

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

In the Matter of the Appeal of

JIM JAMES

FILE NO. W-77-018

from an environmental determination  
of the Department of Community  
Development

The appeal is DENIED and the determination of  
the Department of Community Development is affirmed.

Introduction

The appellant, Jim James, filed an appeal from a declaration of non-significance, hereinafter DNS, prepared by the Department of Community Development, hereinafter DCD, with regard to a proposed action to rezone property generally located at the southwest corner of S. Eddy Street and Carleton Avenue S. and comprised of approximately 30,000 square feet of property.

The appellant exercised his right to appeal pursuant to Section 20, Ordinance 105735.

This matter was heard before the Hearing Examiner on September 14, 1977.

Parties to the proceeding were the appellant, the Department of Community Development, represented by Charles Brown; and the petitioner, represented by Lynn Hurst.

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 petitioner, George W. Akers, requested a rezone of the subject property from Single Family Residence High Density (RD 5000) to General Industrial (IG). The DCD issued a declaration of non-significance on or about July 27, 1977.
2. The subject property located at the southwest corner of S. Eddy Street of Carleton Avenue S. contains approximately 30,000 square feet of property. The length and width of the subject property is approximately 121 feet by 246 feet.
3. At the present time the site in question is occupied by a machine shop, a telephone switching station, and a single-family residence. The machine shop location on the subject property presently exists as a nonconforming use.
4. The petitioner, George W. Akers, has not listed any specific projects planned for the subject property. Should industrial development occur on the subject property, it is likely that the existing single-family home on the site will be replaced resulting in the loss of one housing unit.

5. No significant increase in demand for police or fire protection would occur under the proposal.

6. In accordance with Section 13 of Seattle City Ordinance 105735, the declaration of non-significance regarding the subject property was filed with the SEPA Public Information Center on July 27, 1977. In accordance with Section 13, Seattle City Ordinance 105735, the declaration of non-significance was listed in the final declaration of non-significance register located at the SEPA Public Information Center and the information in that register along with notice of the right to appeal the final DNS in accordance with Section 20 of the Seattle City Ordinance 105735, was published in the city official newspaper. Notice of the final DNS regarding the subject property along with the notice of right to appeal the final DNS in accordance with Section 20 of Seattle City Ordinance 105735 was published in the South District Journal/Beacon Hill News on August 10, 1977, fourteen days after the adoption by DCD of the final determination of non-significance. Testimony from the DCD representative indicated that publication in the South District Journal/Beacon Hill News could not be accomplished in the week following the filing of the DNS because of publication deadlines of the newspaper.

7. Seattle Municipal Code Section 19.23(a) provides that certain IG developments are not permitted within 300 feet of single-family residences. A number of IG uses would therefore be prohibited on the subject property.

8. There are economic and other possible impacts raised by the appellant which are beyond the scope of the environmental checklist. WAC 197-10-360 directs that the questions contained in the checklist are exclusive and that factors not listed therein shall not be considered in the threshold determination. Those impacts therefore cannot be considered in this review.

### Conclusions

1. An environmental impact statement is required by the State Environmental Policy Act (SEPA, RCW 43.21C) only where there is a major action which would have a significant adverse impact on the environment. The question of what types of action "significantly affect" the environment has been addressed by the Washington Supreme Court in several cases. In Narrowview Preservation Association vs. Tacoma, 83 Wn2d 416, 423, 526, P.2d 897, (1974), the court noted:

"the term 'significantly' has been defined to include the examination of at least two relevant factors: (1) the extent to which the action will cause adverse environmental effects in excess of those created by existing uses in the area, and (2) the absolute quantitative adverse environmental effects of the action itself, including the cumulative harm that results from its contribution to existing adverse conditions or uses in the affected area."

More recently in the case of Norway Hill Preservation and Protection Association vs. King County Council, 87 Wn2d 267, 522 P.2d 674, (1976), the court held that:

"consistent with this policy it would seem appropriate to state a general guideline rather than attempt a value laden definition of "significantly". Generally the procedural requirements of SEPA, which are merely designed to provide full environmental information should be invoked whenever more than a moderate effect on the quality of the environment is a reasonable probability.

In reviewing the actions of a governmental agency which has made a negative threshold determination (no EIS is required), such a determination may be overturned either because the decision is clearly erroneous or because it is arbitrary and capricious. See Norway Hill Preservation and Protection Association vs. King County Council supra 267. The test under the arbitrary and capricious rule is whether there is evidence in the record to support the administrative decision. The clearly erroneous standard is broader because it calls for a review of the entire record. Under either test, the proposed rezoning of George Akers will not have a significant adverse effect on the environment and therefore the Department of Community Development has properly prepared and issued a declaration of non-significance.

2. In an appeal of this nature, the burden of proof is on the appellant to demonstrate that a significant error or oversight has been committed by the agency which prepare and issue the declaration of non-significance. RCW 43.21C-090 provides as follows: "In any action involving an attack on the determination by a governmental agency relative to the requirement or the absence of the requirement, or the adequacy of a "detailed statement" the decision of the governmental agency shall be accorded substantial weight." Likewise, Section 20(7), Seattle City Ordinance 105735, provides as follows: "Appeals shall be considered de novo except that the determination appealed from shall be regarded as prima facie correct and the burden of establishing the contrary shall be upon the appealing party. In the present case, the appellant has not met his burden of proof.

3. Section 13, subparagraph 2 of Ordinance 105735, provides in part: "In addition, notice of each final DNS adopted during the preceding week, along with notice of the right to appeal a final DNS in accordance with Section 20 of this ordinance, shall be published once every week in at least one community newspaper with distribution in the area impacted by the proposal for which the final DNS was adopted." (emphasis added)

Section 20, subsection 3, of Ordinance 105735, provides that the appeal time begins running from the date of the filing of the environmental determination in the SEPA Information Center.

A reading of the two sections cited above indicates that there is no requirement that the notice of the right to appeal be published before the appeal time begins to run. However, Section 13(2) of Ordinance 105735, does require that the publication in the local newspaper occur one week after the adoption of the DNS. In the present appeal, this requirement was not met. The DNS was filed with the SEPA Public Information Center on July 27th, and published in the South District Journal/Beacon Hill News on August 10, 1977. There was testimony on behalf of the Department of Community Development that the legal newspaper in question requires submission of legal notices one week prior to publication.

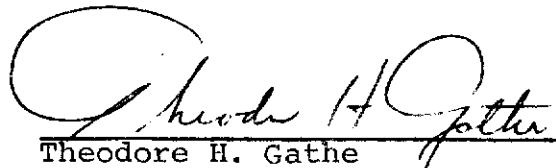
That evidence was not contradicted by the appellant and therefore it must be concluded that the Department of Community Development substantially complied with Section 13(2) of Seattle City Ordinance 105735.

4. Section 13, subparagraph 2 of Seattle City Ordinance 105735, affirmatively requires that the City shall publish notice in a local newspaper within one week preceding the filing of the DNS. It is the opinion of this Hearing Examiner that absent a showing of a local or regional newspaper's inability to publish a legal notice of a determination of non-significance within one week following the issuance of that determination, it is the Hearing Examiner's duty to remand the matter back to the government agency in question and require said agency to fully comply with Section 13, subparagraph 2 of the Seattle City Ordinance 105735.

Decision

The appeal is DENIED and the determination of the DCD is affirmed.

Entered this 29<sup>th</sup> day of September, 1977.



Theodore H. Gathe  
Hearing Examiner Pro Tempore

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.