

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

KING COUNTY FIRE PROTECTION
DISTRICT NO. 1

FILE NO. W-79-033

from an environmental determination
of Department of Community Development

The appeal is DENIED and the EIS is found to be
adequate.

Introduction

The appellant, King County Fire Protection District No. 1 (Fire District No. 1) filed an appeal challenging the adequacy of an environmental impact statement (EIS) prepared by the Department of Community Development (Department) with regard to a proposal by the City of Seattle to annex about 920 acres in the South Park/Duwamish area.

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

Parties to the proceeding were: the appellant, represented by Clark B. Snure; and the Department, represented by Ross Radley.

This matter was heard before the Hearing Examiner on October 18, 1979.

Department's Exhibit 1 is the deposition of G. Brice Martin, Executive Secretary of the King County Boundary Review Commission. The appellant objected to the relevancy of the exhibit and a ruling on admission was reserved. Department's Exhibit 1 is 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. The City of Seattle proposes to annex about 920 acres adjoining the southern boundaries of the City. An EIS was prepared on the proposal and the Final EIS was filed with the SEPA Public Information Center on September 4, 1979.

2. Fire District No. 1 filed a timely appeal on September 19, 1979. If the annexation is approved, Fire District No. 1 would lose a major portion of its assets since 70 percent of the real property assessed valuation of Fire District No. 1 is in the annexation area. Draft EIS, page 49. Under State law (RCW 35.13.272) Seattle would be required to purchase the assets of Fire District No. 1 since it would be annexing at least 60 percent of the assessed valuation of the district. Final EIS, p. 15. The Final EIS at page 13 discloses that the City of Tukwila also has pending an annexation that would incorporate 90 to 95 percent of the population served by Fire District No. 1.

3. On October 16, 1979, the Department filed a document entitled an errata sheet to provide corrections to the EIS. The appellant objected to the introduction of the errata sheet on the grounds that it involved matters of substance and that the EIS was not complete until the errata sheet was filed. The appellant filed a separate appeal with the Hearing Examiner on October 29, 1979 based on the filing of the errata sheet.

4. Alternative method number 2 at page 16 of the Final EIS is criticized for failure to specify a firm commitment to hire Fire District personnel. It is noted at page 17 that firefighters from Fire District No. 1 could have to pass a physical before being eligible to join the Seattle Fire Department. The letter from the Seattle Fire Department in the appendix to the Final EIS states that personnel from Fire District No. 1 would be required to pass a physical exam. The errata sheet acknowledges the need for a clarification and states that firefighters from District No. 1 might have to pass a physical by the Seattle Fire Department but that a physical can be waived by the Civil Service Board.

5. Alternative number 2 also states at page 17 of the Final EIS that if Fire District No. 1 personnel failed the Seattle Fire Department's physical that they would automatically retire under the uniform state retirement plan. The appellant alleges that the foregoing statement is inaccurate in that failure to pass a physical examination does not automatically qualify the individual for a disability retirement. The errata sheet acknowledges the need for clarification and states that firefighters from Fire District No. 1 would only be eligible for a pension if they were able to present medical information to the satisfaction of the Local Board that they were not fit to perform the duties of a firefighter.

6. Alternative method number 3 at page 17 of the Final EIS is criticized for failure to measure the impacts. This alternative states the possibility of retaining Fire District No. 1 and having the City pay the equivalent of revenues removed by annexation.

7. Alternative number 4 at page 17 of the Final EIS is criticized for assuming Tukwila will be successful in its annexation proposal or that Tukwila would be willing to enter into a contract for servicing the area.

8. Alternative number 5 at page 18 of the Final EIS is criticized as not addressing where District No. 1 would find funds to buy its assets back and to finance firefighter personnel.

9. The appendix to the Draft EIS at page 13 lists the value of the inventory of the equipment of Fire District No. 1 at \$75,000. The appellant alleges that the basis for this figure is not disclosed. A representative of the Seattle Fire Department, who evaluates equipment for his Department, testified that he obtained a list of the equipment owned by Fire District No. 1 and made an evaluation after contacting equipment dealers.

10. Page 19 of the Final EIS states as follows:

The Washington Survey and Rating Bureau assigns fire insurance ratings to municipalities and fire districts. A low rate means a higher level of fire service, which may mean a lower insurance premium. Seattle is a #2 class town, Fire District # 11 is a 5 and Fire District #1 is a 6. For most businesses and residences, annexation would mean lower insurance rates.

The appellant alleges that this information is incorrect and that the rating for classes 2 through class 6 is considered a single grouping for insurance purposes.

In the errata sheet the Department acknowledges that the rating for classes 2 through 6 is considered as a single grouping although this applies to homeowner policies for 1 or 2 units or possibly up to 4 units in owner-occupied residences.

11. Page 86 of the Final EIS states that King County does not have a fire code in the discussion of code requirements. The appellant alleges this to be an error. The errata sheet acknowledges that the county is governed by the Uniform Fire Code.

12. At pages 15, 52 and 78 the Final EIS states that the proposed annexation would remove about 80 percent of Fire District No. 1's revenues. The appellant alleges this figure is in error. The financial consultant for the Department states that 75.6 percent should be substituted for the 80 percent figure. This amounts to a 4 percent error.

Conclusions

1. An EIS must be reviewed to determine whether there is a disclosure of the environmental consequences of a proposed action. The "rule of reason" is to be used in judging the adequacy of an EIS and remote or speculative consequences of a proposed action need not be considered. Cheney v. Mountlake Terrace, 87 Wn.2d 338 (1976).

2. The appellant in this case has not challenged a broad range of environmental impacts relating to the proposed annexation, but only those directly concerning Fire District No. 1. An annexation is defined in WAC 197.10.040(2)(c)(iv) as a government action of a nonproject nature. WAC 197.10.442 recognizes that a lead agency has greater flexibility in writing an EIS for a nonproject action because "normally less specific details are known about the proposal and any implementing projects as well as the anticipated impacts on the environment."

3. The main thrust of the appellant's case is that the alternatives set out on pages 16 through 18 of the Final EIS do not provide sufficient details and are too vague. The specific details relating to alternatives for fire service cannot be known at this stage in the proceedings. However, the broad outlines of the various alternatives must be disclosed and that was done in this case. To require additional detailed information, as the appellant alleges is necessary, would be premature and speculative. The discussion of alternatives was adequate given the nonproject nature of the proposal.

4. The Department in its errata sheet admitted to certain errors and the need to clarify specific statements in the EIS. Findings of Fact numbers 4, 5, 10, 11, and 12 identify the necessary corrections and clarifications. The statements in the errata sheet relating to physical exams for firefighters, eligibility for disability pensions, and fire insurance, are in the nature of clarifying statements. The statements relating to the fire code and revenues are errors but of a minor nature. The appellant has failed to show that the matters addressed in the errata sheet are of a substantive nature that would mislead the decision-makers with regard to the environmental consequences of the annexation. Inconsequential errors, such as are addressed in the errata sheet, are not sufficient to render the EIS inadequate. Mentor v. Kitsap County, 22 Wn.App. 285 (1978).

5. The issues raised in Findings of Fact numbers 6, 7, and 8 would require evaluation of remote and speculative consequences. Such matters need not be included in an EIS. Cheney v. Mountlake Terrace, supra.


6. With regard to other issues raised in the appeal, the appellant has failed to substantiate its allegations and therefore such allegations must be dismissed as a matter of law.

7. The appellant filed a second appeal on October 29, 1979 relating to the errata sheet. Since the errata sheet is found to not address substantive issues the appeal of October 29, 1979 is dismissed under Rule 1.4 of the Hearing Examiner Appeal Rules as being without merit on its face.

Decision

The appeal is DENIED and the EIS is found to be adequate.

Entered this 31st day of October 1979.


William N. Snell
Hearing Examiner

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any appeal to the Superior Court should be filed within 20 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977).