

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

EASTLAKE COMMUNITY COUNCIL

FILE NO. W-77-025

from an environmental determination
of the Department of Community
Development

The appeal is DENIED.

Introduction

The appellant organization, the Eastlake Community Council, filed an appeal challenging the issuance of a declaration of non-significance with regard to a proposed action to continue use of a barge as a customs terminal for property near 1200 Westlake Avenue North on Lake Union.

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

Parties to the proceeding were: John H. Sweet, attorney, representing Airwest Airlines, Ltd., Ross Radley, attorney, representing the Department of Community Development and Jim Engrissei for the Eastlake Community Council.

A motion by the counsel for Airwest and the Department to dismiss the appeal was denied on December 1, 1977.

This matter was heard before the Hearing Examiner on January 9, 1978.

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. Airwest Airlines, Ltd., has submitted an application for a shoreline permit to continue the use of a customs terminal that is located on a wood frame barge that is moored adjacent to the AGC Building on Lake Union near 1200 Westlake Avenue. Located on the barge is a one-story building which is used by the United States Customs Office to clear passengers arriving from Airwest flights originating in Canada.

2. Airwest for several months operated two Seattle to Victoria flights per day departing at 9:50 a.m. and 4:20 p.m. Flights arrive at 9:35 a.m. and 4:05 p.m. All fueling takes place in Canada. During the past few weeks the flights have been suspended but there are plans to renew the flights.

3. The Department of Community Development reviewed the shoreline permit application and issued a declaration of non-significance on October 5, 1977.

4. In a timely appeal filed on October 20, 1977, the Eastlake Community Council raised several issues with regard to the declaration of non-significance. The following paragraphs will consider specific issues raised by the appellants on appeal.

5. Paragraph 10 of the background information in the environmental checklist contains the following question: "Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal?" The answer entered is "no". The appellants allege that the number of flights will increase in accordance with the demand for service and that the checklist is inadequate in that it does not address the potential impacts of increased future use.

6. Item number 6 of the checklist states that the proposal will not increase existing noise levels. The aircraft utilized by Airwest are DeHaviland, Twin Otter, D8-C6 with PT6-20 Turbines. A noise analysis, which is part of the checklist, indicates that the resulting noise will be below those of other aircraft now being operated on Lake Union. The appellants did not challenge the finding of the noise study but do allege that the failure to consider the impact of potential increases in the frequency of flights is a defect in the checklist.

7. Under land use, item 8, it is stated that the proposal will not result in the alteration of the present or planned land use of the area. Under item 13, transportation and circulation, the checklist states that there will be no impact upon existing transportation systems, alterations to present patterns of circulation and no alterations to waterborne or air traffic. The appellants allege that the responses to these items do not contain an adequate evaluation of the potential impacts of the proposal.

8. Under item 14, public services, it is stated that the proposal will not have any effect upon other governmental services. The appellants allege that it will result in a duplication of customs facilities.

9. Under item 19, it is stated that the proposal will not result in an impact upon the quality or quantity of existing recreational needs. The appellants challenge this contention and allege that the flights will interfere with waterborne recreation.

Conclusions

1. The determination of the Department of Community Development, pursuant to Ordinance 105735, in issuing a declaration of non-significance is regarded as prima facie correct. Appellants have failed to meet their burden and establish the incorrectness or inadequacy of the Department's determination.

2. One of the primary purposes of the State Environmental Policy Act (SEPA) is to require the city to consider environmental factors when taking "major actions significantly affecting the quality of the environment". RCW 43.21C.030(2)(C). In stating a general guideline as to when an environmental impact statement is required, the Washington Supreme Court in Norway Hill vs. King County Council, 87 Wn.2d 267, 552, p.2d 674 (1976) stated:

Generally, the procedural requirements of SEPA, which are merely designed to provide full environmental information, should be invoked whenever more than a moderate effect on the quality of the environment is a reasonable probability.

3. The record in this case has been reviewed in light of the standard established in Norway Hill v. King County

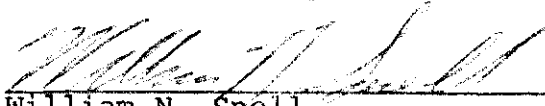
Council, supra. The record shows that Airwest has utilized a customs facility, which is located on a barge or vessel to unload passengers. Given the small size of the facility and its proximity to a large office building, its establishment has resulted in a very minor physical change in the Lake Union environment. The small number of flights (two per day) in aircraft that is quieter than existing aircraft using the lake will not result in any marked change in waterborne use or enjoyment. The capacity of the aircraft (a maximum of 17 passengers) also limits the impact of the proposal. Considering all of the above factors it is concluded that the impact of the proposal will not be negligible but that it certainly will be less than moderate. Therefore, no environmental impact statement is required. A substantial modification of the number of flights or type of aircraft could result in a need for further evaluation but such modifications would be subject to review by Federal agencies controlling aviation. However, the record does not indicate that any substantial modification is a reasonable probability in the near future.

4. The Supreme Court has held that the record of a negative threshold determination by a governmental agency must show that environmental matters were considered in a manner sufficient to result in prima facie compliance with the procedural requirements of SEPA. Sisley v. San Juan County, 89 Wn.2d 78 (1977). The record demonstrates that the Department conducted an independent review of the environmental checklist and complied with the procedural aspects of SEPA. The appellants have failed to present substantial evidence to support the allegations contained in the appeal.

Decision

The appeal is DENIED.

Entered this 26th day of January, 1978.


William N. Snell
Hearing Examiner

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination and any further appeal must be made to the courts.