

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

In the Matter of the Appeal of

PUGET CONSUMERS CO-OP, INC.

FILE NO. W-81-008

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

Introduction

Appellant, Puget Consumers Co-op, Inc. (PCC), appeals the declaration of significance under SEPA by the Department of Construction and Land Use (CLU) for a proposal to legally establish an accessory parking area at 6512-20th Avenue N.E.

Parties to the proceeding were: PCC represented by Diane Dray Kenny, Roberts, Shefelman, Lawrence, Gay and Moch; CLU represented by Kermit Robinson, environmental specialist; Concerned People of the Ravenna Neighborhood, intervenor, represented by Robert W. McKisson of McKisson and Sargent, Inc., P.S.

This matter was heard before the Hearing Examiner on July 6, 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 subject property consisting of part of Lot 10 and all of Lots 11 and 12, Block 2 of Dingley's Addition, at 6512 20th Avenue N.E., has been used as a parking lot accessory to a grocery store for more than 30 years. Conditional use approval is required to legalize the use since the initial approval in 1949 expired after a period of five years.

2. CLU issued a Declaration of Significance finding that the "parking lot is having a significant adverse impact on the traffic circulation and parking in the immediate vicinity." (Exhibit 1). CLU is requiring an environmental impact statement (EIS) limited to the effect on traffic, circulation, parking and identified, related secondary effects.

3. Appellant challenges the determination urging that the effects to be considered should be those from closure of the lot and that the parking lot is not creating a significant adverse impact on traffic circulation and parking nor from secondary impacts.

4. The environmental specialist made three weekday site visits and one Saturday afternoon site visit prior to the issuance of the determination. He relied principally on the visit on Saturday afternoon, either February 7 or 14, 1981, for his analysis.

5. Two other site visits were made after the decision and filing of the appeal at the request of appellant.

6. The parking lot is striped to allow spaces for 30 vehicles. Access to the lot is from 20th Avenue N.E. north of N.E. 65th Street.

7. During the Saturday site visit in February, the environmental specialist observed, during a half-hour period that, of the 37 vehicles which attempted to enter the lot, 27 were successful and 10 were turned away; that the lot was full with 34 cars and 2 more in the lot waiting for an empty space; that on-street parking was fully utilized; that 41 percent of the 49 vehicles travelling on 20th Avenue N.E. north of PCC were related to PCC; that 60 percent of the 72 vehicles travelling on 20th Avenue N.E. south of PCC were related to PCC. (Exhibit 5.)

8. In late November, 1980, PCC opened a store at N.W. 66th and Fremont. The store was fully operational by the end of the first quarter of 1981. The average daily number of cash register transactions, "customer count", has declined some 4-6 percent since March, 1981, due, in part at least, to the membership's shift to the new store.

9. The site visit on May 23, 1981, showed the lot to be about half full and the on-street parking about half occupied. The number of vehicles travelling on 20th Avenue N.E. was greater than on the February visit but the percentage of the traffic related to PCC was lower. The environmental specialist discounted the reliability of those observations because that Saturday was in the Memorial Day weekend.

10. On Saturday, May 30, 1981, the lot was nearly full at 1:00 p.m., and the street spaces were 75 percent to 85 percent full. Of the traffic on 20th Avenue N.E., only 20 percent of that north of PCC and 48 percent of that south was related to PCC.

11. Appellant contends that the observations were insufficient to be relied upon; that CLU should have consulted experts in traffic matters regarding impacts of the lot; and that CLU should have written, measurable criteria on which to base decisions about the significance of impacts.

12. The environmental checklist cites the potential of jeopardizing continued viability of the single family residential use of the area as possible secondary impacts of the lot on land use and housing.

Conclusions

1. The Hearing Examiner is required to give the environmental determination by CLU substantial weight. Section 25.04.200. Appellant must, therefore, make a showing of clear error in that determination.

2. WAC 197-10-300, requires that a threshold determination be made for every proposal for a major action. "Proposal" is defined as:

...a specific request to undertake any activity submitted to, and seriously considered by, an agency or a decision-maker within an agency....
WAC 197-10-040(2).

3. The proposal for which the threshold determination was made is the re-establishment of an existing parking lot requiring conditional use and variance authorization. Since CLU concluded that the closure of the lot would also have significant adverse impacts, appellant's contention that a different approach, that considering the proposal to the closure of the lot, would have different results is without merit.

4. The impacts of a proposed action are not to be presumed to be significant merely because the action is not exempted from the threshold determination and EIS requirements of the ordinance. WAC 197-10-160.

5. Appellant did not show that significance was presumed by CLU because of the lot's nonexemption. While the environmental specialist indicated that he was unable to say with certainty that secondary impacts were significant, WAC 197-10-330(2) and WAC 197-10-36 require the preparation of an EIS if information reasonably sufficient to assess the impacts is not available after making further investigation which does appear to establish a presumption of significance. Appellant did not contend that information showing that secondary impacts were not significant was provided CLU prior to the determination and no such evidence was adduced at hearing.

6. Appellant points to no regulation requiring expert consultation on a threshold determination, except where an agency with expertise has jurisdiction. Nor does appellant point to a requirement of written standards for determining significance of an impact. On the contrary, the language of WAC 197-10-360 contemplates consideration not merely of the absolute quantitative effects but of the nature of the existing environment, the variability of which makes the development of fixed workable standards of significance much more difficult. The amount of discretion and professional judgment allowed is one reason for providing for an administrative appeal. No clear error results from the failure to consult experts or to make a decision without written criteria.

7. The Court has interpreted SEPA to require preparation of an EIS when the proposed action would continue an adverse impact but there the status quo involved a violation of air quality regulations. See Asarco v. Air Quality Coalition, 92 Wn.2d 685, 601 P.2d 501 (1979). The Court saw that there was a potential to increase the rate of environmental degradation and cited the policy of preventing or eliminating damage and of restoring it as discussed in Eastlake Community Council v. Roanoke Assoc., Inc., 82 Wn.2d 475, 513 P.2d 36 (1973), to support its conclusion that the action was subject to SEPA and an EIS was required. The indication in this environmental checklist of potential jeopardy to the viability of the area for single family use is not unlike the degradation to be studied in that case.

8. The Examiner is not permitted to make an independent judgment about the degree of adverse impact involved but may find that appellant has proven clear error only if left with a definite and firm conviction that a mistake has been committed. Facts supporting such a conviction are not present in this record, therefore, the decision must be affirmed.

Decision

The determination by Construction and Land Use is AFFIRMED.

Entered this 20th day of July, 1981.

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 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).