except for general statistics relating to housing and population. The appellant alleges that the foregoing elements should have been discussed.

10. With regard to public services, the Fire Department responded by stating its concern with regard to possible access problems to the site. The Superintendent states that the Fire Department's concerns would be a condition of the building permit. The appellant alleges that discussion of the element of fire protection did not contain sufficient detail and that there was a failure to discuss crimes against persons.

11. The appellant alleges that the discussion of the element of aesthetics is inadequate and that without building plans it is not possible to evaluate this element. The basic dimensions of the building are known but no plans or drawings are available.

12. "Goals for Seattle" and the Lake Union Resolution of August 1, 1973 are attached to the EIS but not discussed as to their applicability to the proposed project, other than the fact that some conflict exists. The appellant alleges a detailed discussion is required.

13. Under alternatives there is a discussion of no-action, open space, single-family residential and commercial/business. The appellant alleges that multi-family residential should have been discussed as an alternative.

14. In a document entitled Findings and Decision of the Superintendent, dated September 20, 1976, environmental approval was granted for the hotel project with the condition certain landscaping be provided. No application for a building or other permit had been filed with the Superintendent when his decision was issued and none had been filed as of the date of the hearing.

15. At the hearing the Examiner reserved his ruling on whether or not testimony by Mr. Walsh, as to the intent of certain provisions of Ordinance 105735 would be considered. The testimony was not considered in making this decision since it was not made by a legislator but rather by a staff person.

Conclusions

1. This matter is remanded to the Superintendent for the preparation of a supplemental EIS pursuant to WAC 197-10-695. The Superintendent has failed to adequately analyze and discuss in sufficient detail or has omitted discussion of elements of the environment that may be significant. In reviewing the EIS it was recognized that WAC 197-10-440(8)(a), which is adopted by a reference in Section 2 of Ordinance 105735, does not require all impacts of a proposal to be discussed in detail but only those which are either known to be or may be significant. The detail required must relate to the environmental difficulties created by the proposal. Finally the standard for the EIS must be based on reason and not an impossible ideal.

2. In the following paragraphs it is concluded that the elements of water runoff, noise, light and glare, land use, population, housing, aesthetics, goals and alternatives require either discussion and analysis or more detailed discussion and analysis. This does not mean that a new EIS is required but only that the foregoing elements be considered and expanded upon in a supplemental EIS.

Soils

3. The discussion of soils in the EIS is adequate in that a recognition is made of the need for detailed soils studies at a later date. This is basically an issue of timing and to require the preparation of soils studies at this stage, when there is no substantial evidence in the record to indicate a problem is not a violation of SEPA.

Runoff

4. Additional detail is required in the discussion of the runoff problem. WAC 197-10-440(8)(a), which describes the contents of an EIS, provides that the known impacts of a proposal shall be discussed in detail. In this case there is a known impact (water runoff) but there is a lack of detailed discussion. The type of details necessary are the estimated runoff from the proposed project and its impact on the existing sewer system. An estimate as to the size of the holding tank that would be necessary should be included. Without this type of information, one can only guess as to whether or not the holding tank is workable and will result in mitigation.

Noise

5. The discussion of noise is adequate except for noise emanating from the 68-car, two-level garage. WAC 197-10-440(11) requires the EIS to contain a description of reasonable alterations that could avoid or mitigate the adverse impact. In this case the possibility of enclosing the garage should be considered as a mitigating factor.

Light and Glare

6. The EIS should contain a discussion of the element of light and glare. Given the height and width of the building in relation to adjacent residential properties and the inclusion of an open garage, the need for a detailed discussion is apparent. See WAC 197-10-440(8).

Land use, Population and Housing

7. Given the nature of the proposal, the elements of land use, population and housing should have been discussed. WAC 197-10-060(3) requires a consideration of the direct impacts of a proposal as well as its reasonable anticipated indirect impacts. The type of issues that need to be considered are the effect if any, on existing housing, population density, and land use. The mere inclusion of statistical tables without discussion is not sufficient.

Public Services

8. The discussion of public services was adequate since the significant problems were identified. Given the present stage of the proposal, it is reasonable to wait until detailed plans are available for a final review by the Fire Department.

Aesthetics

9. The discussion of aesthetics is inadequate and does not comply with the provisions of WAC 197-10-440(8). At page 29 of the final EIS, the Superintendent discusses possible types of architectural treatment and their possible impacts. It would have been far more productive for the Superintendent to request information from the project developer on this point. In fact without additional information there can be no reasonable discussion of aesthetics or of possible mitigating measures.

Goals

10. City goals should have been discussed with regard to their applicability to the proposal. Section 15 of Ordinance 105735 provides that city and neighborhood goals are to be included as an element of the environment. Since goals are an element of the environment and have some acknowledged applicability to the proposal, the inclusion of goals as an appendix without discussion and analysis does not meet the requirement of WAC 197-10-440(8).

Alternatives

11. The discussion of alternatives is adequate except for the failure to consider multi-family residential. WAC 197-10-440(12) requires a discussion of reasonable alternatives. In this case multi-family residential is a reasonable alternative considering that a portion of the property is zoned RM and given the surrounding residential uses.

Decision of the Superintendent

12. The procedure utilized by the Superintendent in preparing a written findings and decision, dated September 20, 1976, which gives final environmental approval, prior to the filing of an application for a building permit, is in conflict with RCW 43.21C.030, WAC 197-10-030 and 710 and Section 4 of Ordinance 105735.

13. The purpose of the environmental review process is to insure that environmental values will be given consideration in decision-making. "SEPA requires an environmental impact statement in order that full information is available before governmental action is taken, with or without the imposition of conditions." Norway Hill v. King County Council, 87 Wn.2d 267, (1976).

14. The integration of the environmental review process into existing procedures is required by the SEPA Guidelines. Section 4 of Ordinance 105735 provides:

- (1) To the fullest extent possible, the procedures required by this ordinance shall be integrated with existing planning and licensing procedures used by the City. These procedures should be initiated early and undertaken in conjunction with other governmental operations to avoid lengthy time delays and unnecessary duplication of effort. A private applicant, may and is encouraged to, file a completed environmental checklist prior to the filing of an application for a license.
- (2) Environmental documents shall accompany a proposal through existing review processes...

15. In the proposal under consideration the decision-making stage is when building or other permits are issued, denied or conditions imposed by the Superintendent. It is clear from a reading of Section 4 of Ordinance 105735 that the EIS should be reviewed by the Superintendent prior to his making a decision on whether or not to issue a building or other permit. However, by issuing final environmental approval prior to the filing of an application for a permit the Superintendent forecloses, or at a minimum, restricts his options regarding the imposition of conditions at the decision-making stage. If the requirement that the EIS accompany the proposal through the review process is to have any effect, other than a transfer of a document, then final environmental approval cannot occur until the permit process has been completed.

16. The issuance of a decision giving final environmental approval prior to the filing of an application for a permit is contrary to the integration requirements of Section 4 of Ordinance 105735. The intent of SEPA is to have the environmental information accompany the proposal through the review process and not to be segregated into a separate decision-making process. As the Supreme Court stated in Norway Hill v. King County Council, supra, the EIS is the mechanism by which the consideration of environmental values is accomplished.

17. The foregoing conclusions do not mean that initiation of the environmental review process prior to filing an application for a building or other permit is prohibited. In fact an applicant is encouraged to complete an environmental checklist prior to filing an application for a license. See Section 4 of Ordinance 105735. The need to begin the review process, however, does not mean that a final environmental decision should be made before an application for a license is even filed.

18. In the process of providing adequate environmental information to the decision-maker, it is essential that the project developer be given information as to the conformity of his project with existing governmental procedures and policies. This goal must be balanced against the rights of neighboring property owners and residents to present their views on the impact of the project. It is in the best

interests of all parties that a developer not be required to incur large costs prior to an identification of the risks involved. The decision in this case is not intended to require the developer to expend large sums of money in preparing building plans. It may be that a supplemental EIS could be prepared without the filing of building plans. However, adequate details would be required in order to evaluate certain impacts. The principal features of a proposal and its impacts upon the environment must be capable of being reliably identified. See WAC 197-10-055.

19. The September 20, 1976, decision of the Superintendent is reversed. Final environmental approval of the project can only be issued after the completion of the licensing (permit) process.


20. The appellant, Eastlake Community Council, clearly comes within the definition of "interested person" as defined in Section 3 (2) of Ordinance 105735. Accordingly, the appellant has standing to file this appeal.

Decision

The decision is as follows:

- (1) This matter is remanded to the Superintendent for the preparation of a supplemental EIS pursuant to WAC 197-10-695. The elements that must be included are set forth in conclusion number 2.
- (2) The September 20, 1976, decision of the Superintendent granting environmental approval, prior to the filing of an application for a building or other permit is reversed. Final environmental approval can only be rendered after completion of the licensing (permit) process.

Entered this 7th day of December, 1976.



William N. Snell
Hearing Examiner