

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

CHG INTERNATIONAL, INC.

FILE NO. W-79-043

from an environmental determination
of the Building Department

Introduction

The appellant, CHG International, Inc. appeals a Declaration of Significance by the Building Department for its proposal to demolish residential structures at 1409 and 1421 Boren Avenue. The parties, appellant represented by William T. Lynn, Gordon, Thomas, Honeywell, Malanca, Peterson and O'Hearn and the Building Department, represented by James Fearn, Assistant City Attorney, agreed to submit the appeal for consideration by the Hearing Examiner on stipulated facts and written arguments.

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

After due consideration of the stipulated facts and exhibits, the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. CHG International, Inc. (hereinafter, CHG) proposes to demolish two apartment buildings which are located at 1409 and 1421 Boren Avenue and which contain a total of 50 dwelling units.
2. All of the dwelling units in the apartment buildings currently rent below HUD Section 8 existing fair market levels. These rents have not changed since CHG purchased the two buildings.
3. CHG has no definite plans for the redevelopment of the sites of the subject buildings.
4. In June, 1979, CHG received notices of violation of the housing code for the two buildings requiring correction or demolition of the buildings by September 1, 1979. CHG applied for demolition permits in July, 1979, and submitted environmental checklists.
5. In October, 1979, the City brought suit against CHG seeking a penalty for CHG's failure to comply with the notices of violation. A settlement agreement was entered into by the parties which waived civil penalties if the buildings were brought into compliance by January 4, 1980. CHG brought the buildings into compliance.
6. On December 6, 1979, the Building Department filed a Final Declaration of Significance (DS) for the proposal with the SEPA Public Information Center requiring an EIS limited to the element of housing.
7. CHG filed an appeal of the DS December 20, 1979.
8. The Building Department explained its threshold determination in the DS as follows:

Following a request for additional information with regard to rent levels, relocation assistance and description of the total proposal; consultation with the Housing Conservation Division of this Department; several site inspections and in consideration of the shortage of housing in Seattle, the low vacancy rate, the particular scarcity of low-income housing and the unlikelihood of low-income housing being replaced; it has been determined that this proposal may have significant adverse impacts with respect to housing. The required EIS shall be limited to those elements of the environment that may be significantly affected by the proposed action, which in this case is housing. The EIS will serve the purpose of disclosing the magnitude of the impacts and discuss possible mitigating measures, alternatives, and applicable City policies and plans.

9. The vacancy rate for rental units in the City was 2.04 percent in the spring of 1979 and 1.68 percent in the fall of 1979. The vacancy rate for rental units in the First Hill area was 2.93 percent in the fall of 1979.

10. There are approximately 230,700 housing units in the City. Approximately 55,000 units of low-rent housing are located in the City, including 11,000 publicly subsidized units.

11. In 1978-1979, most buildings demolished in Seattle were single family units. Only one building with ten or more units was demolished. In 1978, 295 residential structures containing 361 housing units were issued demolition permits. In 1979, 371 residential structures containing 586 housing units were issued demolition permits.

Conclusions

1. The nature of administrative review must be determined by the ordinance authorizing it. Messer v. Board of Adjustment, 19 Wn.App. 780 (1978). Section 20(4) Ordinance 105735, as amended, provides that the threshold determination, as the responsible department, is to be accorded substantial weight by the hearing examiner on appeal. The standard of review to be used by the courts is not applicable to the administrative review, however it should be noted that a DS, which has the effect of "implement(ing) the policies and concerns of SEPA rather than to impede or frustrate those aims," is accorded greater weight by the reviewing courts than a DNS and reversed only if found to be arbitrary and capricious. Short v. Clallam County, 22 Wn.App. 825, 830 (1979). A DNS, however, may be reversed by a reviewing court if found to be clearly erroneous.

2. SEPA Guidelines provide that if the lead agency determines that the proposal will have a significant adverse effect on the quality of the environment, a Declaration of Significance shall be issued and an EIS prepared. WAC 197-10-350 and WAC 197-10-400. A proposal has a significant adverse effect "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, 278 (1978).

3. In examining the effect to determine its degree the City may consider both "(1) the extent to which the action will cause adverse environmental effects in excess of those created by existing uses in the area, and (2) the absolute quantitative adverse environmental effects of the action itself, including the cumulative harm that results from its contribution to existing adverse conditions or uses in the affected area." Narrowview Preservation Association v. Tacoma, 84 Wn.2d 416, 423 (1974).

4. The unusually low vacancy rate can be considered an adverse condition to which the proposal would contribute. The displacement of tenants from the demolition of 50 low-cost units can reasonably be expected to lower the vacancy rate in low-income housing by approximately five percent. Whether a five percent change in the vacancy rate for low-income housing is more than moderate is somewhat subjective in that the answer may differ depending upon the interest of the person making the judgment. A low-income person about to be displaced is likely to decide that a five percent change in the availability of housing he or she can afford is indeed significant while a landlord with a low-cost apartment available may not and both views are tenable.

5. The appellant must overcome the substantial weight accorded to the Building Department's determination that this would have more than a moderate adverse impact. No new information not available to the Superintendent is before the examiner and a showing that evidence may be viewed differently does not overcome the substantial weight of the Superintendent's decision.

6. The language of WAC 197-10-400 requires the preparation of an EIS when a Declaration of Significance is issued. Despite the limitation on the City's authority to condition or deny actions on the basis of policies incorporated into resolution, regulations, ordinances, plans or codes, there is no stated exemption from the EIS requirement where the policies do not specifically provide for denial or further conditioning in mitigation of disclosed adverse impacts.

7. Appellant contends the preparation of an EIS would be a useless and wasteful exercise, violating the intent of SEPA. WAC 197-10-020(2), cited by appellant, merely explains that the Guidelines themselves are designed to reduce wasteful exercises while facilitating public involvement. One cannot construe that statement to provide exemptions from the requirements for proposals for which the guidelines fail to optimally carry out their purpose. While the EIS, limited to the element of housing, may not, in fact, provide much information not already available, the burden of preparation is similarly reduced.

8. The City has developed policies, as required by RCW 43.21.060, including Section 9, Ordinance 107678 for considering and mitigating impacts of proposals on housing. That section gives the decision-maker the authority to require the permit applicant to make a good faith effort to locate acceptable housing for tenants of low-rent units. Section 10 of the ordinance states clearly that the policies adopted to satisfy the statute's requirement are supplementary to other City policies protective of the environment.

9. Besides disclosing the impacts, an EIS would explore the goals and policies of the City and their applicability and describe alternatives to the proposed action. SEPA is recognized as a full disclosure law. Norway Hill v. King County Council, *supra*. Even if the result of the preparation of the EIS, comments on it, and the consideration of its contents by the decision-maker, applicant and the public were issuance of the requested permits after a good faith effort by the applicant to find substitute housing, the full disclosure, in itself, serves a public purpose.

Decision

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

Entered this 7th day of May 1980.

M. Margaret Klockars
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Deputy 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).