

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

TRETHEWEY AND BRINK, et al.

FILE NO. W-79-003

from an environmental determination
of the Department of Buildings

Introduction

The appellants, Trethewey and Brink and the First Hill Community Council, filed appeals challenging the adequacy of the environmental impact statement prepared by the Department of Buildings for the proposed One Union Center project.

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

Parties to the proceeding were: Appellant Trethewey and Brink, represented by Mark A. Rossi, attorney-at-law; First Hill Community Council represented by John Comstock, chairman of its Land Use Committee; Department of Buildings, represented by James Fearn, assistant City attorney; Proponent Union Development Company, represented by Jerry B. Edmonds, attorney-at-law.

This matter was heard before the Hearing Examiner on March 12, 13, 14, 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. The proposed project includes the removal of a surface parking lot and construction of a 35-story office tower at the south end of the block surrounded by Union Street, Seventh Avenue, University Street and Sixth Avenue.

2. An environmental impact statement (EIS) was prepared for the project under the direction of the Department of Buildings. The draft EIS was filed September 25, 1978, and the final EIS was filed January 25, 1979. Appellants filed their notices of appeal on February 8 and 9, 1979.

3. Prior to the hearing on the merits, proponent's motion to dismiss that portion of Trethewey and Brink's appeal relating to future development (No. 2, letter of March 6, 1979) was granted with the reservation that the appellant could revive that issue on proof that definite plans existed which should have been disclosed for consideration of cumulative impacts.

4. No evidence was offered by appellants on the issues in the Trethewey and Brink notice of appeal of the adequacy of the assessment of the impact of the project on wind, use of electricity or recreation. Those issues were dismissed at the end of appellants' cases.

5. The EIS provides graphic depictions of shadows from existing structures in the area on June 21 at noon, 3:00 p.m. and 6:00 p.m. (pp. 6-19, 20, 21). The shadow condition on the same date and at the same times is shown with the addition of the proposed project at pp. 7-10, 11, 12 and the impact of the tower's shadow is discussed at p.

7-8. The EIS explains that the June 21st date was selected because shadow impact on Freeway Park is the greatest during the summer. Appellants contend that similar graphics should have been provided for December 22nd to show winter conditions. The evidence showed that no shadow would fall on the park on December 22nd.

6. Economic impacts of the project are identified at pp. 7-38, 39 of the EIS as to taxes and employment on the subject site and new customers, increased valuation and taxes, and redevelopment pressures on and for surrounding properties. Appellant Trethewey and Brink challenges the objectivity of the statements made and contends that the EIS should assess the negative effects upon other businesses in the area, such as its law firm in the Park Place Building, whose clients and customers may be deterred by the impacts of the project on traffic and parking from doing business in the area. The Department of Buildings did not require discussion of this type of economic impact in the EIS and does not normally include it because of lack of direction as to criteria to be used by the decision-maker and the high degree of difficulty involved in gathering any meaningful data.

7. Appellants allege that the EIS is inadequate in its treatment of noise impacts of the project and of cumulative noise impacts in that the direct impact of construction noise on Park Place and other surrounding buildings has not been addressed, mitigating measures are too general, and that alternative building materials were not considered as a means of controlling the reflection of freeway noise. The EIS addresses construction or "short term" noise impacts at pp. 7-6, 7, 10-3, their and their mitigation at p. 10-1 and in Appendix B. Expected dBA levels for various pieces of construction equipment and for the different construction phases at a distance of 50 ft. are given. No prediction of sound levels at specific buildings or locations in buildings are made. Expected readings at 50 ft. would allow a decision-maker to understand, in general, the impact. The type of building materials separating users of the various surrounding buildings from the outside would, of course, affect the impact on those users. The appellant's suggestion that the EIS should attempt to assess the effect of the noise on work capabilities of the tenants of the Park Place Building and on the value of the leasehold goes beyond the disclosure of the impact to an area where individual persons' and businesses' differences represent so many variables to make such assessment an Herculean task.

8. The EIS states that the mitigating measures for short term noise impacts listed can be adopted. It does not give any figures as to the degree of reduction that can be expected but it is clear that that could not be precisely measured since the measures include means with variable results such as changing the awareness of personnel and using the least noisy equipment. These measures can be required by the Superintendent of Buildings as conditions on the granting of certain permits without any indication in the EIS that the proponent is willing to use them, appellant's implication to the contrary.

9. The testimony of proponent's noise expert supported the statement in the EIS at pp. 7-6, 7A that while it is foreseeable that some freeway noise would be reflected, because of the physical properties of sound, even if all of the sound were reflected directly to First Hill, it would be diminished some 6 to 12 dB because of the distance involved. Further because of the way dBs are added, the resulting sound level at First Hill would be increased 1 dB or less and would not be perceptible under community conditions. Since no significant impact from reflected noise is reasonably foreseen no alternatives nor mitigating measures need be proposed. The evidence showed, however, that only major design changes would have any effect.

10. As to the potential for cumulative impact of reflected noise from existing and proposed structures, because of spacing and also because of the experts' basing the information in the EIS on the assumption of an infinite length for the proposed building, the impact of all would not be greater than that projected for the proposed tower.

11. The adequacy of the EIS's treatment of the view portion of aesthetics is challenged. Appellants allege that it does not adequately consider impacts on the tenants of the Park Place Building, on the view corridor down University Avenue, on Freeway Park, on areas east of the freeway or possible alternatives.

12. The EIS contains a discussion and photographic depiction of existing views at pp. 6-51 through 60. Impacts are disclosed at pp. 7-27 through 35. Further disclosure of cumulative impact of the proposed tower together with other known proposals is made at pp. 19 and 20 of the final EIS.

13. The EIS states, at p. 7-27, that "views from the northern windows of the Park Place Building will be altered." Evidence offered by appellant Trethewey and Brink, showed that from one office the view would be nearly obliterated. Appellant contends that the statement is therefore inaccurate in that it does not convey the full degree of blockage and is inadequate in that the financial consequences of the impact was not assessed. No proof of financial impact was offered by appellant.

14. University Street has not received official identification under the SEPA policies ordinance 107678. It has received recognition as a view corridor to be protected in various other city documents and actions. The EIS provides an indication of the impact on that corridor by comparison of the photographs at p. 7-33 with p. 6-57. If legislation were passed prior to the issuance of permits for the proposed tower which designated the corridor as one to be protected through SEPA, the disclosure of the project's impact on the view is sufficient to enable the decision-maker to impose conditions.

15. Freeway Park is not listed in Ordinance 107678 as a public place important for its views. The EIS does state that the water can be seen down University Street and provides two photographs of existing views from Freeway Park and one with the proposed tower added.

16. Three photographs of views from First Hill sites existing and then with the proposed tower are provided in the EIS. A fold-out photograph of a view from Horizon House on First Hill with outlines of known proposed structures gives an indication of the cumulative view impact.

17. Appellant First Hill Community Council argued that the EIS was lacking in its failure to assess the impacts of the project on certain historic structures. The EIS states merely that no structure of historic significance is on the site and that the project would have no impact on any historically significant structure. Of the several structures in the area suggested to have historic or architectural interest, Eagles Temple, Washington Athletic Club, Skinner Building, Olympic Hotel, and Cobb Building; only the Skinner Building has an official designation as a landmark. The Skinner Building is 1.5 to 2 blocks from the site of the proposed tower and is separated by at least one high rise building. The others listed are varying distances away. Further development pressures on buildings with historic significance are a possible result of the proposed project together with other new and proposed development. Development in the area may have a beneficial effect. No analysis was required by

the Department to be included in the EIS because the analyst considered the distance from the site and intervening structures sufficient to reduce the impact to one of insufficient magnitude to merit discussion.

18. The EIS offers some 19 pages of data and discussion regarding existing transportation and circulation and the impact on it from the project. Additional information regarding cumulative impacts is provided at pp. 21-23 of the final EIS. The facts disclosed in the EIS are consistent with evidence at hearing as to the increase in vehicular traffic in the immediate area and that east of the freeway from persons attempting to park using the streets.

19. Appellant's argument that the economic effect on business should be considered was addressed under economics. Appellants further contend that mitigating measures were not and should have been proposed and analyzed. At pp. 10-2, 3, several measures are set out as possible means to mitigate traffic impacts. None are on-site measures but appellants did not offer any reasonable alternative measure that should have received consideration.

20. Only 74 parking spaces are to be provided in the project which is 30 less than what now exists. Approximately 3200 people are expected to occupy the building. Appellant First Hill objects to the EIS' considering parking spaces on First Hill as a parking resource for the project. Appellant Trethewey and Brink attacked the EIS's failure to treat potential loss of business (addressed under economics), the assumption that the mode split will change to more use of Metro and that Metro has the capability of handling it if increased use occurs, and its failure to study the alternative of providing up to the 800 parking spaces that zoning regulations would allow.

21. The EIS presents demand for parking as a range of possibilities. It also presents the City's parking policy and assumptions underlying the figures used. Testimony showed that the mode split suggested in the EIS is similar to that anticipated by Metro and that it is reasonable to assume that Metro will continue to increase its capacity to handle the demand generated.

22. No specific alternative providing parking in an amount closer to the 800 spaces allowed was set forth. The impact on parking is fully disclosed, however, and sufficient data and analysis is available for the Superintendent to reasonably assess the impact and require additional parking or deny permits on the basis of lack of parking.

23. Of the two possible Comprehensive Plan map use designations near the site's location on the map, the one set out at p. 5-21 in the EIS is the one more likely to have been intended to apply than the other possibility. The Seattle 2000 goals and Seattle's Growth Policies are also set out in part in the EIS and help to clarify the plan for the area. With those, the EIS reasonably discloses the comprehensive planning for the vicinity.

24. The EIS discloses that the exterior of the building is to consist of anodized aluminium panels and glass windows. The manufacturer and identifying numbers are provided for each. The EIS attempts to compare the reflectance of both materials to other commonly known materials or buildings. The potential for glare conditions is stated at pp. 4-2 and 7-9; reflected light is acknowledged at 10-4 and stated in terms of a "glint" at p. 14 of the final EIS.

25. Because of the proposed tower's proximity to the freeway and the high degree of reflectivity of the glass proposed (44%), appellants contend that the situation demands a more detailed analysis than that provided. A method of plotting the potential incidence of reflected light by working from the shade pattern diagrams or determining the altitude and azimuth of the sun at given dates and times was

offered to show that the pattern could be determined. While agreeing that the method could be used to predict the pattern of reflection of the sun's image, proponent's witnesses disputed its value to predict glare. Apparently glare is not synonymous with reflected light because of a number of variables the greatest of which is individual differences in human reaction to reflection. No definitive scientific work has been uncovered by persons searching the literature relating directly to the effect of glare from the exterior of a large building on humans. Without such scientific basis, neither the EIS's preparers, the Department of Buildings nor the decision-maker would be able to draw any professionally responsible conclusions from a diagram showing the pattern of reflection of sunlight beyond what could be drawn from the EIS's disclosure that such light would fall on the freeway.

26. Appellant's pleadings also contest the adequacy of the EIS on the basis of the failure to include alternatives to deal with many of the project's impacts. In addition to those already addressed, appellants assert that one with a number of stories more closely satisfying proponent's objectives than the 10-story alternative should be required. Appellants also contend that the level of detail and analysis of the alternatives included is not sufficient.

27. The proponent's reason for offering the 10-story alternative was to show a configuration the most different from the proposed tower while still meeting, to some extent, the proponent's objectives.

28. The reader and the decision-maker can gauge the relative impacts of buildings between the two extremes without having such buildings set forth as specific alternatives.

29. Each of the alternatives to the proposal included in the EIS has a general discussion describing the alternatives and how its impacts would differ from the proposed project followed by a summary chart rating the environmental impact relative to the proposed project.

Conclusions

1. The "rule of reason" is to be used in judging the adequacy of an EIS. Cheney v. Mountlake Terrace, 87 Wn. 2d 338 (1976).

2. While some value would be added by showing the shadow patterns in the winter months when they can be expected to be markedly different, the City's SEPA policies ordinance has specified publicly-owned parks as the area of chief concern and no shadows from the proposed building would affect the park in the winter. There is no requirement in SEPA that the absence of impact be shown, although it may be helpful, so the failure to include graphic depictions of the shadow pattern for December 22nd is not a defect with legal significance.

3. Requiring the EIS to contain analysis of the economic effect the project might have on businesses around this downtown location because of the addition to traffic and parking demand would be unreasonable for, without policy direction, the benefit to be derived would be outweighed by the difficulty of gathering the data. This apparently was the conclusion of the Building Department for this EIS and others and was not in error.

4. The EIS's consideration of construction noise impacts and mitigating measures is adequate.

5. Appellants failed in their burden to prove that reflected freeway noise as a result of the project or of accumulation of projects would have a greater or different impact from that disclosed in the EIS.

6. The EIS provides adequate disclosure of potential

view interference and blockage. While a greater setback from University was not treated as an alternative, the intrusion into the view corridor by the tower at the proposed location is clearly shown and if the Superintendent were given authority to protect that corridor by conditioning or denying the permit the EIS would provide the basis for doing that.

7. With the separation between the project and the Skinner Building provided by distance and intervening buildings the Department of Building's decision that impact on historic buildings would not be significant enough to require disclosure and analysis is not in error.

8. The EIS adequately discloses traffic and transportation impacts.

9. The EIS properly shows the potential for spreading the project's parking demand into First Hill. The data and discussion is sufficient to alert the public and the decision-maker to the potential impact. The failure to specifically address an alternative plan for providing more parking does not make this EIS inadequate as the impact on the environment from adding more parking can be determined. Any damage is to the proponent which did not avail itself of the opportunity to show how providing more parking would conflict with its objectives.

10. The discussion of land use and identification of the Comprehensive Plan designation for the site is adequate.

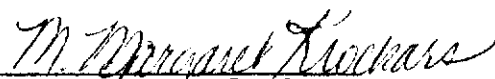
11. The issue of highway safety would normally be enough to remand an EIS for further analysis when there is the expectation that competent information could be gained. Requiring the Department to prepare a refined reflectance pattern using the method proposed is an attractive option. This option is not one which would give any further aid to the decision-maker in weighing the environmental costs, however. A relatively strong showing was made that whether the reflectance would constitute "glare" and whether "glare" is an actual hazard are open questions. A graphic depiction of the potential pattern of the reflection of the sun's image does not provide information more useful than the statement that there is a potential for glare on the freeway. The conclusion must be then, that, given the state of knowledge about exterior glare and its effects, the EIS' analysis is adequate. The decision-maker should be alerted by interested persons, however, to any scientific advance in this area prior to issuance of permits which could give him additional means to assess the impact disclosed.

12. The range of alternatives in the EIS is sufficient for this private project. The level of detail is adequate to allow a comparison of environmental costs and benefits.

Decision

The appeal is DENIED and the determination of the Department of Buildings is AFFIRMED.

Entered this 28th day of March 1979.


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.