

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

In the Matter of the Appeal of

MAGNOLIA COMMUNITY CLUB & MRS. HELENE SMITH

FILE NO. W-76-004

from an environmental determination
of the Superintendent of Buildings

This matter is remanded to the Superintendent
for the preparation of a new threshold determi-
nation.

Introduction

The appellant, Magnolia Community Club and Mrs. Helene Smith, filed an appeal from a declaration of non-significance prepared by the Superintendent of Buildings, hereinafter Superintendent, with regard to a proposed action to construct an animal shelter at 2600-2700 15th Avenue West (Interbay site).

The appellants exercised their right to appeal pursuant to Section 20, Ordinance 105735, which integrates into City programs the policies and procedures of the State Environmental Policy Act of 1971 (SEPA).

This matter was heard before the Hearing Examiner on November 8, 9, and 10, 1976.

Parties to the proceeding were the appellants, represented by Joel Haggard, and the Superintendent, represented by Donna Cloud. The Seattle Animal Control Commission was permitted to state its position with regard to the appeal.

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 Superintendent has the responsibility for evaluating appropriate sites for the construction of an animal control shelter to be operated by the City's Animal Control Division. The animal control facility is designed to serve the following functions: to receive unwanted, stray or dead animals, to care for stray pets until redeemed by the owners, to provide a place for euthanizing unwanted animals, to dispose of carcasses, to offer animals for adoption and to provide public information.

2. The proposed shelter would be one-story in height and contain 7,000 square feet. A 25 vehicle parking area would also be provided on site. A staff of 12 to 13 would operate the facility during the daytime.

3. The site of the proposed animal shelter is vacant property located at 2600-2700 15th Avenue West in the Interbay area between the west slope of Queen Anne and Magnolia.

4. After evaluating the site, the Superintendent prepared a threshold determination, dated September 8, 1976, in which he found the proposed project would have a non-significant adverse impact on the environment and that an environmental impact statement is not required. The threshold

determination was filed with the SEPA Information Center on September 8, 1976. In conjunction with the threshold determination, the Superintendent prepared an environmental assessment, dated September 3, 1976, that provided additional information about the project.

5. An appeal was filed with the Hearing Examiner on October 12, 1976, which exceeded the 15 day appeal period established in Section 20, Ordinance 105735. In an order, dated October 29, 1976, the Hearing Examiner accepted the appeal on the basis that significant new information had been discovered subsequent to the filing of the threshold determination.

6. About 48 acres of publicly owned land is located in the Interbay area. The Park Department controls about 39 acres, of which 29 acres are located directly to the south of the proposed animal shelter. To the northwest is the 10 acre Interbay Athletic Field which is utilized for recreational purposes and there are no plans to develop it for other purposes. Of the remaining acreage, 6.9 acres are controlled by the Building Department and 2.3 acres by the School District, which has leased the property to the city. The animal shelter would be located on the property controlled by the Building Department.

7. The 29 acre site that is located to the south of the proposed animal shelter and controlled by the Park Department has consistently been reserved by the Park Department in clearly stated policies and actions for development as a recreation area.

8. In late 1975 a conceptional plan was prepared for developing the area for an executive golf course, which would require 40 to 45 acres. The plan consisted of a general configuration drawing and a written description. Information regarding the golf course plans and the need to acquire the Building Department and School District lands was first released publicly on October 8 or 11, 1976 in the form of a memo, dated September 30, 1976, to the Superintendent of Parks from a staff member, Robert L. Wilder.

9. In the environmental assessment there is a reference to the Park Department's control of adjacent property but no statement as to development plans. In the threshold determination it states that development of the site for an animal shelter will not have any impact on recreation uses. The Environmental Impact Review Committee commented upon the failure of the Superintendent to consider the golf course alternative in his environmental determination.

10. The proposed site for the animal control shelter is zoned General Commercial (CG). In the environmental assessment (p. 2) it states that the location of the structure would comply with the zoning code. In the threshold determination (question no. 9) it states that the only governmental approval required is a building/use permit.

11. In this proceeding official notice is taken of the provisions of the Seattle zoning code. With regard to permitted uses, a "commercial kennel" is first permitted in the General Commercial (CG) zone (Section 26.36.050, Seattle Code) but a "dog and cat pound" is first permitted in the General Industrial (IG) zone (Section 26.40.020, Seattle Code). Section 26.36.160, Seattle Code, prohibits as a use in the CG zone a use permitted in a more intensive zone. Consequently, a dog and cat pound is not permitted in the CG zone since it is first permitted in the more intensive IG zone.

12. The term "commercial kennel" is defined in the zoning code (Section 26.06.120, Seattle Code) as any lot or building in which four or more dogs or cats at least four

months of age are kept commercially for propagation or treatment. The term "dog and cat pound" is not defined in the zoning code. However, two authoritative sources define it as an enclosure for impounding stray animals that is maintained by a local government. WORDS AND PHRASES, vol. 33, p. 198; WEBSTER'S DICTIONARY, 2nd ed., p. 1411.

13. The necessity of considering a rezoning in a threshold determination is clearly set forth in the SEPA Guidelines. WAC 197-10-060(3) provides in part:

The impacts of a proposal include its direct impacts as well as its reasonable anticipated indirect impacts. Indirect impacts are those which result from any activity which is induced by a proposal. These include, but are not limited to, consideration of impacts resulting from growth induced by the proposal, or the likelihood that the present action will serve as a precedent for future actions. (For example, adoption of a zoning ordinance will encourage or tend to encourage or tend to cause particular types of projects.)

14. Evidence at the hearing indicated that grading on site would require the removal of more than 500 cubic yards. If a grading permit is required, then the declaration of non-significance must be circulated for comment. See WAC 197-10-340.

15. The environmental assessment contains a list of alternatives sites that were considered. A map showing the location of the sites is part of the record (Respondent's Exhibit No. 2). Even though an environmental impact statement was not prepared in this case, that does not mean that alternatives must not be adequately considered. RCW 43.21.C.030(2)(e) requires the responsible official to study, develop, and describe appropriate alternatives and to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. A recent federal appellate court decision holds, under language virtually identical to SEPA, that alternatives must be considered without regard to the filing of an environmental impact statement. This obligation involves a broad type of consideration--"study, develop and describe". See Trinity Episcopal Church v. Romney, 8 ERC 1033 (2nd Cir., 1975).

Conclusions

1. This matter is remanded to the Superintendent for the preparation of a new threshold determination, due to the failure to evaluate the impact upon land use of the location of an animal shelter adjacent to Park Department property and the plans for development of recreational uses on the site. A limited amount of land is available for recreational use and due to the significant acreage requirements of a golf course, the location of the animal shelter could preclude or limit the available options for the future development of the site for golf or other recreational use. Since the Interbay area is one of the last publicly owned open sites with potential for recreation development in the area, the impact on the recreation needs of the Queen Anne and Magnolia communities must be evaluated.

2. The Superintendent claims that the plans for the golf course were not sufficiently definite to warrant consideration. Although the golf course proposal was certainly not in a final stage of development, a written evaluation and drawing had been prepared by Park Department personnel. It is clear from the record that the golf course proposal had reached a stage of sufficient conceptualization to warrant considera-

tion in the environmental review process.

3. Even if no plans for a golf course had existed, the fact that the animal shelter would be located adjacent to a large area that has been preserved for development by the Park Department for recreation use warrants environmental analysis. The threshold determination and environmental assessment are totally insufficient at this point, and misleading, due to the failure to recognize any impact on recreation uses. To require the Superintendent to disclose such factors is not an impossible burden. For example, if the Park Department had no plans to develop the property for recreation use but only as a vehicle storage yard there would be no need for further evaluation. However, in this case one of the last remaining open areas in the city with potential for recreational development is involved. Certainly the decision makers, the City Council, should be made aware of such factors and the SEPA Guidelines require such disclosure. The failure of the Superintendent to properly evaluate and disclose these factors is clearly erroneous.

4. The new information relating to the plans for a golf course were not made public in time for the appellants to file an appeal within the time limits established in Section 20, Ordinance 105735. The information relating to the golf course has been shown to have potentially significant adverse impacts on recreational use. Based on the foregoing, the Hearing Examiner has jurisdiction to hear and decide this appeal. Furthermore, the evidence in this case shows that the Superintendent abused his discretion by failing to withdraw his threshold determination based on the new information relating to the golf course and the authority contained in WAC 197-10-375.

5. The proposed site of the animal shelter is zoned General Commercial and since an animal shelter, which comes within the definition of "dog and cat pound", is first permitted in the more intensive General Industrial zone, a rezone would be required. Both the threshold determination and the environmental assessment contain clearly erroneous statements with regard to the need for a rezone. WAC 197-10-060(3), which is specifically adopted in the SEPA Ordinance (105735), requires a consideration of any zoning change in a threshold determination.

6. Although the issue relating to the need for a rezone does not specifically come within the definition of new information, it so basically affects the project development that failure to properly evaluate it could render all future actions void. The issuance of a use permit for construction of the shelter could be appealed under Ordinance 104795, relating to appeals of decision of the Superintendent. However, an appeal at that late stage would mean that additional time, effort, and money would be invested in the project. WAC 197-10-055 requires completion of the threshold determination at the earliest point in the planning and decision-making process when the principal features of the proposal and its impacts can be reliably identified. The impact of the project in requiring a rezone has been identified and should be dealt with at this stage.

7. The appellants have raised several other issues with regard to the threshold determination, but they do not come within the definition of new information and will not be formally ruled upon. However, for the guidance of the Superintendent in the preparation of a new threshold determination specific attention should be given to the need for a grading permit, noise emanating from pile driving, and evaluation of alternative sites.

Decision

This matter is remanded to the Superintendent for the preparation of a new threshold determination in accordance with the SEPA Guidelines. The Superintendent is required to specifically address the need for a rezone and the impact on recreation and land use of an animal shelter adjacent to Park Department property that is designated for recreational use, with specific reference to plans for an executive golf course. Consideration should also be given to the factors outlined in conclusion number 7.

Entered this 29th day of November,
1976.


William N. Snell
Hearing Examiner