

FINDINGS AND RECOMMENDATION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Petition of

THE CITY OF SEATTLE, DEPARTMENT OF
CONSTRUCTION AND LAND USE

FILE NO. CC-82-015
C.F. NO. 291890

for an amendment to the Official
Zoning Map pursuant to Title 24,
Seattle Municipal Code (Ordinance
86300, as amended)

Introduction

Applicant petitioned to change the shoreline environment classification of property near the intersection of South Court Street and 42nd Avenue South from Conservancy Management (CM) to Urban Residential (UR).

For purposes of this recommendation, all section numbers refer to the Seattle Municipal Code, Title 24, as amended (Ordinance 86300, as amended) unless otherwise indicated.

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

This matter was heard before the Hearing Examiner on October 18, 1982.

At the hearing, the Director of DCLU was represented by Diane Althaus; the property owners were represented by Richard E. Gifford of Hillis, Phillips, Cairncross, Clark and Martin; the opponents were primarily represented by William W. Kates, Catherine M. Kitto and Michael S. Panteleakos.

After due consideration of the evidence presented by the Petitioners, the information provided by the Director's report, and all evidence elicited during the public hearing, the following findings of fact and conclusions shall constitute the recommendation of the Hearing Examiner Pro Tempore on this petition.

Findings of Fact

1. The subject property is located at 4200 S. Court Street and 3702-42nd Avenue S. in Seattle. The owners of the subject property are Jack and Tana Martin.

2. The Shoreline Management Act of 1971 (RCW 90.58) required the City of Seattle to prepare and adopt a Shoreline Master Program to regulate the use and development of the City's shorelines. In 1976, the Seattle City Council adopted said Shoreline Master Program, which included both written policies and regulations and maps of the shoreline areas (generally including land and water 200 feet inland of the ordinary high water mark). These maps designated the shoreline areas by means of a classification system involving seven "shoreline environments". Prior to adopting the Shoreline Master Program, the Seattle City Council transmitted tentative policy votes to the City departments, so the ordinance could be prepared in conformance with the legislative intent. City Council's tentative policy vote for Lake Washington shorelines was to designate residential areas as Urban Residential (UR) and to designate parks and submerged lands from the shoreline to the outer harbor line as Conservancy Management (CM).

3. The subject property, which was vacant land at the time of the preparation of the shoreline maps, was incorrectly believed to be a part of the adjacent publicly owned park property located to the north of the subject property. Property boundary lines were difficult to determine in this area, because the base maps used in the mapping

process did not mention Lake Washington Blvd. Therefore, the subject property was designated as CM along with the adjacent park property following Lake Washington Blvd. The underlying zone of the area was RS 7200.

4. The maps containing the cartographer's error were adopted without any special consideration for the subject property by the Seattle City Council.

5. In 1980, it was learned that the subject property was designated CM, which prohibits residential use, even though the underlying zoning was for single family use. The Seattle City Council passed Ordinance 110108 on September 8, 1981, without initiating the hearing procedures provided in Section 24.72 of the Seattle Municipal Code in an attempt to correct the cartographic error designating the subject property as CM. The mayor of Seattle signed the ordinance, and the State Department of Ecology, who has final approval of shoreline environment rezones, approved the change from CM to UR on January 5, 1982.

6. Ordinance 110108 specifically provides that:

"Whereas in assigning environmental classification under the Shoreline Master Program, the city Council did not intend to include an privately-owned uplands in the City environment because the uses permitted would be too limited and would constitute a "taking" of the property for public use without compensation; and

"Whereas, the property described herein is privately owned, but was classified as CM upon the erroneous assumption by the cartographer who prepared the maps showing proposed environmental classifications that the property was publicly-owned, and all other private property in the same block is designated as Urban Residential (UR)..."

7. The subject property is privately-owned, residentially-zoned upland property located above Lake Washington Blvd., and was so owned and zoned at the time of the adoption of the Seattle Shoreline Master Program.

8. The subject property was not specifically considered by the Seattle City Council during its adoption of the Seattle Shoreline Master Program, but was generally considered within the category of privately-owned residential property along the Lake Washington shoreline.

9. John Crull testified by affidavit that he was the cartographer who prepared the maps for the City of Seattle's Shoreline Master Program. Mr. Crull testified that he was under the mistaken impression that the subject property was publicly owned, consequently, he left the subject property in the CM classification. If Mr. Crull had known that the subject property was privately owned, he would have designated the subject property as part of the UR classification.

10. The tentative policy votes of the City Council on environmental classification and environmental mappings stated:

"The Lake Washington shorelines should be designated as follows: UR in residential areas, CM in parks and submerged lands from the shoreline to the outer harbor line, including the area from the shoreline to the inner harbor line at Rainier Beach and Leschi as CM." Committee of the Whole - February 3, 1975.

Conclusions

1. The Office of Hearing Examiner has jurisdiction in this petition.

2. Section 24.60.335(A) provides that the purpose of the Conservancy Management environment is to:

"protect areas for environmentally related, usually public, purposes such as public and private parks and marinas, aqua-culture areas, underwater recreational sites, fishing grounds and migratory transition zones. While the natural environment is not maintained in a pure state, the activities to be carried on provide minimal adverse impact. The word "management" is the key to this shoreline environmental classification, in which the intent is to use the natural ecological system for production of food, for recreation, or for water dependent scientific research by recognized agencies, and to provide access by the public for recreational use of the shorelines"

3. Section 24.60.340 provides that the purpose of the Urban Residential environment is to:

"protect areas which are appropriate primarily for residential uses. The purposes of the UR environmental designation is to maintain the existing residential character of the designated area in terms of bulk, scale, and general types of activities and developments."

4. The CM designation virtually provides for no other use than a park or other public benefit in a CM environment.

5. The Seattle City Council did not intend to include any privately-owned uplands in a CM environment classification because said classification would constitute a "taking" of private property for public use without compensation.

6. The evidence indicates that the Seattle City Council did not specifically consider the subject property when it adopted shorelines environment classifications as part of the Seattle Shoreline Master Program.

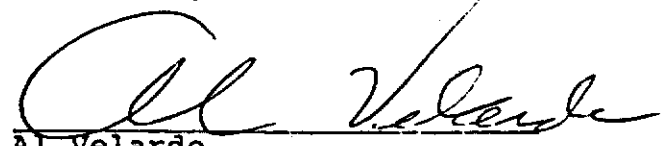
7. If not for a simple cartographic error, the Seattle City Council would have designated the subject property as UR, instead of the CM designation.

Recommendation

The recommendation of the Hearing Examiner Pro Tempore to the Seattle City Council is as follows:

The petition be GRANTED.

Entered this 15th day of November, 1982.


Al Velarde
Hearing Examiner Pro Tempore

NOTICE OF RIGHT TO PETITION
FOR FURTHER CONSIDERATION

Pursuant to 24.72.090, Seattle Municipal Code , as amended, (Section 27.51 of the Zoning Ordinance 86300, 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 petition will be based upon the record of the Hearing Examiner's 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.