

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

VIRGINIA WEDGWOOD

FILE NO. W-80-015

from an environmental determination
of the Department of Construction
and Land Use

The determination of the Director of the Department of Construction and Land Use (the "Department") that the Environmental Impact Statement in question was adequate is AFFIRMED and the appeal is DISMISSED.

Introduction

The appellant exercised her right to appeal pursuant to Section 20 of the SEPA Ordinance (105735, as amended).

Parties to the proceeding were appellant appearing pro se and with the assistance of her husband, Dr. Ralph Wedgwood; the lead agency, Department of Construction and Land Use, City of Seattle, by and through Assistant City Attorney, James Fearn, and the sponsor of the development in question, SEBO Development Corporation by and through its attorney, Russell Hokanson of Helsell, Fetterman, Martin, Todd and Hokanson.

This matter was heard before the Hearing Examiner on September 12 and 16, 1980.

After due consideration of the evidence elicited during the public hearing, including the exhibits admitted into evidence, the testimony of the parties and arguments of the parties, and being advised in the premises, the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. By letter dated July 28, 1980, the Director of the Department noted his approval of the final Environmental Impact Statement with respect to Inverness Park, a 61 lot housing development involving 17.7 acres at 8901 Inverness Drive N.E., Seattle. The letter stated that the adequacy of the statement was appealable to the City of Seattle Hearing Examiner and that the appeal period expired on August 12, 1980. A letter dated August 5, 1980, from appellant to the Director of the Department was received on that date by the Department and on August 12, 1980 in the Office of the Hearing Examiner of the City of Seattle. The letter generally stated three major concerns of the appellant with respect to the FEIS and the project itself. Had the letter been prepared by an attorney at law it would not be deemed to meet the requirements of Hearing Examiner Appeal Rules, Section 1.2 and Section 20(2) of the Seattle SEPA Ordinance, with respect to appeal of a determination of adequacy of an FEIS.

2. On August 14, 1980, the developer's agent addressed a letter to the Hearing Examiner requesting dismissal of the appeal for failure to comply with the appeal requirements of Section 20(2) of the Seattle SEPA Ordinance, 107501. The letter stated further that there may be unnecessary delay and cost to the project sponsor should the proceedings not be prosecuted in a

timely manner. By notice dated September 8, 1980, the Hearing Examiner stated that the hearing would be expedited pursuant to Hearing Examiner Appeal Rule 3.7, and that the appeal would be heard on Friday, September 12, 1980, and that there would then be considered a motion to dismiss the appeal.

3. On September 12, 1980, the undersigned was assigned as Hearing Examiner Pro Tempore pursuant to Section 10 of Ordinance 102228 as amended by Ordinance 106477.

4. By way of letter dated September 8, 1980, received by the Hearing Examiner on September 10, 1980, the appellant set forth two specific areas of concern with respect to her appeal. These were "the potential continued slide activity on the proposed site for Inverness Park and the adverse effect on the environment due to proposed methods of disposal of storm water from the site for the Inverness Park." These concerns were deemed to be the bases for this appeal.

5. At the hearing held on September 12, 1980, the respondents moved for dismissal of the appeal on the ground that it did not present a proper appeal with respect to a determination of adequacy by final Environmental Impact Statement. Appellant presented a prepared written statement of nine pages setting forth in detail her concerns with respect to the adequacy of the FEIS with citation to authority (the "Appeal Statement"). That statement was taken and accepted by the Hearing Examiner to be a modification of the earlier notices of appeal. As such, certain portions of said statement were deemed by the Hearing Examiner to be beyond the scope of the concerns raised by the appellant in her letter of September 8, 1980, referenced supra.

6. The Inverness Park development proposed by respondent SEBO is located west of Sand Point Way in the City of Seattle near to and above the Matthews Beach area. The site now consists of 17.7 acres which are almost wholly undeveloped. The subject property is largely uncleared and contains some deep ravines. Drainage for the property is by and through Thornton Creek which enters into Lake Washington near the Matthews Beach Park. A generalized description of the project and the topography is found at Pages 1 through 3 of the DEIS and that description is incorporated into and made a part of this finding as if fully set forth.

7. The DEIS discussion of removal of surface water is found at Pages 48 through 52 thereof including figures 9 and 10. Essentially, that plan envisioned collection of surface water in desiltation ponds and eventual drainage into Thornton Creek. The effects of such a system are described at Pages 5 through 6 of the DEIS and alternatives to the drainage in Thornton Creek are discussed at Pages 12 and 13 thereof. A design alternative discussed in the DEIS consists of installation of a tightline to carry storm water from the subject property directly to Lake Washington. The FEIS adopts use of the alternative drainage method at point 10, Pages 16 through 23 thereof. It appears from comments received with respect to the DEIS and reproduced in the FEIS that the City Engineering Department and others were concerned about the increased flow of water into Thornton Creek and the possibility of increasing siltation therein, further exacerbating the flooding problem in the Matthews Beach Park area and the residential area adjacent to and near the mouth of Thornton Creek with Lake Washington.

8. The proposed tightline would carry drainage water from the project parallel to the Burke Gilman Trail, under that trail, then along N.E. 90th Place to a point approximately 200 ft. westerly of Lake Washington and about 5 ft. in elevation above the high water line of the lake. This tightline will consist of a 30" diameter pipe capable of carrying approximately 60 cubic ft. of water per second. The outfall of the pipe would be in a rock lined swale which will extend to Lake Washington. The sides and bottom of the swale will be lined with rock. Because

of the slope of the swale, water will move at approximately 5 to 6 ft. per second, the speed necessary to scour the swale of debris and silt. At present, there exists along the course of the proposed swale a crude drainage ditch.

9. The proposed swale lies within land which is owned in fee by the Park Department of the City of Seattle. Thus, it is within a Conservancy Management area. There is no evidence to indicate any unique or rare species of flora or fauna lie within or near to the drainage ditch. Further, there is no evidence that any waterfowl currently uses the ditch or the area adjacent thereto for nesting purposes. It may be presumed, however, that nesting does occur in the general vicinity of the ditch and in the Matthews Beach vicinity because of the prevalence of such animal life along the shores of Lake Washington in general.

10. Thornton Creek enters into Lake Washington approximately 350 ft. north of the drainage ditch described in paragraph 9, supra. The water level of Thornton Creek is approximately level with Lake Washington for at least 300 ft. westerly of the intersection of the mouth of the creek with the shoreline of Lake Washington. Because the creek level is at lake level for such a distance, the creek is slow moving and tends to allow the accumulation of silt along its course prior to entering the lake. This siltation has been, in part, the cause of flooding in the area. The siltation also necessitates constant improvement and monitoring of the creek to avoid hazardous conditions. Because of the difference in elevation and the attendant difference in water velocity between Thornton Creek and the proposed swale, there is no similarity between the two and it is not reasonably foreseeable that the proposed swale will be a source of flooding. Further, because the subject property will drain through the tightline and into the swale instead of through the natural course of Thornton Creek, the volume of water draining through Thornton Creek and into Matthews Beach will be less should the proposed project be completed according to the recommended alternative drainage program set forth in the FEIS.

11. The velocity of water in the tightline and in the run-off swale is such that it is extremely unlikely that there will be any significant ground water seepage through the swale and into the surrounding earth.

12. The DEIS describes substantial changes to be made to the slope of the land adjacent to and surrounding the westerly boundary of the Burke Gilman Trail. At present, there exists deteriorating bulkheads along said westerly edge. The testimony leaves the clear impression that the hillside above the trail is gradually subsiding and could likely encroach upon the improved portion of the trail. It is proposed to build a bulkhead approximately 6 ft. from the westerly edge of the trail at certain portions and to regrade a portion of the hillside and to allow better drainage thereof through the use of a permeable drainpipe. Said pipe will be located in the same general course as the proposed tightline and there will be access thereto in at least three different points by way of silt traps. In order to clean the silt traps it will be necessary for the Department of Parks and Recreation to have a heavy truck enter on to the trail at infrequent intervals throughout the year for regular maintenance. Each trap will require approximately 15 minutes to clean by use of this machinery.

13. The Burke Gilman Trail was formerly a railroad right-of-way. It now consists of a paved right-of-way for the use of bicyclists, joggers and pedestrians. The trail itself is approximately 8 ft. wide where it is adjacent to the subject property. The right-of-way for the trail proper is approximately 100 ft. The trail presently consists of approximately two or three inches of asphalt which in turn lies on crushed rock. Underneath that surface is a foundation bed prepared by a railroad company. Testimony indicated that the subsurface foundation for the trail

may be as extensive as 6 ft. The testimony is also undisputed that the trail is presently used by motor vehicles including vehicles of the Seattle Fire Department. The use of the trail by a Park Department vehicle will not affect the trail in any significant manner.

14. It appears that no feasible alternative exists to the tightline proposal for drainage of surface water other than use of the Thornton Creek drainage area. Construction of a tightline into Lake Washington was deemed inadvisable because of problems reasonably to be anticipated with respect to maintenance and removal of silt.

15. Appellant presented no independent expert testimony with respect to any alleged deficiency in the EIS process and related to the points set out in the letter of September 8, 1980. The lay testimony, including opinions expressed therein, was rebutted by respondent's expert testimony through Messrs. Portman and Hendrick. The lay testimony of Mrs. Berteig with respect to the Burke Gilman Trail and effects of slope control bulkheads thereon did not establish that there would be any significant impact on the trail not otherwise existing or identified in the EIS.

Conclusions

1. The purpose of an environmental impact statement is to inform decision makers of the reasonably foreseeable consequences of governmental actions which may significantly affect the environment. The environmental impact statement is then but part of the process by which responsible City officials determine whether to issue approval, permits and/or licenses with respect to a project. A recommendation in an environmental impact statement is not binding on a City official. The fact that adverse consequences of future governmental action are noted in the environmental impact statement does not prevent the responsible official from giving his or her approval to a project.

2. The notices of appeal filed in this case would be inadequate were they prepared by an attorney. The letter of August 5 and September 8 are simply too vague. However, because they were prepared by lay people, the Hearing Examiner will extend to them the benefit of the doubt and deem them to be in compliance with the applicable rules of the Hearing Examiner as well as with Section 20(2) of the SEPA Ordinance. However, while the appeal was properly perfected the Examiner will deem the appeal to be concerned only with those two items which are set forth in the appellant's letter to the Examiner dated September 8, 1980.

3. With respect to the items set forth in the appeal statement dated September 12, 1980, the rulings of the Hearing Examiner during the course of the hearing were: (1) Point 1, first paragraph Page 3 of the statement: the independent review of the second soils consultant retained by the Director of the Department is done pursuant to the requirements and procedures set forth in the Grading and Drainage Ordinance of the City of Seattle, Number 108080. This is a process which does not need to be included in an FEIS. (2) Point 2, Page 4: the project in question is a phased project and is identified as such pursuant to the requirements of WAC 197-10-440, 6(d). (3) Timing of the grading, objected to on Page 4 of the statement is subject to procedures and requirements of the Grading and Drainage Ordinance, supra. The DEIS and FEIS have made, in any event, full disclosure of reasonably anticipated risks and effects upon the environment of the proposed project and alternatives thereto are also set forth, as required. The same is also true with respect to Point 3 of the statement found on Pages 4 through 5.

4. With respect to item No. 1 found on Page 5 of the appeal statement dated September 12, 1980, there is no evidence that the

project, or any part or alternative thereto, will have any significant impact on flora or fauna within the Conservancy Management area known as Matthews Beach Park.

5. With respect to the item on Page 6 of the statement, this item regarding screening of residences, is outside the scope of the appeal statement set forth in appellant's letter of September 8, 1980.

6. With respect to Point 2 on Page 6 of the appeal statement, the effects of the proposed project on the Burke Gilman Trail are adequately set forth in the FEIS and its predecessor, DEIS. The use of the trail by cleaning devices will be wholly short term and insignificant. Further, there is no evidence that the construction of the bulkhead will have any effect on the use of the Burke Gilman Trail for any period of time.

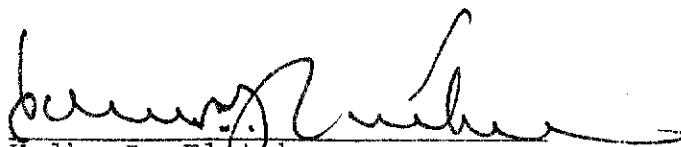
7. With respect to Point 3 found on Page 7 of the appeal statement, the discussion with respect to Thornton Creek is thorough. The discussion in the DEIS was extensive enough so that responsible local officials decided that an alternative drainage plan propounded in the DEIS was preferable to drainage into Thornton Creek. This is due, in large part, to the identification of adverse environmental effects upon Thornton Creek and its flood plain set out in the DEIS. The alternative discussed in the DEIS is set out sufficiently and accurately.

8. The FEIS must be presumed to be adequate, accurate and sufficient. That presumption is rebuttable. Appellants have simply failed to produce evidence that the statement is deficient in any way related to the points set out in the September 8, 1980 letter. While appellants harbor genuine concerns about the proposed development at Inverness Park, those concerns are more properly directed to the wisdom of proceeding with the project at the licensing and permit stages.

Decision

The determination of the Director of the Environmental Impact Statement in question was adequate is AFFIRMED and the appeal is DISMISSED.

Entered this 19th day of SEPT., 1980.



Kelby D. Fletcher
Hearing Examiner Pro Tempore

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any appeal to the Superior Court should be filed within 20 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977).