

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

Inn the Matter of the Appeal of

EAST SLOPE CONSERVATIONISTS

FILE NO. W-78-025

from an environmental determination
of the Superintendent of Buildings

The appeal is GRANTED IN PART and this matter is remanded to the Superintendent of Buildings for further action in accordance with the terms of the decision.

Introduction

The East Slope Conservationists filed an appeal challenging the adequacy of the Environmental Impact Statement (EIS) prepared for a proposed 37-unit condominium development at the southeast corner of Newton Street and Taylor Avenue North.

For purposes of this decision, the portion of the EIS bound in the green cover and issued on April 21, 1978 shall be referred to as volume 1 and the portion bound in the light blue cover and issued on August 21, 1978 shall be referred to as volume 2.

The parties to the proceeding were the appellants, represented by William Baron, the project developer by Richard Wilson and the Superintendent by Ross Radley.

This matter was heard before the Hearing Examiner on January 11 and 15, 1979.

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. Pacific Townhouse Builders propose to construct a condominium development (Queen Anne Palisades) on a .81 acre site located on the southeast corner of Newton Street and Taylor Avenue North. The development would contain two buildings with a total of 37 units. The uphill or western building would contain 4-stories above a parking level with an entrance via a bridge from the street at the 3rd floor level. The downhill (eastern) building would be set into the slope of the hill so that its entrances would be at the 4th and 3rd floors. Forty-six parking spaces would be provided.

2. The project site is located on a steep hillside. A maximum of 45% slope is located on east and west sides and a 10% slope through the center of the site. Two wood frame houses are located on the site and would be removed.

3. The project site is located generally on the east slope of Queen Anne Hill and has available spectacular views of Lake Union, the downtown area and the Cascade Mountains.

4. The property is located in a Multiple Residence Low Density (RM 800) zone. Directly to the north of Newton Street is a Single Family Residence High Density (RS 5000) zone.

5. On the Comprehensive Plan map the area is designated as best suited for multi-family development.

6. The Final EIS was issued on November 22, 1978 and a timely appeal was filed on December 7, 1978. The original appeal was filed by the Queen Anne Community Council. A substitution was made and the name of the appellants was changed to the East Slope Conservationists.

The following paragraphs will consider specific issues raised by the appellants.

Transportation and Circulation

7. The appellants allege that the analysis of on-street parking, the existing street system, and traffic generation is inadequate.

8. Transportation and circulation is discussed in the EIS, volume 1, pages 52 through 57. This discussion points out that all traffic to and from the site must utilize or cross the minor arterial, 5th Avenue North, through a loop road system that is formed by Crockett, Newton and Howe Streets, east of 5th Avenue North, and by the two block segment of Taylor Avenue North.

9. Six auto trips per day per unit are assumed for the project resulting in a net increase of 186 average daily trips on adjacent streets. EIS, volume 1, page 55.

10. The project will provide 40 legal off-street parking spaces and 37 are required by the zoning code. Three off-street parking spaces will be available for guests. A total of 46 spaces are proposed but 6 are tandem spaces in which 2 cars park end-to-end and cannot be counted as double spaces for zoning code purposes. The Engineering Department stated that tandem parking is awkward and may result in tenants looking for other places to park a second vehicle which could result in a demand for more on-street parking. EIS, volume 2, page 76.

11. In the EIS, volume 1, page 55 under traffic hazards it states that there have been no reported traffic accidents at or near any of the intersections of streets in the area for 1976 and 1977. The appellants have shown (appellants' exhibit 1) that this statement is in error and that there have been at least 17 accidents in the area between January 1, 1974 and July 31, 1978.

Aesthetics and View

12. Aesthetics and view are considered in the EIS in volume 1, pages 63A through 71. The EIS discloses that there will be view blockage from some buildings in the immediate area and through a series of photographs and a drawing, figure 15 on page 64, volume 1 illustrate the amount of blockage. Page 71, volume 1 shows the measures that can be taken to reduce view blockage such as reducing the bulk of the westerly building.

13. The appellants allege that the discussion and illustrations contained in the aesthetics and view blockage section are inaccurate and underestimate the extent of the view blockage. The appellants attempted to show in a series of photographs (appellants' exhibit 2) that many of the photographs in the EIS were not in perspective, taken from a

position that would lessen the impact on views, and that the buildings were situated too low, all of which would attempt to conceal the degree and amount of view blockage. The record shows that the building outlines on several of the photographs (figures 16 through 21, volume 1) contain errors ranging from 1 to 4 feet.

14. Section 6 of the SEPA Policies (Ordinance 107678) provides that it is the policy of the City to reasonably protect views from public places as defined in appendix B of the ordinance. Included in public places are scenic routes. Taylor Avenue North is listed as a scenic route and the appellants allege that the portion of Taylor Avenue North fronting on the subject site is a scenic route and subject to the SEPA Policies. The affidavit of Cornelius Smith, an employee of the Engineering Department, shows that the portion of Taylor Avenue North fronting on the subject site is not a scenic route.

Vacation of Newton Street

15. Access to the site would be via a 20 foot drive on a reinforced earth structure located in the Newton Street right of way. The EIS, volume 1, page 2, discloses that the Engineering Department recommended the vacation of the south half of Newton Street. The EIS, volume 2, page 106, states that the Engineering Department has clarified its position and will not grant a street use permit for a proposed driveway structure to the condominiums unless a street vacation for Newton Street is approved.

Greenbelt

16. The subject site is adjacent to but not in an area designated as the Northeast Queen Anne Greenbelt. The EIS states that development of the subject site would not be in conflict with the purposes of that greenbelt, except where it blocks visibility of a portion of it from the west. EIS, volume 1, page 28.

Public Services

17. Allegations were raised and supported by affidavits relating to failure to disclose impacts relating to fire department access, sewers and water system improvements. All of these impacts are discussed in the EIS as follows: fire vehicle access page 85, volume 2; sewers, page 63, volume 1; and water, page 80, volume 2.

Cumulative Impacts

18. The appellants allege that the discussion of cumulative impacts with reference to the proposal and specifically potential development of the parcel to the southeast is inadequate. To the southeast of the subject site is a large vacant parcel marked as "B" on figure 5, page 13, volume 1, EIS. Parcel B is located in the greenbelt. On page 46 it states that development of this proposal could set a precedent for the development of parcel "B". Access to parcel B is provided by an easement across the subject parcel.

19. The EIS does not contain specific rent level information. Section 9 of the SEPA Policies (Ordinance 107678) requires information on the monthly rental for each housing unit proposed to be removed. Two structures containing a total of 6 dwelling units will be removed.

Procedural Defects

20. The appellants allege a violation of WAC 197-10-550 which provides for a 75 day time period between the

issuance of the Draft and Final EIS. The Draft EIS was issued on August 21, 1978 and the Final EIS on November 22, 1978 for a total of 93 days.

21. The appellants allege a violation of WAC 197-10-580(3) and claim that the Draft EIS should have been rewritten in order to adequately respond to the critical comments. WAC 197-10-580(3) provides in part: "The lead agency may determine that it is necessary and appropriate to rewrite the contents of the draft EIS in order to respond to critical comments received during the commenting period."

Conclusions

1. The appellants have shown that with regard to the proposed vacation of Newton Street, the accident rate, the cumulative impacts, the views from public places, the view blockage photographs, and rental levels that the EIS is inadequate. All other allegations concerning inadequacy are held to be without merit and are dismissed. The responsible official is required to prepare a supplement to the EIS limited to the issues set out above.

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). A review of the EIS shows that this test has been met in certain impacts covered by the EIS but not others.

3. The proposed street use permit and vacation of the south half of Newton Street and related impacts is dealt with inadequately. First there is very little information in either volume of the EIS on the proposed actions although such information will be needed when decisions are made to approve or disapprove. The vacation of the street will reduce on-street parking but no information on this impact is disclosed. The street end provides a means of access to the designated Queen Anne Greenbelt but the issue of the relationship between the vacation of the street and the greenbelt policies has not been addressed. The alternatives to a use permit or street vacation have not been addressed. The EIS does not provide the decision maker with essential information on these issues.

4. The street system leading to the site is very narrow in portions and has a limited number of through streets due to the steep topography. In light of these factors an analysis of accident factors is important to a full disclosure, especially with regard to the potential for the project to increase accidents and the possible need for mitigating measures. The responsible official provided clearly erroneous information on this issue even though the information is readily available from the Engineering Department. A complete disclosure and analysis is required.

5. With regard to cumulative impacts, the discussion with regard to parcel "B" is inadequate. The EIS only contains a conclusionary statement about a precedent for future development being set. The type of information that should be included is the size of the parcel, the zoning, the steepness of the grade and a range of potential development densities. Information on this parcel is especially critical in light of its location in the greenbelt and the access easement over the subject site.

6. With regard to views from public places, the record shows that Taylor Avenue N. in front of the subject site does not qualify as a public place under the SEPA Policies (Ordinance 107678) and therefore no analysis under the cited ordinance is required unless there would be view blockage from the uphill portion of 5th Avenue N.

7. With regard to aesthetics, the analysis of this issue is particularly difficult since illustrations of potential view blockage are usually drawn on photographs of the site and there is a potential for error and distortion. The information on view blockage underestimates the height of the proposed buildings in some cases by up to 4 feet. Figures 16 through 21 must be corrected to indicate the potential view blockage and lines must also be drawn in to show the top two stories. The latter information is important in considering mitigating conditions.

8. The EIS does not contain information on rent levels as required by Section 9 of the SEPA Policies (Ordinance 107678) and compliance with this section is required.

9. With reference to transportation and circulation, the EIS contains an adequate discussion and analysis except for the accident data as noted in conclusion no. 4. Although more details could have been provided, the discussion contains sufficient data to provide the decision maker with adequate information. Although there are differing points of view concerning trip generation factors, the data supplied in the EIS was based on accepted national studies and is reasonable.

10. The lapse of time between the issuance of the Final and Draft EIS was not excessive. The 75 day time limitation is directory rather than mandatory. The appellants have also not shown any harm as a result of this delay.

11. WAC 197-10-580 specifically authorizes the responsible official to determine whether the EIS needs to be rewritten. The appellants have not shown that the method chosen by the responsible official was an abuse of discretion.

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

Decision

This matter is remanded to the Superintendent for preparation of a supplement to the EIS dealing with the following issues:

- (a) the street use permit and proposed vacation of the south half of Newton Street. (see conclusion no. 3);
- (b) accident data on nearby streets (see conclusion no. 4);
- (c) cumulative impacts (see conclusion no. 5);
- (d) possible view blockage from a public place (5th Avenue N.) (see conclusion no. 6);
- (e) correction of view blockage photographs (figures 16 through 21) (see conclusion no. 7);
- (f) rent level information (see conclusion no. 8).

Entered this 2 day of February , 1979.

William N. Snell
Hearing Examiner