

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

In the Matter of the Appeal of

SEATTLE SHORELINES COALITION

FILE NO. W-82-004

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

Introduction

The Seattle Shorelines Coalition appeals the declaration of non-significance issued by the Director of the Department of Construction and Land Use (DCLU) in the proposed "Fine-Tuning" Amendments to the Seattle Shoreline Master Program.

The appellant exercised its right to appeal pursuant to Section 25.04.200, Seattle Municipal Code.

Parties to the proceedings were: Seattle Shorelines Coalition by Benella Caminiti and the DCLU represented by Gordon Crandall, Assistant City Attorney.

This matter was heard before the Hearing Examiner on September 22, 1982, and September 24, 1982.

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. DCLU proposes amendments to the Seattle Shoreline Master Program (SSMP) termed "Fine-Tuning" Amendments. DCLU issued a declaration of non-significance (DNS) pursuant to Chapter 25.04, Seattle Municipal Code and SEPA (RCW 43.21C) for the proposal. Appellant filed this appeal of the DNS.

2. Appellant alleges, inter alia, that DCLU violated the SEPA guidelines by predetermining that the threshold determination would be a DNS by overly limiting the scope of the proposal or issuing a DNS for a segment of a proposal with significant impacts. It also alleges that DCLU did not properly consider indirect impacts on several of the elements of the environment. It urges that the fine-tuning amendments would have greater impacts than earlier proposals which were acknowledged by the City to require environmental impact statements (EIS's).

3. DCLU did decide the DNS would be issued and then chose only those amendments which would not cause significant impacts.

4. Two proposals for amendments to the SSMP have been prepared by the Department of Community Development (DCD), the Proposed Reenactment of the Seattle Shoreline Master Program (Reenactment) and the Proposed Adjustment of the Seattle Shoreline Master Program (Adjustment). EIS's were written but never published for the Reenactment and Adjustment.

5. The approaches taken in the Reenactment and Adjustment were different from that taken in the fine-tuning amendments. In the Reenactment, in general, all uses permitted in the underlying zoning and the bulk regulations of the underlying zone would be permitted on upland lots. In the Adjustment, all uses in the underlying zone and the bulk restrictions in the underlying zone would apply unless there was interference with the view, in which case the Shoreline restrictions would apply.

6. Upland lots are those within the shoreline district but separated from the water by a street, arterial, highway, or railroad right-of-way or by government owned or controlled property which prevents access to and use of the water.

7. The fine-tuning amendments propose to distinguish uplands from waterfront lots for some purposes in the application of the SSMP to carry out what the drafters believe was the intent of the Council when it adopted the SSMP but did not realize the extent of the problem for upland lots.

8. The occurrence of upland lots is scattered throughout the City's shoreline district. Many waterfront lots are 200 ft. deep without interruption leaving no upland lot.

9. For development other than residential, a new Table 2 would differentiate between waterfront and upland lots for lot coverage with a separate designated maximum for each area. Up to 100 percent would be permitted on upland lots in various areas. DCLU looked at the characteristics of each area to determine if 100 percent coverage would be appropriate. Lot coverage for residential development is the same for both waterfront and upland lots in all environments.

10. In much of the Central Waterfront increase would be from 75 to 100 percent but many of the upland lots have nonconforming development with that lot coverage and in certain areas, such as between Piers 86-91, there are no upland lots. There is only one upland lot in the area of Piers 90 and 91. Another area where the increase would be from 50 to 100 percent, also on the central waterfront, has many nonconforming developments. In the West Seattle area, the increase would be from 35 to 100 percent for commercial development. Lake Washington Ship Canal in the UD environment would increase the coverage allowed from 50 to 100 percent. One hundred percent is already permitted on the north side. There is no increase in lot coverage in the US environment on the Ship Canal. On the west side of Lake Union, the increase permitted would be from 50 to 100 percent. No increase is proposed on the east side.

11. There are no changes proposed in permitted height for upland lots leaving the maximum heights the same as for waterfront lots.

12. Implementation of the Land Use Transportation Project (LUTP) proposal, and successor Downtown Alternative Plan, which include the central waterfront, would require amendments to the SSMP different from those proposed in the fine-tuning, i.e., it is not dependent on those now proposed and may require amendment of some now proposed. A declaration of significance for the downtown LUTP has been issued.

13. The distinction is also made between waterfront and upland lots for permitted uses by shoreline environment. The uses must also be permitted by the underlying zoning in order to be established. Section 24.60.285, Seattle Municipal Code. No change is proposed in uses for UR environments where only housing is permitted. A small number of changes are proposed for the UD environment which already allows industrial uses which are not water dependent and offices. In the US/LU, new permitted uses on upland lots include artist studio dwelling units, offices as conditional uses, principal use parking lots, manufacturing which is non-water dependent, and principal use warehousing and wholesaling. In the US/CW environment, the uses proposed are multifamily, artist studio dwelling units, retirement and group homes, offices, hotels, principal use parking, principal use warehousing and wholesaling and non-water dependent manufacturing. Office use is now permitted on upland lots. The office use shown in Table 3 was added to clarify DCLU's interpretation of the existing ordinance. The proposal contains no change in permitted uses on waterfront lots on Lake Union Ship Canal.

14. View corridors would be required, by the proposal, on upland through lots in certain environments where they are not now required.

15. The new provision for regulation of nonconforming uses in the shorelines district at Section 24.60.315 incorporates the Zoning Code regulation of nonconforming uses which in the existing code is only incorporated by reference.

16. None of the proposed amendments add any encouragement toward water dependent uses. The reference at Section 24.60.380 to Section 24.60.52E is intended to alert readers to the existing preference.

17. The earlier proposed PUD provision was not included in the fine-tuning proposal.

18. The proposed addition to the definition of "lot" at Section 24.60.090, Seattle Municipal Code, of "or parcels" reflects an existing interpretation and administration of the code and does not represent a change.

19. In the current SSMP, Table 3 shows all the permitted uses for the shoreline district by environment which includes those lots to be designated "upland". The proposed amendments would separate Table 3 into A, for waterfront lots, and B, for upland lots. All uses in B are shown as "new". Log storage appeared as a permitted use in the US/CW environment in Table 3, and is shown as "new" for the corresponding uplands in proposed Table 3B. No change is proposed for that use except to create two tables.

20. The general requirements for dredging would be changed to add US/LU and US/CW environments to those where 500 cubic yards could be dredged. The existing Table 3 had allowed dredging in the US/LU as a special use. US/CW was added. Provisions for landfills on wetlands has not changed.

21. The changes proposed regarding bulkheads are designed to make it more difficult to obtain a permit if the bulkhead could be damaging to the environment of the beach. Criteria are now proposed based on the report of Wolf Bauer. A permit also would be required from the Department of Fisheries which department would apply its own criteria and regulations for the protection of the fish habitat.

22. The Army Corps of Engineers has prepared an EIS under NEPA for a proposal involving the dredging of 2.5 million cubic yards from the Duwamish Waterway, and filling between piers 90-91 and in waters at Four Mile Rock. The proposal would be unaffected by the amendments in that the Corps has not been subject to the SSMP and the dredging and fill by others remains subject to the SSMP. A provision has been added which separates land fill below the line of ordinary high water from wetlands in the CM, UR, US and UD environments and makes it a special use permitted only on satisfaction of some new conditions.

23. No provision of the fine-tuning amendment changes the right to petition for rezone on a contract basis.

24. Elsie Hulsizer, the senior environmental specialist who managed preparation of the amendments, environmental checklist and threshold determination, had reviewed or was familiar with the Reenactment, the Adjustment, the LUTP background report, EIS's for the Seattle Ferry Terminal, Waterfront Center, Union Oil Project, Pier 66 and 69, among others. She also had been professionally involved in the administration of the SSMP.

25. The land use technicians in DCLU analyzed the 95 miles of shorelines in this City to locate and catalogue upland lots by zone and shorelines environments. Ms. Hulsizer reviewed the amount of land to be permitted additional uses and bulk. The existing uses were examined as well.

26. In assessing the degree of impact from development which is likely to occur due to changes proposed by the fine-tuning amendments, Ms. Hulsizer looked at the differential between that which is permitted under existing provisions and that which is permitted under those proposed. She determined that the additional development which could occur as a result of the proposal would not be significant and would not cause significant impacts.

27. The third paragraph of the "Description of Proposal" in the DNS was intended to explain that the "maybe" answers to environmental checklist questions represented Ms. Hulsizer's judgment about the probability of the indirect impact, not that she did not consider the indirect impact.

28. The downtown central waterfront is heavily developed now and has acute parking, traffic and access problems. Ms. Hulsizer was aware of traffic accident rates and locations and other planned development.

29. Ms. Hulsizer concluded that the changes proposed in the provisions would not have significant impact on the central waterfront because of the following factors: most lots are already hard-surfaced; many are at 100 percent lot coverage; accessory parking facilities already exist; the preference as to water-dependent uses over others is part of the existing regulation; warehousing is now permitted as accessory to water dependent uses; new parking must meet the restrictions of the underlying zoning as well which, in this area, would be Area B which allows accessory use parking outright and principal use parking as a conditional use; M zoning, which covers most of the central waterfront, does not permit housing so rezoning would be required before residential uses could be established; housing or hotels would not conflict with the existing uses on the central waterfront; the proposed amendments would not permit or assist many of the schemes for development such as Waterfront Park; the proposal would not change allowable heights in the central waterfront; utilities are now available in upland lots in the central waterfront; and few vacant parcels exist.

30. Certain uses which are now permitted as conditional uses are proposed to be permitted outright. No change in environmental impact is anticipated because the conditional uses are routinely granted. Similarly, where certain bulk variances are routinely granted the proposed amendments change the bulk regulation to avoid the necessity of obtaining variance.

Conclusions

1. The burden is upon appellant to prove that the threshold determination is clearly wrong and to overcome the substantial weight to be accorded the decision. Section 25.04.200C, Seattle Municipal Code, Norway Hill v. King County Council, 87 Wn.2d 267 (1976).

2. Appellant did not show that the fine-tuning amendments are a part of the LUTP, which action has been deemed significant. The record reflects that the fine-tuning amendments also are not a necessary prerequisite to the LUTP nor would they facilitate the LUTP. DCLU has not, therefore, been shown to have violated WAC 197-10-060, by either impermissibly segmenting or limiting the scope of the total proposal. Further, the indirect impacts from development induced by the amendments were considered as required by that section.

3. DCLU did decide not to include any amendment which was determined to have a significant impact. Since no evidence was provided of what was considered and rejected by DCLU and whether those amendments, if any, are functionally related to those proposed and will be proposed in the future, clear error was not established as to that possibility of segmentation violative of WAC 197-10-060(4).

4. The record shows that DCLU was informed as to the existing conditions in all the affected shorelines and carefully considered the amount and nature of impacts from additional development which could occur as a result of the proposed amendments. While precise quantification did not take place, sufficient analysis did occur to assure that the magnitude of the change was understood.

5. An EIS is required only when more than a moderate effect on the quality of the environment is a reasonable probability. Norway Hill, supra.

6. With the existing conditions the reasonably probable adverse impacts from the differential amount of development were determined not to be significant. Appellant has not shown that possible development would have more than a moderate adverse impact on the environment.

7. Appellant challenges the legality of using the text amendment process for the fine-tuning amendments rather than the rezoning process which involves more specific notice, different hearings and the application of different legal standards. Appellant has not shown that the environmental impact would be different under either process or that the threshold determination decision would be different.

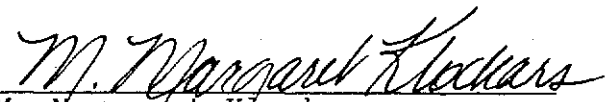
8. Appellant is also concerned with the potential for use of contract rezones. While that possibility does not appear to be any different under the proposed amendment than before, several aspects can be noted. The SSMP would still apply even though the underlying zoning were changed. Contract rezones cannot be used to avoid the use and bulk restrictions of the named zone but are used to reduce or remove from possibility undesired effects or uses by adding restrictions beyond those of the zone or requiring amenities as a means to offset undesirable effects.

9. Many additional assignments of error were made by appellant but no evidence was introduced to support them. In addition, evidence was offered in support of various assignments of error but some of those discussed appeared to be the result of misunderstanding of the proposal. That misunderstanding is not surprising as comprehending the effects of the regulations require vigorous mental gymnastics. Having traced the path blazed by Ms. Hulsizer in the hearing through the provisions, the Hearing Examiner is convinced that the decision with regard to the nature and degree of impacts from the changes is not clearly erroneous. The DNS should be affirmed.

Decision

The decision of the Director of the Department of Construction and Land Use is AFFIRMED.

Entered this 8th day of October, 1982.


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. 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). Should an appeal be filed, instruction for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City of the appellant is successful in court.