

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

MARY M. HORVATH, ET AL.

FILE NO. MUP-82-050(W)
APPLICATION NO. 82-0161

from a decision of the Director of
the Department of Construction and
Land Use on a master use permit
application

Introduction

Appellants, Mary M. Horvath, et al., appeal the declaration of non-significance issued by the Director of the Department of Construction and Land Use (Director) for the proposal by Vitamilk Dairy to construct additions to the property at 427 N.E. 72nd Street.

The appellants exercised their right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

Parties to the proceedings were: appellants represented by James M. Driscoll, attorney at law; the Director represented by James E. Fearn, Jr., assistant city attorney; and applicant, Vitamilk Dairy, represented by Kenneth Cornell, attorney at law.

This matter was heard before the Hearing Examiner on October 4, 1982.

After due consideration of the evidence elicited during the public hearing, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. Vitamilk Dairy (Vitamilk) applied for a master use permit to construct a second floor addition to house a plastic bottle manufacturing operation, a storage tank and a transformer pad. The Director issued a declaration of non-significance (DNS) pursuant to Chapter 25.04, Seattle Municipal Code and RCW 43.21C (SEPA) for the proposal. Appellants appeal the DNS.

2. Vitamilk was established in the Green Lake neighborhood in 1942 as a small dairy with 5 or 6 milk delivery trucks. It has expanded and changed over the years. At one point, when it was still a retail operation, it employed as many as 70 delivery trucks. The market is now wholesale so large diesel refrigeration trucks are used. Approximately 20 trucks are now used, 15 of which are semi-trailers.

3. The subject property is at the corner of N.E. 72nd and 5th Avenue N.E. and is part of that used by Vitamilk located on N.E. 71st and 72nd Streets in a General Commercial (CG) zone. The zone extends south and west and contains a mixture of uses, both residential and commercial. To the west of the northerly part of this CG zone is a Community Business (BC) zone which borders the Green Lake park. To the east, 5th Avenue represents the boundary of a Multiple Residence (RM) zone which is bounded on the other side by I-5.

4. The CG zone permits heights up to 60 ft. for commercial buildings.

5. Dwelling units are located immediately adjacent to the dairy and its parking lots.

6. The area around Vitamilk has suffered the effects of the growing business over the years. Attempts to work out resolution of the problems have not resulted in solutions satisfactory to the neighbors. The chief impacts from the existing operation are traffic congestion and hazard from backing and turning semi-trucks, commercial trucks parked on the street, noise from movement and loading of trucks during the night, their early departures and refrigerator trucks which are run all night, and emission from the diesel engines. A recent sound level reading by the City showed that the sound from refrigeration trucks parked on 5th Avenue N.E. exceeded permitted levels by 4-6 dB.
7. Vitamilk proposes the second floor addition for the installation of a blowmolding machine to manufacture plastic bottles to meet the competition of other dairies. Currently, Vitamilk purchases some 12,000-18,000 pre-formed plastic bottles per day. From one to two semi-trailer loads are brought to the site per day. The trailer is moved to the loading site where the bottles needed are used and then any remaining are left in the trailer which is moved to a lot for storage for the next day's use.
8. The blowmolder is a machine which draws resin (high density polyethylene) pellets from a storage silo by an enclosed vacuum system into the machine where they are melted and shaped into bottles that appear from the front of the machine onto a conveyer belt leading to the filler. The machine must be airtight and completely enclosed in a room. A grinder for recycling scrap and misformed bottles would be located in the room adjacent to the blowmolder. The grinder emits noise so it must be enclosed to reduce the noise.
9. The resin pellets would be delivered once a week. The truck would be emptied by vacuum into a 36 ft. high, 10 ft. diameter silo also to be constructed.
10. A transformer pad is to be constructed for two transformers necessary for the dairy. The City had requested that the pad be built since the existing poles cannot support additional transformers.
11. No additional expansion or construction is contemplated by Vitamilk at this time. The president indicated that the business is very competitive and that Vitamilk must respond to new trends to stay abreast of the market. The concerned neighbors are skeptical because they have been told in the past that the company foresaw no growth. The result, as they view it, is piecemeal growth without any comprehensive planning or ability for the City to regulate.
12. Employees who now load the bottles onto the belt to be filled would operate the blowmolder machine. It may be necessary to add one employee.
13. The environmental specialist who reviewed the environmental checklist and prepared the DNS read correspondence from community members and others concerned about effects of Vitamilk on the community; met with representatives from other departments about the problems; studied materials provided by the applicant including a letter from the blowmolder manufacturer; talked with engineer in charge of a similar machine at another dairy about representations made by the manufacturer; requested additional information from the applicant; and visited the site. He concluded that the only impacts he could consider were those that would result from the proposed expansion and they either would be temporary or insignificant as long range impacts.
14. Dust from the grinder is controlled because the blowmolder area must be dust free. No dust would leave the building. Additional dust and hydrocarbons can be expected during construction.
15. Water for cooling is recycled.
16. Seven new street trees would be added.
17. No added noise would escape the building.

18. Little additional light would emanate from the building.
19. Some additional electricity would be used, to be handled by the new transformers.
20. The resin is inert matter and not combustible.
21. Since the adverse effects of the dairy on the community would not be magnified by this proposal there would be no effect on housing.
22. There should be a slight decrease in truck circulation as a result of the addition of the blowmolder except during construction when it would be increased.
23. The environmental specialist expects construction to take approximately six months.

Conclusions

1. An environmental impact statement (EIS) is required when there is a reasonable probability that the proposal will cause more than a moderate effect on the quality of the environment. Norway Hill v. King County Council, 82 Wn.2d 267, 552 P.2d 674 (1976). In reviewing the decision made by the Director the Hearing Examiner is to accord that decision substantial weight. Section 23.
2. Appellants urge that the many questions they raised at hearing require answers in the form of an EIS. For two reasons the Examiner cannot base a reversal on those questions. First, many are questions which cannot be read into the questions in the environmental checklist. WAC 197-10-360(1) specifically limits the Director's consideration to the questions in the checklist. Therefore, answers to others raised by appellants could not be the reason to require an EIS. Secondly, clear error must be shown to overcome the substantial weight given the determination. Norway Hill, supra. Without a showing that the answer to an unanswered question would probably lead to a significant impact, the raising of questions would not be sufficient unless an absolute failure to consider an element of the environment were shown. In that case a remand could be in order. The record shows that all required questions were answered.
3. Appellants urge other grounds for reversal of the decision: that the proposed activity is so interrelated to the operation of the dairy that the impacts from the whole operation are to be considered; that the existing conditions warrant an EIS; and that the current proposal is but a segment of continuing expansion.
4. SEPA Guidelines implementing SEPA require a decision as to whether or not an EIS is required for any "action" as defined by the guidelines. According to WAC 197-10-040(2) the actions which may require an EIS are "(a) Governmental licensing of activities involving modification of the physical environment", (b) Governmental action of a project nature", and (c) Governmental action of a nonproject nature." WAC 197-10-060, defining the scope of the proposal to be considered, provides: "(2) the total proposal is the proposed action, together with all proposed activity, functionally related to it."
5. The only request for licensing or permits is for the additions. The scope, then, includes the addition and the activity to take place as a result of the addition. No permits have been requested or are required for the existing operation so it is not part of the action which may require an EIS.
6. As to the existing conditions, intolerable as they may be, the Director cannot address them through the SEPA threshold determination process since he is limited to the questions posed in the environmental checklist. Any violations of law by the current operations can be enforced by him and other officials with enforcement authority.


7. Unless there is evidence of further plans, only the action applied for can be considered. While the community has experienced the continued growth and expansion of Vitamilk it would be impermissibly speculative to require an EIS based on past experience without other evidence.

8. The determination by the Director that the expansion for addition of the blowmolder, grinder, silo and transformer pad, and limited to that proposal, would have no significant adverse impacts on the environment has not been shown to be clearly erroneous and so must stand.

Decision

The environmental determination of the Director is AFFIRMED.

Entered this 15th day of October, 1982.


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 further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App 418 (1977); JCR 73 (1981). Should an appeal be filed, instruction for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City of the appellant is successful in court.