

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

CONCERNED CITIZENS OF SOUTH PARK

FILE NO. W-81-004

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

Introduction

Appellants filed an appeal from a declaration of non-significance (DNS) issued by the Department of Construction and Land Use (CLU) for proposed rezoning and condominium construction. The subject site is the block bounded by S. Trenton Street, 12th Avenue S., S. Henderson Street and 10th Avenue S.

The appellant exercised its right to appeal pursuant to Section 20 of the SEPA Ordinance (107535, as amended).

Parties to the proceedings were: appellants by Lynn D. Weir, Smith, Brucken, Winn and Ehlert; proponent by Michael R. Alfieri; CLU by James Fearn, Jr., Assistant City Attorney.

This matter was heard before the Hearing Examiner on March 31, and April 1, 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. The proponent William S. Tsao and Company proposes to rezone an area from Single Family Residence High Density (RS 5000) to Duplex Residence (RD 5000) in order to construct 147 condominium units in a planned unit development (PUD).

2. The project site is in the South Park neighborhood. South Trenton Street lies to the north; S. Henderson Street to the south; 12th Avenue S. to the east; and 10th Avenue S. to the west. The site is presently undeveloped. The existing vegetation includes grass, clover, blackberry bushes, individual trees and small groves of trees.

3. The proposal envisions four to ten units generally two or three stories high. Fifteen percent of the proposed units are potentially 3 bedroom units, with the remainder 2 bedrooms. Attached garages would provide one on-site parking space per unit, although additional small group parking on site yields a total of 1.5 parking spaces per unit. Proposed access is via S. Henderson Street and 12th Avenue S. Fourteenth Avenue S., to the west is an arterial, served by a Metro transit line.

4. CLU issued a Final DNS for the proposed action and filed same February 9, 1981. The appellant, Concerned Citizens of South Park, filed an appeal of that threshold determination February 23, 1981.

5. The reasons cited for the appeal are as follows:

- (a) The Environmental Checklist shows that the proposal will significantly affect the quality of the environment;
- (b) the DNS "does not adequately assess the effects of the proposal on air, water, earth, noise, land use, population, transportation/circulation, public services, utilities, and recreation.";
- (c) noncompliance with RCW 43.21C.030(2)(e).

6. There are presently 43 residential units in the South Park area, served by three transit routes.

7. The proponents traffic projection is in the Checklist: a 5.6 average weekday total (AWDT) per unit, or an addition of 823 AWDT to the present traffic volume. The 1978 Seattle Department of Engineering traffic count for S. Henderson Street, west of 14th Avenue S. was 278 AWDT. The CLU analyst suggested per Seattle Engineering Department recommendation a trip generation factor of 5.1 per unit, with adjustment of the 1978 traffic volumes by 2 percent per year to construction year. This results in an estimated 750 trips generated daily with 1983 (assumed construction year) traffic volumes sans project of 308; with the project 1,058, "still well within the street capacity" of S. Henderson Street, which is to be improved between 10th Avenue S. and 14th Avenue S. by the proponent. The analyst was of the opinion that single family dwellings generated more traffic than did multifamily dwellings.

8. Appellant's expert witness testified that since, in his opinion, the area should be considered as a nonurban, single family area, the more proper trip generation figure is 10 per unit per day. With the proposed rezone the witness projected 430 AWDT from existing residential units and 1,470 from the new units or a subtotal of 1,900 residential AWDT. The Seattle Refrigeration plant is located south of the proposed rezone and just south of S. Director Street. Director Street is one block south of S. Henderson Street. The plant is credited with an additional 50 AWDT, including truck traffic, which was considered by the CLU analyst in the threshold determination.

9. Appellant presented testimony and supportive documentation acknowledging that there is an air pollution problem in South Park and that some area residents suffer from respiratory problems, including chronic bronchitis, emphysema, and asthma. The suspected impact of the proposal on the foregoing was succinctly put by an appellant witness: "Every little bit hurts." Carbon monoxide is a product of automobile operation.

10. The CLU analyst concluded that although the additional cars and fireplaces are expected to yield additional particulates, "(g)iven the amount of traffic increases and the relatively small number of particulates from fireplaces, no significant deterioration in air quality is anticipated...." The proponent's witness estimated a maximum .5 percent increase in area pollution.

11. South Henderson Street is part of an approximately 21 ft. right of way. This blacktop street without curbs has a capacity of 600 vehicles per hour per lane. With the proposed improvements and 2 lanes, the analyst considers that S. Henderson Street could safely carry 1,200 vehicles per hour. Proponents plan to add curbing to S. Henderson.

12. A level of service rating denotes the congestion of a given street, e.g.: A, most favorable, free flowing; B, stable flow; C, stable flow; D, some queing, greater delay; E, congested delay; F, forced flow.

13. A witness from the Engineering Department also urged that the 5.1 trip generation factor was more appropriate because, among other reasons, of more recent Source (1979) data. Projecting that each of the 147 units would have 5.1 trips, or add 750 to the existing S. Henderson Street volume, the witness testified that the service level would remain at A; assuming 10 vehicle trips per day (1,470 trips), service level B; even with peak traffic total 195 per hour, the service level would be A or B. Traffic volume is the principal service level determinant although road condition is considered.

14. Proponent's soils engineer tested the land stability by fourteen holes 12-13 ft. deep, and concluded no slide danger was present; the report did not express any view of ground water. One appellant witness testified that the bulkhead of a resident $\frac{1}{2}$ block east of the subject site slid down the bank. That witness also testified that there are year round wet areas, springs, and water runoffs from the subject site right on to Henderson Street, south of the subject site, so that pedestrians cannot use the sidewalk. That witness' concern was echoed by several others but disputed one neighbor who felt that in the summer the subject site was dry and a fire hazard.

15. There is a combined storm sewer in Henderson Street between 12th and 14th Avenues South; i.e., the sewer functions for drainage and sewage. There is a problem with uncontrolled overrun, specifically at 4th and 5th at S. Trenton, several times per year. However, an owner of three homes in the area since 1971 has received no complaints of flooding or of back-up sewers.

16. In addition to planning to maximize existing vegetation retention, the proponent intends to make street improvements to 12th Avenue S. from S. Trenton to S. Henderson Street. As stated above, S. Henderson would also be improved, between 10th and 14th Avenues S. Compliance with the stormwater and grading regulations of the Grading and Drainage Ordinances are planned. Thus, while the percent of impervious surface will increase, the proponents plan to collect site storm water into a required retention system (reservoir) for dissipation at a controlled and regulated rate. With the natural exception of evaporation or absorption (10 percent) the runoff will be channeled roughly two-thirds to the (south)west where it will merge with the state (freeway, natural drainage) system, and one-third to the (south)east to the storm system. The purpose is the retention of storm water during the heaviest rainfall, to be released when the system can bear it. If drainage is controlled, the increased volume of sewage will not increase the number of outfalls. The south drainage beyond S. Henderson would also be restricted by the proposed curbs on the north side of Henderson. The exact amount of water was not projected; however, the CLU analyst testified that the amount is not ascertained in Environmental Impact Statements (EIS). We find in accord with a CLU witness that the additional units will not strain the system.

17. The proposal would increase the population of the area and the population density pattern will be altered. Per a draft Neighborhood Improvement Plan (NIP) suggestion of presently 2.1 persons per household, the project would add roughly 309 residents. The NIP goal is to maximize the number of single family dwellings.

18. An increase in school age children population is expected. Many of the 20-30 employees of Delta Marine Industries, $\frac{1}{2}$ mile south of the subject site, have expressed an interest in area housing. The majority of these employees are 27-28 years of age, married, with children. However, the CLU analyst testified that condominium units generally have a higher percentage of childless adult residents; but that assuming each proposed unit had children, the impact on the neighborhood school, Concord

Elementary, would not be significant, (15), and would in any case be beneficial. An appellant witness responded to cross examination inquiry by stating that school population had increased from 1978 (175) to 1980 (231).

19. Appellants testified that recreational facilities are already in maximum use, including the Senior Center. The Checklist indication that there would be no impact upon the quality or quantity of existing recreational opportunities was modified by the analyst to reflect some increased visitation, but (nevertheless) no adverse impacts.

20. The proposal will result in incidental grading and exposure of soils, increasing erosion potential. No part of the site is designated as environmentally sensitive, however. There were no potential or known slide areas in the vicinity.

21. Single family residential development is predominant in the vicinity, including the RM zone $1\frac{1}{2}$ blocks north of the site and the RD zone west adjacent to the site.

22. No city high accident locations are designated in the project vicinity. No evidence was presented as to noise.

Conclusions

1. The Hearing Examiner must accord substantial weight to CLU's determination, Ordinance 105735, Section 20(4), and the burden of showing clear error is on the appellant.

2. We agree with counsels for the proponent and CLU that the appellant's claim of noncompliance with RCW 43.21C.030(2)(3) concerning the study, development and description of alternatives is not cognizable at this level of appeal. "Questions contained in the environmental checklist are exclusive and factors not listed in the checklist shall not be considered in the threshold determination." WAC 197-10-360(1).

3. An environmental impact statement is required for every recommendation or report on...major actions significantly affecting the quality of the environment...." RCW 42.21C.030(2)(c). The lead agency is to use the environmental checklist to determine whether the proposal will result in a "significant adverse impact upon the quality of the environment." loc cit.

4. In Norway Hill v. King County Council, 87 Wn.2d 267, 552 P.2d 674 (1976), appellant successfully challenged the County Council's determination that an environmental impact statement was not required. At issue was a project involving 52.3 acres of vacant heavily wooded land. Proposed was a residential suburban neighborhood, complete with "sanitary, sewers, curb and gutter streets, sidewalks and underground utilities." at p. 269. The court concluded that:

"...the procedural requirements of SEPA, which are merely designed to provide full environmental information, should be invoked whenever more than a moderate effect on the quality of the environment is a reasonable probability...." at p. 278.

Specifically rejected were previous attempts to define "significantly".

5. Appellant has not shown CLU's clear error, or that there will be more than a moderate effect on the quality of the environment as a reasonable probability, on several points, including noise as to which no evidence was given. While storm water runoff will be increased from the site, given the plans

for drainage control and the testimony that development and corrective water retention will not adversely affect the capabilities of the vicinity combined sewer system, which we adopt as a finding, the appellant has not overcome the substantial weight accorded CLU's decision on that element.

6. Similarly, the Director's threshold assessments on population, public services, utilities, recreation, and earth were insufficiently challenged.

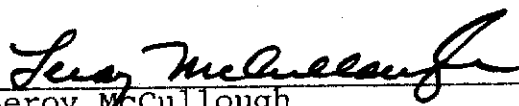
7. However, the multifamily project, even though a planned unit development, represents a significant departure from the land use of the subject and adjacent, more intensively zoned area. Its positive elements notwithstanding, the project's "magnitude"; projected affect in traffic volume, and hence on the air, present more than a "moderate" environmental effect as a reasonable probability. Norway Hill v. King County Council, supra.

8. While the appellant's case on air quality could have been stronger and more direct, sufficient proof was adduced that the area is afflicted by not insignificant levels of pollution. The CLU assessment on air was couched in terms of relative deterioration of existing air quality. As to traffic, there is a reasonable probability that more than a moderate effect on the quality of the single family dwelling environment may follow, suggested controls notwithstanding. Norway Hill v. King County Council, supra. CLU has the option of ordering an EIS limited to these elements.

Decision

The determination of the Department of Construction and Land Use is REVERSED. The matter is remanded for consideration consistent with this opinion.

Entered this 16~~th~~ day of April, 1981.


Leroy McCullough
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 further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981).