

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

PREP'S CONCERNED NEIGHBORS

FILE NO. W-81-007

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

Introduction

Appellant, Prep's Concerned Neighbors, an unincorporated association, challenged the adequacy of an environmental impact statement prepared by the Department of Construction and Land Use (CLU) for additions and alterations to the Seattle Preparatory School at 2400-11th Avenue East.

Parties to the proceeding were: Appellant represented by Roger M. Leed and Jeffrey M. Eustis; proponent, Seattle Preparatory School, represented by Hillis, Phillips, Cairncross, Clark and Martin and Glenn J. Amster; and the Department of Construction and Land Use (CLU) represented by Douglas Jewett, City Attorney, and James E. Fearn, Assistant.

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 environmental impact statement (EIS) for proposed "Alterations and Additions to Seattle Preparatory School" was prepared by the Department of Construction and Land Use.

2. The appeal filed by Prep's Concerned Neighbors challenges the adequacy of that EIS.

3. Seattle Preparatory School proposes to construct a new gymnasium and support area, remodel and add to to an existing building for science room, solarium and offices, and remodel the first floor of the faculty building for a new cafeteria/student center.

4. The school is located on the north slope of Capitol Hill at 2400-11th Avenue East. It is in a Single Family Residence High Density (RS 5000) zone. Single family residences are located directly across the street to the west (11th Avenue East) and south (East Miller Street). Additional school-owned, vacant property is located across Delmar Drive East to the north. Two blocks west, at the intersection of East Miller Street with 10th Avenue East, is located a small business area.

5. Seattle Preparatory School's objectives to be achieved by the proposal include alleviating crowding and providing new facilities to fulfill existing demands with construction of a gymnasium with seating for 1,000 people, a cafeteria/student center, and enlargement and improvement of science facilities.

6. The Matteo Ricci Program is offered by the school in conjunction with Seattle University. Students spend three years at the Seattle Preparatory School campus and three on the University campus to earn their high school diploma and undergraduate degree.

7. Presently, boys varsity interscholastic basketball games are held at other schools.

8. The traffic analysis done by the Transpo Group for the draft EIS assumed maximum attendance (worst case) of 400 persons at an event.

9. The 400 figure was based on the school's attendance experience. The greatest attendance at a Seattle Prep basketball game in the 1980-1981 period is 232 people (Exhibit 8). Attendance may increase if games are played at "home" because of the increased identity with the school. The EIS showed an average attendance of 50-400 people for boys varsity basketball. The other activity shown with an average as high as 400 is an open house.

10. Based on the attendance figure of 400, provision of 147 parking spaces on-site and vehicle occupancy of 1.7 persons, the EIS shows an estimated parking spillover of 115 vehicles. (DEIS, p. 49.) Surveys of on-street parking found 410 parking spaces within 2-3 blocks of the site with peak occupancy of about 55 percent.

11. In response to Seattle Engineering Department's and others' comments the EIS acknowledged the possibility of a 1,000 person crowd and briefly analyzed the impacts of that attendance on parking and traffic volumes. (FEIS, pp. 37-41) That discussion shows an estimated spillover of 303 vehicles and states that 86 cars would have to park farther away than a two block radius. Appellants showed that it is likely that a 4-5 block radius would be required to absorb that demand.

12. The EIS states that the impacts in the "1,000 person scenario exaggerate a condition that could ever be expected...." (FEIS, p. 39)

13. Appellant urges that the 1,000 person attendance should have been fully analyzed as the "worst case" scenario since the facility is to have seating for at least 1,000 persons.

14. Proponent's representatives and the EIS explain that 1,000 seats are needed to allow seating of the student body on one side for assemblies, etc. (FEIS p. 37) but would never be used to capacity.

15. Streets in the neighborhood are narrow. Vehicles traversing the streets may need to weave from side to side where cars are parked or stop for on-coming cars. More parked cars will require more of these maneuvers. Emergency vehicles may have difficulty passing through heavily parked streets. The EIS does not state the widths of the streets or the width of passage-way necessary for emergency vehicles. It does state that emergency vehicles' ability to respond could be decreased. (FEIS p. 96)

16. As the demand for parking increases, the incidence of illegal parking may increase. (FEIS, p. 64) The EIS does not quantify this increase but there is no reasonable way to do so.

17. That illegal parking may impede the passage of emergency vehicles is not directly stated in the EIS.

18. Because the neighborhood around the subject site is an older one, many homes provide no off-street parking. Garages which do exist may not be usable by modern vehicles. Therefore, residents of the area are dependent upon the streets for parking space.

19. Several new establishments--a delicatessen, restaurant, dessert outlet and tavern--have opened at the intersection of 10th and Miller, two blocks from the site, since the parking survey was done. The change in availability of on-street parking resulting is not reflected in the EIS.

20. As a mitigating measure the school proposes to hire security personnel. (FEIS, p. 33) The EIS implies that impacts of noise, parking, litter and congestion could be mitigated thereby. Appellant's witnesses contend that security personnel are unlikely to have any effect on these impacts off-site.

21. Appellant suggests that there may be a compounding effect not analyzed by the EIS when two games, back to back, are scheduled.

22. The neighborhood experiences on-street parking generated by the school now, without the proposed additions. The parking lot area will be smaller after the expansion but will be striped to accommodate more vehicles.

23. The DEIS, p. 85, erroneously shows that parking is permitted on the south side of East Miller west of 10th Avenue East.

24. The phenomenon of vehicles circling through the neighborhood, in search of parking, which is likely to occur, was not discussed in the EIS.

25. The vehicle occupancy rates used for traffic analysis were based on surveys of other sports facilities since no standards were otherwise available. The data supporting those rates were not included in the EIS. Calculations based on different rates were not provided in the EIS.

26. The neighborhood's experience with litter is well-documented by comment letters in the EIS.

27. The school currently has a litter patrol, offered along with security personnel as a potential mitigating measure, which has not cured the problem.

28. The EIS does not quantify expected noise impacts from the proposal. It does disclose that noise from construction and additional activity can be expected. (DEIS, p. 34)

29. Loss of view is depicted by photos in the EIS taken from a street and high spot but may not show the degree of loss from houses located on the east side of 12th Avenue East.

30. The EIS, in its description of population in the census tract, shows 15.3 percent of the households are headed by retired persons and 12.4 percent have children. (FEIS, p. 60) Appellant's witness obtained further detail from a City office showing that in 1976 over 24 percent of the population in the census tract is over 55 years of age.

31. Appellant pointed out the problems of the elderly which could be exacerbated by increased parking and traffic--physical disabilities that require parking close to home or other destination, fears regarding security, etc.

32. The existence of a soils report is acknowledged in the response to a comment. (FEIS, p. 60) The report is not included in the draft EIS and therefore not subject to scrutiny and comment through EIS process.

33. Three design alternatives, in addition to the "no action" alternative, were included in the DEIS. The FEIS added a reduced seating alternative, an additional parking area on Delmar Drive alternative and an off-site parking shuttle alternative.

33. Appellant contends that the alternative of utilizing other facilities for spectator events should have been offered and that consideration of a design including both underground and surface parking was necessary.

35. The analysis of a Delmar Drive lot was too limited in area and emphasized the disadvantages, according to appellant. The school owns a large parcel on the north side of Delmar. The alternative addressed only a small portion of the parcel. Persons using the lot could walk to a safe point to cross instead of on a curve.

36. Continued use of Seattle University facilities was rejected, in part, because of scheduling difficulties.

37. Seattle Preparatory School owns no other property suitable for construction of gymnasium or parking facilities.

38. The EIS sets forth "Goals for Capitol Hill" relevant to the proposal. (DEIS pp. 27, 28)

39. The relevant Single Family Residential Areas Policies are set out in response to a comment letter along with their relationship to the proposal. FEIS, pp. 61-63) How the alternatives relate to those policies is not analyzed.

40. Construction of parking either one level underground or above ground one level costs approximately \$7,000 per space. Surface parking where the surface is level costs approximately \$200-300 per space to construct.

Conclusions

1. The "rule of reason" is the standard by which environmental impact statements are to be judged. Cheney v. Mountlake Terrace, 87 Wn.2d 338 (1976). Substantial weight must be given the decision by CLU that the EIS is adequate. Section 25.04.200, Seattle Municipal Code.

2. The Guidelines for the State Environmental Policy Act permit the level of discussion of significant impacts to be proportionate to their probability of occurrence. WAC 197-10-440(8)(a). The discussion in the EIS reflects those relationships, especially in the discussions of traffic impacts.

The disclosure and analysis of the impacts from an event with 400 persons in attendance is relatively detailed. The disclosure and analysis of the 1,000 person event is included but is briefer. Some consideration of the larger event is necessary to recognize possible use. The "high end of the range of reasonably expected conditions," for impacts from 400 person events or "worst case", as defined by the transportation expert, is appropriately and adequately disclosed in detail. A discussion on the circling phenomenon would have been useful and error was shown in the parking survey and in the failure to take into account the demand from the new businesses. These errors or omissions taken together show an imperfect statement but not an inadequate statement.

3. The EIS need only set forth responsible opposing views on scientific or technical data brought to the attention of the agency. See Committee for Nuclear Responsibility v. Schlesinger, 404 U.S. 917 (1971). While appellant questioned the vehicle occupancy rates used, no evidence of error or scientifically based alternative was shown.

4. Appellant's contention that mitigating measures proposed in some cases do not respond to the problem they are to mitigate is probably correct. The EIS does not appear to carry out its duty to evaluate such measures, however, none are of a nature that their effect can be quantified. Therefore, evaluation is likely to require subjective judgments and be subject to contrary opinion.

5. No significant impact on population was shown. The level of detail presented is, therefore, sufficient.

6. WAC 197-10-440(12) requires description and evaluation of "any reasonable alternative action which could feasibly attain the objective of the proposal." In the case of a private project on a specific site, the range of alternatives is further limited to alternatives on that site or others owned or controlled by the project proponent.

7. Appellant urges that, next to the no action alternative, the alternative which would mitigate most of the significant impacts is for the school to hold major spectator events at other facilities such as Seattle University or other schools. Discussion of that cannot be required as an alternative since it both fails to meet the proponent's objectives and requires use of other sites not owned or controlled by proponent.

8. The cost of underground parking or a parking structure makes alternatives involving either economically infeasible.

9. The alternatives considered are adequate in range and detail.

10. The EIS, as a whole, presents a reasonably thorough discussion of the significant aspects of the probable environmental impacts. It is, therefore, adequate as a disclosure document and as a basis for the decision-maker to impose conditions or grant or deny permits.

Decision

The determination that the EIS is adequate is AFFIRMED.

Entered this 8th day of June, 1981.

M. Margaret Blockars
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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 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).