

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

In the Matter of the Appeal of

PIONEER SQUARE PROPERTY OWNERS ASSOCIATION FILE NO. W-80-021

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

Introduction

Appellant, Pioneer Square Property Owners Association, appeals the adequacy of the environmental impact statement (EIS) prepared by the Department of Construction and Land Use (CLU), for a proposal by the State of Washington Department of Social and Health Services (DSHS), to place a work/training release center in the Reynolds Hotel at 410-4th Avenue.

Parties to the proceeding were: Appellants, represented by Timothy R. Fishel, Fishel and Seligmann; attorneys at law, and assisted by Arthur Skolnik; the Department of Construction and Land Use, represented by Ross Radley, Assistant City Attorney; and the Department of Social and Health Services, represented by Michael Hanbey, Assistant Attorney General.

This matter was heard before the Hearing Examiner on December 16 and 18, 1980, and January 2, 6 and 7, 1981.

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 EIS was prepared by the Phoenix Group for the Department of Construction and Land Use for the proposal to establish a work/training release center in the Reynolds Hotel.

2. Appellant filed an appeal challenging the adequacy of the EIS.

3. The Reynolds Hotel is located just outside the boundary of the Pioneer Square Historic District and Special Review District at 410-4th Avenue.

4. The Reynolds Hotel has 112 single room or residence occupancy (SRO) units.

5. The Department of Social and Health Services proposes to lease the hotel for 10 years for use as a work/training release center (Center) and contract with Second Chance, Inc. to operate the center.

6. The Center would house 100 adult offenders who would leave the facility for work, training or furloughs and would be supervised while in the Center.

7. The work/training release center, operated by Second Chance, Inc., is currently located in the Washington Center Building. That center has been found by Municipal Court to be in violation of the City's zoning ordinance and is required to relocate its 100 residents.

8. A council conditional use permit is required under Section 17.3, Ordinance 86300, as amended, to establish a work/training release center at the proposed location which is zoned Metropolitan Commercial (CM). The process for that permit includes a public hearing before the Hearing Examiner, a recommendation by the Hearing Examiner to the City Council and an opportunity to request of the City Council further consideration of the Hearing Examiner's recommendation.

9. The EIS identified as unavoidable adverse impacts the loss of 112 SRO housing units for 10 years, the displacing of 51 current permanent residents of the Reynolds Hotel and the further concentration of correctional facilities in the area.

10. Jails are presently located in the King County Courthouse and Public Safety Building, both within one block of the Reynolds Hotel. Use of a part of the Morrison Hotel as a jail and a new King County Jail between Fifth and Sixth Avenues and James and Jefferson Streets are proposed.

11. Goals for Seattle (Seattle 2000), adopted in 1973, contains two goals relevant to the proposed action. Community, Goal C., Institution Subgoal 7, provides:

The City of Seattle shall accordingly set limits to and establish criteria for institutional growth; weigh their anticipated benefits to the public against their intensities of use and scale; and study the available alternatives, including the alternative of dispersing institutional functions and facilities.

Public Facility Subgoal 3 provides:

The City of Seattle shall disperse these facilities rather than concentrate them within a few communities, and assure that their residents have ready access to transportation, recreation and shopping appropriate to their needs.

Neither statement was included in the EIS which stated that no specific reference to siting of correctional facilities could be found in the Seattle 2000 goals and that City policy does not discourage concentration of correctional facilities (p. 13, 14).

12. The EIS cites the Pioneer Square Special Review District Ordinance No. 107453 as relevant and quotes a portion of the purpose Section 24.91, Ordinance 86300, as amended, viz. "... to stabilize existing and encourage a variety of new housing types related to all income groups" The general purpose of Special Review Districts, incorporated by reference into the purpose of the Special Review District, includes additional goals or purposes which may be relevant, i.e., "to protect and enhance neighborhoods ...," "to promote stability of land values and investments"

13. The Pioneer Square area is experiencing a loss of tenants, a slowing of interest in rentals and a slowing in investment in the area. The decline is attributed to the area's image which is affected by the physical maintenance of the area, its underdevelopment, and the controls of the Historic District and Special Review District.

14. The strengths of a neighborhood and the trend of a community are considered by lenders when deciding whether to provide monies for development. The evidence adduced by Appellant showed that the perception that jail-related uses have negative impacts on the areas around them results in

actual economic impact since institutional lenders and appraisers consider trends and additional correctional facilities in relation to office and residential uses would be treated as a downward trend. The EIS discounted the potential of economic impact by reference to a report's conclusion that halfway houses have no effect on real estate values and an analysis and statements from another EIS that correctional facilities in Ballard, Steilacoom and Longview caused no loss of property value. No recognition of those area's dissimilarities to Pioneer Square or Pioneer Square's special attributes was included.

15. A survey of sales of improved and unimproved commercial and business properties and condominium units was done for the years 1978 to September, 1980, for five areas in the Capitol Hill and Central areas. Work release facilities are located in four of the areas. The one area without a work release facility was used as a control. The survey concluded that "In all cases the resales have been for a greater amount of money." The surveyor indicated that there are too many variables to allow a conclusion that the facilities do not affect sales price. The areas surveyed were not shown to be comparable to that surrounding the Reynolds Hotel.

16. The City College has dropped plans to renovate the Pioneer Office Equipment Building at First and Cherry for its administrative headquarters. One consideration in that decision, as reported by a trustee, was the possible conversion of the Reynolds Hotel to a work/training release center.

17. The EIS describes the composition of the downtown population, the 70 percent loss of SRO units since 1960, and the range of vacancy rates depending upon which survey relied upon. It discloses that the cumulative impacts from continued loss of housing units in the downtown and of SRO units is significant. An increase in demand for SRO units in the future is acknowledged.

18. The EIS does not contain a specific statement of the purpose or objectives sought to be achieved by DSHS. The conditional use permit application, included in the EIS as an appendix, states the reasons for the choice of the Reynolds Hotel and from those reasons some broad objectives can be deduced -- to house 100 inmates at limited capital expenditure in a governmental center, well served by public transportation, without unreasonable dislocation and where permitted by zoning.

19. The actual site selection criteria, objectives of the proposal, are a) room for 100 beds plus kitchen, dining area, visitor area and office space; b) proper zoning; c) cost of site limited to current \$175,000 program cost plus about \$100,000 for renovation; d) displacement of elderly or handicapped persons not large; e) quick availability.

20. Alternatives to the proposed action included in the EIS are "no action", Reynolds Hotel with combined operations, alternative sites and construction of a new facility.

21. Under the "no action" alternative, the EIS states that economic pressures could force the loss of the Reynolds Hotel as an SRO facility. Appendix C was provided "to review the potential for continued operation of the Reynolds Hotel as an SRO facility" It presents a pro forma operating budget based on the sale of the hotel showing a negative cash flow and concluded that it does not appear feasible for a private individual to buy the hotel and operate it profitably as an SRO facility. While increasing room rents was listed as one change necessary to make it feasible, that was then discredited as a possibility by stating that it would only increase the vacancy rate.

22. The possibility of lease of the Reynolds by a non-profit group for SRO housing was offered in Downtown Human Services Council's comment letter in the EIS which included figures that could be substituted in the pro forma operating budget to show a possible positive cash flow. While acknowledging the plausibility of that alternative, the EIS responds by discounting assumptions it assumes must be made to support that analysis with further assumptions, i.e., that a non-profit agency cannot financially guarantee that a lease payment will be made.

23. A table is used to summarize the reasons 23 other facilities were not selected. The table was offered in response to a comment that it would be useful to have a list of vacant residential buildings and the reasons they are not available. The reasons given are the conclusions of the project proponent and do not supply the bases for those conclusions.

24. The EIS does not discuss the environmental impacts of the alternate sites and compare them with those of the proposed site.

25. The EIS states that the Housing Preservation Ordinance No. 109220 does not apply to the proposal because the use of the building would not change from residential under the proposal. Appellant contends that that is an arguable legal conclusion so the EIS should have provided the alternative analysis.

Conclusions

1. The Washington Court, following the federal courts, has adopted the rule of reason as the standard for judging the adequacy of an EIS. Cheney v. Mountlake Terrace, 87 Wn.2d 338 (1976). That rule requires a "reasonably thorough discussion of the significant aspects of the probable environmental consequences" Trout Unlimited v. Morton, 509 F.2d 1276, 1283 (9th Cir. 1974).

2. The Hearing Examiner is to accord substantial weight to the determination from which the appeal is taken and the burden of establishing the contrary is upon the appellant. Municipal Code 25.04.200 C.

3. The failure to include two relevant Seattle 2000 goals is error, as conceded by the Department of Construction and Land Use. The impact addressed by those goals, concentration of correctional facilities, is disclosed in the EIS, however.

4. Since more of the purposes for the Pioneer Square Special Review District are relevant and adopted goals of the City, their inclusion would improve the EIS.

5. Appellant did not show any inadequacy in the analysis and disclosure of impacts of the proposal on housing.

6. While a more balanced presentation of the potential effect of another correctional facility in the area on property values might have been desirable, there is question about whether these attitudes are susceptible to measurement and the kind of objective analysis an EIS is to contain. In Trinity Episcopal School Corporation v. Romney, 387 F. Supp. 1044, 1079 (1974), a situation where no EIS was prepared for a proposal to construct a low income housing project, the court observed, citing Hanley v. Kleindienst, 471 F.2d. 823, 833 (2nd Cir. 1972), that "it is doubtful whether psychological and sociological effects upon neighbors constitute the type of factors that may be considered in making such a determination since they do not lend themselves to measurement."

While the impacts here cited are economic, they are the result of subjective fears which are not readily assessed. Therefore, further analysis of the fears and potential impacts would not provide objective, useful information and should not be required.

7. WAC 197-10-440(5)(a) requires a brief description of "the purpose or objectives which are sought to be achieved by the sponsor." The EIS failed to include that description in the manner contemplated by the WAC Guidelines. The broad objectives can be ascertained, however, from the table summarizing the reasons for rejecting alternative sites and from the conditional use application. Therefore, to remand to provide a statement of project objectives would be to regard SEPA as only procedural and would not supply the decision-maker with any additional useful information.

8. The alternatives section of the EIS has been characterized as the "linchpin of the entire impact statement". Monroe County Conservation Council, Inc. v. Volpe, 472 F.2d 693, 697-698, 4 ERC 1886 (2d Cir. 1972). It must contain a "detailed and careful analysis of the relative environmental merits and demerits of the proposed action and possible alternatives." Alaska v. Andrus, 580 F.2d 465, 474, 11 ERC 1321, 1328 (DC Cir. 1978). The discussion "must go beyond mere assertions and expose the reasoning and data of the agency; Sierra Club v. Interstate Commerce Commission, 11 ERC 1241, 1245 (DC Cir. 1978). "A remote alternative need not be discussed as exhaustively as a currently viable one." Sierra Club, supra, at 1245. The rule of reason is to govern the extent to which the alternative need be discussed.

The table summarizing the reasons for rejecting the alternative sites is not supported by any data and as such provides only "mere assertions". It also does not compare the environmental impacts of those sites with the proposed site. Because the evidence at the hearing showed that most of the sites were not viable alternatives, i.e., they required renovation which cost would greatly exceed the funds available, the rule of reason would indicate that the treatment of those alternatives was adequate. Further, it should be remembered that the disclosure and analysis is not to be regarded as an end in itself but is to provide information helpful to the decision-maker, in this case the City Council. Since the decision will be whether to authorize the facility at a particular site, the data supporting the rejection of other sites is of less importance than in some other types of decisions.

9. Appellant urges that analysis of "no action" should assume the continuation of the existing use of the subject site but that if one possible scenario is detailed then all other reasonably foreseeable future courses of action must also be presented. If use of the subject site, without the proposed action, is to be considered then the scenario chosen is certainly a reasonable one which should be discussed. The presentation of the "no action" alternative with one possible future for the site, that of sales and loss of SRO housing, by use of the pro forma statement, with only inclusion of another possible future through a comment letter, that of a non-profit lease arrangement for maintenance of the SRO units, and then responsively denigrating its feasibility, does not provide a balanced look at the "no action" alternative.

The SEPA process is intended to be an integral part of the licensing and permit processes of the City. The discussion provided, both in the alternatives section with appendix and in the response, is sufficient to alert the City Council, the

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ultimate decision-maker to the issues involved and some of the trade-offs. Since a hearing is required on the conditional use application, interested persons can offer evidence and opinion to assist in the determination regarding the weight to be given the assumptions and conclusions on the EIS.

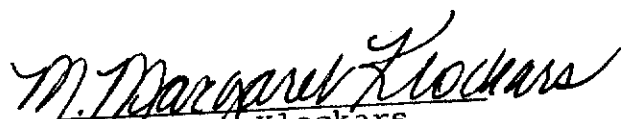
10. The applicability or non-applicability of laws other than comprehensive land use plans, zoning regulations and regional, City and neighborhood goals, objectives and policies is not required to be included in an EIS by the WAC guidelines nor by Ordinance 105735, as amended. The stated conclusion that the Housing Preservation Ordinance does not apply to the proposal, in response to a comment, was a gratuity. The impacts or absence of impacts were not discussed so the impacts of the opposite conclusion, that the ordinance does apply, are not required to be discussed.

11. Despite some errors and evidence of bias and weakness, the EIS, under the rule of reason, is legally adequate.

Decision

The appeal is DENIED.

Entered this 2/26 day of January, 1981.


M. Margaret Klockars
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. After 5 days from the date of this decision, a permit may be issued unless a party of record files with the Director of the Department of Construction and Land Use a written notice of intent to seek judicial review of the City's action. 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).