

FINDINGS AND RECOMMENDATION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Petition of

R. PATRICK MCGREEVY, agent for
PATRICIA ISAKSEN, et al.

APPLICATION NO. 8401470
(CC-83-016)
C.F. NO. 292803

to move the Seattle Construction Limit
Line and to amend the Official Zoning
Map pursuant to the provisions of the
Seattle Municipal Code (Ordinance
86300, as amended)

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 August 20, 1984. Petitioners were represented by R. Patrick McGreevy, attorney at law, and the DCLU Director by Jim Barnes. Phil M. Davis and others testified in opposition to the petition.

After due consideration of the evidence of record, the following shall constitute the findings of fact, conclusions and recommendation of the Hearing Examiner on this petition.

Findings of Fact

1. At issue are two contiguous parcels located between the Interstate 5 Freeway Bridge and the University Bridge. The latter connects with Eastlake Avenue E. Access to Parcels I and II is from then under the University Bridge. Parcels I and II are near a bend which separates Lake Union, west of I-5 Bridge; from Portage Bay, east of the I-5 and University Bridges. The file of record contains a legal description which, subject to the condition of this recommendation, is incorporated herein by reference. See DCLU map attached hereto.

2. Parcel I begins landward (south) of the Combined U.S. Bulkhead and Pierhead Line, which Line is coextensive with the Seattle Construction Limit Line (CLL), and extends to the landward limit of the Shoreline District, i.e., roughly to the north side of Fuhrman Avenue East. The Construction Limit Line was established as a boundary for Lake Union, Portage Bay structures.

3. Parcel I contains approximately 48,000 sq. ft.; roughly 8,000 sq. ft. of this area is submerged. Parcel I is zoned General Commercial (CG). Its shoreline environment designation is Urban Residential (UR). This petition proposes to leave the zoning as CG but change the shoreline classification to Urban Stable (US). The US environmental classification would allow office, restaurant, and certain retail uses. Residential use would be permitted as a conditional use. The UR environment

allows residential development and open wet moorage. The Comprehensive Plan designates this "south shore" area as appropriate for commercial use.

4. Parcel I's development pattern is principally shown by an illustration of record dated April 27, 1984. Lot 10, the westernmost lot, is vacant. A pier for existing boat moorage does extend from Lot 10 to a point some 35 ft. beyond the existing Construction Limit Line. (For purposes of identifying the dock photographs of record, DCLU denotes this westernmost dock as A and the most easterly as dock E.)

5. Proceeding easterly, Lots 9 and 8 are developed with an apartment building. One of its two docks extends to the present Construction Limit Line; the more westerly dock extends beyond the present CLL. Lot 7 has a house built over water on pilings. A houseboat is immediately north. Approximately 39 ft. of the houseboat lies beyond the CLL.

6. The Lot 6 house is set farther landward, but it also has a dock extension beyond the CLL.

7. Lot 5 is the most easterly of the Parcel I lots. The April 27, 1984, illustration shows a house with a deck and a dock that extends beyond the CLL. City permit records, however, show a duplex and boat repair shop on Lot 5.

8. The remainder of Parcel I lies principally between the above described development and Fuhrman Avenue and is in use for garage and surface parking (paved) use.

9. The South Passage Point public park is west adjacent to Parcel I and extends under the I-5 bridge. There is a steep grade from the park area up to Fuhrman Avenue.

10. Properties south of Fuhrman and along both sides of Eastlake Avenue are zoned CG and developed with a mixture of residential and commercial uses. Some manufacturing (M) and multi-family residential zones are also south of Fuhrman. A large houseboat community is east of the University Bridge.

11. Parcel II extends waterward (north) of Parcel I and lies between an area formed by the present Construction Limit Line and the proposed new location for the Construction Limit Line. Parcel II is an irregularly shaped, totally submerged parcel that at its most westerly point extends some 55 ft. north of the present Construction Limit Line. This north distance decreases as the area continues to its most easterly point where it only extends 20 ft. from the Construction Limit Line. The DCLU report notes that part of the water area beneath the University Bridge is also included.

12. All property waterward of the Lake Union-Portage Bay Seattle Construction Limit Line, including Parcel II, is designated Single Family (SF) 9600 since it is property not specifically included within a Land Use Map official zone. Reference Section 23.30.30. Petitioners propose to alter this zoning classification to CG. Commercial moorages, offices and boat building, sales and repair are generally permitted in the CG zone. The SF 9600 principally permits single family residential, including floating home, development.

13. Parcel II's shoreline designation is Conservancy Natural (CN). The CN environment is designed to essentially preserve the natural systems and resources. Ecological observation is an illustrative type of activity permitted within the CN environment. Petitioners propose reclassifying Parcel II to the Conservancy Management (CM) environment. The CM areas are designed to protect areas for environmentally related, usually public purposes such as marinas, open wet moorage, and public recreational facilities.

14. Parcel II's present development includes the piers extending beyond Parcel I; moorage; and the existing houseboat that is immediately north of the Lot 7 house. Aerial photographs show Parcel II development beyond the CLL as early as 1936. The DCLU report gives Parcel II area at 35,000 sq. ft. However, the DCLU analyst, petitioners' counsel and others agree that the area is substantially less.

15. A designated navigation channel lies some 50-95 ft. north of the proposed Parcel II Construction Limit Line. This channel goes to the Montlake cut. From 250 ft. in width the channel narrows as it heads east, such that north of the subject property the channel is 200 ft. wide.

16. The channel funnels the water traffic, and is thus directly involved in the amplified waves (swells) that reportedly can move and destabilize area docks. One reason for the petition is that property owners can make no development improvements, breakers included, without a zoning change.

17. Shoreline properties north of the channel are principally zoned Manufacturing with a shoreline designation of Urban Stable. Waterway 14, roughly midway between the University Bridge and the I-5 Bridge, is classified as Conservancy Management. North-shore development includes cold storage, marina sales and covered moorage.

18. No specific development is proposed as part of this petition. Change in Parcel I's shoreline classification from Urban Residential to Urban Stable is expected to facilitate permitted office, retail and similar uses of the relatively undeveloped (upland) portion. Parcel II's change from Conservancy Natural to Conservancy Management would permit future modifications to existing piers/docks and to the houseboat. Environmental checklist annotation, p.5. According to the DCLU annotation, "individual developments would be reviewed with respect to specific impacts at time of application." Checklist p.7.

19. With regard to the action proposed in this application, a declaration of non-significance (DNS) has been prepared by the responsible official pursuant to the State Environmental Policy Act of 1971 (SEPA) and Ordinance 105735, as amended, Chapter 25.04, Seattle Municipal Code, and is part of the record.

20. A corrected property description is a key element of DCLU's recommended approval, as follows:

A new site plan/plat map, prepared by a surveyor registered in the State of Washington, shall be submitted which shows all property lines, the Combined US Bulkhead and Pierhead Line, the adjacent street and bridge right-of-ways, the designated navigation channel between the I-5 Freeway and University Bridges, all existing improvements with dimensions, and the proposed new location of the Seattle Construction Limit Line. The relocated Seattle Construction Limit Line shall not extend beyond the existing piers and houseboat moorage and in no event closer at any point than 50 ft. from the designated navigation channel. If necessary, a new legal description must be provided prior to adoption by the City Council of any amendments.

21. The State Department of Natural Resources (DNR) recommends that the Construction Limit Line be extended as petitioners request and as conditioned by DCLU since (a) the uses within Parcel II are of long-standing; (b) the extension would legitimize the uses; and (c) the extension would permit the uses to be properly under state lease. The existing houseboat that is beyond the present Construction Limit Line would be subject to a lease agreement upon expiration of its existing 15 year lease, No. 11112 (1977).

Conclusions

1. Local governments may amend Shoreline Master Program regulations, such as environmental designations, pursuant to Chapter 90.58, RCW. State Department of Ecology approval is specifically required for changes to shoreline environment classifications. RCW 90.58.190.

2. Seattle Municipal Code Section 24.60.365 provides that Seattle's Shoreline Master Program regulations may be amended "in the same manner as for map amendments in Chapter 24.72..." The procedures of Chapter 24.72 have been supplanted by provisions of the recently adopted Land Use Code, Title 23. Therefore, the Official Land Use Map adopted by Chapter 23.32, and its Seattle Shoreline (overlay) classifications, may now be amended pursuant to Chapter 23.34, Seattle Municipal Code.

3. Seattle Municipal Code Section 23.34.02(C) requires that the DCLU Director respond to a petition to amend the Official Land Use Map by issuing a report and recommendation. The report is to:

... contain an analysis of how the proposed map amendment would carry out the goals and objectives of Seattle's Land Use Policies, the Land Use Code, and other official policies and objectives of the City...

Pursuant to advice from the City Attorney, DCLU considers that changes to the Construction Limit Line may be processed as amendments to the Ordinance/map which established the Seattle Construction Limit Line.

4. The Examiner concludes that the petition should be conditionally approved. The existing Construction Limit Line was established as an outer limit of structures or buildings. As a practical matter, the proposed Parcel II area has been developed with piers, pilings and support structures from at least 1936. As noted by the State Department of Natural Resources witness, the existing uses waterward of the present Construction Limit Line are well-dated; and removal of the uses would be of no particular public benefit, while legitimization of these uses, such as by inclusion within a Construction Limit Line, would facilitate appropriate State lease coverage. The public access to and use of the water would be enhanced by the ability to improve existing uses, and the proposal is therefore consistent with key objectives of the Shoreline Management Act and Master Program goals. Since no functional development change is proposed, no impact is expected on the natural systems or navigation channel, particularly if approval would be contingent on a setback condition included within this recommendation.

5. Further, the underlying zoning of Parcel II should be changed from Single Family 9600, to CG and the environmental classification from Conservancy Natural to Conservancy Management. The SF classification is designed to encourage single family development on relatively large tracts. The DCLU report notes that "the (Parcel II) area is unsuitable for single family development, which is prohibited over water." General Commercial

zoning would accommodate legitimate sales and repair of boats, commercial moorages and offices. Further, Parcel II reclassification to CG would be logical extension of the existing Parcel I (CG) zoning. Finally, the Comprehensive Plan Map designates the petition area as commercial. No negative precedent would be presented in this specific instance. Section 24.34.28.

6. The parcel II shoreline environment classification should also reflect actual, "historical" use. While all bodies of water can be stated to have some life forms, not all bodies are necessarily appropriate for the Conservancy Natural classification. Because the subject site is adjacent to a navigation channel, it is subject to marked impacts of nearby boat traffic, such as swells. While the purpose of the CN environment is to essentially preserve a natural state, proposed CM categorization is designed to protect areas for environmentally related but usually public purpose. Again, the thrust of the rezone criteria would be met by the proposed reclassification. Section 24.38.28.

7. Petitioners also wish to change the shoreline environment of Parcel I from Urban Residential-which permits residential development and open wet moorages - to Urban Stable, which allows specified office, retail and restaurant use. This portion of the request should also be approved, as limited herein.

8. Excepting the westernmost dock area, Parcel I's shoreline area is principally developed, with homes, piers etc. Therefore, the major impact of a reclassification should be on the slightly developed upland portion.

9. The proposed US classification would be more consistent with the present underlying General Commercial zoning classification and with the Comprehensive Plan designation. While the UR classification generally prohibits business and commercial uses, the US classification would allow specified commercial uses. Underlying CG zoning would also accommodate (non-retail) commercial and business activity. CG zoned uses are present along Eastlake Avenue. Parcel I's upland portion is topographically separated and distinct from the waterfront (principally residential) development. Projected parking and traffic issues resulting from commercial uses should be the subject of intense review by DCLU as various projects are proposed for this segment of Parcel I. Based on the evidence of record, the Examiner is not persuaded that commercial zoning and development is inappropriate for the upland portion of Parcel I. Therefore, the UR to US classification change should be approved.

10. The proposed reclassifications bear a sufficient relationship to the public welfare and to the City Official Policies and Objectives. For example, Seattle Shoreline Goals and Policies goals include one of compatibility and concentration of uses within a segment of the shoreline area. The petition would allow existing uses to continue and similar uses to be developed.

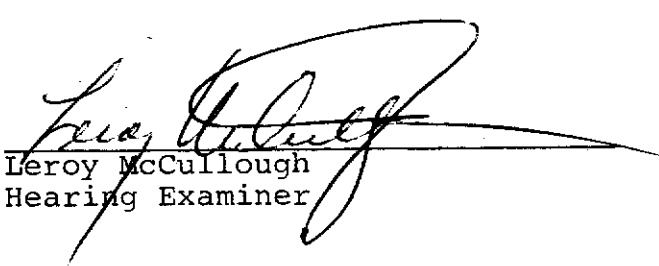
Recommendation

For each of the above reasons, the Hearing Examiner's recommendation to the City Council is as follows:

That the petition be granted on the condition that:

A new site plan/plat map, prepared for a surveyor registered in the State of Washington, shall be submitted which shows all property lines, the combined US Bulkhead and Pierhead Lines, the adjacent street and bridge right-of-ways, the designated navigation channel between the I-5 Freeway and University Bridges, all existing improvements with dimensions, and the proposed new location of the Seattle Construction Limit Line. The relocated Seattle Construction Limit Line shall not extend beyond the existing piers and houseboat moorage and in no event closer at any point than 50 ft. from the designated navigation channel. If necessary, a new legal description must be provided prior to adoption by the City Council of any amendments. The requirement for a new legal description and approval of same should be approved by DCLU in conjunction with the Office of the City Attorney.

Entered this 4th day of September, 1984.


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 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.