

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

CONCERNED CITIZENS OF SOUTH PARK

FILE NO. W-79-006

from an environmental determination  
of the Department of Community Development

The appeal is GRANTED and the determination  
of the Department of Community Development is reversed.

#### Introduction

The Concerned Citizens of South Park, appellant, filed an appeal from a Declaration of Non-significance issued by the Department of Community Development, hereinafter, DCD, for a proposed rezone from Single Family Residence High Density (RS 5000) to General Industrial (IG) of property in the 9300 block of 8th Avenue South.

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

Parties to the proceeding were: Concerned Citizens of South Park, appellant, represented by Thomas H.S. Brucker, attorney at law; DCD, lead agency, represented by Gordon Crandall, assistant city attorney; Western Tours, Inc., petitioner, represented by John F. Rassier, attorney at law.

This matter was heard before the Hearing Examiner on April 4, 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. An amended petition for reclassification of 2.5 acres from RS 5000 to IG was filed by Western Tours, Inc. on October 21, 1978. The subject property is located on the west side of the 9300 block of 8th Avenue South in the South Park area of Seattle.

2. The reason given for the requested rezone on the amended petition was a plan to construct a 100,000 sq. ft. administration and storage facility for tour motor coaches on 2.305 acres of the subject site. No indication of the use of the remainder of the property was found.

3. An amended environmental checklist was also filed October 31, 1978, by Western Tours. Prior to that date, a checklist had been submitted which was reviewed by Ed Somers for DCD. In his review he visited the site, obtained the plans for the project and reviewed them, met with the architect, requested and received additional information regarding traffic and storm water runoff, contacted DCD's neighborhood planner for the area and contacted Curt Horner, director of the noise program for the Seattle-King County Department of Public Health, regarding noise analysis. At some point in the review the amended checklist was filed incorporating measures to mitigate impacts foreseen by DCD. DCD then issued its Declaration of Non-significance on February 8, 1979.

4. The building at the facility would provide for some administrative offices and maintenance of the coaches. Outside storage would be provided for up to 50 busses, although currently the company has 39 busses, and parking for 37 employee vehicles.

5. Most of the busses would leave the site between 4:10 and 9:00 a.m. and return between 4:30 and 5:00 p.m. At this time 15 to 20 busses leave again for evening tours with 2 to 4 returning after midnight. Busses are moved around the site between 4:30 and midnight for washing and maintenance.

6. The subject property is presently occupied by one single family residence. To the east, across 8th Avenue South, is Puget Sound Painters. To the south, across South 96th, is a large warehouse. To the north and to the west are single family residences and vacant lots. Farther to the west and southwest is farmland.

7. The subject property and that to its north and west is zoned RS 5000. Across 8th Avenue South is an IG zone. Property to the south lies beyond the city limits and has a county industrial zoning designation.

8. The South Park area is one of the five areas with the most serious air pollution in the state. The report on air quality provided by petitioner to DCD supplementing the environmental checklist incorrectly stated that the area is already in full compliance with standards for suspended particulates. PSAPCA shows the area to be classified as a suspended particulate secondary nonattainment area by the U.S. Environmental Protection Agency.

9. The checklist indicates that DCD believes the proposal will result in air emissions or deterioration of ambient air quality.

10. Exhaust from diesel engines, used in petitioner's motor coaches, contains suspended particulates although increases from the 50 busses are expected to be less than 1 microgram per cubic meter. The state's standard is 60 micrograms per cubic meter. The chief contributor to suspended particulates in South Park however, is vehicle traffic on its unpaved streets.

11. Air quality standards for carbon monoxide are being met at Station 26 which is the one closest to the site. Diesel busses do emit CO and CO levels can be expected to increase in the vicinity of the proposed facility at certain times.

12. While no violations of established standards for oxides of nitrogen have been reported, ozone levels exceed federal and local standards and NO<sub>2</sub> is considered to be a precursor of ozone. Tables provided showed that diesel engines emit oxides of nitrogen but standards were not provided for ozone or for the rate of production of ozone from oxides of nitrogen.

13. DCD answered the checklist question regarding noise with a "yes" that noise levels will be increased however indicated that berms "would help to provide a noise barrier to mitigate increased noise."

14. The plans provide for an earth berm four feet high, at the north property line, along the northerly 332.3 ft. of the westerly property line, and along the north property line of the southern "panhandle." The plans show a 6 ft. high security fence on top of the berm with a foot of "heavy growth" screening 1 ft. above that and a 2 ft. step down to the parking level for the northern perimeter. This barrier would be 13 ft. above the parking level.

15. For the west and panhandle berm there would be a 2 ft. recession to the parking level, a 2.5 ft. earth berm, a 7 ft. fence and one foot of heavy growth screening above for a total of 12.5 ft. above the parking level.

16. Data supplied to DCD showed that four coaches at high idle produce a sound level of 79 dBA at 50 ft. With reductions for distance and a sound barrier the sound level would be 52 dBA at the nearest house and 40 dBA inside. A reduction of 15 dBA was taken for the barrier.

17. Existing noise levels were not recorded at the location of the closest residence. Noise levels just west of the panhandle at 7th Avenue S.W. between 9:30 and 10:30 a.m. averaged 62.80 dBA and 77 dBA for the average ( $L_{50}$ ) of the 3 highest readings ( $L_{10}$ ). Ambient noise levels were an  $L_{50}$  reading of 57.2 dBA and  $L_{10}$  of 63.6 dBA.

18. The average of the readings from three sites, on 8th Avenue S.W., on 7th Avenue S.W., and further away for the ambient level, was 63.4 dBA for the  $L_{50}$ . At night the average  $L_{50}$  was 56.2 dBA.

19. The EPA, state DOE, and Seattle-King County Health Department regard 55 dBA as the speech interference level and 45 dBA as the sleep interference level.

20. Curt Horner based his expectation that the barrier would reduce noise by 15 dBA on a height of approximately 5 meters or 16.4 ft. He testified that 15 ft. would not be an adequate height for this result.

21. Without a barrier 79 dBA at 50 ft. would be reduced to 67 dBA at 200 ft.

22. Noise increases of less than 3 dBA are not audible to the human ear.

23. Busses would be parked, according to the site plan, within 15 ft. of the north property line and 10 ft. of the west property line so the noise level could be greater than that measured at 50 ft. During high idling, one bus created a noise level of 92 dBA at 10 ft. and 84 at 20 ft.

24. The proposed facility would increase the number of peak noise levels.

25. The question as to alteration of Population in the checklist was answered "maybe" by DCD. Increased population is required to ensure the continuity of South Park as a residential community. A level of 245 students must be maintained to retain a full time principal for the elementary school. The elementary school is necessary for viability of the residential community.

26. The checklist indicates that both Land Use and Housing would be affected. The rezone would make the site unavailable for residential development. The proposed South Park Neighborhood Improvement Plan would change the Comprehensive Plan designation and rezone the site to multiple residential. This plan has not been adopted.

27. The checklist indicates that additional vehicular movement would be generated and that existing transportation systems may be impacted as well as a possible increase in traffic hazards. Approximately 344 new trips per day are anticipated. DCD based its determination that no significant impact would occur from additional vehicular movement on use of an access route from the south which would avoid passing through residential areas.

28. The petitioner's president indicated his willingness to have a contract rezone requiring the mitigating measures proposed by DCD as to interior landscaping, sound barrier in

the form of a berm, restriction of route of busses to avoid residential areas and runoff retention.

### Conclusions

1. The State Environmental Policy Act requires an environmental impact statement for major actions which will have a significant adverse effect upon the quality of the environment. RCW 43.21C.030(c) and WAC 197-10-360. The term "significant" has been defined by the Court to mean "whenever more than a moderate effect on the quality of the environment is a reasonable probability." Norway Hill v. King County Council, 87 Wn.2d 267,278 (1976).

2. DCD's determination, as lead agency, that the proposed rezone and specific project would not have a significant adverse impact is clearly based upon the inclusion of the various mitigating measures as conditions of the rezone. Whether the net impact, that is the impact as reduced by the mitigating conditions, may be considered is questionable. In Norway Hill, supra, the Court found the project on its face would have a significant impact and that it was improper to avoid the preparation of an EIS by imposition of conditions. The Court pointed out, at p. 279, that "(o)ne of the purposes of this complete information requirement is to help the agency decide what protective conditions are needed."

3. In the instant case the conditions have not been imposed as a condition of approval of the action but at an earlier point in the process where they could be considered a part of the proposal. This may be a distinction without a difference, however, since they still work to avoid the full disclosure and review of the project and alternative conditions and there is no assurance that they will be made a part of the project beyond testimony at the appeal hearing. The petition itself has not been amended to reflect a proposed contract rezone and not all of the conditions are or can be shown on plans submitted even were the rezone tied to the plans.

4. The SEPA Guidelines seem to require a binding commitment, since in WAC 197-10-370 a lead agency may withdraw a declaration of significance if a proposal has been changed to eliminate significant adverse impacts only when all license applications have been revised "or other binding commitment is made by the applicant." While a DNS has been issued here, it was based on modifications to a proposal but the petitioner is not shown to be bound to these modifications.

5. Even if consideration of mitigating measures at the time of the threshold determination were appropriate, DCD's decision must be reversed on other grounds.

6. Norway Hill, citing Narrowsview Preservation Ass'n v. Tacoma, 84 Wn.2d 416(1974), sets out two of the factors which must be considered in assessing impact - both the extent of adverse impacts beyond those now existing and the effect of the action itself including the "cumulative harm that results from its contribution to existing adverse conditions or uses in the area." p.277.

7. The area was described as at least one of five of the most serious in the state in terms of air quality. Addition to the problem of suspended particulates and ozone where levels are already too high must be scrutinized more carefully than in areas where the problem is lesser. Although additional trips by heavy vehicles can be presumed to add dust to the suspended particulates levels as well as that from the exhaust this was not shown to have been considered. No consideration of the effect on the ozone level was apparently given by the lead agency.

8. Without adequate barriers, the record shows that the bus facility would increase the noise levels in the area and, according to the testimony of the noise expert, barriers of less than 15 ft. height would not be adequate. Planned

barriers are less than 15 ft. Besides the potential increased noise level the frequency of the high points would increase. Given the already high noise levels probable increases such as these must be considered significant.

9. The direct effect on land use and indirectly on population are of particular importance where increase in population is necessary for the continuance of a residential component of South Park. While a two acre loss of vacant RS 5000 zoned land would not seem to be of sufficient size for concern, the loss plus the effect of bringing intense uses closer to other residential property where population maintenance is important may have more than a moderate effect on the population of South Park.

10. These effects, increased level and frequency of noise a known slight decrease in air quality and potential for greater decrease and loss of land area for residential development and encroachment of industrial use into a residentially zoned area are magnified because of the problems already existing in South Park. The combination of these effects with existing conditions makes it reasonably probable that the proposed rezone would have more than a moderate effect on the environment.

11. Therefore, even if it were permissible to consider the mitigating conditions proposed in the threshold determination, adverse impacts would still be significant and an EIS required. The lead agency may determine that not all elements of the environment need be covered in an EIS. The record shows that the following must be included: Air, Water, Noise, Land Use, Population, Housing, and Transportation/Circulation.

#### Decision

The appeal is GRANTED and the determination of the Department of Community Development is reversed.

Entered this 1st day of May 1979.

M. Margaret Klockars  
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Deputy Hearing Examiner

#### Notice of Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 20 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418(1877).