

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

YOSHIO AKADA, et al.

FILE NO. W-80-016

from an environmental determination of  
the Department of Construction and Land Use

#### Introduction

The appellants, Yoshio Akada, et al., challenge the adequacy of an environmental impact statement (EIS) prepared by the Department of Construction and Land Use (CLU) for a proposal (Park Twelve-01 Condominiums) for 1706 - 1710 12th Avenue South.

The appellants exercise their right to appeal pursuant to Section 20 of the SEPA Ordinance (105735, as amended).

Parties to the proceeding were: appellants represented by Janet Quimby, attorney at law; Construction and Land Use represented by Ross Radley, Assistant City Attorney; Park Twelve-01; represented by Brian E. Lawler, attorney at law.

This matter was heard before the hearing Examiner on October 7, 1980, October 14, 1980, and further continued for submission of briefs.

Ater 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. CLU issued an EIS (draft and final) for a proposal to construct a 61 unit, 18 story condominium, the Park 12-01 Condominium, at 1706 - 1710 12th Avenue South.

2. Appellants challenge the adequacy of the EIS in the analysis of noise, parking and traffic, view and solar energy, the neighborhood improvement plan and alternatives.

3. The EIS describes the existing noise levels on the site (p. 37, final) including that from flying aircraft, the anticipated noise levels from construction equipment (p. 61, draft), and anticipated noise level increase from increased human activity on the site and an 8% increase in traffic volume (p. 64, draft).

4. The City's Noise Ordinance establishes maximum permissible levels of sound for daytime and nighttime from any source with exemptions for certain noise generators. Appellants urge that the Noise Ordinance standards need to be included in the EIS to make it understandable to those using it.

5. Comparison of the ambient noise levels from the readings at p. 37, final EIS, and the point source levels in the Noise Ordinance could mislead the nonexpert reader of the EIS.

6. Professor Breyse has conducted a noise study on Beacon Hill, apparently with regard to aviation noise. The study had not been published at the time of the hearing of the appeal. Appellants urge that information gathered by the professor should have been included in the EIS.

7. A traffic and parking study of the area was conducted by David Markley, a transportation engineer, retained by the general consultants for the EIS. A survey of on-street parking supply and utilization was made with counts taken on weekdays at 10:30 a.m., 2:00 p.m. and 7:15 p.m. and on weekends at 2:15 p.m., 1:15 p.m. 6:45 p.m. and 8:25 p.m. The area surveyed was what the consultant considered a reasonable walking distance expanded to include areas affected by specific traffic generators such as the Public Health Hospital and other construction projects. The survey identified a total of 852 on-street parking spaces in that area and a peak occupancy rate of 55%, after correcting for inclusion of a bus zone in available parking.

8. One side of South Holgate Street, which is a "no parking" area, was included in the count of on-street parking spaces. The count of available parking spaces should be reduced by approximately 14 spaces for this error.

9. The consultant, using the Capitol Hill Parking Study conducted by the Seattle Engineering Department as a guide, determined that a total of 92 parking spaces would be demanded by the proposed project in the worst case. Since 76 parking spaces on-site are proposed, as many as 16 vehicles could require on-street parking. He concluded that the streets could absorb the additional demand although some displacement could occur forcing some residents who currently park close-by to park farther away.

10. Appellants conducted two parking surveys of availability and occupancy. Those surveys showed as many as 49, or approximately 6%, fewer spaces available.

11. Parking utilization is highest in the immediate area of the proposed project on weekends in the early morning and late evenings. At those times utilization in the immediate vicinity is substantially higher than 55%. Vehicles are parked illegally on planting strips and in driveways at these times of high demand.

12. The times chosen by the consultant for the survey are those generally used by the consultant to reflect the range of parking demands and to include the time when peak demand normally occurs. The peak demand by residents of the project is expected to be on weekday evenings. No comments were made in response to the parking study in the draft EIS that it did not cover the period of peak demand.

13. The Public Health Hospital expansion for a primary care facility will displace 30 on-site parking spaces during construction but will have no long-term effect on parking availability or demand.

14. The consultant considered potential demand from other known projects in the general area.

15. The alley which the subject site abuts upon is used by garbage trucks and approximately two other vehicles per day. It is narrow, unpaved and rutted. Eleven parking spaces for the building at 1701 - 13th S. are located on the alley and are little utilized. Sight distance is limited and backing from them may be more hazardous if more vehicles use the alley. The backing difficulty is not disclosed in the EIS, however, because of the condition of the alley, increased traffic south of the subject site is unlikely.

16. While south-end employment centers were not mentioned, forty percent of the daily traffic was assumed to be travelling south. The analyst also assumed high auto use in determining the mode split (p. 3-23, draft). The 40% figure exceeds the percentage of residents of the Akada building working at south-end sites.

17. The EIS provides graphic depictions of the shadow impacts of the proposed tower for the summer from 6:00 a.m. to 6:00 p.m., spring and fall from 7:00 a.m. to 5:00 p.m. and winter from 8:00 a.m. to 4:00 p.m.

18. One existing building is not shown on the maps used for the shadow pattern depiction.

19. Appellants contend that shadow impacts before 6:00 a.m. and after 6:00 p.m. should have been shown and that a representation of the actual shadows cast by the Beacon Tower should have been included.

20. Showing the existing shadows on the same graphics would make the impact of the proposed tower more difficult to ascertain. Showing them on a separate graphic would not provide any information about the impact of the project or any cumulative impact.

21. Appellants maintain that the solar heat loss to be experienced by buildings shaded by the tower should have been quantified.

22. Reference to loss of sunlight or solar heat is made at pp. 3, 7, 17, 50 and 112, draft EIS, and p. 73, final EIS.

23. Calculation of solar heat loss for the buildings which would experience shadow from the tower would require information about the design and construction of the units which the City may not have and information about the use of and users of the units which the City would not have. The CLU analyst was not aware of such an analysis having been done for any project and no one doing such analyses was known to the EIS consultant.

24. The depiction of the proposed tower in the upper photograph at p. 44, final EIS, is misplaced. The photograph provides minimal view impact information.

25. Appellants object to the characterization of the North Beacon Hill Neighborhood Improvement Plan (NIP) as "a statement by interested citizens designed to guide decision-making officials on matters pertaining to that neighborhood" at p. 34, final EIS, and a similar statement at p. 39, draft EIS.

26. The NIP has been adopted by the City Council and amends the Comprehensive Plan for the City, therefore, it is something more than a statement by interested citizens. The function of the Comprehensive Plan as a guide to development has been reaffirmed recently by the Washington Supreme Court in Barrie v. Kitsap County, 93 Wn.2d 843 (1980).

27. The EIS offers three relevant alternatives to the proposed project--no development, a low-rise structure of six stories and a tower without base structure. The low-rise structure is described infeasible because the price per square foot for acquisition and construction would exceed the price at which units in such a structure could be marketed.

28. Appellants assert that the objective of the proponent is too narrowly defined, that more substantiation regarding feasibility is required and that the alternative of a low-rise, stick frame building should have been analyzed as an alternative.

29. The CLU's policy does not require requesting analysis of an alternative that is not practical. The analyst, Melody McCutcheon, testified that a wood frame structure of six stories would not be appropriate although three stories would be. Costs of acquisition from project to project are too variable to make comparisons meaningful for checking bases for feasibility. The CLU relies on proponent's statements as to feasibility.

### Conclusions

1. Section 20, Ord. 105735, as amended, provides that the decision appealed from is to be accorded substantial weight. Further, the Courts have established the "rule of reason" as the standard for judging adequacy of an EIS. See Cheney v. Mountlake Terrace, 87 Wn.2d 338 (1976), Trout Unlimited v. Morton, 509 F2d 1276 (9th Cir. 1974).

2. Giving the determination that the EIS is adequate substantial weight and applying the rule of reason the challenge must fail.

3. Neither the Noise Ordinance standards nor data gathered by Professor Breyse would be relevant or useful in understanding probable impacts caused by the proposed project, and, therefore, are not necessary for a reasonable disclosure.

4. The parking survey was reasonably accurate and a good faith attempt to include peak demand periods was made. Despite the function of the draft EIS process described in WAC 197-10-405 which the proponent urges limits review, appeals are permitted by the City without regard to whether appellants made comments during the comment period or whether there were comments on the specific issue giving notice to the City of the alleged inadequacy. Here, despite lengthy comment by various appellants, it was never suggested that the survey had missed the peak demand time. Appellants must take some of the blame for this omission.

5. Appellant's evidence of substantially higher occupancy of on-street parking applied chiefly to the streets in the immediate area. The consultant's conclusion about the project's impact was based on the ability of the larger area to absorb any overflow by the effect rippling out from the immediate vicinity. Appellants failed to prove that further weekend data would make this conclusion invalid. The probable consequences were, therefore, adequately explored.

6. The shadow analysis was adequate. The users of the EIS will be able to extrapolate the shadow impacts for before and after 6 o'clock from those given.

7. The analysis of solar heat loss to units affected by the tower's blocking sunlight requested by appellants is not reasonable.

8. While the description of the NIP does not properly characterize the status of NIP's adopted by the Council, the decision-making official is advised by experts in land use and, further, must be presumed to know the law. The Comprehensive Plan is a guide, as affirmed by Barrie v. Kitsap County, *supra*, and will be recognized by the official as such. The statement does not make the EIS inadequate.

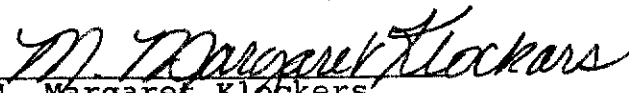
9. The alternatives which must be considered for a private project are limited to "no-action" plus reasonable alternative means of achieving the objective of the proposal. WAC 197-10-440(12)(a)(ii)(e). Since only the proponent may define its objectives the proponent must also be given great latitude in determining whether an alternative satisfies those objectives. It is reasonable to assume that a three story building is not reasonably likely to satisfy the objectives of a proponent proposing an 18 story building. Therefore, analysis of the alternative of a three story, frame building cannot be required.

10. Appellants ask that the proponent be required to substantiate claims regarding cost to allow verification of the feasibility of alternatives. CLU has not required cost figures of other proponents and the CLU representative indicated that she does not have the expertise to evaluate such costs. Further, while various cases under NEPA require sufficient detail with supportive data and reasoning to understand the relative environmental effects of the alternatives, none was found requiring cost data. See Alaska v. Andrus, 11 ERC 1321 (DC Cir. 1978).

#### Decision

The determination by the Department of Construction and Land Use is affirmed.

Entered this 6th day of December 1980.

  
M. Margaret Klockers  
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 WnApp. 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).