

## FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

SENTINEL HOMEOWNERS' ASSOCIATION

FILE NO. W-78-027

from an environmental determination  
of the Department of Buildings

The appeal is DENIED and the determination of the  
Department of Buildings is AFFIRMED.

### Introduction

The Sentinel Homeowners' Association, appellant, filed an appeal challenging the adequacy of the environmental impact statement, (EIS), for a project of the Public Employees Mutual Insurance Company (PEMCO).

The appellant exercised its right to appeal pursuant to Section 20, Ordinance 105735, as amended.

Parties to the proceeding were: Janet E. Quimby, attorney at law, representing Sentinel Homeowners' Association; Theodore P. Cummings, attorney at law, representing PEMCO; Ross K. Radley, assistant city attorney, representing the Department of Buildings.

This matter was heard before the Hearing Examiner on February 20, 1979 and continued for submission of certain rebuttal evidence and written argument.

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. The final environmental impact statement for the proposed action was filed on December 8, 1978, by the Department of Buildings. On December 22, 1978, a notice of appeal was filed by appellant.

2. The proposed action involves the demolition of two buildings and the construction of two 5-story buildings and a multi-level parking garage to be located on the eastern one-half of the block bounded by Eastlake Avenue East, Yale Avenue North, Harrison Street and Thomas Street. The buildings would be next to and like a building now existing on the subject block.

3. The appellant alleged that the EIS is inadequate in terms of its analysis of the impacts of the project on noise, view, traffic and parking and in its consideration of alternatives to the proposed action.

### NOISE

4. Appellant contends noise will be intensified because of reflection of freeway noise off of the proposed buildings and that the discussion of noise in the draft EIS did not consider this reflective noise. It further contends that the discussion in the final EIS(at p. 25-27) in response to a comment was inaccurate.

5. Any increase in noise due to reflection of freeway noise off the proposed buildings was shown to be negligible as disclosed in the EIS. Appellant's study of reflected noise is unreliable because of design and analysis flaws.

VIEW

6. The view from dwelling units on the west slope of Capitol Hill overlooking the freeway is an important amenity of those units. (DEIS 2-47). Appellant contends that the effect on the view from residential buildings just above the freeway and from the freeway itself were not disclosed in the EIS.

7. Existing views and view impacts are discussed at pp. 2-47, 3-27 through 3-45 and in the final EIS at pp. 18-20 with extensive use of photographs and other graphics. The photographs were taken from the first floor of each of the residential buildings from the Sahali north of East Harrison Street to the Melrose Avenue East Condominiums which are three buildings south of East Thomas Street. Each photograph had the outline of the proposed project superimposed.

TRAFFIC/PARKING

8. The existing traffic and parking condition is described at pp. 2-25 through 2-42. The expected impacts from the project traffic and parking are analyzed at pp. 3-13 through 3-22 with additional data provided as an appendix. Appellant contends that assumptions on which the analysis is based are not sufficiently substantiated.

9. The figure of 1200 employees in 1981, on which impacts are based, is suggested to be questionable because at p. 1-7 the EIS states that PEMCO is adding 100 new employees per year to the 500 now employed. It also states that employment is expected to reach 1200 in 1990. That figure is stated to include both PEMCO employees and tenants.

10. Appellant also challenges the assumption of a stable traffic volume from the present to 1981 except for increases from the project. A witness for appellant reported that traffic volume on I-5 at the junction of the off ramps to Mercer Street has been increasing over the past five years with the rate of increase from 1977-1978 at about 5%.

11. A question was raised as to the accuracy of traffic circulation data based on a survey of 78% of the employees. No showing was made, however, that such a sampling is too low for statistically valid projections.

BULK

12. Appellant contends that the EIS needs clarification as to the proposed project's lack of conformity with existing bulk regulations. Details of the project necessary for analyzing conformity are set out at pp. 1-6, 1-24. The discussion at p. 1-24 states that the gross floor area of the proposed project exceeds the bulk regulations. Further discussion of a requirement for variances appears at p. 16 of the FEIS.

ALTERNATIVES

13. The following alternatives are set out with varying degrees of detail in the EIS: no action; project without variance; project without mechanical penthouses; single building; 3-story building east of alley and 3-story building west of the alley over a 6-story garage; 5-story building on northeast corner and 5-story building to the west; 10-story building on northeast corner; 7-story and 3-story buildings; smaller building. PEMCO's objectives were not clearly stated in the summary of the proposal, however they can be ascertained from the alternatives section. The objectives for the project seem to be to obtain about 166,600 sq. ft. of floor area to accommodate space requirements for 10 years with close physical proximity for integration of services, flexibility, phased construction, and the ability to separate functions if required.

14. Appellant maintains that the objective of a uniform design, which the proponent concludes is the only way to achieve the other objectives, is not a reasonable objective and further consideration should be made of alternate design possibilities. It is further contended that the discussion of alternatives consists of rationalizations without any supporting data.

#### Conclusions

1. The appellant failed to show that the EIS was inaccurate in its conclusion that any reflected noise from the new buildings would be negligible. An explanation of that conclusion is contained within the EIS and no further discussion is required.

2. Ordinance 105735, as amended, at Section 14(6), clearly includes views from private property as one part of the "Aesthetics" element listed in WAC 197-10-444 for discussion of impacts in the EIS.

3. The EIS contains photographs of the view or views from the first floor of each of the residential buildings along Melrose Avenue about which appellant was concerned. Neither the views nor the outline of the buildings superimposed was shown to be distorted or misleading. Adequate discussion of the existing views and impact of the project on those views is provided.

4. What appellant points out as a possible discrepancy in 1990 employment based on 100 additional employees a year was not shown to be more than statement of a present growth rate and a projection of employment for a certain year. Confusion could have been avoided by stating further the factors underlying that prediction.

5. The traffic projections are clearly labeled as based upon the 1200 figure. The showing of a 5% increase in freeway traffic volume does not prove that the assumption of a stable average daily traffic volume on local streets which was used is in error. Appellant did not show whether or how this increase relates to the streets surrounding the project. When an appellant alleges an inaccuracy in an EIS, its burden requires an actual showing of error. Since error was not clearly shown the challenge fails.

6. The discussion of the proposed bulk and related zoning regulations was reasonably sufficient to advise the reader of the lack of conformity.

7. In assessing whether the range and discussion of alternatives in an EIS is adequate, as with other impacts, the "rule of reason" is to be applied. (See Cheney v. Mountlake Terrace, 87 Wn.2d 338 (1976); Monroe County Conservation Council v. Adams, 566F.2d 419 (1972)). An adequate discussion is one which sets forth a reasonably comprehensive selection of alternatives in sufficient detail to permit a reasoned choice. Monroe County Conservation Council v. Adams, *supra*. The Guidelines distinguish between public and private projects and provide that for a proposed private project on a specific site alternatives considered are to be limited to no action and other "reasonable alternative means of achieving the objectives of the proposal" on the subject site or others owned or controlled by the proponent. Some confusion could have been avoided by a careful statement of the proponent's objectives since those objectives necessarily dictate what alternatives may be required.

8. Several design possibilities listed in the EIS were rejected in a conclusory manner with virtually no discussion of impacts and little as to reasoning. They followed, however, fairly complete discussions of other alternatives and their features, as to both objectives and environmental impacts, so the reader can easily relate those

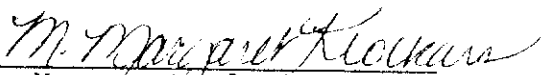
to the other designs and the trade-offs involved. Given the probable objectives to be achieved by the proposal, the range of alternatives is reasonable and since the view impact appears to be the primary one which would be changed with the alternatives, the discussion is adequate.

9. A number of allegations were made under each of the headings for which no findings have been entered such as the inadequacy of the proposed parking. In that instance, and the others, the evidence went to the impacts of the proposal as set forth in the EIS rather than to the adequacy of the EIS and were therefore not addressed in this decision.

#### Decision

The appeal is DENIED and the determination of the Department of Buildings is AFFIRMED.

Entered this 12th day of March 1979.

  
M. Margaret Klockars  
Deputy Hearing Examiner

#### Notice of Appeal

The decision of the Hearing Examiner in this case is the final administrative decision and any further appeal must be made to the courts.