

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

In the Matter of the Appeal of

THE SEATTLE DISPLACEMENT COALITION

FILE NO. W-79-028

from an environmental determination  
of the Building Department

The appeal is DENIED and the determination by the  
Building Department is affirmed.

Introduction

The Displacement Coalition, appellant, filed an appeal from a declaration on non-significance by the Building Department for a proposal to demolish ten units of low income housing and construct a 52-unit condominium at 1101 South Atlantic Street.

The appellant exercised its right to appeal pursuant to Section 20 of the SEPA Ordinance (105735, as amended).

Parties to the proceeding were: appellant, represented by John Fox and Barbara Warren, Evergreen Legal Services; John Y. Sato, proponent, represented by Bruce P. Babbitt, Ferguson and Burdell, attorneys at law; Building Department, represented by Ross Radley, assistant city attorney.

This matter was heard before the Hearing Examiner on October 3 and 4, 1979.

The motion to admit appellant's Exhibits 28, 29 and 30, three letters of comment on the proposed DNS, which was inadvertently not ruled on at the hearing, is granted and Exhibits 28, 29 and 30 are admitted.

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. John Y. Sato proposes to demolish six single-family residences and two duplexes and construct a 52-unit condominium structure with 62 parking spaces. The site of the proposal is on North Beacon Hill. The subject property is bounded on the north by Atlantic Street, on the west by the slope and Green Belt, on the east by an alley and on the south by vacated South Seattle Street.

2. The Building Department filed a final declaration of non-significance (DNS) August 15, 1979, after circulating a proposed DNS. The 15 day circulation period ended August 3, 1979.

3. Written comments were submitted after August 3, 1979, by Lee H. Fairchild, Ken Valz, John V. Fox. Melody McCutcheon, the environmental specialist in the Building Department assigned to the project, read the late comments but did not consider them in making the threshold determination.

4. The Seattle Displacement Coalition filed an appeal of the DNS August 29, 1979. The check list issues on appeal were narrowed at a prehearing conference, to 1) the demolition as it relates to Population, Housing and Land Use; 2) consideration of slide potential under Earth and Water; 3) Transportation/Circulation; and 4) consideration of the greenbelt as it relates to Flora and Fauna.

5. The Building Department's threshold determination followed extensive investigation and analysis.

6. Appellant contends that an EIS is needed to examine the role this project might play in the future of land use on Beacon Hill. The possibility of this project acting as a catalyst leading to increased development and displacement was posited based on lower rental and purchase prices on Beacon Hill, proximity to desirable areas, and unmet housing demand in the city. Such a scenario was admitted to be speculative, but the Department's conclusion that the potential impact would not be significant was urged to be error because of that possibility.

7. The subject site is in an area zoned Multiple Residence Low Density (RM 800). Adjacent to this area to the east is a six block area of Multiple Residence Variable Height (RMV 200) zoning. The proposed development is consistent with present zoning in the area and is consistent with the North Beacon Hill Neighborhood Improvement Plan issued in January, 1977.

8. The area has been zoned for apartment density use since the 1950's. There are seven apartment buildings with some ten to thirty units in the immediate area, constructed between 1956 and 1968. There are several more apartment buildings with fewer than ten units. The project would not establish a new trend or open up a new area to new uses. Debra Demitruk of the Office of Policy Planning testified that the proposed plan would not change present land use in the area.

9. Gary Clark of the Office of Policy Planning testified on the survey done as part of the Seattle displacement study from 1973 through the summer of 1978. During the time of the study period it was found that demolition of existing housing was the cause of less than five percent of the total displacements.

10. The executive summary of the displacement study (Exhibit 1) identified price rises in purchase prices of single family residences as increasing much more rapidly than rents. Mr. Clark acknowledged that the increase in single family residence purchase price outstripped the increase in rental costs keeping families in the rental market longer and adding to the shortage in rental housing. He testified that condominium buyers are often formerly renters and that the project might provide relief to rental housing shortage problems.

11. The displacement study indicated that renter households who were displaced on the average spent no more for their new dwelling than for their old one nor did they have to accept lesser quality, during the study period. Most people displaced in an area of the city, including the south end, remained in the same area of the city.

12. The study of the Seattle Displacement Coalition on demolition of housing (Exhibit 5) examined the demolition of single family housing. It found that in 1977, 275 single family rental units were demolished, but there was a net gain of 113 rental units from rebuilding of rental units, even assuming that no rental units are built upon the 139 lots presently vacant after demolition and that condominiums provide no rental housing. In 1978, there was a net gain in rental units from the demolition of single family housing of 187 units even assuming that none of the 92 vacant lots still not built upon become rental units and that condominiums provide no rental units.

13. There are approximately 230,700 housing units in Seattle. 1980 Housing Assistance Plan (HAP), Recommendations, p. 3. Over 38,000 lower income renter households and homeowners need housing assistance. HAP p. 1. From 1970-1978, approximately 7,969 dwelling units were demolished, with approximately 1,200 in the period, 1977-78. The median rent level of the demolished units, according to a different source, was more than 50 percent lower than the median rent level for the total rental housing supply in 1976. Exhibit 2.

14. The vacancy rate for the City is thought to be between one and two percent. The vacancy rate is slightly higher on Beacon Hill.

15. For the purpose of the DNS, Ms. McCutcheon assumed, based on a preliminary report, the houses to be structurally sound. Evidence was presented to show that at least one of the buildings was structurally defective. Evidence was offered as to the expected cost of rehabilitating the units.

16. The dwelling units on the subject property were rented at or below Section 8 fair market rent levels. Between 17 and 25 people occupying the units were forced to find other housing. The tenants had or are having great difficulty in finding suitable replacement housing.

17. Seattle Housing Authority was contacted as were others, to ascertain interest in acquiring the units. The City's bridges were an impediment to moving them to the north end for scattered site housing.

18. Don Carr, representing the Engineering Department, testified that the Engineering Department was satisfied that its concerns for pedestrian, vehicular and bicycle access were met with the inclusion of a widened alley in the plans.

19. The widened alley meets Fire Department needs and the Fire Department, when asked to comment on the plans, had no criticism of the access.

20. The area has street capacity for expected additional vehicles. A shortfall of 11 off-street parking spaces is anticipated but can be accommodated on-street. There was no evidence presented to the contrary.

21. Proponents presented three reports, each of which was supported by test borings and analysis of the geology and topography in the immediate vicinity:

A. Chas. A. Tiffany and Associates report of December 11, 1963, had test borings down to 160 feet and concluded that there was firm material for the full depth and indicated that the area showed no probability of earth movement.

B. Test borings taken by Pacific Testing Lab at 12th Avenue South indicated firm sand to depths of 25 feet and that the site was adequate for the planned development.

C. James Eaton, a licensed civil engineer and geologist with extensive experience as a consultant on large projects involving soils stability, conducted a subsurface investigation for John Y. Sato and Associates which showed hard and compact soil with firm support and dense fine sand and fine sand with gravel from 10 feet down to 60 feet. The ground water table was found to be very thin below which was clayey silt.

22. Mr. Eaton testified that he observed the soil to be undisturbed, unfissured and unsaturated. He indicated there was a possibility of shallow slides, but that possibility was guarded against by the augured cast-in-place piling system specified which called for no significant removal of flora and pilings down at least 25 feet below existing and final grade.

23. Mr. Eaton testified that some weight of present soil would be removed in excavation for the structure and that a storm water retention system and system of drainage into the City storm sewers would actually divert water from the slope. The plan of construction methods in Mr. Eaton's opinion would increase the stability of the slope and decrease the risk of any earth movement. His opinion was that it is extremely unlikely that a deep shear slide would occur.

24. Lee Fairchild, a doctoral student at the University of Washington in the Geology Department with an M.S. in Geological Sciences, testified that the stratigraphy of the area to be constructed upon suggested a high probability of a significant landslide. This opinion was based upon a visit to the site, his observation of slide activity in the area, an examination of the report of James Eaton and the Tubbs report, a doctoral thesis, showing that much of the developed area of Seattle on the side of hills are in potential slide areas.

25. Ms. McCutcheon was aware of Mr. Fairchild's opinion that more analysis was necessary but found that the issues he raised were covered by the reports available to her.

26. No evidence was presented by appellant to show that the development as actually planned would increase the risk of slides to any extent.

27. A very small portion of land designated as Greenbelt is located on the project site in the vacated street. The proponent does not plan to remove any vegetation from the Greenbelt portion. Any displaced animal life could be accommodated in the Greenbelt. Ms. McCutcheon found that the proposed project would have no effect on the Greenbelt.

#### Conclusions

1. An environmental impact statement is required by the State Environmental Policy Act (SEPA RCW 43.12C) only when there is a major action which would have a significant adverse impact on the environment. The Court, in establishing a guideline as to what is "significant" has held that the "procedural requirements of SEPA . . . should be invoked whenever more than a moderate effect on the quality of the environment is a reasonable probability." Norway Hill Preservation and Protection Association v. King County Council, 87 Wn.2d 267, 522 P.2d 674 (1976).

2. The determination by the Department is to be accorded substantial weight and the burden is upon the appellant to establish the contrary. Section 20(4), Ordinance 105735, as amended.

3. The instant case is clearly distinguishable from the "Aqua Vista" case (In the Matter of the Appeal of Morris Piha Company, File No. W-78-023, March 16, 1979). That case involved an appeal from a declaration of significance for a proposal to demolish a 38-unit apartment building and construct an office building based in part on the assumption that the structure could be rehabilitated. The Hearing Examiner in that case concluded that reasonable inquiry would have shown that the units were so deteriorated that they were not a part of the City's housing stock. The instant case deals with a proposal to demolish 10 housing units and replace them with 52 units. As in "Aqua Vista," the Department considered these units to be capable of being rehabilitated, but despite that issued a DNS based upon the magnitude involved.

4. In making the threshold determination the environmental specialist acknowledged the serious problem of displacement of lower-income persons in the city. Evidence adduced by appellants as to the extent and nature of the problem is not sufficient to overcome the substantial weight of the Department's decision given the relative magnitude of the figures involved - 10 units to be demolished, over 230,000 units in the city and 38,000 households in need of assistance. Appellant is probably correct in its statement that no individual project is going to have a statistically measurable effect on the overall housing market.

5. While SEPA permits and, in fact, requires evaluation of cumulative impacts, imposing the burden of an environmental impact statement (EIS) on a project representing such a minor increment to the problem would be clearly outside the intent of the legislation. Further, although appellant lists options of denying or conditioning the proposal if the EIS reveals the impact, the only option open, according to the SEPA policies, Ordinance 107678, is to require relocation assistance. As recognized by OPP in Exhibit 9, an approach other than SEPA has to be used to deal with the problem of the loss of housing stock for the lower-income portion of our population.

6. An EIS would provide the means to force this developer to look at alternate means of financing his project, such as with Section 8 assistance. Only the existence of a reasonable probability of more than a moderate adverse impact can trigger the EIS requirements, however. That degree of impact from the loss of 10 units is not reasonably likely for the elements of Housing of Population.

7. The evidence does not support appellant's contention that the Department failed to consider the role the proposal might play in the future land use. The environmental specialist considered the mix of uses in the area, the zoning and degree of underdeveloped properties, the housing demand and other market factors. She concluded that there was nothing to indicate that this project was likely to play any significant role in the future land use of Beacon Hill. Her conclusion was not error. The Department's conclusion regarding the Greenbelt was not refuted.

8. Substantial evidence supports the Department's conclusion that significant impacts from the project's effect on stability of the earth are not reasonably anticipated. From the evidence adduced at hearing it appears that a deep seated earth movement is not a reasonable probability. The evidence shows that the project itself may actually have a positive effect but this is not to be considered at the threshold determination stage (WAC 197-10-360(3)) and no reliance is placed on that possibility.

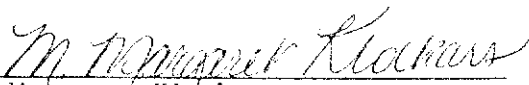
9. The Department's conclusion that increased vehicular movement and demand for parking would not have a significant adverse effect is correct.

10. The Department of Buildings' decision was based on adequate information. While the specialist's definition of cumulative effects was incorrect, she did consider the correct factors for cumulative effect. The appellant did not sustain its burden to prove the declaration of non-significance incorrect.

#### Decision

The appeal is DENIED and the determination by the Building Department is affirmed.

Entered this 19<sup>th</sup> day of October, 1979.

  
M. Margaret Klockars  
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 (1977).

If a use permit is required for this proposal, it is subject to a separate administrative appeal pursuant to Section 25.40 of the Zoning Ordinance (86300, as amended).

#### Notice to Superintendent

The Superintendent shall not issue a demolition permit for two working days after the date of this decision.