

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of the

SOUTHEND SEATTLE COMMUNITY ORGANIZATION

FILE NO. MUP-81-054(W)

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

Introduction

Appellant, Southend Seattle Community Organization (SESCO), challenges the determination by the Director of the Department of Construction and Land Use that the environmental impact statement for the Kubota Gardens proposal is adequate.

Parties to the proceeding were: Appellant, appearing at hearing through one witness, Christopher Brown, P.E.; the Director of the Department of Construction and Land Use (Director) through the City Attorney, Elizabeth A. Edmonds, assistant; and the project sponsor, Dujardin Custom Homes, Inc. by William Lynn, attorney at law and G. Douglas Webb, Subdivision Management, Inc.

This matter was heard before the Hearing Examiner on October 14, 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. An environmental impact statement (EIS) was issued by the Department of Construction and Land Use, as the lead agency, for a proposal by Dujardin Custom Homes, Inc., to rezone 25 acres know as Kubota Gardens and develop it into a 480 unit condominium project.
2. SESCO filed an appeal challenging the adequacy of the EIS in the areas of the traffic and transportation, land use and policy, and the single family development alternative.
3. The site of the proposed action is currently zoned RS 7200. A reclassification to RM 800 is proposed.
4. SESCO contends that such a rezone would violate the Single Family Residential Areas Policies adopted by Resolution 25968 in that:
 - a. the policy intent is to preserve and protect areas currently in single family use and such an action would set a precedent for more intensive zoning;
 - b. the subject site meets the criteria in Implementation Guidelines 1 and 2 to be designated as single family in that the surrounding areas consist of blocks with at least 70 percent of structures single family residential, the area has many new single family homes and home improvements, the area is topographically suitable for single family development and there is a need for more single family lots to accommodate families; and
 - c. edges are to be protected from intrusions of non-single family uses.

5. The EIS deals with the Single Family Residential Areas Policies at p. 37, Final Environmental Impact Statement, hereafter "FEIS". That segment points out that the Area Designation Policy allows tracts of vacant land larger than 5 acres to be excluded from single family designation, therefore, no further discussion of those policies was included.

6. While the discussion of those policies does not go further, the FEIS at pp. 16 and 85 acknowledges the potential precedent the rezoning could set and at pp. 39 and 40 discusses edges with respect to the Special Cases: Planned Developments policy and the differences between the proposed and surrounding development.

7. In the discussion of the Goals for Seattle - Seattle 2000, the EIS mentions and comments upon Housing Task Force Goals, Goal C, Objectives 2 and 3. Appellant points out that Implementation No. 4, "Encourage retention of all RS zoning (min. 5,000 sq. ft.), and where appropriate, backzoning of areas to the same residential zoning where present use is single family residential" was not mentioned or commented upon.

8. Recommendations for implementation were not adopted as City policy by the City Council but accepted only as matter for further consideration. Not being City policy those recommendations need not be included.

9. A single family development alternative is considered in the EIS. Appellant contests the project sponsor's conclusions that the alternative is not economically feasible and the analysis leading to that conclusion.

10. The cost of the land is \$2,000,000 without regard to the type of residential zoning or development which takes place. Five acres were sold for \$206,100, a lower price, because a larger portion of the property is steeply sloping only allowing development of up to twenty-two 5,000 sq. ft. lots.

11. The cost projected for utilities and roads development is high but reflects the extra costs involved in developing in the City and was based on a detailed analysis of the site and prevailing rates.

12. As financing costs, the EIS shows use of 20 percent for two years on the full amount. The sponsor considers this conservative because the rate is likely to be 2 points over the prime rate plus a 2-4 point fee. If an 18 percent prime rate is assumed the cost could be as high as 24 percent. The entire amount for two years was used on the assumption that that would reflect the cost of use of the full amount for 1.5 years, 6-9 months development period with an increasing balance and 3 years to sell with a decreasing balance.

13. The per lot costs shown in the EIS, \$49,453, is only the cost of acquisition and development and not a projected sales price. Adding overhead and a profit margin could bring the cost to \$52,000 and with sales costs to \$60,000 or more.

14. The sponsor agrees with appellant that the cost of an improved lot in the area would be around \$15-20,000. The conclusion that single family development would not be economically feasible by this sponsor is supported.

15. Impacts on the future capacity of utility systems for development exceeding that contemplated by the land use plans were not adequately addressed, according to appellant.

16. A city engineer whose speciality is sewers and drainage explained that the design capacity of the sewer system is based on the Comprehensive Plan designation by acre but that in the area of the subject site the design capacity is some five times the actual use leaving ample capacity to carry additional flow from the site.

17. A survey of residents within a one mile radius of the subject site was done by ten community volunteers to ascertain, in part, the purpose and destination of trips made by the respondent to the survey. The survey showed that 36 percent of the respondents' trips were south on Renton Avenue South.

18. Trip distribution is shown in Figure 25, DEIS. It predicts that 3 percent of the trips will be south to Renton and 1 percent to Skyway. Revised Figure 26, FEIS shows 700 of the 3,900 vehicle trips per day generated by the project to use Renton Avenue South. The data are based on a Puget Sound Council of Governments (PSCOG) estimate of person travel demand in the Rainier Valley zone.

19. Appellant asserts that based on the survey some 1,400 person trips per day would utilize Renton Avenue to go south. A direct comparison with the number shown in Revised Figure 26 is not possible because no vehicle occupancy rate figure is provided in the EIS for the difference between person trips and vehicle trips.

20. The origin-destination patterns from PSCOG describe "person travel demand estimates", p. 93, DEIS, so the percentages of 36, 12 (adding Bryn Mawr, Skyway, Renton and two destinations to the east, all of which would involve Renton Avenue) or 18 percent representing 700 vehicles over 3,900 are comparable with PSCOG's estimate.

21. The project sponsor asserts that the figure of 8.0 for vehicle trips generated per unit is probably 25 percent higher than the actual expectation of 5.1 to 7.2 for condominiums, pp. 89 and 93, DEIS. The witness suggested that the 1,400 trips figure should be reduced by 25 percent bringing it closer to the 700 used. Both figures would be reduced, however, maintaining the relationship of the two but lessening the possibility of adverse effects by either.

22. SESCO's expert, an engineer specializing in traffic and transportation, testified that there would be a consequence to Renton Avenue, for instance the intersection of Renton and Rainier Avenues with Airport Way, from the greater use of that street than was projected.

23. Appellant's traffic expert maintains that pedestrian demand and safety should have been studied. In his opinion it is probable that the safety of pedestrians would be compromised by the additional traffic.

24. The project sponsor's transportation planner made several site visits and found nothing unique about the area. While he was aware that several schools were located nearby, none of the visits occurred during the school year.

25. Accident frequency on surrounding streets on the basis of the average number annually is given in Figure 24, p. 90, DEIS. The number for Renton Avenue South southeast of the subject site includes any accidents at the intersection of Renton Avenue with 57th Avenue South.

26. Appellant contends, through its expert, that the analysis of hazards should be expanded to include sufficient data to allow the reader to determine if the accident experience is good or bad.

27. The project sponsor's expert stated that the frequency of accidents over time is a convenient way of presenting data and that the analysis and presentation suggested by SESCO is used usually for design studies rather than as a tool for decision makers. Since no significant problem was noted he did not do a detailed analysis of traffic hazards.

28. The expert testifying for SESCO has greater experience than the sponsor's expert. The former is a resident in the area of the subject site.

Conclusions

1. Section 24.84.170, Seattle Municipal Code, requires the hearing examiner to accord substantial weight to the decision of the Director that the EIS is adequate.

2. Appellant's expert's opinions that it is probable that the different trip distribution would have "consequences", that pedestrian safety would be compromised by the additional traffic and that the data provided on accidents is not sufficient to come to any conclusion about hazard were countered by the project sponsor's expert's opinions. While SESCO's expert's opinions might normally be given greater weight because of the length of his experience and reputation, his personal interest in the case also must be considered. In the absence of clear proof of error by the project sponsor's expert who analyzed the traffic and transportation impacts the Director's decision must be upheld.

3. The treatment in the EIS of the Single Family Residential Areas Policies is adequate in light of the provision exempting vacant areas larger than five acres.

4. No error was shown with regard to Seattle 2000 policies or utilities' capacities.

5. The estimated cost of developing the lots for single family development is supported by fact and would make the conclusion that such development is not economically feasible for this project sponsor reasonable.

6. A perfect EIS is not required. The document is adequate if it provides a "reasonably thorough discussion of the significant aspects of the probable environmental consequences..." of the proposed action. Cheney v. Mountlake Terrace, 87 Wn.2d 338, 552 P.2d 184 (1976). Appellant has not shown the EIS to be inadequate under this standard.

Decision

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

Entered this 28th day of October, 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). Should an appeal be filed, instructions 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 if the appellant is successful in court.