

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

In the Matter of the Appeal of

PHINNEY RIDGE COMMUNITY COUNCIL et al

FILE NO. W-79-040  
W-79-041

from environmental determinations  
of the Building Department.

The appeal is DENIED and the determinations  
of the Building Department are AFFIRMED.

Introduction

The Phinney Ridge Community Council et al, appellants, filed notices of appeal of the adequacy of environmental impact statements prepared by the Building Department for the proposed demolition of four structures and construction of a 29 unit condominium in the 5900 block Phinney Avenue North (the 5900 Phinney Ridge Condominium) and demolition of five structures and construction of a 31 unit condominium in the 6500 block of Phinney Avenue North (the 6500 Phinney Ridge Condominium).

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

Parties to the proceeding were: Appellants, Phinney Ridge Community Council, Phinney Ridge Block Grant Steering Committee, Lora Barnard, Geoffrey Chism, Steven Paul and numerous other, represented by Geoffrey Chism, attorney at law; the Building Department represented by James Fearn, Assistant City Attorney; Phinney Condominiums, Ltd. and Woodland Park Condominiums, proponents, represented by John Rassier, attorney at law.

This matter was heard before the Hearing Examiner on December 5 and 6, 1979.

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. Woodland Park Condominiums proposes to demolish four structures on a site which is on the eastern half of the 5900 block of Phinney Avenue North and construct a 29 unit, six-story condominium structure with one level of underground parking for 32 cars.

2. Phinney Condominiums, Ltd., proposes to demolish five structures at a site located at 6523 - 6541 Phinney Avenue North and construct a 31 unit, six-story condominium structure with 37 underground and 6 surface parking spaces.

3. Environmental impact statements (EIS's) were prepared by the Building Department for each proposal, Draft EIS's were first issued and filed June 4, 1979. After circulation of the drafts for comment and public hearing, final EIS's were issued and filed October 24, 1979, which together with the draft EIS's were to be regarded as the Final EIS. The second volumes contain written comments from public agencies and others and the Department's responses to selected comments, a summary of comments from the public hearing and responses and various appendices.

4. The Building Department acknowledged various factual errors in the documents.

(a) At p. 44a of the Final EIS for 5900 (Exhibit 2), the Department provided a revised zoning map to correct errors in the one at p. 26 of the Draft (Exhibit 1) and to add the proposed rezone. The revised map failed to include an additional half block north of N. 62nd on both sides of Phinney in the portion shown as the area of a proposed rezone.

(b) It also mislabelled the proposed rezone as from CG to BI whereas the proposal was actually from BC to BI.

(c) The zoning map at p. 33 of the Draft EIS (Exhibit 3) for 6500 was incorrect and a revised map was presented at p. 46 of the Final (Exhibit 4). The revised map incorrectly depicted the area of the proposed rezone from BC to RM 800. The rezone area extends along both sides of Phinney to midblock south of N. 63rd.

(d) The graphic depictions of the bulk of the proposed structures at p. 65 of the Final EIS for 5900 (Exhibit 2) and p. 67 of the Final EIS for 6500 (Exhibit 4) are inaccurate in that they each show 5 floors where 6 are proposed. The bulk is shown correctly however.

(e) The Response to Comment No. 2 of the Engineering Department at p. 19 of the Final EIS for 5900 (Exhibit 2) provided incorrect figures, according to the project sponsor. Demand of 1.7 spaces per unit should have been shown instead of 1.36, yielding a total potential demand of 49 spaces instead of 39, 17 more than proposed instead of 7 and 26 empty spaces on-street on the 11 block faces instead of 44 empty spaces.

5. The appeal challenged the use of the two volume - draft and final - format and the adequacy of the contents of the EIS's as to the analysis of land use and zoning, bulk, transportation and circulation, parking and economic impacts.

#### Land Use and Zoning

6. The statements in the 5900 EIS at p. 35, Exhibit 1, and p. 47, Exhibit 2, that describe the neighborhood as "characterized by rental housing" were shown to be inaccurate. Owner occupancy predominates in the neighborhood.

7. The tone and content of the discussion of the Comprehensive Plan and Neighborhood Improvement Plan (NIP) is criticized by appellants who assert that since the NIP amended the Comprehensive Plan, including a description of the former designation is confusing and misleading. The EIS for 5900 at p. 25 (Exhibit 1), for example, states that the West Woodland NIP "officially revised" the Comprehensive Plan designation. Appellants also object to characterizing the NIP as a "guide."

8. Appellants attack the discussion of the area's zoning as failing to provide the actual status of the zoning of the sites at the time of publication and to explore the nonconformity of the proposed structures with the bulk limits of the new zoning designation. The Draft EIS for 5900 (Exhibit 1) at p. 18 merely mentions a pending downzone, however in response to the Community Council's comment, at p. 45 (Exhibit 2), it is updated and elaborated to show that the rezone had received Council committee approval. At the date of filing the EIS's the rezone had been passed by the Council but was not yet effective. The EIS's state that the proposed structures are designed and permitted under the previous zoning designation and that they would be nonconforming but does not examine the nonconformity with the new bulk limitations. Bulk, in relation to the existing development in the area, is discussed at several points in both EIS's.

### Bulk

9. Appellants maintain that the EIS's conclude that the proposed structures are not radically different in scale from other structures in the neighborhood and support their contention, in part, by pointing to the photograph at p. 65 of the 5900 EIS (Exhibit 2) with a depiction of the building from a point which includes one of the largest buildings in the area. The discussions of aesthetic impacts at pp. 99 and 101 of the Draft EIS for 6500 (Exhibit B) and p. 92 of the Draft for 5900 (Exhibit 1) refer to the fact that the height will exceed that of the other buildings. The appellants are correct that the amount of the excess is not emphasized in the discussion. The numerous mentions of the difference in scale throughout the documents add emphasis, however, and other photos such as those at pp. 93 and 94 of the Draft EIS for 5900 (Exhibit 1) clearly show the great disparity.

### Transportation/Circulation

10. In their challenge to the discussion and analysis of transportation/circulation, appellants questioned the projected distribution of the trips generated, the conclusions regarding traffic hazard and accidents and the existing status of bus patronage. For the purpose of projecting the circulation patterns and attendant impacts, the author of the transportation discussion assumed that drivers would follow the "paths of least resistance" or arterials. Several witnesses testified that they, personally, take a different route to the University District and downtown than they believed was predicted for future residents, based upon the discussion in the document. There was also testimony that some drivers going toward Ballard can be expected to use residential streets rather than arterials.

11. The traffic analyst used census data regarding work locations, locations of shopping and other opportunities, turning movement counts, traffic volumes, etc. to make the traffic distribution or pattern estimations. She acknowledged that some drivers heading west may use residential streets, as does the EIS.

12. The projected traffic volume increase from both proposed structures on Phinney Avenue North is 4 percent and on neighboring streets is less than 2 percent.

13. Appellants contend that increased traffic hazards from left-hand turns into the sites, access close to a curve and increased volume on N. 65th have been ignored by the EIS's.

14. Left-hand turns into the sites are legal and were anticipated and considered by the analyst in making the projections. Likewise the sight distance from the curve to the driveway at the 6500 project was considered and a recommendation by the traffic analyst for a mitigating measure was provided. That an increase in traffic accidents in proportion to the increase of volume of traffic is anticipated was acknowledged.

15. The Draft EIS's, published in June, state that buses were operating at or above capacity during the peak ridership hours but that several empty seats are available in the morning. Appellants contend that this should have been updated to show that all buses are full. The Final EIS's acknowledge, in response to a comment, that because of fuel shortages, the buses are probably more crowded than previously disclosed.

### Parking

16. The EIS's offer projections of parking demand based on the results of a Capitol Hill survey (Somerset) showing 1.36 spaces per unit and in the final EIS's an adjustment for the

greater number of bedrooms in the subject projects to 1.70 for 5900 and 1.59 spaces per unit for 6500. For the 5900 project the demand projections were 39 and 49 spaces and 32 spaces are to be provided on site. For the 6500 project the demand projections were 42 and 49 spaces and 43 spaces are to be provided. The appellants questioned the appropriateness of the application of those standards. The EIS's conclude that any excess can be absorbed on street.

17. In the draft EIS's, the number of on-street parking spaces was estimated and a survey of utilization made. After critical comments, an actual count of spaces was made and the figures were revised. The highest occupancy for the times and block faces considered was shown to be 52 percent for 5900 or 143 spaces vacant and 66 percent for 6500 or 80 spaces vacant.

18. The appellants disagree with the choice and number of block faces considered in the EIS's surveys, the times the survey was made, the failure to count certain illegally parked cars in the utilization and the conclusions.

19. The Final EIS's contain the results of surveys done by the community. Fewer block faces were considered in the community's surveys and illegally parked cars were counted but deducted from the vacant spaces to show what the capacity would be if those cars were parked legally. For the block faces used for 5900, at the time of highest use the survey shows 23 spaces vacant (without subtracting those cars illegally parked.) For 6500, at the time of highest usage the survey shows 30 vacant spaces (without deducting illegally parked cars).

20. The block faces chosen for the EIS's represent the area over which it is reasonable to expect the new demand to cause a shifting in parking, not in which the residents of the new structures would actually be expected to park.

21. The times were selected to include both week days and weekends and a range of times. No early or very late hours were included. The EIS survey occurred in a winter month.

22. The traffic analyst's and community's surveys differed markedly as to the number of parking spaces in many of the blocks. No clear explanation of those differences were provided. The total number of spaces over the block faces selected by the community varied only slightly from the total by the traffic analyst for the same block faces.

23. Witnesses disputed the results of both surveys because of their observations that often no vacant spaces exist on certain block faces and that on summer weekends the area is at capacity. They further contend that the effect of illegal parking should have been considered.

#### Economics and Indirect Impacts

24. Appellants maintain that the EIS's failed to adequately address the economic impacts of the projects on the neighborhood. The EIS's, at p. 67 of the final for 5900, for example, acknowledge the potential for displacement of existing business tenants as the area redevelops and property values in the business zones increase. The appellants desire analysis of this potential and that of displacement of senior citizens and lower income persons by increased pressure to convert to condominiums in the area and from loss of services.

25. The Department contends that only those indirect impacts induced by the proposed project may be considered and to do what appellants ask would be to engage in speculation.

#### Format

26. The Superintendent of Buildings is the official who will decide whether to issue the majority of the licenses, permits and authorizations required for these projects and is, therefore, the "decision-maker." His representative testified that the Superintendent's practice is to read each document thoroughly.

#### Conclusions

1. A reasonably thorough disclosure and analysis of the potential impacts of a proposed action is required in the EIS. The "rule of reason" is to be used in judging the adequacy of an EIS and remote or speculative consequences need not be considered. Cheney v. Mountlake Terrace, 87 Wn.2d 338 (1976).

2. The errors acknowledged by the Department and listed as 4a, b, c, d and e are not severe enough to invalidate the EIS where the correct information is to be found elsewhere in the documents.

3. The erroneous characterization of the neighborhood as "rental" was not shown to be likely to have any consequence.

4. The discussion of the Comprehensive Plan, NIP, and zoning was not inaccurate. The characterization of the Comprehensive Plan and NIP as "guides" is correct under Washington law.

5. The bulk of the proposed buildings, in relation to that of existing development, was adequately disclosed.

6. The appellants failed to prove inaccuracy or other inadequacy in the analysis of potential impacts on traffic distribution, hazards and transit.

7. The block faces used in the parking surveys are reasonable given the explanation of the expectation that a new use would cause those who formerly parked there to shift to the next block causing a domino effect.

8. The discrepancies between the traffic analyst's and community's surveys of number of on-street spaces are disturbing when both claim to have paced or measured the blocks involved. Added to the concern are the credible reports of residents that no spaces are available on some blocks. Both the revised parking survey and community parking survey show sufficient vacant spaces in the area to absorb the demand projected. Further, the traffic analyst acknowledged that while, at times, many block faces could be full this would not be inconsistent with the survey results.

9. The Department relied on WAC 197-10-060(3) in determining what indirect economic and displacement impacts should be included. That provision provides that those resulting from an activity induced by the project are to be analyzed. The Cheney case makes it clear that it is the probable environmental consequences that must be thoroughly discussed. While appellants suggested a number of possible displacement and economic consequences, no competent evidence of a causal relationship was introduced. With the downzoning of a part of the area, the Department's conclusion that any discussion would be too speculative is correct.

10. WAC 197-10-580 expressly permits the Department to use the format they chose for these EIS's - a draft document and then a document with written comments, responses, minor changes and summary of oral comments. While numerous, the changes made by the Department in the second documents were minor.

11. Appellants' contention that the number of changes and updated or additional information included in the second volumes for each project is too great to provide an understandable or useful document is somewhat borne out by the difficulty the examiner has had in preparing the findings of fact above.

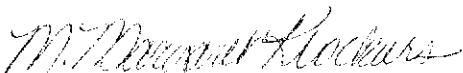
12. Phrases, such as "has been amended" and "has been revised" add to the expectation of a new amended document. Whether the documents must be remanded for a consolidated document turns, however, on whether the combined statement would permit a decision-maker to consider and balance the environmental factors and impacts involved and make a reasoned decision. This determination, again, is to be governed by the rule of reason.

13. One factor to be considered as to whether or not the combined document format is reasonably useful in this case is who the decision-maker is. Even though the documents are difficult to use, since the decision-maker is the Superintendent of Buildings and evidence shows that he was responsible for the choice of format, is accustomed to using it and that he reads the completed documents and further that the examiner is required by Section 20, Ordinance 105735, as amended, to give substantial weight to the Superintendent's decision, it must be concluded that the format is not unreasonable.

#### Decision

The appeal is DENIED and the determinations of the Building Department are AFFIRMED.

Entered this 21st day of November 1979.

  
M. Margaret Klockars  
Deputy Hearing Examiner

#### 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).