

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

In the Matter of the Appeal of

DEAN JACOBSEN

FILE NO. W-76-008

from an environmental determination
by the Department of Community Development

This matter is remanded to the Department of
Community Development for the preparation of
a new threshold determination in accordance
with the provisions of this decision.

Introduction

The appellant, Dean Jacobsen, filed an appeal from a declaration of non-significance prepared by the Department of Community Development with regard to a proposal to rezone 5.9 acres at the southwest corner of 3rd Avenue N.W. and N.W. 115th Street from RS 9600 to RS 7200. The appellant alleges that the threshold determination was based on insufficient evidence.

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

This matter was heard before the Hearing Examiner on January 26, 1977.

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 rezone petition was filed by Ronald A. Comin (hereinafter petitioner) requesting a rezone of 5.9 acres of property located at the southwest corner of the intersection of 3rd Avenue N.W. and N.W. 105th Street. The existing zoning for the property is Single Family Residence Low Density (RS 9600) and the proposed zone is Single Family Residence Medium Density (RS 7200). The petitioner is seeking the rezone in order to increase the density that would be permitted for development under the RS 7200 zone. The petitioner intends to apply for a Planned Unit Development (PUD) that would include 42 dwelling units on the subject property if the rezone is approved. If the property is not rezoned in accordance with the petitioner's proposal, only 32 units would be permitted under the existing RS 9600 zone.

2. The Department of Community Development (hereinafter Department), pursuant to the provisions of the State Environmental Policy Act of 1971 (SEPA) (RCW 43.21C) prepared a declaration of non-significance with regard to the proposed rezone. The essence of this threshold determination was that it was considered by the Department that the rezone would not have a significant adverse impact on the environment and that an environmental impact statement was not required in this instance. In reaching this determination, the Department considered only the impacts of the proposed rezone and did not consider what impact, if any, the intended PUD would have on the environment.

3. The appellant, Dean Jacobsen, filed an appeal with the Office of Hearing Examiner on December 15, 1976, that took issue with the declaration of non-significance issued by the Department. The appellant contends that the determination was based on insufficient evidence.

4. The subject property includes 5.9 acres that fronts on 3rd Avenue N.W., immediately east of Carkeek Park. The property has significant topographical variations with moderate to severe slope conditions in some areas of the property. Much of the site is comprised of sand with substantial areas of dense vegetation. A creek flows through the middle of the property.

5. The petitioner completed an environmental checklist which was used by the Department as a basis for its threshold determination. The petitioner included the proposed rezone and PUD as components of his proposal and completed the checklist accordingly. The petitioner consequently noted potential impacts that would result from both the rezone and the PUD. However, in the preparation of the declaration of non-significance, the Department excluded any consideration of the potential impacts of the PUD and considered only the environmental impacts of the proposed rezone. The Department has not made a threshold determination on the PUD at this time.

6. The section of the SEPA guidelines which discusses the scope of a proposal and its impacts (WAC 197-10-060) has been adopted by reference as a policy and procedure for the City of Seattle by Section 2, Ordinance 105735. The timing of the environmental review process for city departments is outlined in Section 5, Ordinance 105735.

Conclusions

1. The threshold determination prepared by the Department with regard to the petitioner's proposal is defective in that it is based on insufficient information. The declaration of non-significance fails to recognize the total proposal of the petitioner as being comprised of the rezone and the PUD as its two components. Additionally, the Department has failed to recognize the proper timing of the environmental review process and to analyze the indirect impacts of the proposal.

2. The total proposal of the petitioner, pursuant to WAC 197-10-060(2), consists of both the rezone request and the intended PUD. The PUD is functionally related to the proposed rezone because it will be facilitated if the rezone request is approved. Additionally, the plans for the PUD are sufficiently specific so that its potential impact can be considered at this stage.

3. Despite the fact that the rezone request and the intended PUD will require separate approvals, Section 5 of Ordinance 105735 requires that a threshold determination and EIS, if required, be prepared at the beginning of the evaluation process of the merits of the total proposal. The environmental impacts of the proposal should be available to the decision makers at the earliest possible stage. The features and impacts of the total proposal can be reliably identified at this stage and should be included in the consideration of the threshold determination. Although an application for a PUD has not been submitted by the petitioner, the Department can seek the information required for the threshold determination from the petitioner at this stage and need not wait until such an application is filed in the future.

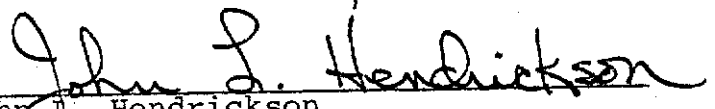
4. The Department in preparing a threshold determination for the petitioner's total proposal should consider the indirect impacts of the requested rezone, pursuant to WAC 197-10-060(3), which would include the effects of the PUD on the environment. These impacts can be reasonably anticipated at this stage due to the specific nature of the petitioner's request for a rezone and eventual PUD. If the requested rezone is approved, it is certain that it will be a precedent for the PUD inasmuch as it will encourage the petitioner to go forward with the PUD portion of his total proposal.

5. No inference should be drawn from this decision as to whether an environmental impact statement is required with regard to the petitioner's total proposal of a rezone and PUD. This must be decided by the Department in the preparation of a new threshold determination which shall consider all of the relevant features and impacts of the total proposal.

Decision

This matter is remanded to the Department of Community Development for the preparation of a new threshold determination in accordance with the provisions of this decision.

Entered this 9th day of February, 1977.


John L. Hendrickson
Deputy Hearing Examiner

Notice of Appeal

The decision of the Hearing Examiner in this case is the final administrative determination. Any appeal must be made to the courts. Section 12, Ordinance 102228, the Administrative Code, sets forth the procedure for staying enforcement of an administrative order or decision pending judicial review.