

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

In the Matter of the Petition of

MARTIN SELIG

FILE NO. CC-81-023
C.F. 291201

for an amendment to the Official
Zoning Map pursuant to Title 23,
Seattle Municipal Code

Introduction

Applicant petitions to reclassify property addressed 408 Wall Street, and 2600 Fourth Avenue, from Multiple Residence-Mixed Density (RM-MD) to Metropolitan Commercial/Temporary (CMT) with conditions.

For purposes of this recommendation, all section numbers refer to the Seattle Municipal Code, Title 23, as amended, unless otherwise indicated.

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

This matter was held before the Hearing Examiner on March 9, 10 and 11, 1983.

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

Findings of Fact

1. The subject property is located in the Denny Regrade area of downtown Seattle. It consists of a city block bounded generally on the north by Vine Street; the south by Wall Street; the east by 5th Avenue and on the west by 4th Avenue. The property is legally described as Lots 1, 2, 3, 4, 5, 6, 7 and 8 of Block N, Bell's 5th Addition, Seattle, Volume 1-191. The site was acquired by the proponent in 1979. It will be referred to hereafter as the Selig or the subject Block.

2. The Selig block is 55,727 sq. ft. in area and developed with a one story commercial building on the northeast portion. A one-story bus repair garage is located along 4th Avenue. A U-Park, 45 space open parking lot is found at the southwest quadrant of the block. A concrete paved alley evenly divides the block; however, the north third of the block was vacated.

3. The U-shaped Devonshire apartments are located at the southeast quadrant of the block. This four story, 62-unit structure was built in 1925. Eight of the units are one-bedroom units. Monthly rents range from \$190 for an older studio unit to \$285 for a fully cleaned and repaired one-bedroom unit. There are currently some 19 units vacant; due in part to cleaning and repairing of those units.

4. In 1957, the general area to the north of Bell Street was zoned General Commercial (CG); the area to the south of Bell Street Metropolitan Commercial (CM). In 1966, the CMT (Temporary) zone was created, and applied to the northern two blocks of the CM area. Bell Street is located two blocks south parallel to Wall Street.

5. In 1971, the administration of then Mayor Uhlman had received census data reflecting a significant decrease in the downtown population. Attention was accordingly focused, first on Pioneer Square and then on the Denny Regrade. The latter was viewed as 75 acres of land with 35 percent in use as parking lots. Goals were established to make downtown Seattle an in-city living complex, and plans to induce private development were formulated. In 1974, it was resolved by the Seattle City Council as follows:

That the Comprehensive Plan be amended for the area bounded by Fifth Avenue, Virginia Street, Western Avenue, Broad Street (between Western and Second Avenues), Clay Street (between Second and Fourth Avenues) and Denny Way (between Fourth and Fifth Avenues) to "Modification of legend to include a new land use category which reads "High Density Residential and Commercial Area: residential area with high rise, mid rise and walk up units; includes general business and commercial uses."

In 1975, a new, RM-MD classification was created and applied to the subject site and environs, although a two year moratorium on application of the new zone's development restrictions was granted.

6. The Selig block is near the eastern boundary of an RM-MD zone extending nearly four blocks south of the subject site to Lenora Street; nearly four blocks west of the subject site to Western Avenue; east to 5th Avenue, adjacent to the subject site; and to Denny Way, Clay and Broad Streets to the north. The zone configuration was changed in 1980 to include an odd shaped Union Oil parcel extending from the most northwest point of the zone. The Department of Construction and Land Use is currently reviewing two requests to expand the RM-MD zone. Excluding this petition, no petition has previously requested or served to reduce the size of the RM-MD zone.

7. All properties north, south and west adjacent to the subject site are zoned RM-MD. The area east of the site, across Fifth Avenue, remains CG zoned.

8. Uses permitted in the RM-MD zone include apartment houses and retail businesses and services primarily serving vicinity residents, e.g., grocery, beauty shop, delicatessen; and commercial uses serving or related to the central business such as business and professional offices. Chapter 24.38, Seattle Municipal Code. The stated purpose of the RM-MD zone is to provide for

...variable density housing including tower apartment houses where such buildings have a desirable relationship with surrounding structures, and certain nonresidential uses compatible with housing and with adjacent commercial areas, located in close proximity to the city center or other major subcenters and employment areas....

Section 24.06.060, Seattle Municipal Code

Generally, the floor area of a nonresidential structure shall not exceed two times the lot area. Where at least half the space provided is for residential use, the floor area ratio is 3:1 and may be as high as 5:1. Section 24.38.070, Seattle Municipal Code.

9. The block directly across Fifth Avenue from the subject site is developed with the Grosvenor House, an apartment house of some 400 residents, featuring a roof garden. Rents are from \$275 to \$800 per month. At present, the Grosvenor has two vacancies. The Draft Environmental Impact Statement (DEIS) p. 47, notes the structure as having 18 floors. Its property manager estimated the building height at 150 ft. At the north end of the "Grosvenor" block is a parking garage and plaza.

10. The Post-Intelligencer building is located in the block south of the "Grosvenor" block.

11. The block west of the Post-Intelligencer Building and south of the Selig Block is developed with a parking lot, a parking structure and repair shops. The block southwest of the Selig block is developed with the 12-story Fourth and Battery office building, one of several office buildings constructed during the moratorium on application of RM-MD development restrictions. A combination of lowrise parking, office and restaurant uses are the predominant uses in the west half of the Fourth and Battery Building block; and the block immediately west of the Selig block.

12. Northwest of the subject block is the Fourth and Vine office building, completed in 1974. It provides eight stories of office space. The west half of this block is developed with offices, parking and shops.

13. Directly north of the Selig block, across Vine Street, is residential development: the 30-unit Stonecliff apartments; 30-unit renovated Edward Apartments; and the 43-unit Davenport. The dominant structure is the Bay View Tower, a 13-story Seattle Housing Authority apartment building completed in 1978 providing 100 subsidized units for the elderly and disabled. DEIS, p. 50. The older buildings appear of the same style and structure as the Devonshire.

14. The owner of the Edward Apartments feels that more employment in the area would be beneficial as it would be an incentive to live in the area. Of the 23 Edward tenants, 17 are older and 6 are estimated as between 25-35 years of age.

15. The overall pattern for the area is one of mixed business, office, retail and residential uses.

16. The proposal site and vicinity have good traffic and transit access. Roughly 516 buses pass by the site daily. In terms of modal choice, 20 percent of peak period traffic is projected to be by transit. This is less than the 60 percent choice made closer to the central business district. The Magic Carpet service is within walking distance of the site. The sponsor intends to encourage building tenants to implement flextime and to offer partially or fully subsidized bus passes. Final Environmental Impact Statement (FEIS), p. 25.

17. The Department of Community Development (DCD) witness testified and the Hearing Examiner finds that the subject area has one of the strongest concentrations of housing in the Regrade area. DCD estimates that there are approximately 700 residential units within a 500 ft. radius.

18. It is undisputed that there is an inadequate supply of low to moderate income housing in the Denny Regrade area. Not surprisingly, many Devonshire residents wish to remain there because of its moderate rent schedule; access to services; and because of the improved level of care since the purchase by the rezone proponent.

19. Not all Regrade residential structures are as well maintained. According to the Denny Regrade Background Report of August 1981, cited p. 14, 1982 DCD Denny Regrade Housing Strategy Report, 42 percent of the Regrade's residential buildings were shown to be in poor condition. And a Regrade resident testified that the quality of low-moderate income housing was inadequate. The same DCD report found that "Twenty years ago, Downtown Seattle had about twice the number of residential units that remain today. Since 1960, half the

housing units have been removed...at p. 4. Implementation of a more stringent high rise fire code is expected to further decrease the number of downtown residential units.

20. Against this scenario is the project applicant's proposal to rezone the Selig block from RM-MD to CMT, with conditions, and to construct a high rise office building on the northern portion of the block. The bus repair facility would be demolished. Proposed conditions include:

- The retention of the Devonshire as low to moderate income rental housing, in perpetuity.
- Limiting the floor area of the development to 6.5 times the lot area less the floor area of the Devonshire (block area 55,727 sq. ft. x 6.5 less 37,055 sq. ft.) or to roughly 325,170 sq. ft. of office/commercial space.

Another condition is provision of a 14,880 sq. ft. area park in the southwest quadrant of the block.

21. In response to projected shadow impacts on the east adjacent Grosvenor House and other comments to the DEIS, applicant now proposes to situate the office building in an east-west fashion, rather than north-south as originally planned. Other commitments from the developer include a limit on the amount of reflective exterior surfacing; street level retail space; and strong street edge definition on 4th Avenue and Vine Street. Further, petitioner pledges continued funding of the Metro Transit Magic Carpet Zone concept for an additional 5-year period. Also planned is an extension of the Magic Carpet zone boundary, one block further north, bringing it closer to the Selig block's southern boundary.

22. The Devonshire agreement was struck in November 1980, following intense negotiations with Devonshire tenants, the Seattle Displacement Coalition and the Denny Regrade Community Council, signatories to the resulting Devonshire agreement, Appendix A, DEIS. Eviction notices had been issued the previous summer and the Devonshire scheduled for demolition. Proponent had considered developing the site with the Waterview Project, a development of 232 residential units, 250,000 sq. ft. of office space, theatre space and a monorail stop. Proponent's architect envisioned a Planned Unit Development (PUD) RM-MD hybrid and a building height of 600 ft. In a letter to counsel for proponent dated August 27, 1980, however, the DCLU director advised of problems with the expected height and other aspects of the project.

23. At the time of the negotiations there was no Seattle Housing Preservation Ordinance, imposing fees for demolition of housing, nor Just Cause Eviction Ordinance. Since the 1980 adoption of the Housing Preservation Ordinance, there have been few, if any demolitions in the Regrade although petitioner could meet any fees imposed for demolition of the Devonshire. The Devonshire agreement includes "just cause" eviction terms and rent control provisions.

24. Due in part to its novelty and "positive precedent," and to commitments to do so made within the agreement, Devonshire agreement signatories and others support the requested proposal as a practical means of preserving actual low-moderate income housing, while allowing commercial development in the area. In fact, proponents suggest that denial of the project/rezone would mean repudiation of community negotiation efforts, and a boost for expensive, unneeded condominium development.

25. Uses permitted in the CMT zone include offices, hotels and apartment houses. For nonresidential structures the Floor Area Ratio is generally 10:1. With bonuses, projects of residential or mixed residential/commercial uses may be up to 13:1. Chapter 24.50, Seattle Municipal Code.

26. The goal of the CMT zone is stated in Section 24.06.080B, Seattle Municipal Code:

The CMT Zone permits a variety of commercial and business uses and is conceived as a temporary or interim classification. Permitted building bulks are similar to those permitted in the CM Zone but are not eligible for bonus provisions to permit increased building bulk.

Petitioner is not seeking all of the development privileges typically associated with CMT zoning.

27. Petitioner has not yet designed the building. The height will vary depending on the base width; projections have ranged from 12-25 stories. Per the Devonshire agreement, community groups would have some input on development design.

28. The principal project architect testified that if the rezone petition is denied a purely commercial building is the alternative since land costs and economics would not permit a mixed residential use construction. J. Dorm Braman, CH2M Hill Director of Planning, opined that in today's market high income units could not support low income units. This opinion was shared by Ron Liebsohn, a local area commercial developer.

29. The project will cause no significant change in the level of service of intersections in the subject area. DEIS, p. 64. With construction of a mixed use residential and office building, the average weekday, one-way vehicle trips would be generally less than that generated by the proposal. DEIS, p. 62.

30. There was much support for and opposition to the proposal. Many opponents, including Grosvenor House residents, felt that the commercial building would be incompatible with and gut the residential character of the area. The FEIS noted that the "increase in commercial office use may indirectly dampen residential development in the Denny Regrade." FEIS p. 87. Other concerns were loss of views, sunlight, increased noise and traffic, although many of these impacts could be experienced with a mixed use building.

31. Some opponents did not wish the proposal, as a CMT zoned project, to be exempt from RM-MD spacing, setback and other elements of design review. Further, some opponents consider this single rezone request as a premature, unhealthy preclusion of the downtown area plan under consideration. Denny Regrade developer Howard Anderson, for example, would support a total reevaluation of RM-MD zoning. He perceives approval of this request as a precedent for similar development in the Regrade area. Anderson's concerns were echoed by John Milne, another Regrade developer, who felt that present and future zoning for the area should be fair, constant and certain. DCLU agrees with Anderson's views on the precedential impact. Also see FEIS, p. 87.

32. Representations from the the Seattle P.I. were that approval of the rezone would constitute spot zoning.

33. Unavoidable adverse impacts resulting from the proposal include precedent; preemption of additional housing construction on the west half of the block; and proportionate increase in accidents around the proposed site. Additionally,

land values in the area may continue to increase, partially as a result of the proposed action. Pressure for redevelopment of low density land uses may occur. DEIS, pp. 133-134.

34. Nonadverse impacts include retention of the Devonshire; a minipark; location in an area with other high rise buildings; and a net increase in on-site employment "of about 1,280-1,370 persons." DEIS, p. 135-136.

35. Proponent testified and the Examiner finds that there is a demand in the Regrade area for office space.

36. The City is in the process of revising the Comprehensive Plan for the downtown area. To that end, the Land Use and Transportation Project issued in May, 1982, a 1982 Downtown Alternative Plan. This plan calls for "a primary residential area in the Denny Regrade." DEIS, p. 102.

37. There are several blocks in the vicinity with similar development of mixed low scale residential and other use. However, the DCLU analyst knew of no specific request for any rezone action such as the present petition.

Conclusions

1. There is no presumption of validity favoring a rezoning action. Proponents have the burden of demonstrating changed circumstances. Further, the rezone must bear a substantial relationship to the public health, safety, morale or welfare. Parkridge v. Seattle, 89 Wn.2d 454, 462 (1977); Cathcart v. Snohomish County, 96 Wn. 2d 201 (1981).

2. More specifically, Seattle Land Use Code Ch. 23.34 governs Amendments to Official Land Use Map (Rezoning), and criteria are specified therein. The Hearing Examiner concludes that the petitioner has not met the burden of persuasion.

3. Locational criteria for the downtown area, including the Regrade area, have not been adopted. The Downtown Plan under consideration, however, would demarcate the area as primarily residential. The Comprehensive Plan designation emphasizes the residential character of the site, although it is clear that general business and commercial uses are permissible. The key, new development is commercial only. Whether the project is considered as the Devonshire plus the commercial building; or as simply the commercial building, the project, depending on the bulk of the commercial building, is neither incompatible nor totally inconsistent with existing development. Hence, the conjunctive requirements to designate the action as an illegal spot zone are not met. Cf. Lutz v. Longview, 83 Wn.2d 566 (1974).

4. However, it is clear that a CMT "island" could result, as the subject site is bounded on all but its east side by RM-MD zoning, with dissimilar (CG) zoning to the east. And immediately east is the Grosvenor House, a large residential structure. The existing east zone boundary, 5th Avenue, is a rational boundary for this zone. Further, a new, strictly commercial building would stand in marked contrast to the predominant development pattern of apartments north of the Selig block, and effectively preempt residential construction on that portion of the block.

5. Review of zoning history would also militate against the proposal. In the past, zoning changes in the area have only served to increase the RM-MD area. DCLU is currently reviewing two requests to expand the zone. In 1980, the zone was expanded north-northwest to include the Union Oil property. Further, the 1975 RM-MD zoning classification was created after the 1966 CMT classification, to facilitate in-city working and living development.

6. Essentially proposed is retention of a 62-unit structure at low to moderate income levels in exchange for a commercial building of some 320,000 sq. ft. Approval of the request would establish a negative precedent. One witness, an area developer, gave his opinion that other developers might attempt to follow suit. Such potential impact was also noted in the DEIS. Several vicinity blocks have development patterns similar to that existing in the Selig block. The examiner is not persuaded that the ratio of housing to commercial development suggested by the proposal is consistent with the Comprehensive Plan focus. Carried to its logical conclusion, the precedent could lead to an inordinate number of commercial buildings, dwarfing in size and comparative number the residential units retained or provided. In order to reach this conclusion, it is not required that potential developers be identified by name or proposal.

7. In view of the foregoing, rejection of the proposal is not paramount to rejecting the Devonshire or any other type of Regrade housing. Further, the record is not persuasive that construction of the proposed commercial building is necessary for retention of the Devonshire.

8. In addition, approval of the rezone application would be premature, as it would permit reclassification of a single parcel, although with several generous conditions, at the expense of a well considered, areawide plan, which would inure to the equal benefit--or detriment--of other property owners in the zone.

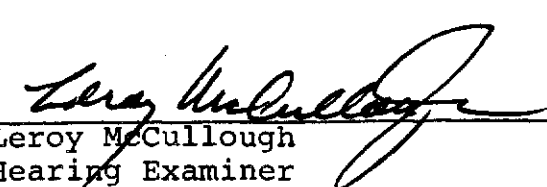
9. As to changed circumstances, the Denny Regrade area has experienced a decline in population and in available low-moderate income housing, such that the Devonshire agreement-rezone has more than a slight appeal. However, at the time the Devonshire agreement was reached, Seattle residents were without the protection of Just Cause Eviction or Housing Demolition provisions. The Devonshire Agreement contains both elements. Since the 1975 RM-MD zoning, the only new commercial uses in the immediate vicinity of the site resulted from a moratorium allowing development under previous standards. Housing renovation has occurred. The circumstances do not support a reclassification to develop an exclusively commercial building.

10. Should the Council nevertheless approve the petition, it is recommended that the project be subject to complete Department of Community Development design review; that the responsibility of that review not be abdicated solely to Devonshire tenants or other signatories.

Recommendation

That the rezone petition be denied without prejudice to proponent's right to petition if and when the downtown component of the Comprehensive Plan is favorably amended. If the petition is granted, it should be conditioned on Department of Community Development design review.

Entered this 25th day of March, 1983.


Leroy McCullough
Hearing Examiner

NOTICE OF RIGHT TO PETITION
FOR FURTHER CONSIDERATION

Pursuant to Section 23.80.10.E, Seattle Municipal Code, any person substantially affected by or interested in this recommendation may submit a petition in writing to the City Council requesting further consideration. The petition must be filed with the Council within fourteen days of the date of this recommendation and should be addressed to the City Council, Land Use Committee, Municipal Building, Seattle, Washington, 98104.

The petition should clearly identify specific objections to this recommendation and the relief sought; however, the petitioner should not include any additional evidence or exhibits as the Council's consideration will be based upon the record of the Hearing Examiner's hearing. If the Council determines that a factual error exists in the record or that important information is missing, the Council may have the record supplemented pursuant to Section 23.80.10.E.3 or 23.80.10.E.4. At its public meeting the Council may allow oral or written arguments based on the record.