

FINDINGS AND RECOMMENDATION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Petition of

THE CITY OF SEATTLE

for an amendment to the Official
Zoning Map pursuant to Title 23,
Seattle Municipal Code (Ordinance
86300, as amended)

APPLICATION NO. 8607297
C.F. NO. 295595

Introduction

The City of Seattle, by its Department of Construction and Land Use, requests reclassification of certain property described herein from Greenbelt/Single Family 9600 to Single Family 5000.

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 13, 1987. Mary Green, an owner of two of the four subject lots, appeared pro se. Roger Leed, attorney-at-law, appeared on behalf of rezone opponents Dr. Harvey Muggli, Dr. and Ms. Patten and others. The DCLU Director was represented by John Doan.

For purposes of this recommendation, all section numbers refer to the Seattle Municipal Code, Title 23, as amended (Ordinance 86300, as amended) unless otherwise indicated.

After due consideration of the evidence presented, including the Director's report and file, and subsequent to a visit to the site and environs by the Hearing Examiner on October 16, 1987, the following shall constitute the findings of fact, conclusions and recommendation of the Hearing Examiner on this petition.

Findings of Fact

1. This recommendation concerns a City - sponsored petition to

reclassify lots 12, 13, 14 and 15, Block 2, Shaffer and Moncrieff's Olympic View Addition from Greenbelt/Single Family 9600 (GB/SF 9600) to Single Family 5000 (SF 5000).

2. The proposal's street address is 1111 W. Blaine Street in the city of Seattle.

3. Historically, the site was zoned from RD 5000 to Single Family 5000 in 1982. Under RD 5000 zoning, single family and duplex development were allowed.

4. In 1984, the Greenbelt Ordinance (#111568) reclassified the subject four lots to Single Family 9600 and included them in the Southwest Queen Anne Greenbelt. The DCLU representative suggested to the Hearing Examiner that in general, greenbelt designated parcels that were undeveloped were assigned the City's least intensive, i.e. SF 9600, zoning classification. (With the exception of new provisions governing development on steep slopes, there have been no particular changes in zoning, vegetation or other circumstances on the subject lots since 1984.)

5. June 9, 1986, King County Superior Court Judge Shannon Wetherall ruled that "Sections 23.70.40 and 23.70.50 of Seattle Ordinance 111568" were "invalid, null and void." Cause No. 84-2-05979-6. The matter had come before the bench via challenge by the Greens, owners of subject lots 12 and 13, and by other property owners to the validity of the City's Greenbelt Ordinance. As described by Judge Wetherall, Section 23.70.40 sets

strict standards for retaining the property in its natural state with narrow exceptions e.g. selective cutting and pruning to enhance remaining vegetation. The Wetherall opinion describes Section 23.70.50 as requiring, prior to any development, that 50 percent of a greenbelt designated lot be designated and recorded as a greenbelt preserve with "strict location and contiguity criteria." (Exhibit 6, pp. 6-7).

6. In Judge Wetherall's view, subject lots 12 and 13 were included within the greenbelt ordinance although the lots fulfilled none of the ordinance purposes. Judge Wetherall found lots 12 and 13 to be without trees, not steep, and of no service as a buffer between incompatible zones. The Wetherall opinion is currently on appeal.

7. By letter dated November 7, 1986, City Councilmember Williams requested that DCLU commence the necessary work to review the rezone of certain property "located in the Southwest Queen Anne Greenbelt at 1111 West Blaine..." from Greenbelt/SF 9600 to Single Family 5000. Exhibit 1. The subject parcels were lots 12 & 13 of the Block and Addition described in Finding 1 above. From the ensuing site visit, DCLU determined that south adjacent lots 14 and 15 were similar in topography, geometry and (lack of) vegetation. The present petition therefore includes lots 12-15. The DCLU staff did not visit the west edge of the site, but viewed it from the (easterly) top bank.

8. In March 1987, the Mayor's Office for Long Range Planning issued a recommendation that the subject property be deleted from the Greenbelt. The witness from the Executive Department explained that the subject land was essentially without trees and did not meet greenbelt criteria. In Ms. Sugimara's view, the functional tree growth is two blocks west. The Mayor's recommendation is expected to be considered by the Council's Parks and Public Grounds Committee in 1988. (See Recommended Open Space Zoning Map, Exhibit 7).

9. The Greens, owners of lots 12 and 13, strongly favor the petition. The Pattens, owners of lot 14, oppose the petition. They also own lot 14's east adjacent lot addressed as 1621 - 11th Avenue W. The Pattens purchased the land from a Murdock Carroll in March or April 1987. The Pattens object to any effort to remove the greenbelt designation because in their opinion, the land is unstable and subject to slides; raccoons and other wildlife still inhabit and frequent the back yard (greenbelt) and adjacent areas; the approximately 18 trees on lot 15 and those on lot 14 provide a visual buffer; rezoning will raise their taxes; and rezoning foreshadows development that will have detrimental impacts on the vicinity.

10. By letter dated May 29, 1987 to DCLU, Andrew T. Reynolds voiced objection to the proposed rezoning of his lot 15. Reynold's concerns mirror those of the Patten's and other opponents:

...The lots in the proposed rezone previously had homes on them which slid off the hill in the mid-50's. They then had to be demolished, and the area now contains no residences. I see no reason to rezone the area in order to build on sites which have in the past proven to be unstable. Therefore, I object...

11. Dr. Muggli, owner of the lot east adjacent to the Green's lot 12, also opposes the rezone. In his opinion the Green property is, in fact, steep; has some trees; harbors wildlife; and provides a substantial buffer which discourages building on slide-prone property.

12. L. Zobrist owns the land east adjacent to subject lot 15 and also opposes the rezone. He has observed 30 ft. high trees on lots 14 and 15 as well as raccoons, birds and squirrels. He testified credibly that large trees mark the lot 14/15 boundary,

and that a noticeable tree growth begins 40 ft. west of lot 15 which continues through the remainder of the lot.

13. In the opinion of the Queen Anne Community Council Land Use Review Committee representative, lots 12-15 are within a slide scar. Since protection of slide areas is one of the greenbelt ordinance functions, Blair offered, the rezone should be denied. The witness further opined that significant vegetation growth is possible on those portions of lots 12-15 that are presently undervegetated. Much opposition to the rezone related to the perceived negative precedent that would be established by the rezone.

14. In fact, the line of heavy tree growth increases from the north in a southeasterly direction. Thus, there is primarily grass, brush, and other growth on the upland portion of lots 12 and 13. This upland portion of lots 12 and 13 serve as a rear yard-garden area for the Greens, whose home occupies lots 11 and 10. There is a sharp break at the western portion of lots 12 and 13 that drops to undeveloped 12th Avenue West which, along with the other westerly land, is heavily vegetated with trees and underbrush. From this vegetation line the greenbelt continues west generally to undeveloped 14th Avenue W. The upland portion of Lot 14 is also primarily presented as a slightly vegetated rear yard. Lot 15 appears from the evidence to have the most easterly growth of the four subject lots.

15. Recognizing the lots' slide potential, the DCLU Report states that the west half of the subject lots is within a designated environmentally sensitive area. However, it is stated at p. 17 of the environmental checklist that the "western three-quarters of the 4 lots is within the environmentally sensitive...designation." Some slope grades exceed 100 percent. The foundation of one house remains on lot 12 as evidence of past slide activity.

16. As topography makes development of 12th Avenue W. improbable the lots are without adjacent street access. Vehicle and utility easements would be required for any residential development of the subject lots. There is a makeshift roadway from W. Blaine that crosses lots 10 and 11 and curves to lot 13.

17. As noted above, the subject lots are all zoned GB/SF 9600. They form an eastern pocket of the Southwest Queen Anne Greenbelt. This "pocket" extends to the middle of the "block" between 11th and undeveloped 12th Avenues W. Thus, while the west adjacent land is also zoned GB/SF 9600, the north, south and east adjacent properties, also located between 11th and 12th Avenues W., are zoned SF 5000.

18. The adjacent parcels are developed with single family homes, consistent with the majority pattern. Some duplexes and multi-family structures complete the SF 5000 and the nearby Lowrise 1 (L-1) vicinity.

19. The Southwest Queen Anne Greenbelt consists of some 25.6 acres. Some 8.01 of this acreage is in platted streets, 5.88 acres in public ownership, and 11.7 acres in private ownership.

20. DCLU estimates the Greenbelt's present width (east to west) as between 400-600 ft. Each of the subject lots add an additional east-west dimension of 105 ft. Each lot has a north-south dimension of 45 ft. and an area of 4725 sq. ft.

21. It is undisputed that the Greenbelt generally forms a visible functioning buffer between the heavy arterial and industrial Interbay area below and the Queen Anne Hill residential areas above.

22. No development proposal is before the Hearing Examiner by this rezone request. It is clear, however, that excision of the lots from the GB/9600 overlay would remove major building constrictions from the subject sites and could thus be read to facilitate development of those sites.

23. Should such development be proposed, access and utility easements could be necessary. Among other items, a geotechnical study would be required in advance of any permit approval. The Water Department has advised DCLU that prior to development a 300 ft. 8 in. watermain would be required. In addition to addressing access and utility (easement) issues, development would also face the regulations of Director's Rule 2-87 (superseding DR 7-84), the City's Grading and Drainage Ordinance, and those regulations regarding Environmentally Sensitive Overlays, Chapters 23.62, and 25.05, Seattle Municipal Code. Although development of one single family home would be exempt from SEPA review (Chapter 25.05, Seattle Municipal Code), the Building Code and Grading and Drainage Ordinance provisions would apply and a soils study would be required prior to single-unit construction.

24. The Greenbelt designation of the property does not prohibit development. It would generally limit development such that 40 percent of the lot would be "preserved" in its natural state. Without greenbelt designation, the building footprint could approximate 1750 sq. ft. With greenbelt designation the building footprint could approximate 1505-1610 sq. ft. The DCLU projection, that the greenbelt would be probably located west adjacent to the steeply sloped area, appears sound.

25. The developed streets in the vicinity are residential access streets. They are generally paved to a width of 25-35 ft.

26. No challenge was made to the DCLU determination that the proposed rezone would present no significant environmental impacts on the vicinity. The evidence of record supports the DNS.

27. The vicinity is subject to no specific neighborhood planning effort.

Conclusions

1. Much of the discussion before the Hearing Examiner involved the question of whether this "rezone" process is the appropriate procedure by which the requested deletion of the subject property from greenbelt status should be considered. While the Hearing Examiner recommends a specific City Attorney opinion on this subject prior to City Council final action on this matter, the following observations are made for this record. (The Hearing Examiner also recommends City Attorney advice as to the impact of the Wetherall Superior Court opinion on this petition.)

2. First, it is noted that Chapter 23.70 provides no direct guidance as to the proper procedure to remove property from greenbelt designation although Seattle Municipal Code Section 23.70.020 establishes "...pursuant to Chapter 23.56...the Greenbelt Overlay District as shown on the Official Land Use Map." Chapter 23.56 contains general provisions for overlay districts, but includes no reference to the revision of a greenbelt or other overlay district.

3. On the other hand, Seattle Municipal Code Section 23.32.010 establishes that overlay districts are a part of the Official Land Use Map of the City of Seattle, and Seattle Municipal Code Section 23.34.002 provides that

Procedures for amending the Official Land Use Map, including overlay districts...shall be as provided in Chapter 23.76, Procedures for Master Use Permits and Council Land Use Decisions.

4. Seattle Municipal Code Section 23.76.036(A)(2) states that the City Council shall make decisions on "Amendments to the Official Land Use Map...including changes in overlay districts..." The rezone or "Type IV" decision is to be preceded by an application by the "property owner...contract purchaser...(or) City agency...." Seattle Municipal Code Section 23.76.040(A). Following public notice DCLU is to issue a report to the Hearing

Examiner who shall then conduct a public hearing and issue a recommendation to the City Council. (See generally Seattle Municipal Code Sections 23.76.036 - 23.76.056).

5. The foregoing scheme strongly suggests that the "rezone" process is appropriate in this case. Greenbelt districts are clearly overlay districts within the Title 23 code definitions. Further, the greenbelt legislation states that

The procedures for designating the boundaries of a greenbelt preserve shall be as provided in Chapter 23.76...(emphasis supplied).

Seattle Municipal Code 23.70.050(C). It is reasonable to consider the request at issue as one to redraw or "redesignate" the greenbelt boundary.

6. It is noted that Chapter 23.66, "Special Review Districts," provides that

A petition to establish, alter or abolish a special review district shall be filed and considered in the same manner as amendments to the Official land Use Map, Chapter 23.32....

The greenbelt legislation can and should be amended to similarly clarify its reclassification process.

7. The general rezone criteria are enumerated at Seattle Municipal Code Section 23.34.008. The Section requires as a general proposition that "In evaluating a request for a zoning change..." eight specific factors be considered. The first of those factors, Seattle Municipal Code Section 23.24.008(A), is the "Match Between Established Locational Criteria and Area Characteristics." The most preferred application of this criterion requires examination of the characteristics of the subject lots against the backdrop of locational criteria for the greenbelt designation.

8. Identified "locational criteria" are presented in Title 23 for several zones such as the Single Family, Lowrise, Institution, Neighborhood Commercial and Commercial zones and as well for the Pedestrian Overlay Districts. Title 23 contains no "locational criteria" for greenbelts. Therefore, in order to apply the rezone criterion to the present case, a locational criteria equivalent must be identified. In this context, it is appropriate to consider the Urban Greenbelt Principles and Standards from the Urban Greenbelt Plan of 1977, together with the "purpose and intent" of Chapter 23.70, Seattle Municipal Code, the "Greenbelt Overlay District" Chapter of Title 23.

9. Seattle Municipal Code Section 23.70.010 provides that

The purpose of this chapter is to implement the Urban Greenbelt Plan, Resolution 25670, by regulating development of Seattle's urban greenbelts in order to:

1. Provide or encourage permanent buffers between incompatible land uses...

This subsection corresponds generally to subsections (1)(a) and (c) of the Urban Greenbelt Principles.

10. It is clear that the 600 ft. wide Southwest Queen Anne Greenbelt serves to buffer the Interbay arterials and industrial areas from the Queen Anne residential area above. It is also clear that the eastern portion of lots 12, 13 and 14, segmented, provide no greenbelt buffering effect because of topography that is generally level and because of low vegetation growth.

11. Although the record is less clear respecting lot 15, the Hearing Examiner is persuaded that lot 15's vegetation pattern is markedly more consistent with the buffering portion of the ordi-

nance.

12. The second stated purpose of Seattle Municipal Code Section 23.70.010(A)(2) is to:

Limit developemnt of environmentally sensitive areas or areas unsuitable for building because of earthslide hazard, flood hazard or drainage problems.

This provision corresponds generally with Urban Greenbelt Principle (1) which adds that areas facing "impracticability of service by public utilities...should be included...providing such areas otherwise fit the suggested greenbelt criteria." The Hearing Examiner declines to substitute the preservation of trees, as opposed to limiting development in unsuitable areas, as a paramount purpose of the ordinance.

13. Between 50-75 percent of the subject lots are designated as environmentally sensitive. Their slide histories and potential are undisputed. A monument to the land instability is the foundation of a former house that now rests on lot 12. Those factors lead the Hearing Examiner to conclude that the four lots in their entirety should, by this criterion, remain within the greenbelt. While greenbelt designation does not prohibit development per se, the designation does

"limit the development of environmentally sensitive areas...or areas unsuitable for building because of earth slide hazard..."

The term "areas" should not be read to mean specific segments of a lot or lots absent legislative clarity to that effect.

14. Greenbelt designation probably limits a single lot development footprint to an area between 1505 and 1610 sq. ft., but would not prohibit development of the four lots since a larger, 1750 sq. ft. footprint could be established without greenbelt designation. The greenbelt therefore serves in some way to

"maintain (a) belt(s) of natural landscape...within Seattle while permitting reasonable development of property within greenbelt areas..."

Seattle Municipal Code Section 23.70.010(A)(3). It is also noted that raccoons, squirrels, birds and other wildlife inhabit the thickly vegetated (westerly) portion of the greenbelt and that some of the animals venture to the eastern (upland) portion of the lots and beyond.

15. The subject Greenbelt is near local access streets, consistent with Urban Greenbelt Principle (2) and is otherwise not inconsistent with the open space and other Urban Greenbelt Principles.

16. Although no "locational criteria" exist for SF 5000 as opposed to SF 9600 zones, the SF 5000 classification would be consistent with the great bulk of the adjacent and other vicinity zoning and development. Thus, absent greenbelt designation and restrictions, it would be appropriate to reclassify the lots as SF 5000.

17. In sum, at least 1/2 of "the area to be rezoned" is steep and/or environmentally sensitive. Trees and other thick vegetative growth generally mark this western portion of this area. The characteristics of the "area to be rezoned" therefore do "closely fit" the equivalent of greenbelt locational criteria. Area characteristics indicate that SF 5000 zoning is more appropriate than the present SF 9600 zoning.

18. The second of the Seattle Municipal Code 23.34.008 general rezone criteria calls for an examination of zoning

history and precedential effect. The zoning history militates against the rezone. The subject lots were rezoned from multi to single family use in 1982. The property was restricted even further in 1984 when it was designated SF 9600 as part of the Southwest Queen Anne Greenbelt. There is insufficient evidence of record from which the Hearing Examiner can deduce that the topography-vegetation pattern substantially differs from the 1984 pattern. On the other hand, the reclassification would not establish a negative precedent for erosion of the remaining greenbelt. The DCLU analysis is correct that the greenbelt properties west of the subject site are below, heavily wooded and steeply sloped. These west properties therefore are strikingly and precedentially dissimilar to the relatively level and sparsely vegetated eastern portions of the subject property. Seattle Municipal Code Section 23.34.008(B).

19. An examination of "zoning principles relating to compatible land use pattern, size, configuration and boundaries" appears to suggest removal of the property from greenbelt designation. Seattle Municipal Code 23.34.008(C). Such action would leave a relatively straight eastern greenbelt boundary, and the present eastern jog would be eliminated. On the other hand, the western portion of the subject lots have slope and vegetation characteristics consistent with greenbelt designation. On balance, the Hearing Examiner considers it more appropriate that boundary lines in particular follow lot characteristics, and not grid patterns. There is ample support, however, for the proposition that SF 5000 zoning of the subject property would be consistent with established zoning principles.

20. The Hearing Examiner is persuaded that the probability of development will be considerably enhanced by approval of the rezone and some clearing, erosion and excavation would be necessary. Increased human and vehicular activity would also follow. Assuming the application of building and engineering safeguards, the potential impacts on parking, public services, noise, air and water quality would not be significant. It is far preferable, however, to consider more specific impacts in the context of specific development proposals. Seattle Municipal Code Section 23.34.008(D). In this connection approval of the proposed rezone would allow SF 5000 development on each of the four lots that would be subject to grading, drainage, utility-vehicular access and other determinations and approvals. The footprints would be 140-245 sq. ft. larger than the footprints of a building within the greenbelt overlay because of the latter's requirement of a contiguous, dimensioned tree preserve. Should such development occur on either of the subject lots, the building height could not exceed 35 ft. Therefore, the view impacts in particular would not be substantial.

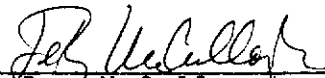
21. No neighborhood planning efforts apply to the subject property, Seattle Municipal Code Section 23.34.008(E), and no development, demographic or similar changes have been asserted as "part of the justification for the rezone." Seattle Municipal Code Section 23.34.008(F). The purpose and boundaries of the overlay district, i.e. the greenbelt, have been considered above. Seattle Municipal Code Sections 23.34.008(G)(H).

22. It appears from the foregoing that insufficient facts have been submitted to justify deletion of the four lots in their entirety from the Southwest Queen Anne Greenbelt. However, the Council could elect to delete the eastern, upland portions of lots 12-14 from the greenbelt, and the same would be supported by the evidence of record. If that decision is made, survey specifics should precede the City Attorney's legal description of the area to be reclassified. Since the petition before the Hearing Examiner is for the reclassification of the four lots in their entirety, the Hearing Examiner does not recommend that the rezone be approved.

Recommendation

As presented, the Hearing Examiner recommends that the petition be Denied.

Entered this 28th day of October 1987.


LeRoy McCullough
Hearing Examiner

NOTICE OF RIGHT TO PETITION
FOR FURTHER CONSIDERATION

Pursuant to Seattle Municipal Code Section 23.76.054, as amended, any person substantially 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 fifteen days after the date of mailing the recommendation of the Hearing Examiner and addressed to: City Council, Urban Redevelopment Committee, Municipal Building, Seattle, Washington 98104. The request for further reconsideration shall clearly identify specific objections to the Hearing Examiner's recommendation, facts missing from the record, and the relief sought.

Pursuant to Seattle Municipal Code Section 23.76.054(D), if there is no request for further consideration Council action shall be based on the record established by the Hearing Examiner.

The City Council Urban Redevelopment Committee should be consulted for further information on the Council review process.