

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

SEATTLE BOARD OF PARK COMMISSIONERS &  
UNITED SOUTH SLOPE RESIDENTS

FILE NO. W-77-027

from an environmental determination  
of the Superintendent of Buildings

The appeal is GRANTED and the EIS is  
remanded for further view analysis.

#### Introduction

The appellants, the Seattle Board of Park Commissioners and the United South Slope Residents (U.S.S.R.), filed an appeal challenging the adequacy of the Final Environmental Impact Statement (FEIS) prepared by the Superintendent of Buildings, hereinafter Superintendent, for a proposed 240 unit condominium on the block bounded by W. Mercer and W. Roy, Second Avenue W. and Third Avenue W.

The appellants exercised their right to appeal pursuant to Section 20, Ordinance 105735.

Parties to the proceeding were: the Seattle Board of Park Commissioners, represented by Thomas O. Wimmer, Chairman, and United South Slope Residents, represented by John D. Dillow, appellants; the Superintendent, represented by Ross Radley, City Attorney; and the project developer, represented by George Peterson, Regional Manager, Polygon Corporation, and Russell Leach, Architect.

This matter was heard before the Hearing Examiner on January 11, 1978, and continued to January 18, 1978, for written argument.

After due consideration of the evidence elicited during the public hearing, and as a result of a personal inspection of the subject property and surrounding area the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

#### Findings of Fact

1. The Polygon Corporation has proposed to construct a 240 unit twin tower residential condominium, Mercer West Condominiums, to occupy most of the block bounded by West Mercer Street, West Roy Street and Second and Third Avenues West.

2. A draft EIS, (DEIS) dated March, 1977, for the proposal was filed and circulated to various agencies and interested members of the public and a public hearing was held. On October 26, 1977, the FEIS containing responses to written comments, the text of the written comments, a summary of the public hearing and appendix was published. This appeal followed.

3. Appellants' primary allegation is that the EIS is inadequate in terms of its view analysis. In the appeal letter filed by the Seattle Board of Park Commissioners the

inadequacy cited is its "graphic depiction of potential view obstruction and other possible impacts on Kerry and Kinnear Parks." The letter filed by the U.S.S.R. outlines their contentions: that the EIS's analysis of impact on the parks is inadequate, that the view analysis is too restricted and inadequate, and there are various other inadequacies.

4. At hearing appellants argued that not only was the view analysis inadequate but that the composite photograph at p. 60 showing the proposed buildings superimposed on the view from Kerry Park was inaccurate and misleading. Two other depictions of the projects impact on the view were offered and admitted at hearing as well as the original of the composite at p. 60. The photos differed from p. 60 in clarity, span of view, placement, height and amount of sides and top of the proposed buildings shown to be visible. Testimony was heard as to how each was taken and how the placement, size and height of the representation of the buildings were determined. Appellants contend that the composite misrepresents the distance between the buildings, the depth of the buildings and their height resulting in showing less view obstruction than will actually occur.

5. The FEIS, in the response at the top of p. 15, acknowledges that scale and distance are misrepresented. The error in the representation of the amount of separation between the two buildings was not acknowledged. Evidence adduced at hearing showed and the Superintendent's representative conceded, that there was an error of approximately 36% in the separation of the buildings. It is highly probable that the picture of Tower B misrepresents the visual perception of the depth of that building as to the amount of side and top that would be seen.

6. Further, some distortion of distance and size does occur in the photograph which cannot be explained satisfactorily by the effect of reduction alone since a similarly reduced composite photograph from the DEIS of the Queen Anne Proposed Rezone at p. 26, which was introduced at hearing, does not show the same distortion. As a result of the distortion the siting of the buildings appears to be much further distant from the viewpoint than it appears to be in either the rezone photo or by the naked eye. Other landmarks, such as the Space Needle, also appear to be farther away and less significant. The Superintendent's representative testified that he received a Xerox copy of the composite photograph from which it was difficult to determine accuracy but that no checks of the accuracy were made.

7. As to the accuracy of the depiction of the height of the buildings as they intrude upon the view of Elliott Bay and West Seattle, no finding will be made. Each party made a valiant effort to relate this depiction to known heights of other buildings or points in the landscape with three differing results. As to whether the elevator shaft was included in the EIS's depiction there was even disagreement between the Superintendent's representative and the project's architect. The height will not be less than depicted by the EIS nor more than depicted by appellants.

8. The FEIS states that "The Draft EIS recognizes (pp. 57-61) that either view obstruction or view intrusion will occur over a portion of the southwestern slope of Queen Anne Hill, and that this impact is widely variable." While acknowledging that views at elevations lower than Kerry Park may be blocked and views higher would be blocked or intruded

upon, with the exception of a graphic "View Blockage (to major landmarks)", no other attempt is made to graphically represent areas of view impairment.

9. The misquoted statement from the "Draft Environmental Impact Statement of the Queen Anne Proposed Rezone" taken out of context that "View obstruction (sic) is more of an emotional than objective matter with most people," (DEIS, p. 57) served no useful purpose. The discussion of view in a rezone EIS would, by its nature, have to be more general than one where a specific project with specific dimensions is proposed. The fact that view obstruction has been analyzed in the other EIS's (FEIS, p. 15) does not aid the decision maker in this case when those analyses are not incorporated into this EIS and even if they were would not deal with the proposal at this location or with these dimensions.

10. The FEIS contains a letter to the Superintendent from Walter R. Hundley, Superintendent, Department of Parks and Recreation, in response to a pre-draft consultation stating that the Department had reviewed the DEIS and had no comment. Mr. Hundley testified at hearing that he would retract the original "no comment" as he now realizes that there would be view blockage as a result of the project. Appellants argue that the FEIS is therefore incorrect and misleading as the views of an important city agency are misrepresented.

### Conclusions

1. In an appeal from a determination of a lead agency, the determination is to be regarded as prima facie correct and the burden of establishing the contrary is on the appellant. Ordinance 105735. Whether or not an EIS is adequate is to be judged by the rule of reason. Cheney v. Mountlake Terrace, 87 Wn. 2d 338 (1976). So "(t)he court's task is to determine whether the resulting statement would permit a decision maker to fully consider and balance the environmental factors." Concerned about Trident v. Rumsfeld, 6 ELR 20787, 20792 (DC Cir.1976), citing Carolina Environmental Study Group v. United States, 510 F.2d 796, 819 (DC Cir.1975).

2. In the instant case appellants have shown error in the graphic representation of view obstruction as to the separation of the building and distance from the viewpoint. They have also shown that the EIS lacks any specificity within the area of view obstruction, except for the Kerry Park viewpoint, which would have been desirable in providing useful information to the decision makers. The question to be answered though is whether the analysis, even with these defects, is reasonably sufficient to enable the person making the decision to understand and consider meaningfully the factor of view obstruction.

3. In an area where view does not play so important a role, the FEIS would most likely meet that test. A proposal which has an impact on the view from Queen Anne is not such a case however. The combination of an inaccurate photo representation of the proposal's impact on the view from one point on the hill and very little else, either in written or graphic analysis, does not provide sufficient reliable information as to that impact to ensure that an informed decision will be made. Therefore, the EIS must be remanded either for correction or disclaimer as to the reliability of the photograph, and some additional detail. This is not to require an exhaustive survey of view obstruction from every point on the hill, however some further analysis as to the impact should be made. ✓

4. As to the issue of the Department of Parks and Recreation's change in position, WAC 197-10-545, as adopted by reference by Ordinance 105735, controls. It provides that "(a)ny consulted agency which fails to submit substantive information to the lead agency in response to a draft EIS is thereafter barred from alleging any defect...with the contents of the final EIS". Mr. Hundley explained that his letter was the result of a cursory review which failed to uncover the impact. The cite provision was included to protect project proponents from protraction of the process because of just such administrative oversight. Therefore, the EIS would not be remanded to reflect that change alone.

Decision

The matter is remanded for correction or disclaimer as to the accuracy of the photograph at p. 60 and a more detailed analysis as the impact of the proposal on views.

Entered this 6th day of February, 1978.

M. Margaret Klockars  
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Deputy Hearing Examiner

Notice of Right to Appeal

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