

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

In the Matter of the Petition of

MARGARET LUNDBERG

FILE NO. F-85-001

for review of a moorage fee increase

Introduction

Margaret Lundberg petitioned for review by the Hearing Examiner of the moorage fee increase demanded by Dox Cooperative Moorage Association (Dox) pursuant to Section 7, Ordinance 111526. After the parties provided the notices and exchanged information and offers required by the ordinance, the matter was heard by the Hearing Examiner on June 28, 1985, and the record was kept open for additional evidence.

At the hearing, Margaret Lundberg appeared pro se. Dox was represented by James Carlsen, past president.

Having considered the entire record including documents filed prior to hearing and evidence adduced at and after the hearing, the Hearing Examiner enters the following findings of fact, conclusions and decision.

Findings of Fact

1. Margaret and Lennert Lundberg lease "stall 2" of the floating home dock at 2219 Fairview Avenue East from Dox.
2. Dox notified Lundbergs of an increase in the monthly rental amount from \$300.92 to \$357.57 effective July 1, 1985.
3. The Lundberg floating home occupies a slip next to the bulkhead and street with a narrow waterway and views available only from the upper deck of the house.
4. Dox is organized as a cooperative. The members are responsible for equal contributions of approximately \$39,000 though the slips have different values depending upon their locations.
5. In 1982, the thirty-one slip moorage was purchased for \$1,200,000. The down payment was \$250,000, a balloon payment of \$50,000 was due in two years and the remainder was financed by a twenty year, 13.5 percent loan, apparently secured by a mortgage. Dox's investment in the property as of July 1, 1985, was \$332,683.
6. Dox owns 29,250 sq. ft. of land and leases 27,000 sq.ft. from the Department of Natural Resources.
7. The CPI-U for the Seattle-Everett area was 2.9 percent for 1982, 3.2 percent for 1983, 3.6 percent for 1984 and 3.5 percent for 1985 to July 1. Over the three years, 1982 to 1985, the CPI-U has increased approximately 10 percent.
8. In 1982, the rental amount was adjusted through arbitration from \$150 to \$290 per month, effective July 1, 1982. That increase was based on the increase in the fair rental value of the property. The \$290 rent was increased \$5.67 per month to reflect increased operating costs effective February 1, 1984. The next adjustment was a \$.59 addition per month effective May 1, 1984. Effective May 1, 1985, the rental payment was increased \$4.67 to adjust for increased operating costs. The adjustments for actual operating costs are permitted by lease provisions, not the ordinance.

9. The demanded rental fee is a 23.3 percent increase over the \$290 rental in 1982.

10. Maintenance costs paid by members of the cooperative are graduated according to the location of the member's slip on the dock: 2.9 percent for inside moorages, 3.7 percent for the middle, 4.1 percent for the next three slips and 4.5 percent for the three outside slips.

11. Dox' current actual cash outlay, expenses, fees and mortgage payments, per houseboat, averages \$400 per month. Prorated according to the Dox formula, based on location, the outlay for an inside moorage would be \$395.

12. The monthly mortgage payment is \$10,866.42. This payment would include interest of approximately \$9,757 in the July payment on a remaining principal balance of \$867,317.

13. The current actual monthly expenses then, excluding principal payments, according to figures provided by Dox on May 13, 1985, would be as follows:

Interest	\$ 9,757
Garbage, sewer, water	601
Taxes	170
Electricity	9
State Lease	223
Administration	23
Insurance	102
Accountant	78
Repairs and Maintenance	313
TOTAL	\$ 11,276

14. An equal division of the monthly expenses among the 31 slips would be \$364 per slip. Applying the factor for an inside slip to the expense figure (including interest) results in a monthly expense of \$327 for the Lundberg slip.

15. The expenses for the moorage used in 1982 in making rental adjustments were as follows:

Garbage, sewer, water	\$ 472
Taxes	167
Lights	11
State lease	191
TOTAL	\$ 841

16. The twenty year T-Bond rate in 1982, at the time of Dox' initial investment in the moorage was 12.5 percent.

17. At the time of hearing the interest rate at one financial institution on a twelve month, \$34,000 certificate of deposit was 7.5 percent.

18. The Lundbergs obtained an appraisal of their houseboat and the houseboat with membership in the moorage cooperative. The houseboat alone was appraised at \$104,000 and together with the membership, \$139,500.

19. The rents for inside moorage at comparable docks have increased an average of 23.3 percent since 1982. The current rents are as follows: 2035 Fairview Avenue East, \$186; 2037 Fairview Avenue East, \$186; 2727 Fairview Avenue East, \$201, 2321 Fairview Avenue East, \$ 234, 2339 Fairview Avenue East, \$258; 2331 Fairview Avenue East, \$258; 2239-2241 Fairview Avenue East, \$243; and 2201 Fairview Avenue East, \$336.

20. Dox reported no capital improvements since the last rent increase.

21. Dox reported no increase in services provided since the last rent increase.

22. Dox purchased the floating home moorage to gain security for its membership and did not intend to profit by the investment.

Conclusions

1. The Hearing Examiner has jurisdiction over the subject matter and the parties to this case pursuant to Ordinance 111526 (the ordinance).

2. The rent increase demanded is greater than the amount permitted by Section 8 of the ordinance.

3. Section 7D of the ordinance sets forth factors to be considered, among others, to determine whether the amount in excess of that permitted by Section 8 is "necessary to assure a fair and reasonable return to the moorage owner...." Those which have application to this case are: (1) increases or decreases since the last moorage fee increase in the expenses of operating and maintenance of a floating home moorage, and, (5) comparability with moorage fee charges for other floating home moorage sites in the City. Other relevant factors may also be considered.

4. The expenses of operating the moorage have been passed on in annual increases pursuant to the lease so need not be taken into account in the current increase request, except any increase since the May, 1985, adjustment. No increase since May was shown.

5. A comparison of the amount requested with that charged for inside slips at other moorages--\$357.57, compared to a high of \$336--would suggest that the rent is too high, where there is no showing of greater amenities or services. Such comparison can have little bearing on the ultimate conclusion in the case, however.

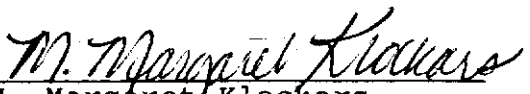
6. Here, when the expense figure supplied, to which there was no challenge, is divided in a manner favorable to the Lundbergs, \$327 is required just to cover the actual expenses without providing any return on Dox' investment. Using the most conservative of the interest rates (7.5 percent suggested by Lundbergs) and applying that to 90 percent (which is the relationship of 2.9%, used by Dox for expenses, to the average of 3.23% and produces a result similar to Lundberg's appraisal figure) of the average investment per slip, the amount to be added for a reasonable return on investment would be \$60. The rental fee necessary to provide a reasonable return on Dox' investment would be at least \$387.

7. If Dox were demanding more than the minimum necessary for a reasonable return, then the fact that comparable moorage sites are rented for less would allow the reduction of the amount demanded. But, while the rent requested appears to be unusually high compared to rates at other moorages, the ordinance requires the Hearing Examiner to find whether the increase is necessary to assure a fair and reasonable return. In this case there has been no showing that any of the expenses are not actual, legitimate expenses. There has been no showing that the investment was so imprudent that the purchasers should be entitled to no return, even though the membership's intent was to gain security, not to profit by its investment. The excess requested above the CPI factor allowed by Section 8 has been shown to be even less than would be necessary to assure a fair and reasonable return on Dox's investment. Therefore, the increase must be approved.

Decision

The requested rental increase is approved.

Entered this 9th day of August, 1985.


M. Margaret Klockars
Deputy Hearing Examiner

Notice of Right to Petition for Further Consideration

The decision of the Hearing Examiner in this case is the final administration determined by the City, and is not subject to re-consideration except to correct errors on the ground of fraud, mistake, or irregularity in vital matters. Any request for judicial review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within fourteen days of the date of this decision. Should such request be filed instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court. Instruction for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104.