

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

COALITION AGAINST THE PROPOSED  
EAST CENTRAL POLICE PRECINCT  
STATION and Isaiah Edwards

FILE NO. W-79-015

from an environmental determination  
of the Department of Buildings

#### Introduction

The appellants, Coalition Against the Proposed East-Central Police Precinct Station and Isaiah Edwards, filed an appeal challenging the adequacy of an environmental impact statement (EIS) prepared by the Department of Buildings for a proposed East-Central Police Precinct Station sponsored by the Department of Buildings and Seattle Police Department.

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

Parties to the proceeding were: Appellants, represented by Roger M. Leed, attorney at law; Department of Buildings and Seattle Police Department by Ross Radley, Assistant City Attorney.

This matter was heard before the Hearing Examiner on July 10, 11, 12 and 16 and continued to August 15, 1979, for submission of written argument.

The EIS is composed of two volumes, the draft environmental impact statement, hereinafter DEIS, and the final environmental impact statement, hereinafter FEIS.

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. A bond issue passed by the voters in 1977 provided monies for the construction of a police precinct station in the East-Central Precinct along with replacement, renovation or expansion of others.

2. An EIS to evaluate and compare three proposed sites for the East-Central Precinct Station has been prepared under the direction of the Department of Buildings and Police Department by consultants.

3. The instant appeal is of the adequacy of the EIS principally as it relates to the 23rd Avenue site and as to the opportunity for community input and review into the process.

#### Community Input and Review

4. A 12-member citizens Advisory Task Force held at least 10 public meetings and hearings on site selection and evaluation. Notices of the meetings were sent to various organizations and persons and dates of meetings and hearings were announced in several newspapers including The Facts and The Medium, two papers serving the Central Area. Persons attended and testified. Two sites were originally recommended to the Mayor. The 23rd Avenue South site was added after the report and recommendation was made at the request of Mike Nagan and after poll of the members. That site did not

go through the same evaluation process as the others.

5. The Building Department held a meeting December 5, 1978, prior to the DEIS, to solicit community concerns regarding environmental impacts. This was the first time the Building Department had held such a pre-EIS hearing. The DEIS was circulated to the persons and organizations listed at pp. xi - xvii which included those who attended the December meeting. A public hearing on the DEIS was held February 15, 1979. No one testified at that hearing although several attended. Notice was filed in the SEPA Information Center, included in the EIS and published in The Facts, the Daily Journal of Commerce and the Seattle Times. The Building Department has never done a survey or poll as a tool for environmental analysis.

6. A hearing was held on April 24, 1979, after a meeting of appellant Edwards and his invitees, Mayor's staff people, a Police Department representative and a Building Department representative. The Building Department prepared the notice and representatives attended the meeting to gather community comment to aid the Mayor and Council. Approximately 100 community people attended. Appellant Edwards had understood that the comments from the meeting would be included in the FEIS. The FEIS was issued the day before the meeting.

7. Appellants contend that the EIS either misrepresents community attitude or is inadequate in that Edwards' comments and views from the December 5, 1979, meeting were not incorporated as stated in the EIS and the vague statements about community perception at pp. 1-25, 2-47, were not sufficient to describe the real attitude and concerns of the community. Appellants did a survey based on nine questions about attitudes toward the precinct station to show that such a survey could easily be done to ascertain community perception.

8. Appellants also assert that the kind of notice given of the draft hearing is not as effective as other means and that the Building Department should have employed other means, in addition to a hearing such as a survey, to gather comment.

9. The EIS does not indicate to the decision-makers that there is strong sentiment, in at least a segment of the community affected, against the 23rd Avenue site and, to some extent, against any station in the East-Central Precinct.

#### Plans and Policies

10. The DEIS at pp. 1-13 and 1-14 describes three kinds of Seattle 2000 goals with which the site selection "process" conforms. Institutional subgoal No. 8, p.9 urges, according to the EIS, that governmental facilities be located in conformance with the Comprehensive Plan; Objective E(9) under Law and Justice "urges...decentralization of police operations;" and in the Transportation section alternatives to private auto use are to be encouraged.

11. Appellants contend that Goal E., under Community Zoning Subgoal 1., advocating reversal of overzoning and resistance to the pressures of automobile traffic and parking lots upon residential neighborhoods and Goal F Subgoal 11, to discourage development that favors auto traffic should have been noted as goals with which the proposal is inconsistent.

12. At p.1-14, Policy 12: Institutions, Seattle's Growth Policies, is set out without any discussion of whether the proposed site relates positively or negatively. Appellants contend that WAC 197-10-440(b)(f) requires such analysis and further that an East-Central Precinct Station would be a redundant facility and would not generate additional employment, two of the conditions necessary for expansion of institutions, according to the policy.

13. The Yesler-Atlantic Neighborhood Improvement Plan

(1976) which encompasses the 23rd and Yesler site, is discussed at p. 1-24 of the DEIS. Appellants urge that the presentation of the plan is not adequate because it fails to discuss the policy against overconcentration of institutional uses and how law enforcement activities would be incompatible with the development encouraged by the NIP. The Plan emphasizes the need for new housing and lays out strategy for redevelopment. The recommended Comprehensive Plan shows the subject site as suitable for multi-family development. Government, educational and related uses, which category the station would have to fall in, are shown to the south of the site. Therefore, the proposal could be seen to conflict with the plan. No specific policy statement against overconcentration of institutional uses was found in the Yesler-Atlantic Plan but was discussed in the Mann-Minor NIP which includes the other sites.

14. The Housing Assistance Plan is related to the proposed action at p. 1-25. The relevant policy, according to the EIS is Housing Supply Policy 5: "The City shall encourage the use of government-or utility-owned surplus vacant property for low-and moderate-income housing where appropriate." Appellants take issue with the EIS' conclusion that since the three sites are located close together and "in a part of the City where additional public housing is only conditionally encouraged, it is doubtful that all of the sites would be used for subsidized housing" as being without basis. A map in the Housing Assistance Plan shows the Central Area as one where public housing is "conditionally" encouraged because of the presence of some subsidized housing and the policy to disperse and diversify public housing. Therefore, there is some basis for the statement.

15. The Capital Improvement Policy Plan discussion at pp. 1-26, 27 identifies the subject site as a part of the Yesler-Atlantic Development Area, quotes the policy section regarding redevelopment areas and then states that the location is consistent with the policy if it "encourages a greater sense of safety and confidence in the community and facilitates police/community communication..." and because it locates a public service in close proximity to low income persons.

16. Appellants, referring to the 1980 Capital Improvement Policy Plan, contend that potential conflict with Impact Objective 4, under Neighborhood and Environmental, at p. 61, to reduce traffic noise in residential neighborhoods and with Conflict Resolution Statement 3 at p. 63 regarding first consideration to the protection of residential areas, should be pointed out. That document was adopted by the Council April 30, 1979, after the FEIS, and therefore was not available for consideration. Appellants also urge that the plan provides for the preservation of housing opportunities for the low income residents and that the EIS should call attention to the conflict with this from the demolition of the four units that would be required by the proposal.

#### Land Use

17. The site selection criteria of Resolution 25776 were set out at pp. 1-30, 1-31, DEIS. The EIS states that three sites were "recommended on the basis of substantial compliance with all criteria." Appellants urge that each site should have been discussed in terms of these criteria and that the failure of the 23rd Avenue site to meet a number of them should have been discussed. The EIS does state, in effect, that the Council will have to decide for itself whether each criterion is met. The site does not meet (11) unless it is a "last resort" and opinions could differ on others.

18. Figure 2-5 at p. 2-37 purports to show the land use in the vicinity of the proposed precinct station and land use is discussed at pp. 2-36, 2-38. Appellants contend that other institutional uses such as CAYA one-half block away, a church next to the library, and two churches on 25th

should have been shown to accurately portray the land use surrounding the site and that the EIS should point out the incompatibility of a police unit with cultural, religious and educational activities in the vicinity. The appellants challenge the conclusion that a precinct station at the 23rd site is compatible with the pattern of land use in that it would contribute to overconcentration of institutional uses and that impacts such as traffic would be harmful to uses already present.

#### Response to Comments

19. The Department of Community Development (DCD) commented on the DEIS in a letter published in the FEIS. Appellants maintain that the EIS did not adequately respond to DCD's criticism regarding lack of schematic site development plans and ingress and egress locations. The EIS response stated that such plans and exact locations are not necessary to adequately assess impacts. The EIS was prepared at this stage with the design parameters in mind. Further review could be done at a later stage if warranted because of additional impacts.

20. The comments by the Fire Department that construction will induce additional firefighting hazard; increased population will increase aid and apparatus requirements; and increased traffic can cause emergency response delay were responded to by stating that they are recognized and were addressed. At pp. 2-70 through 2-73 the EIS discusses fire hazards from demolition, increased responsibility for life and property protection, etc. Potential for delayed response during construction from obstructions was considered however delay from traffic, suggested by the Fire Department, was not assessed in the EIS except to the extent that traffic increase would not cause significant adverse effects. A letter from the Fire Department, dated June 26, 1979, was admitted as an exhibit which appears to counteract the earlier statement of concern.

#### Transportation/Circulation

21. The appellants allege that the EIS' consideration of transportation/circulation impacts is inadequate for its failure to consider the cumulative effects on traffic and parking demand of other projects and existing uses in the area and potential I-90 traffic; to provide pedestrian counts and to identify and consider the effects of increased traffic on sensitive groups in the area; to adequately assess availability of on-street parking; to make projections for future traffic volume growth; to assess the proposal's effect on number of traffic accidents; to consider the potential for and effect of parking meters; to recognize the increase in left hand turns that would result and evaluate their impact; to consider the fire station's control over traffic and potential conflict between fire and police traffic.

22. The EIS predicts that the station would generate as many as 806 trips per day based on other precinct stations' experience. As many as 135 trips could occur during shift change which occurs three times per day, none of which coincide with normal rush hours. These figures were not challenged. This additional traffic would not "noticeably" affect the level of service on the streets, according to the EIS.

23. The addition of Promenade 23 traffic at the S. Jackson and 23rd intersection was considered.

24. The station, as described, would provide parking for 80 vehicles (40 police, 10 visitor and 30 employee). The EIS showed a worst-case demand for 104 parking spaces, spreading visitor parking over 24 one hour periods. The EIS finds parking more limited at the subject site than at the others but available on Yesler between 22nd and 23rd.

25. Traffic increase is likely to occur from the proposed Odessa Brown Clinic (not considered in the EIS), Promenade 23 (considered), new condominiums (not considered) and I-90 (not considered). In addition, considerable vacant land exists that may be developed.

26. No actual parking counts were taken in the vicinity although a consultant did walk the area and passed by on various occasions. The visits were not made according to any structured plan to assure observations at all relevant times. The number of cars that could be accommodated on Yesler was not known to the consultant. No consideration was given to potential increased demand for on-street parking from the Odessa Brown Clinic, the new 38-unit condominium, any increase in enrollment at SOIC, use of the library or other development. The statement at p. 2-60 that notes "on-street parking is generally available nearby" does not, therefore, consider the potential for increased demand from any planned development except for the precinct.

27. The EIS takes no note of the pedestrian usage, as to volume or type, on Yesler or 23rd. The presence of children and handicapped persons and the effect of additional sidewalk crossings and traffic should have been considered.

28. The number of recorded traffic accidents at the intersection is disclosed. The EIS indicates that the potential for increased accidents exists.

#### Alternatives

29. Appellants view the requirement of considering alternatives to the proposal to include assessment of use of the site that would be foreclosed by construction of the precinct station. At pp. 3-1, 3-2 the EIS discusses the "no action" alternative and states that more intensive development, than existing, could be expected to occur in the future.

#### Conclusions

1. The test for judging the adequacy of an EIS is the rule of reason. Cheney v. Mountlake Terrace, 87 Wn.2d 338 (1976). WAC 197-10-440 gives additional guidance in determining what is reasonable. Impacts that are known to be or may be significant are to be discussed in detail and potential, but not certain, impacts are to be discussed within reason, according to (8)(a).

2. Also to be considered in this case is the fact that it is the City Council members who will be the decision-makers and that anyone interested will have opportunity for more input prior to the decision on the conditional use that would be required to establish the police precinct.

#### Community Input and Review

3. The Building and Police Departments have satisfied the legal requirements of the City's SEPA Ordinance and the SEPA Guidelines for public notice and input. WAC 197-10-450 states "The lead agency is encouraged, but not required, to use any reasonable method to inform the public that the draft EIS is available and of the procedures for requesting a public hearing." Section 16 of the Ordinance requires publication in the City official newspaper and in another daily newspaper plus mailings to those requesting notice. The departments held at least one hearing not required by either the ordinance or the SEPA Guidelines and another that may not have been required.

4. The notice of the April 24 meeting did not represent that the testimony given would be incorporated in the FEIS. It may have been more politic to have held up the EIS for those comments but not legally required.

5. The EIS does not give any real indication of the

existence or strength of the sentiment against the proposed site. While those attitudes have a bearing on the proposal's relationship to some of the goals and policies, the EIS is not inadequate as it stands. The statements, "if-then", that are criticized by appellants, do the job of alerting the Council to the need to weigh community sentiment. That opportunity will come at the Council's hearings on the issues. To require the lead agency to conduct an attitude survey when adequate opportunity for the decision-maker to get that information exists would be unduly burdensome. The Council, itself, has the authority and the fiscal capability of determining when extraordinary measures are necessary to fully explore community attitude in ways other than the usual hearings. The applicable ordinance and SEPA statute do not require tailoring public review and access to a particular situation.

6. WAC-197-10-440(6)(f) states clearly that the EIS is to describe how a proposal is consistent and inconsistent with comprehensive land use plans and zoning regulations. Section 15 of the ordinance adds regional, city and neighborhood goals, objectives, and policies and indicates that the level of detail in the discussion should be proportionate to the impacts of the proposal. The use of the word "discussing" in the ordinance certainly suggests contemplation of disclosure of agreement and/or conflict but it is not directly mandated as for the comprehensive plan and zoning.

7. The EIS does describe the proposal's relationship to the zoning and the Yesler-Atlantic Neighborhood Improvement Plan and recognizes that it could conflict with neighborhood goals. A clearer description of the multifamily designation of the site and that there is a separate designation for governmental, educational and related use in the plan for other locations would have been desirable.

8. As to the other City plans and policies, in each case there is a room for individual opinion as to whether the proposal is consistent or conflicts. Since such a judgment is not specifically required, the wiser course may have been to set out all goals, objectives, etc. that reasonably relate to the proposal and avoid drawing any conclusions since the Council will ultimately be faced with that. The provisions, cited by appellants as potentially conflicting, that were not stated in the EIS, are not so clearly pertinent (as in the case of the Institutions subgoals), had not been adopted prior to the EIS or were not in the relevant NIP. The Housing Assistance Plan conclusion had a supportable basis. The discussion of land use and other plans and policies, while flawed, was reasonable, considering the further opportunities for input, the Council's knowledge and the specific policies promulgated for site selection in Resolution 25776.

#### Response to Comments

9. The timing of the EIS was such that specific development plans could not be considered without undue expense to the taxpayer. Adequate environmental analysis could be conducted at this stage but further assessment may be necessary later.

10. The lack of response to the Fire Department's comment about delay in emergency response time due to traffic, because of the potentially grave consequences of such an impact, is a serious omission. The subsequent retraction by letter is an action which casts suspicion on the process. The comments in the later letter are site specific so the difference may be due to the more general nature of the first letter. Though responses are required by the SEPA Guidelines, since no evidence of adverse impact remains to be considered it would not be reasonable to remand the document for further consideration of the Fire Department's comment.

Transportation/Circulation

11. The transportation/circulation analysis is deficient. On its face the discussion appears to be reasonable. The applicants did not prove that the precinct station would have a significant adverse impact but they did show that the conclusions were not based on adequate data to be trustworthy. Evidence adduced at hearing showed that additional traffic and the potential for additional parking demand from planned development and growth projections was not analyzed in projecting the effect of the proposed project. No pedestrian counts were made. The consultant did not know how many on-street parking spaces were available nor was the evidence sufficient to show what the current demand is, without any consideration of increases.

12. The worst case projection of demand for on-street parking for 22 automobiles, together with restricted parking and new residential and other uses, has the potential for adverse impact, therefore a reasonable discussion is required. The discussion provided was not adequate because it was not shown to be based on sufficiently thorough analysis. Therefore, the EIS must be remanded for additional transportation/circulation analysis.

Alternatives

13. The SEPA Guidelines require description and evaluation of any reasonable alternative action which could obtain the objective of the proposal. The EIS adequately presented alternatives.

Decision

The EIS is remanded for further analysis regarding the element of Transportation/Circulation as to the 23rd Avenue site.

Entered this 20<sup>th</sup> day of August, 1979.

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 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).