

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

CARKEEK WATERSHED COMMUNITY
ACTION PROJECT

FILE NO. W-85-002

from an environmental determination
of the City of Seattle Department of
Engineering

Introduction

Appellant challenged a declaration of non-significance issued for a proposed sewerline crossing of Venema Creek, Carkeek Park, Seattle.

The appellant exercised the right to appeal pursuant to Section 25.05.680, Seattle Municipal Code.

Parties to the proceedings were: appellant, pro se, by Nancy Malmgren and Sheila Kelley, and the Seattle Engineering Department by James E. Fearn, Jr., assistant city attorney.

This matter was heard before the Hearing Examiner on July 9, 1985. The record was reopened to July 22, 1985, to accept comments relative to appellant's claim that the Hearing Examiner proceedings should be declared null and void since the DNS should have been withdrawn prior to the Hearing Examiner proceedings.

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

Findings of Fact

1. The Seattle Engineering Department (SED) proposes to install approximately 900 ft. of an 8 in. sanitary sewer line. A portion will pass beneath a branch of Venema Creek at one location and connect to an existing sewer south. Appellant challenged the declaration of non-significance (DNS) issued by the SED for the proposal and submitted this appeal. SED prepared the environmental checklist upon which the DNS was based.

2. The proposed sewer line is designed to enable houses at the southerly end of 11th Avenue N.W., near N.W. 120th, to convert from their near-capacity septic tank system to a gravity sewer system. Some 6-11 households would be added to the combined sewer flow. Although the Seattle Engineering Department is considering alternatives to the proposal, no alternative has been presented or evaluated on an environmental or other basis.

3. The proposal is to generally bury the 8 in. plastic pipe with 2 ft. of cover. Proponent considers it desirable to have more cover at the Venema Creek stream which would be temporarily diverted during stream bed excavation and laying of the pipe. Environmental Checklist, Section (B)(3)(a), p. 6.

4. The proposal further is to bend the pipe around (or tunnel under) existing trees, and to cut the 1 ft. wide or so receiving trench perpendicular to the generally east-west contour line. According to the checklist, shear boards will be placed across the slope's backfill to control erosion along the trench line.

5. Regarding equipment proponent indicates plans for hand digging on the north side of the stream. While it "was not specified" whether construction equipment would be used on the

south side of the stream, according to the SED lead witness, it is a possibility that a motorized, probably all-terrain vehicle, will be used to place needed rock on the site. The witness added that Park Department approval would be necessary for any building activity and equipment within the park.

6. SED plans call for three rock wiers, or mini-dams, to be located in the stream to prevent erosion of the stream bed. The checklist states as follows:

To control possible stream erosion we will place approximately 6 cu. yds. of 6 inch minus crushed rock and up to 31 tons of 2 and 3 man quarry rock. Approximately 6 cu. yds. of washed gravel will be placed in the stream bed.

Checklist Section (B)(1)(e), p.4.

7. A "2 man rock" is a rock of such size and weight that it requires "two men" to move or carry it any distance. Existing stream rocks that are approximately 3 ft. across are larger than a "2-man rock." Section (A)(11) of the checklist, p.2, indicates that the rock proposed for the stream "will be placed by hand or by a crane operating from the bank."

8. Completed wiers could collect leaves, twigs, siltation or other clutter that would have to be removed. On the other hand the wiers could produce a ponding effect which could be beneficial to some aquatic life.

9. Disturbance of the stream bottom, such as by excavation, on a short term basis, would destroy that section's insect population. The insects are food for the fish downstream.

10. Section (B)(4)(b) of the checklist, p.9, indicates that some small shrubs will be removed in connection with the project, but that clearing will be kept to a minimum. Trees and other vegetation near the stream provide shading for the stream, which in turn affects water temperature and aquatic life. It is considered particularly important to cutthroat trout that the water remain cool. The vegetation also serves as habitat for insects which, when they fall into the stream, provide food for the fish, and can provide some shelter for fish from predators. Replanting can mitigate these effects, however.

11. In addition to the plants listed at or near the site at Section (B)(4)(a) of the checklist, p.8, the inventory of lush vegetation includes maiden hair and deer ferns; marsh buttercup; salmon berry; fox glove and others. Appellant's Exhibit 4. The maiden hair fern is rare to the area. The maiden hair and deer fern plants are both tender plant materials that require considerable maintenance and in fact are "endangered." The subject area of Carkeek Park is also the only area of the park offering 4-6 ft. diameter firs and cedar.

12. The Seattle Parks Department approval of the general sewer outreach project was conditioned upon deletion of the Carkeek section from the plans and removal of this subject DNS for Carkeek Park.

13. The Parks Department opposition focused on the potential destabilization of the steep slopes and tree roots; and on the impact of the heavy construction equipment necessary to engage in the operation. The Park Department witness' uncontroverted testimony was that the equipment would need to go in a minimum of some 200-300 ft. along the approximate 2 ft. wide trail. Because previous sewer system construction in Carkeek Park resulted in a widening of a foot trail to allow vehicular access to the man-holes, from which the trail has yet to recover, one Parks Department witness took specific issue with the response of Section (B)(12)(b) of the checklist, p.14, that the construction

activities would "temporarily" disturb the use of the walking area.

14. Additionally, the Parks Department Deputy Superintendent of Operations stated that present storm and sanitary sewer lines in Carkeek Park have proved deleterious to the park. As an illustration, the Parks Department witness testified of a present line running parallel to Venema Creek overflows during heavy storm periods, causing a manhole cover to "pop-up," and raw sewage to flow into the creek and into the park area "1-7 times per year."

15. The environmental checklist lists Venema Creek as the "only surface water affected" by the proposal. Section (B)(3)(a), p.6. Venema Creek is a tributary of Piper's creek. The latter flows into puget Sound.

16. The salmon and trout that now spawn in the gravel-covered beds of Venema Creek are a result of a specific restoration project. The gravel functions to prevent the eggs from being washed away.

17. According to the checklist, some salmon spawn in the area of Venema Creek near the project. Section (B)(5)(c), p.9. In fact, only trout spawn in the portion of Venema Creek that is the subject of this appeal.

18. Although salmon do not spawn as far north in the creek system as the trout, rubbish and other obstacles in the salmon's "migration route" could impede the salmon's return upstream to their spawning ground.

19. As it relates to the proposed crossing site, SED proposes installation of a "filter fabric fence" within the stream "to remove sediments from the water downstream of the work."

20. The subject site is one of steep (up to 50%) slopes. There are leaning trees on the bank. To appellant, this indicates slope movement/instability. Although the area has no record of landslides, some soil slippage due to human factors has occurred, and the area is classified as environmentally sensitive due to its steep slopes.

21. Venema Creek courses through the area of steep banks. Some soil erosion presently occurs into the creek after or during heavy rains. Whether occasioned by natural or human precipitated events, erosion potentially adds silt to the stream. In turn the silt causes potential cover and suffocation of the eggs located within the stream.

22. The Venema Creek crossing site, approximately 8 ft. wide, is to be accessed from the south. The trail that begins beyond the vehicular access point is less than 2 ft. wide, marked by virgin undergrowth and undulations in grade.

Conclusions

1. After the public hearing in which appellant detailed the challenge to the project's DNS, appellant submitted materials suggesting that the Hearing Examiner proceedings were null and void due to the specific Board of Public Works action. In appellant's view, the subject project and DNS have already been excised from all proposals. Based on appellant's submittals, the other items of record, and the City Attorney response, however, the Hearing Examiner's assessment is that the Board of Public Works decided upon the Sewer Outreach Phase I program after the 11th Avenue N.W./Carkeek Park project had been deleted from Phase I, but took no action with respect to the Carkeek Park project. Secondly, the proponent has indicated through their counsel that the Carkeek Park sewer project is "a separate and discreet Engineering Department project which will proceed independent of the Sewer Outreach Program." It is accordingly concluded that

the prior Hearing Examiner proceedings were valid and that some Hearing Examiner decision on the DNS should be issued.

2. Seattle Municipal Code Section 25.05.680 provides that environmental determinations appealed from "shall be accorded substantial weight and the burden of establishing the contrary shall be upon the appealing party." Cf. WAC 197-11-680(3)(a)-(vi). This has been interpreted to mean that the challenger must show that the determination in issue was "clearly erroneous." Brown v. Tacoma, 30 Wn.App. 762, 637 P.2d 1005 (1981).

3. The essential question in the appeal is whether the proposal is likely to have a probable significant adverse environmental impact. If not, a DNS is appropriate. Seattle Municipal Code Section 25.05.340.

4. A significant impact is present "whenever more than a moderate effect on the quality of the environment is a reasonable probability." Norway Hill v. King County Council, 87 Wn. 2d 267, 552 P.2d 674 (1976).

5. Proposals designed to ultimately improve the environment, "such as sewage treatment plant," may nevertheless have "significant adverse impacts." Seattle Municipal Code Section 25.05.330(5).

6. In the instant case, although designed to improve essential services for a number of residences, the proposal is likely to have a probable, significant and adverse effect on the quality of the Carkeek Park environment. The DNS was therefore in error and is reversed.

7. The checklist erroneously lists Venema Creek as the only surface water to be effected by the project. In fact, Venema Creek flows into Piper's Creek, and Piper's Creek into Puget Sound. The branch and tributaries at various points support fish and other natural life systems that would be significantly impacted by imposition of blockage, wiers, potential trash, silt and other results of the project. Appellant is not required to specify the expected amount of such matter or the distance the matter is expected to travel through the creek system.

8. The evidence further shows a proposal for locating up to 31 tons of rock in the stream for wiers. These rocks will be large enough to require "two or three men" to move them any distance. Proponent indicates that the rock will be placed by hand or by a crane operating from the bank. Given the volume to be located, it is more reasonable to consider that machinery will be used. The crane and any other machinery will be required to access the site at least 200-300 ft. from the end of the present motor-vehicle access-way. Some widening of the existing foot-trail would be required. This will impact the vegetation leading to and surrounding the creek itself. The evidence is adequate that the disturbance of the Park's walking area will be more than temporary, and that endangered species of vegetation, including maiden hair and deer fern will be affected by the project.

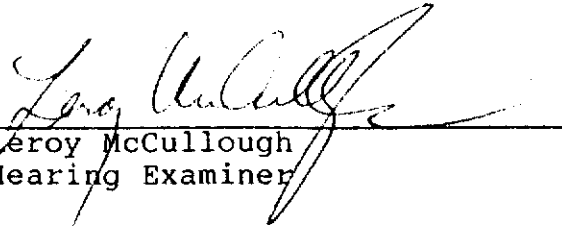
9. Excavation for subsurfacing of the pipe will disturb the stream bottom and, at least on a short term basis, destroy insect life and adversely affect the food chain. Further evidence shows a reasonable probability that silt and other by-products of the excavation-installation would impact the return of fish to the spawning area and possibly jeopardize stream bed eggs. This in turn, could defeat the intent and operation of the restoration project.

10. In light of the foregoing, the DNS was erroneously issued. The Hearing Examiner would clarify, however, that this does not mean that the proposal is defeated, nor that the proposal will definitely have a significant adverse impact. This decision means that the described significant adverse impacts are probable, and that accordingly, more detailed study is required.

Decision

The declaration of non-significance is REVERSED.

Entered this 5th day of August, 1985.


Leroy McCullough
Hearing Examiner

CONCERNING FURTHER REVIEW

Judicial review under SEPA shall without exception be of the decision on the underlying governmental action together with its accompanying environmental determinations. RCW 43.21C.075(6)(c). SEPA issues may be added to the request for review of the rezone, Council conditional use or other Council action within 30 days after the date of the underlying Council decision if a notice of intent to seek judicial review of SEPA issues is filed with the Director of the Department of Construction and Land use, 408 Municipal Building, Seattle, Washington 98104, within fourteen days of the date of this decision. Seattle Municipal Code Section 25.05.680(3).