

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

NORTH QUEEN ANNE ASSOCIATION, et al.

FILE NO. W-78-019

from an environmental determination  
of the Superintendent of Buildings

The appeal is DENIED and the determination  
of the Superintendent of Buildings is affirmed.

#### Introduction

The appellants, the North Queen Anne Association and Benella Caminiti, filed appeals challenging the adequacy of the Environmental Impact Statement (EIS) prepared for a proposed 36-unit condominium development at 2612-32 4th Avenue North.

The appellants exercised their right to appeal pursuant to Section 20 of the SEPA Ordinance (105735, as amended)

Parties to the proceeding were: the Superintendent, represented by Ross Radley; William Baron and S. Hara for the North Queen Anne Association; and Benella Caminiti.

This matter was heard before the Hearing Examiner on November 29, 1978, December 5, 1978 and December 27, 1978.

For purposes of this decision, the portion of the EIS bound in a blue cover and issued on June 13, 1978 shall be referred to as volume 1 and the portion bound in an orange cover and issued on October 11, 1978 shall be referred to as volume 2.

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. Norman Nelson proposes to construct a 36-unit condominium development (Queen Anne Condominiums) on a 1.37 acre site located at 2612-32 4th Avenue North. Six buildings would be constructed, each containing 6 units. Each building would contain 3½ stories, and have an average height of 33 feet 4 inches. The buildings would be of a wood frame with cedar siding and a shingle roof.

2. Fifty parking spaces would be provided for the development, with 36 covered and 14 uncovered. Covered parking stalls would be located near 4th Avenue North and built into the hillside. If a street use permit can be obtained, 18 visitor parking stalls would be located on Newell Street, which is unimproved for vehicular traffic.

3. The project site is located on the north slope of Queen Anne hill and is bounded by Newell Street (unimproved) on the north, Hillside Place (vacated) on the south, 4th Avenue North on the west, and 5th Avenue North (unimproved) on the east. Aurora Avenue North is located about 400 feet to the east.

4. The project site is undeveloped and located on a steep hillside. In the vicinity of Hillside Place and 4th Avenue North is an upper steep slope of approximately 31% that extends between the 175 and 195 foot contours. A more moderate slope of about 20% extends from the 175 to 145 foot contours.

5. Zoning for the project site is Multiple Residence Low Density (RM 800). Technically up to 72 dwelling units could be built on a site since 800 square feet of lot area are required for each dwelling unit. The height limitation in the zone is 35 feet.

6. A final EIS was issued for the project on October 11, 1978. The North Queen Association (NQAA) filed an appeal on October 26, 1978 and Benella Caminiti on October 19, 1978. The following paragraphs will consider specific issues raised by the appellants.

#### NOISE

7. Noise is discussed in the EIS, volume 1, pages 19 through 21. This discussion points out that there are no significant noise sources on the site but that background noise from vehicular traffic on Aurora Avenue North, which is located about 400 feet to the east, would be in the range of 60-65 dBA.

8. The appellants alleged that the discussion of noise in the EIS was inadequate and that there was a failure to take actual on-site readings. Kurt Horner, an employee of the Seattle-King County Health Department, at the request of Ms. Caminiti took noise readings on November 28, 1978. His reading at 8:25 a.m. was 61 dBA and at 2:21 p.m. it was 62 dBA.

9. Fifty-five dBA is the maximum permissible sound level for residential areas pursuant to the Noise Ordinance (106360, as amended). Section 406 of the Noise Ordinance exempts sounds created by motor vehicles from the maximum permissible sound levels.

#### TRANSPORTATION AND CIRCULATION

10. Transportation and circulation is discussed in the EIS, volume 1, pages 27 through 34. Fourth Avenue North, the main access point to the site, has a 20% grade between Newell Street and Queen Anne Drive. The point at which 4th Avenue North intersects with Queen Anne Drive is a 7-way intersection with Raye Street, Nob Hill Avenue North and two parts of 6th Avenue North.

11. The appellants alleged there are several areas of inadequacy with regard to the traffic analysis. The specific allegations are as follows: the data does not fairly reflect the current traffic situation; the analysis does not fairly evaluate the likely traffic impact of the proposed project; that there was not sufficient analysis of the traffic hazards to be expected as a result of much of the traffic from the development entering a 7-way intersection from a steep slope; no evidence to support the statement that 4th Avenue North would have the capacity to absorb traffic increases generated by the project; that the alternative mitigating measure of making 4th Avenue North one-way northbound was not analyzed for its effect on the neighborhood to the north and west; and that there is insufficient information relating to the alternative of providing access by means of Dexter Avenue, along an extension of Newell Street.

12. The data for the traffic counts in the nearby streets is based on two-one hour counts taken in 1970 by the Engineering Department. The appellants claim that this information is outdated and that a new traffic count should have been taken. In support of this allegation they point out that the Seattle Country Day School which has over 180 students was not in operation in 1970. This school is located directly across 4th Avenue North from the subject site.

13. On January 11, 1979 the appellant, NQAA, requested

that the record be reopened for the submission of additional written information challenging the 5.6 weekday vehicle trip ends per unit per day figure and used in the EIS, volume 1, page 31. Opposing counsel did not object and the January 11, 1979 submission was made part of the record.

14. The accident rate for nearby streets is shown in the EIS, volume 1, figure 5, page 29. The appellants claimed at the hearing that some of the traffic accident data was incorrect. The project developer stipulated that the record should be corrected and that there were four accidents on 4th Avenue North between Newell and Queen Anne Drive instead of the two shown.

15. In the transportation and circulation section of the EIS, volume 1, page 34, under the subheading of unavoidable adverse impacts is the following statement:

The proposal would create additional traffic on neighborhood streets: Newell, 4th Avenue North, Queen Anne Drive, Dexter Avenue North, and neighborhood collectors. The potential for additional accidents would increase. The seven-way intersection at 4th Avenue North and Queen Anne Drive, in particular, could experience greater accidents if 4th Avenue North is heavily travelled by condominium occupants.

#### SOILS AND GEOLOGY

16. In the EIS, volume 1, pages 12 and 13, geology and soils is discussed. Appendix A to volume 1 also includes a letter from Neil H. Twelker, a soils engineer, which shows that the maximum cut into the hillside would be 10 feet.

17. The appellants allege that the analysis is misleading and erroneous since a 15 foot vertical cut will be made at the southwest corner of the site into fill material and that this is not addressed in the EIS. In addition the 15 foot cut would be located 10 feet from an existing duplex.

18. Neil Twelker, soils engineer, appeared and testified with regard to the failure to address the 15 foot cut. He stated that his letter, Appendix A, was not meant to cover every detail and that since this cut would only extend for an area of 10 to 20 feet that it would be dealt with at the time of actual construction and no detailed analysis was required. Mr. Twelker also stated that there were various types of actions that could be taken to prevent any danger to the existing duplex.

#### GREENBELT

19. The EIS, volume 1, page 6 shows that the site is designated as park and recreation area on the Comprehensive Plan. This site has also been included in the Urban Greenbelt for Seattle. The EIS, page 22, figure 4, shows the outline of the greenbelt area.

20. Volume 2 of the EIS contains a letter from the Seattle Department of Parks and Recreation dated July 19, 1978. In the letter the Department states that this particular greenbelt area is not in the top priority of areas to be purchased. The appellants allege that the discussion of the relationship between the greenbelt policies and the project is inadequate.

### PROCEDURAL DEFECTS

21. The appellants allege numerous procedural defects with regard to the preparation of the EIS. They allege that the amount of time elapsed between the issuance of the Draft and Final EIS exceeded the requirements of WAC 197-10-550 in that 75 days is permitted and 121 days elapsed.

In addition, the appellants claim that the failure to mail a Draft EIS to all parties whose names and addresses were contained in a zoning file (x-76-148) which related to a more intense project on the subject site was a violation of WAC 197-10-460(B).

It is also alleged that the manner in which critical comments were acknowledged in volume 2 of the EIS violates WAC 197-10-580 and makes it difficult for the decision maker to locate and indentify the comment with relationship to the discussion in the text.

### Conclusions

1. The appellants have failed to show that the EIS for the Queen Anne Condominiums project does not set forth sufficient information to enable the decision-maker to consider and balance the environmental factors.

2. The test for judging the adequacy of an EIS is the rule of reason. Cheney v. Mountlake Terrace, 87 Wn. 2d 338, 552 P.2d 184 (1976). In this case the EIS contains minor errors and some of the impacts will be slightly different or greater than disclosed but to no significant degree. Overall the discussion of impacts is adequate and reasonable.

3. With reference to noise, the EIS contains an adequate discussion and analysis fo this issue. The witness called by the appellants confirmed the accuracy of the data in the EIS. The decision-maker is alerted to the potential noise hazards posed to future residents of the site and may impose protective conditions, if necessary.

4. The section on transportation and circulation would have been more beneficial if more recent traffic counts and a more detailed analysis of alternative access points had been provided. Overall, however, the analysis is reasonably thorough. In addition the summary of unavoidable adverse impacts which is set out in finding of fact number 14 clearly alerts the decision-maker to potential accident and traffic problems.

5. With regard to soils and geology, the most serious objection is the failure of the soils report to note the 15 foot cut and the need for precautionary measures in light of the proximity of a nearby residence. It should be noted that the presence of the 15 foot cut is disclosed in the EIS, volume 2, response to letter from William Baron. Due to the small area over which the 15 foot cut would extend and the testimony of Neil Twelker, an expert soils engineer, that this was not a significant part of the soils analysis and that precautionary measures can easily be taken prior to construction, the overall analysis is found to be adequate. It would be advisable in future cases for the responsible official to more carefully scrutinize the soils information to avoid similar omissions.

6. The analysis of the applicability of greenbelt policies to the project is adequate. Although the City is in the process of refining its greenbelt policies, the requirement is that the EIS reflect the policies in effect at the time the EIS was finalized and this was done.

7. With regard to procedural defects, the lapse of time between the issuance of the Final and Draft EIS was excessive. However, a review of SEPA Guidelines indicates that this particular time limit is directory rather than mandatory. In addition the appellants have not shown how they were harmed by this delay. It is recommended that in the future the responsible official closely monitor the time periods to assure compliance.

8. WAC 197-10-460(g) is discretionary in that any person who has expressed an interest may be sent a copy of a Draft EIS. The distribution list in the EIS shows a wide distribution to community organizations in the area and the media. There has been no showing that the requirements of the guidelines were not met.

9. WAC 197-10-580 specifically authorizes the responsible official to determine that no changes or only minor changes are required in the Draft EIS despite the critical comments. The appellants have not shown that the method chosen by the Superintendent was so confusing or difficult to comprehend so as to amount to an abuse of discretion.

10. Other issues were raised in the appeals but the appellants failed to present any convincing evidence to support the allegations.

#### Decision

The appeal is DENIED and the determination of the Superintendent of Buildings is affirmed.

Entered this 15th day of January 1979.

  
William N. Shell  
Hearing Examiner

#### Notice of 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.