

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

In the Matter of the Appeal of

SEATTLE AREA HOSPITAL COUNCIL, ET AL.,

FILE NO. W-89-001

from an environmental determination
of the Office for Long-range Planning

Introduction

Appellants challenge the issuance of a determination of non-significance under SEPA by the Office for Long-range Planning for Recommended Major Institutions Policies and Recommended Major Institution Land Use Code which are recommended changes.

The appellant exercised the right to appeal pursuant to Section 25.05.680, Seattle Municipal Code.

Parties to the proceeding were: appellants, Seattle Area Hospital Council, Cabrini Hospital, Children's Hospital and Medical Center, Group Health Cooperative, Swedish Hospital Medical Center, Northwest Hospital, Ballard Community Hospital, Seattle Pacific University and Seattle University, represented by Thomas M. Walsh and J. Tayloe Washburn, Foster Pepper & Shefelman, and respondent Office for Long-range Planning, represented by the City Attorney, Robert D. Tobin, assistant.

This matter was heard before the Hearing Examiner on March 20, 21, 22, 24, 1989.

For purposes of this decision, all chapter and section references are to the Seattle Municipal Code.

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. Mayor Charles Royer and City Council member Jim Street propose amendments to the Major Institution Land Use Policies, adopted in 1981, and amendments to the Land Use Code to implement those policy changes. The Office for Long-range Planning (OLP) prepared an environmental checklist and issued a determination of non-significance (DNS) for the proposed amendments.

2. The proposed amendments would change procedures and some substantive standards in the Major Institutions Code. The appellants addressed impacts of the following proposed changes: 1) repeal of the Major Institution zoning and application of the existing underlying zoning where no master plan is adopted; 2) exclusion of noncontiguous areas of major institutions from the major institution overlay for institutions which do not have an adopted master plan; 3) strengthening and implementing the decentralization policy; 4) changes in the development standards to provide for transition at edges, to address density, to require open space and to establish or preserve view corridors; 5) changes in the definition of major institution; 6) increasing the minimum parking required; 7) changing the distance limit for major institution uses outside the boundaries from one mile to one half mile with a 40,000 sq. ft. limitation; and 8) increase the level of detail required in master plans and inclusion of an amendment process which involves the community advisory committee.

3. Eighteen major institutions are now regulated by Chapters 23.48 and 23.81. Six master plans have been adopted and at least three are in various stages of preparation. Two insti-

tutions would no longer meet the definition of major institution.

4. The evidence shows that the major health care institutions and the two private universities have significant direct and indirect impact on the local economy.

5. A reasonable projection of the number of additional hospital beds needed in Seattle hospitals by the year 2000 and the year 2020 considering the growth in population, the aging of the existing population, replacement of obsolete beds, epidemiology (e.g., AIDS), potential changes in technology and public policy developments resulted in a predicted cumulative shortfall of 1,661 beds by the year 2000 and an additional 2,476 beds by the year 2020. The additional square footage requirements to accommodate the replacement of existing beds and the additional beds required is approximately 2.2 million square feet by the year 2000 and another 2 million square feet by the year 2020.

6. Seattle's health care major institutions currently provide specialized health care services to a large percentage of the residents of King, Kitsap, Pierce and Snohomish counties and provide about 30 percent of the health services for the whole state. By the year 2000 the size of the population in these four counties is projected to increase by approximately 400,000 residents. The shift in aging patterns will result in growth of around 50 percent in the number of elderly residents and Seattle has a disproportionate share of elderly persons. The upper age groups utilize health care services at a substantially higher rate than younger ones and Seattle's hospitals provide a major portion of their services to elderly persons.

7. In the next twenty years it is projected that the number of residents seeking admission to four-year institutions of higher education in Washington will increase significantly due in part to shifts in employment structure requiring more than two year college degrees and growth of certain age groups. Seattle Pacific University (SPU) and Seattle University (SU) will need to expand their current facilities to meet their proportional share of this increased demand. SPU projects enrollment of 4,300 by the year 2000 but implementation of its proposed master plan will accommodate only 3,750 students. SU's recently adopted master plan allowed for only about 60 percent of the area proposed by the university for inclusion in its boundaries.

8. The proposed revisions to the policies and code would repeal the existing major institution zoning which creates a dual zoning situation and would apply the underlying zoning to institutions without master plans. Three major institutions without master plans have the capacity under the current major institution zoning to develop needed additions to their facilities.

Northwest Hospital has specific plans to built a 68,000 sq. ft. specialty center to respond to severe capacity problems which it can do under the existing zoning without a master plan. The development would not be permitted with the underlying zoning applicable to the site. A master plan for Northwest Hospital is underway but the process will delay the proposed development.

Ballard Hospital is looking at adding one to two floors to the south wing of its facility within the next two years to meet space needs in the short term. It has the development capacity under existing zoning but could not make this addition with the underlying zoning. Ballard Hospital cannot afford the additional expense of planning staff and the other costs of the master plan process.

Children's Hospital has an urgent need for additional space and could add some 200,000 sq. ft. of floor area without a master plan under its current institutional zoning. The underlying single family zoning would make development of additional space infeasible. Children's Hospital is entirely philanthropic and the substantial costs of the master plan process would directly reduce funds available for medical service to children.

The lost development capacity for institutions without master plans resulting from the repeal of the major institution zoning is quantifiable. The institutions' likely response to the loss is too speculative to make any judgment about the degree of environmental impact such as that on land use or traffic or the effect on health service delivery.

9. Under the proposed changes, institutions with existing land, noncontiguous to their campuses would be allowed to develop them only to the underlying zone development standards and those institutions without noncontiguous areas would be precluded from including them, if acquired, in their institutional boundaries.

SPU has a noncontiguous area, now with institutional zoning, on which they will need to develop significant floor area to accommodate projected growth. Another property developed with a office building is available for purchase by SPU but could not be dedicated to institutional use under the proposed revisions because there are intervening properties and the floor area exceeds 10,000 sq. ft., discussed below.

Harborview has proposed to purchase properties in its vicinity for an AIDS clinic which needs to be proximate to the main facility but available property would not necessarily be contiguous to Harborview's campus. If SPU is unable to find space on its campus for needed growth or Harborview is unable to acquire contiguous property or meet its needs with 10,000 sq. ft., the amendment would have an adverse impact on those institutions' ability to deliver service.

10. The existing policies, Implementation Guideline 7, p. 23-55, encourages decentralization where appropriate and requires that alternative locations be considered for uses not necessary on the campus. The proposed policy addressing the evaluation of the master plan provides for required decentralization if geographic proximity is not required "in order to make an essential contribution to the central mission" of the institution or, "development potential...is needed for facilities more critical to the central mission..." and increasing that potential would result in unacceptable impacts or if adverse impacts on the neighborhood would be reduced or avoided. Implementation Guideline 5.c (2)(a). The proposed code specifically allows the Director to require decentralization if any of the above conditions are found to be present or the need to expand the boundary would be reduced or eliminated by decentralization. Proposed Section 23.69.032F.2.

Appellants see a potential for substantial impact from this change because dispatching almost any institutional use to a remote location would have the effect of reducing impacts on the immediate neighborhood from traffic, parking, bulk and scale, noise, etc. so, they fear, decentralization could be regularly required. The effect on institutions forced to decentralize, beyond that already done by most, e.g., primary care satellites and laundry, would be to increase costs, decrease efficiency and, in some cases, lead to decreased quality of service where close collaboration or high volume is required.

The evidence showed that the institutions are not prepared to predict, beyond that done in adopted master plans, what facilities or services they may need to add in the short or long term. Therefore, without knowing the kinds of uses proposed, reasonable assumptions about how the new decentralization policy would be applied cannot be made. The impact, then, was not shown nor can it be reasonably assessed.

11. Institutions required to decentralize face potentially higher costs for communications, transportation, security, etc. If the proposed changes resulted in substantially higher costs for planning and development of the institutions, higher operating costs because of decentralization, inability to compete with institutions outside the area because growth is restricted or a combination of those effects and the effects were widespread, the result could be decreased services for low income people, a

possibility of loss of service for low income people and a possible lowering of quality of services.

12. Development standards exist under the institutional zoning for height, setbacks, landscaping, light and glare, noise and transportation and parking. These may be modified in the adopted master plans. Under proposed Section 23.69.030 the master plan would be required to include standards for setbacks, height, lot coverage, density, landscaping, parking, traffic circulation and open space. Additional standards may be required to be included in the master plan to address transition in height and scale, bulk, setbacks, preservation of historic structures and view corridors. The addition of at least three required standards, lot coverage, density and open space, and the option to impose standards to provide for transition in height and scale and to provide view corridors on a broader basis than before leads to a reasonable inference that there is potential for reduction of development capacity of a campus. Assessment of the magnitude of that reduction depends on so many variables that it cannot be reasonably calculated and was not shown.

13. Section 23.48.004 permits outright the principal institutional use, accessory uses customarily incidental to the institution and retail sales and service uses intended primarily to serve visitors, employees and users within the institutional boundaries. The proposed definition of "Major Institutions" includes "uses which are functionally integrated with the overall purpose and mission of the major institution...." It specifically includes offices for physicians "associated with the hospital."

Several of the institutions have, or have had, uses which they fear might not be considered by the Director to be "functionally integrated" with the mission of the institution and can foresee potential disagreement about whether a new use in the future is functionally integrated. In addition, a problem arises for physicians' offices where physicians have banded together on bases other than their relationship to the hospital.

Whether there will be any foreseeable impact from the change in description of the permitted use depends on what new uses institutions propose, how each institution describes its overall purpose and mission and the judgment of the particular Director applying the definition. No significant impact from the change was shown nor can it be meaningfully assessed.

14. Hospitals are required to provide at least one parking space for each six hospital beds and one for eight average daily outpatients under the existing code. Section 23.48.08B.2. The proposed revisions would change the minimum requirement for short-term parking to one space for six beds plus one space for six average daily outpatients. More campus space would be devoted to parking under the proposed code.

The adverse impact would be the use of space which could be devoted to development of other structures. The increase in parking which would be required for existing uses if the requirement were to be applied retroactively could be calculated. For uses proposed the increased requirement could also be calculated and some assessment made of that increase in volume on surrounding intersections and streets. Where no uses are proposed, where development under the underlying zoning is not likely to occur and where development standards under master plans to be developed are unknown, the amount of land shifted to parking and lost for development is not readily determinable. Therefore, no significant impact has been shown nor can it reasonably be calculated.

15. Master plans are now required if development is proposed within one mile of the institution's boundaries. Under the proposed revisions, the distance is reduced to 2,500 ft. and within that area an institution could locate up to 40,000 sq. ft., no more than 10,000 sq. ft. on one site, built to the development standards of the zoning of the site. The effect of this change

could be to encourage institutional development one half mile from the institutions, however, the evidence presented was that 10,000 sq. ft. would not be large enough to be of any use, especially if parking for the use is required so the impacts of this change would be minor.

Seven major institutions are within one half mile of the Madison Street corridor through First Hill. Each of the seven could potentially place up to four, 10,000 sq. ft. uses in that corridor altering the land use of that area. Since any new structures would have to adhere to the existing development standards or replace existing uses the impact should not be significant.

16. The proposed revisions require institutions which are preparing master plans to include in the master plan a development program component showing design information, such as schematic drawings, substantially more detailed than the conceptual plans required under existing law and proposed development phases and sequencing. The cost of the master plan to the institutions will be significantly greater to meet these requirements for detail. The cost will be further increased because both health care and educational institutions inevitably need to modify their development plans in response to a variety of factors. Because of the rapid changes in technology, for instance, the ability of hospitals to forecast beyond three years is problematic so major amendments to master plans are probable. The major amendment provisions of the proposed revisions will require an institution to go through a review process which includes the advisory committee. The cost of wasted architectural drawings and delay may indirectly affect the availability of service to the public. While the evidence raises serious concern about the wisdom of the level of detail required, it does not show that the provisions would cause a significant adverse environmental impact.

17. Under the proposed revisions, the new regulations would apply to new development proposed by institutions without master plans and for institutions with master plans at the expiration of the master plan, a maximum of ten years from adoption if a shorter time was not specified in the plan.

Conclusions

1. The Hearing Examiner has jurisdiction over these parties and this subject matter pursuant to Section 25.05.680.

2. The Hearing Examiner is to give the decision made by the responsible official substantial weight, Section 25.05.680B(3), so the standard of review to be used by the Hearing Examiner on appeal of a DNS is the clearly erroneous standard. Brown v. Tacoma, 30 Wn.App. 762, 637 P.2d 1005 (1981). The code provision specifically requires that the appealing party establish "the contrary", i.e., that the decision is clearly erroneous.

3. OLP properly initiated the SEPA process when the specific proposal for revisions was known. The issue is not whether the time prior to the adoption of amendments to the regulations is the appropriate time for environmental review but whether environmental review shows significant adverse impacts are probable as a result of those revisions. The general SEPA requirements clearly state that the fact that environmental impact statements may be required for future activities, in this case for the master plans, does not preclude current review. Section 25.05.055B.1. The need for review at the adoption stage is apparent here where one of the potential impacts addressed by the appellants is the cumulative effect of the amendment on regional availability of tertiary health care to patients unable to pay which indirect effect could not be addressed in an EIS for a master plan for a single institution.

4. Under SEPA, the lead agency is required to determine if the proposal is likely to have a probable significant adverse

impact using the information in the checklist, the proposal and any additional information furnished. Section 25.05.330A. "Significant", in this context, means "a reasonable likelihood of more than a moderate adverse impact on environmental quality." Section 25.05.794. The definition for "significant" explains that the severity of the impact is to be weighed along with the likelihood of its occurrence. The test is, then, whether appellants showed that the impacts are on elements that can be considered in the threshold determination, whether the impacts are probable and whether they would be more than moderate.

5. The impacts to be considered are effects on those elements of the environment listed in Section 25.05.444. Section 25.05.752. There, Public Services and Utilities include fire, police, schools, parks or other recreational facilities, maintenance, communications, water/stormwater, sewage/solid waste, and other governmental services or utilities. Health or educational services do not appear as elements of the environment. It is the position of OLP that if health and educational services are included within Item 15 in the checklist, Public Services, only the effect of a proposal which increases the need for public services is to be considered an adverse environmental impact for the purpose of the threshold determination. Section 25.05.960D6. Whether the impact is on the demand or on the supply, it appears that it would not serve as the basis for requiring an EIS because health and educational services are not "public services" for SEPA purposes. Further, while the effect on economic factors is to be included in an EIS it does not enter into the threshold analysis.


6. From counsel's argument it is clear that the lead agency concluded that it is impossible to forecast the environmental impacts of the changes with precision because there are too many variables in the form of choices that could be made by the institutions, and City Council in individual tailoring of these standards for the institutions. The examiner cannot find that any of the impacts are probable beyond her general sense that development capacity will be reduced and the specific showing that three institutions will be required to prepare master plans in order to achieve development to accommodate space needs that they now have.

7. The evidence showed that the project manager who did the environmental assessment compared what development and uses are allowed today with what would be allowed under the proposed revisions where there is no master plan and found a reduction of environmental impacts viewing the proposal as mitigation of impacts that occur under the existing provisions. This balancing is impermissible under Section 25.05.330E which specifically prohibits comparing the beneficial aspects of a proposal and the adverse impacts. However, the probable impacts that were shown do not amount to a significant adverse environmental impact. The determination by OLP must be affirmed.

Decision

The decision of OLP is affirmed.

Entered this 10th day of April, 1989.


M. Margaret Klockars
Deputy Hearing Examiner

CONCERNING FURTHER REVIEW

Judicial review under SEPA shall without exception be of the decision on the underlying governmental action together with its accompanying environmental determinations. RCW 43.21C.075(6)(c). SEPA issues may be added to the request for review of the

underlying decision within 30 days after the date of official notice of that decision if a notice of intent to seek judicial review of SEPA issues is filed with the Office for Long-range Planning, 200 Municipal Building, Seattle, Washington 98104, with the time limit set for appealing the underlying governmental action. Seattle Municipal Code Section 25.05.680(D)(4).

If the Superior Court orders a review of the decision, the person seeking review must arrange for and bear the cost for preparing a verbatim written transcript of the hearing but will be reimbursed if successful in court. Instructions for preparation of the transcript are available in the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington, 98104. In the alternative, RCW 43.21C.075(6)(b) provides that a tape may be used for the court review. If a taped transcript is to be reviewed by the court the record shall identify the location on the taped transcript of testimony and evidence to be reviewed. Parties are encouraged to designate only those portions of the testimony necessary to present the issues raised on review, but if a party alleges that a finding of fact is not supported by evidence, the party should include in the record all evidence to the disputed finding. Any other party may designate additional portions of taped transcript relating to issues on review.