

## FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

SOUTH PARK COMMUNITY CLUB, INC.,

FILE NO. W-83-001

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

### Introduction

South Park Community Club, Inc., appellant, appeals the adequacy of an environmental impact statement prepared by the Department of Construction and Land Use for the South Henderson Street Land Use Map Amendment.

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

Parties to the proceedings were: appellant, represented by Peter J. Eglick, attorney at law, the Department of Construction and Land Use represented by James E. Fearn, Jr., assistant city attorney, and petitioners, Ivor and Jack Jones, represented by Martin Godsil, Casey, Pruzan and Kovarik.

This matter was heard before the Hearing Examiner on September 21, 1983, September 22, 1983, and September 28, 1983, on the issues of this appeal and on the rezone petition.

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 proposed action is a rezone of property in South Park from SF 5000 to Multi-Family Residential, Lowrise 2. An environmental impact statement (EIS) was prepared by the Department of Construction and Land Use (DCLU) pursuant to Chapter 25.04, Seattle Municipal Code, and RCW 43.21C for the proposed action. DCLU had previously issued a declaration of nonsignificance which was reversed by the Hearing Examiner on appeal. While the Hearing Examiner's order required only a limited EIS, DCLU included all environmental elements in the document. The final EIS (FEIS) was issued May 20, 1983.

2. The South Park Community Club, Inc., filed a timely appeal challenging the adequacy of the EIS. By agreement of the parties the hearing on the appeal was delayed so that it could be consolidated with the hearing on the rezone petition itself.

3. Appellant's case chiefly addressed the following alleged errors or inadequacies: 1. that the EIS did not address the required alternative of a rezone of other property to carry out the City's objectives; 2. that the EIS failed to address the Single Family Residential Areas Policies; 3. that the discussion of land use impacts was incomplete; 4. that the transportation/circulation discussion did not present enough of the reasoning behind the conclusions; 4. that the EIS fails to address the full range of uses permitted under L-2 zoning; 6. that the economic analysis provided is presented as factual; 7. that the economic analysis of alternatives makes unwarranted assumptions about improvements

required by the Seattle Engineering Department; and 8. that there are legitimate alternatives such as the Planned Residential Development which were not fully explored.

4. The site of the proposed rezone is a 7.67 acre parcel, known as "Catholic Hill," bounded by South Trenton on the north, 12th Avenue South on the east, South Henderson on the south and 10th Avenue South on the west. The property was formerly the site of a church and school but is now vacant.

5. The Jones purchased the property in 1978 for \$180,000 plus \$17,000 in sewer assessments from the parish. They had no specific plans for the property at that time.

6. The assessed value of the property in 1979 was \$61,400.

7. The Jones' objectives are "to develop a quality and affordable residential project which will be an asset and positive influence on the business and residential climate of South Park in a manner consistent with the Lowrise 2 Code designation. The plan concept he offers includes 120 units in duplex, triplex and fourplex buildings marketed as condominiums. Internal roadways would be privately owned and maintained and a number of off-site street improvements are included in the plan.

8. The EIS does not state what the City's objective in the rezone would be.

9. The impact analysis in the EIS appears to be based upon 140 units as worst case since another 20 units could be added under L-2 zoning by reducing the size of the units.

10. The site is bounded on all sides by SF 5000 zoning. The immediately surrounding use is single family with the exception of a duplex and triplex to the west where zoning was RD 5000 prior to the adoption of the Single Family Land Use Policies.

11. The EIS discusses the relationship of the proposal to existing plans and regulations. Those discussed were the King Subregional Plan, Seattle 2000, Seattle's Growth Policies, Housing Assistance Plan, Housing Preservation Ordinance and Seattle Land Use Code as to Lowrise 2 and rezone criteria. The Single Family Residential Areas Policies are not mentioned or discussed.

12. The Single Family Residential Areas Policies are relevant to the consideration of the proposed rezone.

13. There is a planning concept of a "critical mass" necessary to maintain a single family neighborhood, i.e., some necessary number of homes to sustain the viability of the use. The EIS discussion of land use impacts does not mention this theory or principle. The environmental specialist for DCLU testified that the concept is not easily quantifiable. Appellant's expert, Cecil, testified that configuration is also an element of critical mass, e.g. the less linear the area the better the neighborhood.

14. The EIS discussed the development standards for residential use under Lowrise 2 zoning along with discussing potential impacts from 140 additional housing units. The EIS failed to recognize other principal uses permitted outright in the Lowrise 2 zone, i.e. boarding homes, group homes, halfway houses, nursing homes, institutions, public facilities, and failed to disclose potential impacts from those uses.

15. The EIS considers the following alternatives: No Action, Retain SF 5000 Zoning, Develop under SF 5000 as a Planned Residential Development, Develop with Lowrise 1 Housing, Construct as a Planned Development, Rezone Only a Portion of the Site to Lowrise 2, Rezone to Lowrise 2 with Design Departure and Develop at Other Sites Zoned Lowrise 2.

16. The last alternative, to develop at other sites already zoned Lowrise 2, considered the zone two blocks north of the site which is nearly completely developed, much at the intensity permitted in Lowrise 2.

17. DCLU did not include consideration of other sites which might be rezoned to meet the City's objectives in the proposed action. The responsible official indicated that she knew no reason for doing so.

18. The alternative of developing under the planned residential development (PRD) provision is discussed in the DEIS. The discussion recognizes that a PRD with 79 units would have less impact on the natural environment than conventional SF 5000, have less traffic impact than the proposed Lowrise 2 and be perceived as more compatible.

19. The PRD alternative discussion concludes that such development would not be economically feasible because the projected market price would not allow the amortization of the investment in land and utilities and off-site improvement costs over just 79 units. This conclusion is that of the proponents although not indentified as such.

20. Appellant's witness, Henley, testified that a 79 unit development would be economically feasible assuming \$65,000 price for 1200 sq. ft. units or \$59,000 for 1000 sq. ft. units. He did not offer other figures to support his opinion. His development experience is limited. Without other figures to support his conclusion, his opinion is entitled to little weight.

21. In estimating the per unit cost under a 140 unit project and the 53 unit single family alternative the EIS discussion assumes that the off-site improvements to South Henderson Street and 12th Avenue South for both would be the same, the Water Department would require extensions along 10th and 12th Avenue south for both but that only 24 ft. wide internal roadways would be required for the 140 unit proposal at a cost of \$94,170 and that the single family alternative would require that 10th Avenue South be improved to 32 ft. width at a cost of \$34,160, Concord be constructed to a 32 ft. width at a cost of \$51,600, Trenton between 10th and 12th be improved to a 32 ft. width at a cost of \$36,600 and alleys be required at an additional cost of \$36,600.

22. The Land Use Code, Section 23.44.16 E requires "improved streets" for access to single family residences but does not state specifically what the standards are. Similar provisions apply to both single family and multi-family development, however, the standards for "improved" may be different. The off-site street improvements would not necessarily be required for a single family development.

23. The difference in width between the internal roads for the proposed project and the streets on-site for the single family alternative is accounted for by the fact that the former would be private roads and the latter dedicated streets for which the minimum standard is 32 ft.

24. A comment by Dennis J. Healy in the FEIS at p. 83 which states that the assessed value of improved 50 ft. lots in the neighborhood is \$20,000 is responded to at p. 98 by stating that undeveloped 50 ft. lots are selling for less than \$5000, according to the applicant.

25. George Cook reported that in December, 1982, one lot sold for \$7,700 in a tax foreclosure action. Other 25 ft. lots are assessed at \$10,000 and \$11,000.

26. Ivor Jones offered and was offered 50 ft. lots for \$4,600 and agreed to buy another 50 ft. parcel 1 year ago for \$3000.

27. The 1500 sq. ft. size for single family houses used in the EIS to calculate cost is a desirable or marketable size. A smaller size could be built. No evidence as to the marketability of smaller units was adduced.

28. The environmental specialist who was the responsible official for the EIS accepted the proponents' conclusions as to economic feasibility without regard to accuracy believing that the proponents are entitled to offer their opinion. The EIS reports the conclusion in each case without any indication that the statement is the opinion of the proponent and not adopted by DCLU in their EIS. According to the environmental specialist, DCLU does not require that a statement as to feasibility be accurate. Given the assumptions used in the FEIS analysis, the statements in the DEIS as to feasibility were not shown to be inaccurate. The assumptions used are not unreasonable.

29. Appellant's expert Cecil testified that while the level of service (LOS) designation stated in the EIS may not be incorrect a discussion of how various factors that may affect the LOS were considered would be desirable, especially in light of community concern. Some of those factored into capacity analysis he sees as truck traffic, lane width, lateral clearance problem, adequacy of shoulders, grade, surface condition.

30. The DEIS discussion of existing conditions under transportation/circulation includes a description of the truck traffic on Henderson, grade of the street, shoulder width, surface condition, parking situation. The discussion of impacts where the predicted LOS is given follows. While it may be presumed that the traffic engineer who visited the site was aware of these conditions, and testimony showed he did consider the factors suggested, the discussion in the EIS does not explain how they were handled in his determination of the LOS.

31. Appendix B, DEIS, indicates that the traffic engineer based the capacity analysis on Transportation Research Board Circular 212, Interim Materials on Capacity. His methodology was found to be correct by DCLU's environmental specialist.

#### Conclusions

1. An EIS is adequate if the proposed action's environmental effects are reasonably disclosed, discussed and substantiated. See Cheney v. Mountlake Terrace, 87 Wn.2d 338, 552 P.2d 184 (1976). It must also include alternatives to the proposed action. Barrie v. Kitsap County, 93 Wn.2d 843, 613 P.2d 1148 (1980), RCW 43.21C.030 (2)(c)(iii). The adequacy of the document is to be judged by the rule of reason. Cheney, supra. Section 25.04.200 requires that the Hearing Examiner accord substantial weight to the departmental determination of adequacy.

2. Under NEPA, the alternative section of an EIS is often termed the "linchpin" of the entire EIS. Alaska v. Andrus, 580 F. 2d 465 (DC Cir.(1978)). WAC 197-10-440(12)(e) is the starting point for determining what alternatives must be included under SEPA. In making that determination in this case, the responsible official apparently lost sight of what the total proposal included. The "proposed action" is a rezone of the property so the City's objectives must be stated and considered. The functionally related proposed activity is the construction of multi-family housing. Because a rezone is requested by the project proponents, the EIS must go beyond consideration of alternative uses of the sites owned by proponents. WAC 197-10-040, Barrie, supra. The Court in Barrie, supra, where alternative uses of only the specific property were considered, found the EIS for a county rezone to be inadequate as a matter of law. The Court stated that the "objective evaluation of any reasonable alternative action which could feasibly attain the objective of the proposal" required by WAC 197-10-440(12)(a) refers to "other means of achieving the County's objective... not the Rosses'" (petitioners). Barrie, supra, at 856. The recent case of SORE v. Snohomish County, 99 Wn. 2d 363, \_\_\_ P.2d \_\_\_ (1983), does not weaken the earlier position of the Court. There alternative sites were discussed in the EIS and the Court recognized that this was required. The issue in SORE was as to the use of those alternatives in making the rezone decision.

3. Here, the EIS did consider the alternative of the proposed development at other sites but limited that consideration to those already zoned Lowrise-2. DCLU urges that the City's objective, though not stated in the EIS, is the same as petitioners'. DCLU points out that no rezone of other property has been initiated and suggests that the likelihood of one occurring in slight so such an alternative would not be reasonable. DCLU did include in the EIS however, the alternative of developing a Lowrise-2 zone which is virtually completely developed as a reasonable alternative. The rule of reason also applies to what alternatives must be considered. Toandos Peninsula Association v. Jefferson, 32 Wn.App. 473, 648 P.2d 448 (1982). Barrie makes it clear that where the proposed action is a rezone, the alternatives may not be so limited. The testimony of the responsible official, however, revealed that no consideration was given to other sites requiring a rezone that could meet the City's objectives.

4. The EIS has several other defects. WAC 197-10-440(6)(f) requires a brief description of existing comprehensive land use plans applicable to the proposal and Section 25.04.150(2) requires disclosure and discussion of regional, city and neighborhood goals, objectives and policies. The failure to include the Single Family Residential Areas Policies when the site is zoned single family and set squarely in a single family area is one of the defects. Its absence, when other clearly inapplicable regulations such as the Housing Preservation Ordinance are included, is remarkable. While it should have been recognized, described and discussed in relationship to the proposed action, its absence alone, given the nature of the proposed action, might not be error requiring remand. The information on which the decision-maker bases its decision on a rezone includes the record made at a public hearing where such policies can be, and were, discussed.

5. Appellant is correct, also, that the EIS should have recognized other permissible land uses under the proposed zoning since petitioners did not request a contract rezone limiting the use to the proposal.

6. The failure either to validate conclusions as to economic feasibility or to label them as opinion of the proponents introduces bias into the document and may make it misleading if the conclusions are not valid. Appellant did not prove that the conclusions were invalid but raised legitimate question about the validity of the assumptions used about City requirements which DCLU found "reasonable" but could have verified. The questions did not amount to proof of error, however.

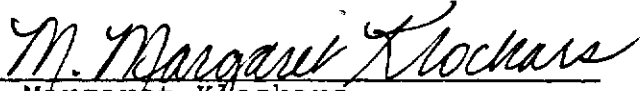
7. The discussion of street capacity analysis is adequate.

8. As urged by the City, the law does not require a perfect EIS. However, the failure to give any consideration to other locations which might be rezoned to meet the City's objectives makes the document inadequate as a matter of law and requires that it be remanded.

#### Decision

The EIS is remanded to DCLU for full compliance with WAC 197-10-440(12)(e) by identifying the City's objectives and considering alternative sites which could reasonably meet those objectives whether or not zoned Lowrise 2. DCLU may also correct other defects present in the EIS.

Entered this 12<sup>th</sup> day of October, 1983.

  
M. Margaret Klockars  
Deputy Hearing Examiner