

## FINDINGS AND RECOMMENDATION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Petition of

RYAN DURKAN FOR MARINE POWER AND  
EQUIPMENT

FILE NO. CC-84-004  
DCLU NO. 8402596  
C.F. NO. 293646

for an amendment to the Official  
Land Use Map pursuant to Seattle  
Municipal Code Title 23

Recommendation: The petition should be conditionally  
GRANTED.

#### Introduction

For purposes of this recommendation, all section numbers refer to the Seattle Municipal Code, as amended, unless otherwise indicated.

The Director's report, submitted by the Department of Construction and Land Use (DCLU), recommended that the petition be conditionally granted.

This matter was heard before the Hearing Examiner on July 25, 1985. The record was left open to August 1, 1985, for an opponent's submittal and to August 5, 1985 for petitioner's and DCLU's reply. Upon DCLU's request, concurred in by petitioner, the date was extended to August 13, 1985, when this record closed.

After due consideration of the evidence of record, including petitioner's, the Director's representative, and other witnesses' testimony, and all evidence elicited during the public hearing, and as a result of the personal inspection of the subject property and surrounding area by the Hearing Examiner, the following shall constitute the findings of fact, conclusions and recommendation of the Hearing Examiner on this petition.

#### Findings of Fact

1. The subject site is generally located on North Lake Union west of Seattle's Gas Works Park. The proposal street address is 1410 North Northlake Way.

2. The location has also been partially described as

in the bed of Lake Union in front of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, and the northwesterly one-half of Lot 10, Block 101, Lake Union Shorelands. Environmental Checklist, p.1.

3. West of Lot 1, Block 101, Lake Union Shorelands is Waterway 21 which Marine Power and Equipment has used for moorage purposes by Board of Public Works permit. Marine Power and Equipment owns property on both sides of Waterway 21.

4. The platted lots of Block 101 extend waterward from N. Northlake Way and there terminate at the U.S. (federal) Pierhead Line. One hundred feet beyond the Pierhead Line is the existing Construction Limit Line. The Construction Limit Line was established in 1964 by Ordinance 92887, Chapter 24.82, Seattle Municipal Code, as the outer limit for building structures in Lake Union and Portage Bay.

5. The Marine Power and Equipment property landward of the federal Pierhead Line is designated by the Seattle Shoreline Master Program as Urban Stable/Lake Union (US/LU). Seattle Municipal Code Section 24.60.350, .345. The US/LU environment

permits marine repair, marine construction and dismantling, marine sales, and water-dependent manufacturing.

6. The area between the Pierhead Line and the existing Construction Limit Line is designated by the Seattle Shoreline Master Program, Chapter 24.60, Seattle Municipal Code, as Conservancy Management (CM). The CM environment is designed to protect areas for environmentally related, usually public purposes and permits such activities as open wet moorage, marinas and public recreational facilities. Seattle Municipal Code Section 24.60.335.

7. The underlying zoning of the property landward of the existing Construction Limit Line is Manufacturing (M). Shipbuilding and repair are allowed in the M zone when the facilities are at least 300 ft. from any residentially (R) zoned lot. The subject property is a minimum of 300 ft. from any R zoned lot.

8. The area waterward of the present Construction Limit Line has an underlying zoning of Single Family 9600. This zone prohibits shipyard use. The shoreline environment for the area is Conservancy Natural (CN). The CN classification is generally designed to preserve, regulate or restore an area to its natural state and allows such activities as ecological observation, study or research. Seattle Municipal Code Section 24.60.330.

9. Petitioner Marine Power and Equipment (MPE) is in the business of building and repairing fishing boats, Coast Guard cutters and similar vessels. The company has occupied their present headquarters of 1341-1455 North Northlake Way since acquiring the former coal transfer facility site in 1949. The MPE activity site includes Waterway 21 and areas waterward of the existing Construction Limit Line.

10. From 1949 to the present MPE repaired vessels of varying dimensions, some in the 300-500 ft. range. Partly attributable to a downturn in the fishing industry, the small boat repair activity has decreased and the trend is clearly toward larger vessel repair.

11. In order to construct or repair the vessels, MPE uses drydocks which are platforms that raised vessels are set upon for repair or other activity. The drydocks are "clearly visible" during the day and lighted at night.

12. There are presently six drydocks on site. The longest is approximately 460 ft. All six drydocks extend waterward of the Seattle Construction Limit Line. Petitioner urges and the Hearing Examiner finds that the company essentially could not operate within the confines of the existing Construction Limit Line.

13. MPE is presently the largest remaining ship repair facility on Lake Union or Lake Washington.

14. MPE proposes to seek legalization of their standing use of this area. The proposal excludes Waterway 21 which was the subject of CC-82-0018 (C.F. 2192008, Hearing Examiner hearing May 16, 1983). Petitioner's present four point proposal is to (1) relocate the Construction Limit Line waterward approximately 300 ft. (2) reclassify the property between the existing and new Construction Limit line from present SF 9600 - Conservancy Natural status to/Manufacturing-Urban Stable/Lake Union status. (The petition includes the submerged land waterward of Waterway 21, as extended.) (3) reclassify a 35 ft. by 150 deep parcel located southeast of Lot 10, Block 101, from Conservancy Management to the Urban Stable/Lake Union shoreline environment. (This parcel lies south of METRO owned property.) (4) amend the text of the Shoreline Master Program to exclude drydocks in lot coverage calculations.

15. The total area proposed for reclassification, submerged

land owned by the State of Washington, is approximately 3.3 acres.

16. The proposed reclassification site is legally described as follows:

BEGINNING AT THE MOST WESTERLY CORNER OF THE SOUTH HALF OF LOT 10, BLOCK 101, LAKE UNION SHORELANDS, IN SEATTLE, WASHINGTON: THENCE S 48°26'05" E 35.00 FEET; THENCE S 41°33'55" W 400.00 FEET; THENCE N 48°26'05" W 354.65 FEET; THENCE N 80°36'26" W 136.27 FEET TO A POINT ON THE NORTHWESTERLY LINE OF WATERWAY NUMBER 21 EXTENDED; THENCE S 48°26'05" E 435.00 FEET TO THE CENTERLINE OF SAID LOT 10 EXTENDED; THENCE N 41°33'55" E 100.00 FEET TO THE POINT OF BEGINNING.

17. The upland portions in and around the MPE site are zoned for and developed with manufacturing uses. The M-zoned waterfront lots, designated US/LU, are principally developed with marine construction, transportation, and marine service businesses. The area directly across this portion of Lake Union is developed with water dependent commercial and industrial uses.

18. The Comprehensive Plan Map shows land abutting west and north of Waterway 21 as suitable for manufacturing uses.

19. The Department of Natural Resources has no objection to the exclusion of drydocks from lot coverage calculations or to any of the MPE proposal.

20. The permitted lot coverage is approximately 50 percent. Seattle Municipal Code 24.60.395. Counting office and other on-site structures the present coverage is approximately 75 percent of the total 5.3 acre site. If the drydocks are excluded, present lot coverage would approximate 36 percent.

21. The proposed action will cause no intrusion upon the navigation channel or jeopardize safety of the channel.

22. The MPE proposal in its entirety is supported by the Fremont Chamber of Commerce; by the owners of the nearby Burke Industrial Center and its 40 tenant-businesses; and by the Lake Union Association which includes more than 60 percent of Lake Union private landowners. The proposals are also endorsed by the local Boilermakers Union and by the Joe Pilato Seattle Metal Trades Council. Supporters acknowledge MPE as the largest area employer and also acknowledge its longstanding boat construction and repair activity that is being reviewed for legalization.

23. The one opposing witness was principally concerned with the use of Waterway 21 and with the potentially negative precedent. This concern with precedent was shared by the DNR witness.

24. The May 9, 1985, declaration of non-significance (DNS) on the proposal, which was not appealed, is a part of the record. While acknowledging possible minor damage to marine fauna and flora oil spills/leakage, intensification of uses, and increased parking demand, the DCLU report concluded that a DNS was appropriate. Specific conditions added as part of the DNS address the potential impact of industrial discharges and the issue of (off-street) parking for employees.

25. As part of the subject (rezone) proposal, MPE proposed conditions to mitigate noise, navigation and risk of upset impacts. See pp. 10-11, DCLU Analysis and Recommendation (July 19, 1985).

26. DCLU recommended approval of the MPE petition on several conditions, first that:

1. granting of the proposed rezone to US/LU/M is subject to City Council's approval on the new location of the Lake Union Construction Limit Line, as proposed.

Department of Ecology approval, initially included in the condition, was deleted upon request of MPE and after concurrence of DCLU since it was presented that DOE had no authority to address the Construction Limit Line question.

27. DCLU also recommended as a condition that:

2. Moorage of any vessel or drydock beyond the new Construction Limit Line (be) strictly prohibited.

MPE initially resisted the condition as overbroad. Subsequent to clarification from DCLU and The Harbor Patrol that "moorage" did not preclude emergency or temporary ties where vessels might extend beyond the Construction Limit Line MPE offered no further objection. (See Letter dated August 8, 1985, to Hermia Ip, DCLU, from T. Ryan Durkan, representative of petitioner).

28. DCLU's third recommended condition requires a survey plan to indicate the specific locations of "the subject property, the existing and new Construction Limit Lines, and the Waterway 21 area..."

29. DCLU's fourth recommended condition was for MPE to "install and maintain at least 5 buoys or markers between the west and east ends of the rezone area to delineate the new Construction Limit Line..." In hearing, MPE resisted this condition as unsafe and infeasible. Subsequent to consultation with the Harbor Patrol and the Seattle Police Department, DCLU and MPE agreed to a condition essentially stating that MPE shall seek to establish two identifying buoys, exact location to be determined at the time of survey.

30. The fifth recommended condition was that no permanent structure be placed lakeward of Waterway 21. DCLU agreed to a modification of the sixth recommended condition to read that:

MPE shall provide an electronic paging system with personal pagers (i.e., bellboy facilities) for each yard supervisor or foreman working the evening or night shift (10:00 p.m. to 7:00 a.m.).

#### Conclusions

1. All land within the City of Seattle is classified as within one of Title 23 or Title 24 zones. Seattle Municipal Code Section 23.30.10. The zoning of a parcel is recorded on the Official Land Use Map of the City of Seattle. Section 23.32.06; 23.32.16. Where property has not been specifically included within a zone on the Official Land Use Map "the property is declared to be in the SF 9600 Zone." Seattle Municipal Code Section 23.30.30. The procedure for amendments to the Official Land Use Map, i.e. for rezones, is delineated at Chapter 23.34., Seattle Municipal Code.

2. The portion of the petitioner's rezone site waterward of the existing Construction Limit Line is presently zoned SF 9600 pursuant to Seattle Municipal Code Section 23.30.30. Petitioner seeks to reclassify this approximately 300 by 470 ft. parcel to Manufacturing. The Hearing Examiner recommends the same.

3. Seattle Municipal Code Section 23.34.24, "Areas Zoned Single Family," provides in this instance that:

...single family zoned areas may be rezoned to another classification only if the appli-

cant can demonstrate that the area does not meet the criteria for single family designation.

4. The criteria for single family zones, at Seattle Municipal Code Section 23.34.32, simply do not square with the facts of the subject case. The Code's single family locational criteria would require consideration of the percentage of structures in single family use and whether adopted neighborhood plans designate the area as appropriate for single family use. The subject SF 9600 parcel is a submerged portion that is in use for constructing and repairing vessels. Seattle Municipal Code Section 24.60.530(A) provides that "(E)xcept for floating homes, new residential structures...are prohibited..." While floating homes may be allowed in the US/LU environment, no residential use is permitted in the CN environment. The subject area clearly fails to meet the "locational criteria for single family designation" as that expression is meant by the Code.

5. Next, Seattle Municipal Code 23.34.28 requires that area characteristics; zoning history and principles; impact; precedent; neighborhood planning efforts; changed circumstances; overlay district issues and greenbelt plans be considered as factors "in evaluating requests for a zoning change." Although no locational criteria exist for the M zone, per se, the M zone allows manufacturing uses as its principal use and permits in this case shipbuilding and repair activity as lawful activity. Thus, the proposed M zoning would allow the present use to continue and would complement other vicinity uses. The proposed land use category would also be in consonance with the proposed shoreline environment classification.

6. The subject SF 9600 portion was so zoned pursuant to Section 23.30.30 only because the site was not otherwise zoned by the Official Land Use Map. No single family use is present, none is anticipated and none is allowed. The site has been used by petitioner for marine vessel repair and construction since 1949. The site, as proposed, is needed for the continued practical operation of the petitioner's longstanding business and is unique to the area. No harmful precedential effect is foreseen.

7. Zoning principles emphasizing compatible land use patterns would be adhered to by the proposed reclassification. The impacts will not significantly adverse. The DNS imposes mitigating conditions as does this recommendation. The subject property is presently developed and occupied with a "historic" use. Further, DCLU notes that any new development beyond the Pierhead Line will be subject to review and approval of State lease permits.

8. The industry trend toward larger vessels is a change in circumstances which supports the requested reclassification. The M zone would allow petitioner to continue to service these larger vessels. No neighborhood plan applies to the site of the proposed rezone.

9. The proposed reclassification would also be compatible with uses across Lake Union.

10. For many of the reasons above, the property waterward of the existing Construction Limit Line should be changed from its restrictive Conservancy Natural classification to the Urban Stable/Lake Union classification which is more indicative of what is and should be the property use. The US/LU environment allows marine construction and repair, and further provides for areas of controlled development and redevelopment.

11. Similarly, the 35 by 150 ft. parcel south of the Metro property should carry the US/LU shoreline classification. For both parcels the requested Urban Stable/Lake Union designations would be consistent with and complement the Comprehensive Plan intent for the manufacturing use of the surrounding dry land.

The current industrial setting and use make it desirable that the subject area be designated to permit any new development, which would be consistent with the State Shoreline Management Act of 1971 and the Seattle Shoreline Master Program economic development goal. The proposed reclassifications would also encourage the mixture of compatible uses along Lake Union and would serve to discourage abandonment of Lake Union's water-dependent uses to restaurant or other recreation-oriented uses. The proposed reclassification is further consistent with the State Shoreline Management Act, RCW 90.58.020, and with its implementing regulations, e.g. Chapter 173-16, WAC. The DCLU Analysis and Recommendation provides an excellent summary of those items and the proposal's comportment with them.

12. Seattle Municipal Code Section 23.34.10(E) provides that the Hearing Examiner recommendation shall be based in part on the report of the Director. The Director's report indicates deferral of the text amendment and Construction Limit Line issues to the legislative body. Accordingly, the Hearing Examiner enters no formal recommendation on those issues.

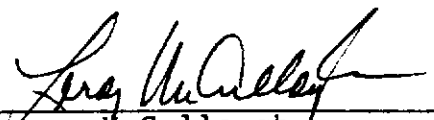
13. In summary, the rezone should be approved on the following conditions:

1. that granting of the proposed rezone to US/LU/M is subject to City Council approval of the proposed Construction Limit Line.
2. that moorage of any vessel or drydock beyond the new Construction Limit Line be strictly prohibited.
3. that MPE shall submit a survey plan to indicate the specific location of the subject property, the existing and new Construction Limit Lines, and the Waterway 21 area, the survey to be conducted by a licensed surveyor of the State of Washington.
4. that within 30 days of the rezone approval by the State Department of Ecology, MPE shall apply for the necessary permits to establish two buoys at the east and west ends of the rezone area for vessel identification: one buoy at the southeast corner of the rezone area, and the other to be located in a parallel position to the west per attachment A of the DCLU letter dated August 12, 1985.
5. that no permanent structure shall be placed in the area lakeward of Waterway 21 (i.e., the westerly 145 feet of the rezone area).
6. that MPE shall provide an electronic paging system with personal pagers (i.e., bellboy facilities) for each yard supervisor or foreman working the evening or night shift (10:00 p.m. to 7:00 a.m.).

Recommendation

The petition should be granted on the Conditions of Conclusion 13 above.

Entered this 27th day of August, 1985.

  
Leroy McCullough  
Hearing Examiner

NOTICE OF RIGHT TO PETITION  
FOR FURTHER CONSIDERATION

Pursuant to 23.34.14, Seattle Municipal Code, as amended, any party affected by a recommendation of the Hearing Examiner may submit a petition in writing to the City Council requesting further consideration. The petition must be submitted within fourteen days after the date of mailing the recommendation of the Hearing Examiner and addressed to: City Council, Land Use Committee, Municipal Building, Seattle, Washington 98104.

The petition should state clearly and concisely the reason(s) why further consideration is necessary, and should refer specifically to any errors alleged to exist in the Hearing Examiner's Findings and Conclusions. The City Council's consideration of the hearing, and new exhibits or other evidence in support of the petition should not be submitted. In its discretion, the Council may allow oral or written arguments based on the record when it considers the petition.