

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

In the Matter of the Appeal of

BERNARD J. STOREY

FILE NO. W-77-028

from an environmental determination  
of the Superintendent of Buildings

This matter is REMANDED to the Superintendent  
for the preparation of a new threshold deter-  
mination.

Introduction

The appellants, Bernard J. Storey et al., filed an appeal from a Declaration of Non-Significance, hereinafter DNS, prepared by the Superintendent of Buildings, hereinafter Superintendent, with regard to a proposal to demolish a single-family residence and construct a seven-unit apartment at 2846 14th Avenue W.

The appellants exercised their right to appeal pursuant to Section 20, Ordinance 105735.

Parties to the proceeding were: James R. Pearson, representing the appellants; Ross Radley, City Attorney, representing the Superintendent; and Elizabeth Osenbaugh, attorney, representing James Osnes, the proponent.

This matter was heard before the Hearing Examiner on January 18, 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. James Osnes, the project developer proposes to construct a seven-unit two-story apartment with seven parking stalls at 2846 14th Avenue West. The site is now occupied by a single-family residence with a garage.

2. The Superintendent issued a DNS on November 21, 1977, with regard to the applicant's proposed action. The appellants filed an appeal of this determination on December 6, 1977.

3. The appellants contend that the Superintendent failed to include in its consideration of the "nature of the existing environment" the effects of additional apartment units which will be available for occupancy on or before the date of opening of the subject project; that a series of licensing actions by the city for building permits issued in the immediate vicinity of the subject property are interdependent and therefore require an EIS for their cumulative impact; and that the determination was based on "inaccurate and arbitrary" data, that of a 3% increase in number of tenants, using an excessively large area.

4. In completing the environmental checklist the proponent had answered all questions in the negative. The Superintendent after review, consultation with other agencies and field inspections, substituted "yes" or "maybe" responses to a number of the individual questions and added explanations thereby providing independent evaluation.

5. Because of the concern of citizens expressed in the form of letters to the Superintendent and the amount of development activity, the Superintendent maintained a master file for 14th Avenue West. The employee who prepared the DNS was aware of the file and consulted it prior to issuing the DNS.

6. The blocks between W. Dravus Street and Gilman Drive W. have been the site of considerable construction activity within the past year. The evidence showed that 47 new units have been or are under construction on 14th Avenue W. between W. Dravus and W. Barrett and 27 between W. Armour and W. Raye. Future apartment development is planned for several other lots on 14th W.

7. In computing the percentage increase in the number of apartment units in the area a Superintendent's employee included all units constructed but not yet open but missed one 5-unit addition.

8. The area chosen as the affected area, 14th Avenue W. between Gilman Drive W. and W. Dravus, was part of the area that appellants suggested would be appropriate for a comprehensive environmental impact statement covering all projects.

9. The environmental specialist for the Superintendent directed her assistant to request a review by the Engineering Department of the present traffic and parking situations along 14th Avenue W. between Gilman Drive and West Barrett in relation to the construction the subject proposal and possible mitigating measures. After conducting the review the Engineering Department responded that the addition of a seven-unit apartment will not have "any significant impact on the traffic situation as it now exists."

#### Conclusions

1. The enabling ordinance, 105735, provides that on appeal the determination by the lead agency is to be considered prima facie correct. The appealing party is to have the burden of establishing that the determination is erroneous.

2. A detailed environmental impact statement is required only when there is a major action that will have a significant adverse impact on the environment. An adverse impact is significant "whenever more than a moderate effect on the quality of the environment is a reasonable probability". Norway Hill v. King County Council, 87 Wn2d 267, 278. The factors to be considered are "(1) the extent to which the action will cause adverse environmental effects in excess of those created by existing uses in the area, and (2) the absolute quantitative adverse environmental affects of the action itself including the cumulative harm that results from its contribution to existing adverse conditions or uses in the affected area." Narrowview Preservation Assn v. Tacoma, 83 Wn2d 416 (1974).

3. The testimony at hearing as to adverse environmental impacts centered on the amount and effect of increased traffic and parking. The Superintendent showed a reasonably

thorough evaluation as to the impacts of the proposal in excess of those created by existing uses in the area. While the statistical data as to traffic volume was badly out of date, the experts did make a total of four site visits at various times of the day. It was unfortunate that no check was made during a rush hour however the experts involved could rely upon their knowledge and experience to make projections as to the increase to be expected. Nor was the discrepancy shown by the appellants as to the length of existing alleyway sufficient to show clear error as to the decision by the Superintendent since the condition of the on-street parking and traffic flow was actually viewed. Evaluation broke down, however, as to the assessment of the cumulative effect this proposal would have. The Superintendent apparently relied heavily on Mr. Hendrickson's opinion as to the affect of traffic. His testimony showed, however, that his opinions as to a "moderate" volume of traffic and no parking problem were based on his expectation of the increase in traffic from seven units on the existing condition, not on the condition as it could reasonably be expected to be considering the additional units under construction. His superior made two site inspections and concurred with Mr. Hendrickson's ultimate conclusion of no significant impact. He, as well, lacked information as to the number of additional units that would be in existence and contributing to traffic volume and parking. Considering the expected increase in number of units within the area under consideration, the cumulative harm of the seven units contribution to the existing traffic and parking could be significant. Therefore, the matter will be remanded for the Superintendent to make a reassessment after obtaining expert opinion as to cumulative effect grounded on the traffic and parking conditions as are reasonably foreseeable with the completion of all units in the area for which building permits had been issued on the date of the DNS.

4. The size of area under consideration as to impact was not unreasonable. A four block area is not an unusually large area to be considered. A detailed environmental impact statement is required only for "major actions". It would seem that when the main impact is expected to be on traffic and parking if the affected area were smaller than four blocks a question should be raised as to whether the action was in fact "major".

5. The Superintendent did not err in failing to require an EIS for the project and all other multi-unit construction in the area. WAC 197-10-060, provides that the total proposal shall be considered. In defining the "total proposal" it includes the proposed action and all proposed activity which is functionally related to it. Future activities can be functionally related if they are an expansion of the present proposal, are necessary to or facilitate the operation of the proposed action or the present proposal facilitates or is a prerequisite to future activities. Contemporaneous development is discussed only in terms of their being an indirect impact if there will be a causal connection between them and one or more of the governmental decisions necessary for the subject proposal. The governmental decision as to the type of uses to be allowed in this area through zoning was made long ago. If a rezone were required for the proposed action and the other development were to follow then an EIS for the including all proposed development would undoubtedly be required. That is not the case here. There is no functional relationship nor interdependence between the various projects. The SEPA ordinance provides the protections appellants are seeking by requiring disclosure of cumulative effects.

Decision

The appeal is remanded to the Superintendent for a new threshold determination in accordance with Conclusion number 3.

Entered this 6th day of February, 1978.

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 and any further appeal must be made to the courts.