

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

MARGARET COUGHLIN

FILE NO. S-80-031

from a determination
of the Director of the
Department of Construction
and Land Use

FINDINGS OF FACT,
CONCLUSION AND ORDER
DISMISSING APPEAL

Introduction

A Motion to Dismiss the above-entitled matter was filed by the Director of Construction and Land Use by and through his attorneys, Douglas N. Jewett, City Attorney and Elizabeth A. Huneke, Assistant. Oral argument was heard at the pre-hearing conference July 7, 1980.

After considering the motion, argument, and the file herein the following findings, conclusions and order are entered:

Findings of Fact

1. On June 10, 1980, the Director of the Department of Construction and Land Use published his intention to issue a demolition permit for 52 buildings in Discovery Park as specified on the demolition plan filed by the Department of Parks and Recreation and the document entitled "Revised Schedule of Buildings."

2. An environmental impact statement (EIS) was prepared for the 1978 Proposals for Discovery Park. The final EIS was issued June 11, 1979, and appeals challenging the adequacy of the EIS were filed and heard by the Hearing Examiner. The EIS included analysis of threshold demolition of buildings. The Hearing Examiner determined that (1) the legality of the environmental review of the amendments to the 1974 Revised Master Plan has been determined by the Courts; (2) circulation of the contrariety of views relating to the Indian Cultural Center Master Plan and a summary of critical comments with which the Parks and Recreation Department disagree is required; (3) analysis of the North Beach access trail is inadequate and new analysis required; (4) analysis of the proposed Landmark District was not in compliance and is to be included in a supplemental EIS; and (5) the remaining aspects of the EIS are adequate.

3. A Discovery Park Final EIS Addendum was issued June 18, 1980, was distributed according to the distribution list for the final EIS, and may be appealed to the Hearing Examiner. The proposed demolition is not addressed in the Addendum.

4. A Supplemental EIS will be prepared and circulated for the proposed Historic District (Zone 7) in the future.

5. Margaret Coughlin filed a Notice of Appeal of Intention to Issue a Use Permit June 20, 1980. Issues raised may be summarized as follows: (a) whether the demolition permit may be properly issued prior to the "finalization" of the final EIS by filing, distribution and potential challenge to the adequacy of the Addendum; (b) whether the Adaptive Reuse Study should include all buildings including those subject to the demolition permit at issue and any demolition await the Supplemental EIS for the Historic District; (c) whether an accounting of the costs of

demolition and grading is required; (d) whether procedural requirements of SEPA, including distribution of documents, were met; and (e) other miscellaneous issues.

6. Issues as to the distribution of the final EIS were raised on appeal of the adequacy of that document.

7. The failure to list building number 565 in the text of the EIS discussing demolition was raised at the adequacy hearing, according to Ms. Huneke and that is not controverted by Ms. Coughlin.

8. No building included in the proposed Historic District is listed for demolition under the permit at issue.

9. The contract for demolition is the responsibility of the Board of Public Works.

10. A Revised Master Plan for Discovery Park was adopted by the City Council in 1974. That plan does not include retention of any buildings to be demolished under the permit at issue.

11. No adverse environmental impacts resulting from the proposed demolition, because of which the Director should have imposed or denied the permit, were alleged by appellant.

12. The limitation of the scope of the Adaptive Reuse Study to the proposed Historic District was raised at the previous adequacy hearing.

Conclusions

1. The separation of various segments of a total proposal when an EIS is found to be "adequate" or "final" for some segments but not others is not specifically addressed in the SEPA Guidelines. The intent and purpose of the policy is fully met, however, when one segment has been analyzed and the impacts adequately disclosed (as a matter of law) and further that action on that segment does not commit to a particular course of action for any of the segments on which analysis is not yet complete. Therefore, it is not error to decide to issue a demolition permit for buildings outside of the proposed Historic District.

2. Issues raised at the previous hearing in the appeal challenging the adequacy of the EIS may not be raised again at the administrative level of appeal as they are res judicata and can only be reviewed by a court. Included are the scope of the Adaptive Reuse Study, procedural aspects such as distribution of documents, among others.

3. The Hearing Examiner has no authority to review, in the instant appeal, alleged errors raised in the earlier appeal proceedings. Superior Court, alone, has jurisdiction to review those proceedings.

4. The Office of Hearing Examiner has only the powers expressly granted by the ordinance or necessarily implied to carry out the functions of the office. No ordinance confers any authority to review actions of the Board of Public Works or to order an accounting if not functionally related to an area of the Hearing Examiner's jurisdiction.

5. No issues of fact are alleged which are not res judicata or are within the jurisdiction of the Hearing Examiner. Therefore, the appeal should be dismissed.

Order

The Motion to Dismiss is granted and the appeal is hereby dismissed.

Entered this 11th day of July 1980.

M. Margaret Klockars
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. After 5 days from the date of this decision, a permit may be issued unless a party of record files with the Director of the Department of Construction and Land Use a written notice of intent to seek judicial review of the City's action. 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).

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