

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Petition of)	
)	
LINDA SCHAEFFER, et al.)	
ELIZABETH SPRINGER, et al.)	
ROBERT LILLY, MARY SIPE)	
and ESTHER C. OLSON)	
Petitioners,)	
)	
vs.)	FILE NOS. F-80-001
)	F-80-002
LAKE SHORE MOORINGS, INC.)	F-80-003
Respondent.)	
)	

Introduction

Petitions for fact-finding were filed by Linda Schaeffer, et al., Elizabeth Springer, et al., and Robert Lilly, et al. pursuant to Section 7.20.050, Seattle Municipal Code (Ordinance 109280) alleging that floating home moorage fee increases requested by Lake Shore Moorings, Inc., were unreasonable. Voluntary resolution of the matter was attempted by the Disputes Resolution Board.

The petitions were consolidated for hearing which was held before the Hearing Examiner on September 22, 23, 24, 25 and 30, and October 9, 1981. Post hearing briefs were submitted.

Parties were represented as follows: Petitioners by Roger Leed and Michael Gillett, attorneys at law and Respondent by Richard Oettinger, attorney at law.

After due consideration of the evidence elicited during the public hearing, the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this petition.

Findings of Fact

1. September 10, 1980, Lake Shore Moorings, Inc., acquired the Tenas Chuck Moorage, 2331 and 2339 Fairview Avenue East from Dahl-Hendrickson, Inc. Thirty-two moorage sites are present. David Keyes is Lake Shore president and present shareholder.
2. The purchase agreement was for \$120,000 down payment and the remaining \$300,000 to be financed under contract at 16% interest. The total facility, including the parking lot, was acquired as part of the arrangement.
3. Since the purchase, Lake Shore Moorings has received no bill for management fees, although an accounting for time spent on management business has been received.
4. Management services have naturally been provided by individual shareholders as follows: bills, accounts, deposits, moorage rules, changes in occupancy, tenant disputes and corporate matters, past due, enforcement. Additionally, some bookkeeping is done by other individuals. In its first 1980-1981 budget, the corporation has assigned \$4,440 for management services.
5. Since its purchase the corporation has made few physical improvements to the moorage facility. Alterations have been made to address more immediate problems. Tar paper was placed by three shareholders on the 2339 deck (32 hours labor) but subsequently removed (6 hours labor) when it was determined that the dock could be cleaned, bleached and painted with a non-skid material.

Other items described as repair items included replacement of boards and the stabilizing of pilings. The most recent estimate provided following a diver's inspection of the sewer in October, 1980, was for approximately \$11,650. One budgeted amount of \$6,800 was increased to the \$10,000-\$15,000 estimate.

6. Concerning legal expenses, the Lake Shore Moorings first projected budget for 1980-81 was \$2,000. Keyes testified that this amount was charged and attributed to general counsel review and enforcement, excluding organizational expenses.

7. December 31, 1968, the incorporation of Tenas Chuck Inc., was concluded. Their services to the subject moorage began January 1, 1969, with the agreement of then moorage owner Dahl-Hendrickson, Inc. Witness Ted Halliday was vice-president and treasurer of Tenas Chuck, Inc. To 1979, Terry Pettis, Esther Olson and witness Halliday, as owners of Tenas Chuck, Inc., "ran" the dock by a regular maintenance schedule with some repairs as needed. Halliday testified that normal repair cost ranges from \$1,200-\$1,500 per year. In return, Olson received partial rate moorage. Additionally, intermittent payments were made to Pettis and Halliday of \$150-\$250 per month, although, Halliday testified, nothing was received by them the first year, and the \$250 ultimately received was to compensate for that first year.

8. In January, 1979, when the Tenas Chuck Moorage, Inc., management lease expired and following negotiations between Dahl Hendrickson and David Keyes, Keyes became on-site manager of the moorage, responsible for the collection and remittance of rents, the payments of bills, supervision of repairs, and for filling in for emergency situations. For these responsibilities Keyes negotiated and received \$370 per month or \$4,440 per year.

9. When Keyes became manager, Dahl Hendrickson provided Keyes a right of first refusal. Keyes considered the purchase and ultimately decided to pursue an option agreement to purchase received April 23, 1980, and exercised May 10, 1980, prior to the expiration date of June 16, 1980. The seller was willing to accept a cash transaction but not a real estate contract from a cooperative-prospective purchaser.

10. After the award of the option Keyes unsuccessfully attempted to organize Tenas Chuck Floating Homes into a cooperative to purchase the moorage. The decision was made, nevertheless, to pursue the purchase by consideration of a corporate entity. The seller was willing to accept a contract from the corporation for a cash downpayment and a 16% financed balance.

11. To take advantage of the opportunity each shareholder contributed \$26,400, a total of \$132,000, so that closing was effected September 9, 1980. The shareholders were tenants. From this point a 12 month budget was attempted, according to Keyes' testimony, by following a projected budget. This budget totaled annual cost, divided this figure by the 32 floating homes and the 12 months of the year, yielding a working figure of \$241 per month to be adjusted per category of moorage desirability. The remaining \$12,000 was projected for closing costs, organizational expenses, filing fees, on-hand capital, etc.

12. The initial Lake Shore Moorings 1980-1981 projected budget follows:

<u>CATEGORY</u>	<u>PAST EXPERIENCE</u>	<u>PROJECTED BUDGET</u>
<u>Operating expenses</u>		
water	\$1,058.76	\$1,091.00
sewer	2,253.86	2,321.00
garbage	1,419.45	1,462.00
electricity	276.06	300.00
Flood I	182.40	182.40
Flood II	182.40	182.40
management services	6,024.00	4,440.00

<u>CATEGORY</u>	<u>PAST EXPERIENCE</u>	<u>PROJECTED BUDGET</u>
<u>Supplies</u>		
postage	unknown	\$ 150.00
miscellaneous	unknown	100.00
regular maintenance	unknown	610.00
	<u>\$11,396.93</u>	<u>\$11,838.80</u>
<u>Mortgage Expense</u>		\$50,085.00
<u>Official Fees & Professional Expense</u>		
property tax	\$ 2,374.26	\$ 2,374.26
City B&O		293.36
street use permit	33.60	33.60
state leased land		2,050.00
bank		80.00
insurance		798.00
license		15.00
legal fees		2,000.00
accounting		700.00
		<u>\$8,352.22</u>
<u>Repairs</u>		\$10,000-15,000
<u>Return on Investment</u>		<u>\$15,840.00</u>
<u>TOTALS</u>	<u>\$95,116.02</u>	<u>\$100,116.02</u>

13. In the \$4,440 management entry, Lake Shore Moorings decided to exclude free moorage considerations and consider Keyes' compensation from the previous owner and as well, results of telephone calls to real estate companies. Concerning the return on investments Lake Shore Moorings used the rate of 12 percent since the "more secure" certificates of deposit paid 12 percent interest by way of comparison. The return was sought on the entire \$132,000. A respondent witness testified that, in view of the risk, the resultant \$15,840 would constitute a unreasonably low return on investments. This witness, a certified public accountant, also opined that appreciation in the value of the property should not be a factor in the return on the investment (ROI). This witness further viewed that due to government restrictions on both, low income housing was the most comparable item to houseboat moorages in the consideration of projected income and return. Petitioner's witness Moss testified that no cash ROI was proper for the first two years of Lake Shore Moorings operation if there was to be consistency with the real estate industry practices.

14. Based on their budget review, Lake Shore Moorings, on September 9, 1980, issued a letter to the tenants notifying them of moorage fee increases in the three classes as follows: from \$112 to \$231 per month protested in F-80-001; from \$122 to \$241 per month protested in F-80-002; from \$132 to \$251 per month protested in F-80-003; all to be effective October 1, 1980. The theretofore most recent moorage increases were effective on or about February 1, 1979.

15. A review of the most recent sale or exchange dates of Fairview Avenue East floating homes as compiled by witness Ezekiel shows one activity for 1958, 1959, three for 1964, one for 1968, three for 1972 (excluding sale of a lot), one for 1977, one for 1979, and two for 1980. Ezekiel first testified that based on King County assessment records the floating homes had experienced an increase of 8 percent in assessed value from 1979 to 1980.

16. Currently in Seattle there are approximately 440 moorage sites and the same number of floating homes. Floating homes without moorage spaces are essentially worthless.

17. An informal March, 1980, Lake Union poll taken by witness Yeannakis revealed through that witness that the 162 houseboats were assessed an average moorage fee of \$141. The survey did not include the Tenas Chuck, Inc., floating homes. The witness personally testified to paying \$155 per month pursuant to a written 10 year lease initially executed in September, 1971, by which the increased operating taxes and costs are passed directly to the tenant; further there is a renegotiation every three years based on an average fee in the Jeffery moorage. All 31 floating homes at the Jeffery moorage are on 10 year (long term) leases which are scheduled for termination in 1982, 1984 and 1992. Some fees were under protest at the time of the survey. In terms of another comparable, the Scarbrough moorage at 2420 Westlake offered average rates of \$152.60 per month for their 16 moorage spaces. Yeannakis also testified that to his knowledge the Jeffery moorage was purchased in 1971 with \$118,000 financed at 7 percent interest.

18. Lake Shore Moorings, Inc., recognized that the Tenas Chuck Moorage has repair needed. The pilings are in need of repair, there are visible openings in the pilings, some standing water and some deteriorating decking although the 2339 dock is in better repair than the 2331 dock, and one incident of deck abuse was attributed to houseboat owners' use of a chopping block on deck. The Jeffery moorage is in better physical condition than the Tenas Chuck Moorage.

19. Some entries to the Lake Shore Moorings budgets have been revised upwards since the initial budget.

Conclusions

1. The Hearing Examiner has jurisdiction of this matter pursuant to Chapter 7.20, Seattle Municipal Code (Ordinance 109280, as amended). That ordinance's purpose is to

...prevent the eviction of floating homes from floating home moorages through arbitrary actions or unreasonable rent increases. Section 7.20.010.

2. The definition of a reasonable fee in this case is stated in Section 7.20.060 wherein it is noted:

The Hearing Examiner shall conduct a public hearing for the purpose of making a factual determination as to whether a demanded moorage fee increase is reasonable in amount; that is, whether such moorage fee increase is necessary to assure a fair and reasonable return to the moorage owner. (Emphasis supplied)

Specific factors to be considered are delineated. Additionally, the Hearing Examiner shall consider "any other factors deemed relevant".

3. Seattle Floating home moorages are limited in number and are for the most part utilized. A floating home without a moorage is of little or no practical value.

4. Moorage owners are permitted to increase the moorage demanded without fact finding in an amount of

... (1) the floating homes owner's proportional share of increased property taxes, utility fees...or other permit fees incurred by the moorage owner which benefit the floating home owners and result in increased operating expenses; or (2) the CPI factor, whichever is greater.

5. This is a relevant factor in the question of reasonable moorage fee increases.

6. The history of Lake Shore Moorings' acquisition of the subject moorage has been generally acknowledged. Nevertheless, the expressed language of the ordinance dictates that a factor is

Increases or decreases since the last moorage fee increase in the expenses of operation and maintenance of the floating home moorage since the last fee increase.... Section 7.20.060A.

Further, as noted in respondents closing arguments, the hearing process should look at the overall picture and the broad results attained rather than attempting the impossible by placing an exact dollar figure for each cost.

7. The following are determined "reasonable and necessary expenses" for consideration per Section 7.20.060(A). While each floating home moorage will present unique, historical and other circumstances, the code language in its context is read to mean reasonable and necessary expenses for a (in the physical sense) floating home moorage as opposed to the moorage. Consequently, anomalies of organization, acquisition and the like are afforded limited consideration.

<u>CATEGORY</u>	<u>AMOUNT</u>
<u>Operating expenses</u>	
water	\$ 1,091.00
sewer	2,321.00
garbage	1,462.00
electricity	300.00
Flood I (per test)	188.00
Flood II (per test)	191.00
management services	4,440.00
supplies	150.00
miscellaneous	100.00
regular maintenance	610.00
	<u>\$10,853.00</u>
<u>Mortgage Expenses</u>	
(excluding amount paid as equity)	\$47,840.00
<u>Official Fee & Professional Expense</u>	
property tax (actual as opposed to good faith projection)	\$ 1,790.00
B&O tax	290.00
street use	34.00
state lease	2,058.00
bank	80.00
insurance	798.00
city license	15.00
legal (general)	2,000.00
accounting (general)	500.00
*repairs	1,100.00
**return on investments	15,840.00

* The ordinance suggests at Section 7.20.060, consideration of capital, i.e., long term improvements that have been made, projected moorage needs and wished for, would fall into a separate category. Thus, this entry represents expanded repair costs that were effectively capital improvements.

** Return on investments at a reasonable rate of 12 percent per evidence of record.

8. Reasonable cost of capital improvements and increases since the last moorage fee in necessary or desirable services per sections 7.20.060, B and C have been considered. The record reflects no "substantial deterioration" in facilities provided by the present moorage owner. Many of the conditions complained of e.g., the wiring, faulty dock, uncovered sewer pipe, were either in effect as of Lake Shore Mooring's acquisition of property or were contributed to by the tenants. Section 7.20.060D.

9. The one moorage comparable offered, the Jeffery moorage, is in admittedly better physical condition than the Tenas Chuck moorage. Further, an informal survey revealed to a witness an average monthly Lake Union moorage fee of \$141 excluding Tenas Chuck. Respondent offered no comparable. However, the petitioners' witness also testified to his belief that the Jeffery moorage was purchased in 1971 with a financing of \$118,000 at 7 percent interest and amortized over 10 years. This is markedly distinct from the financial picture of Lake Shore Moorings. Further, Jeffery moorage floating homes are on extensive 10 year leases with some dates established as early as 1972. The sole witness on comparables testified that another moorage, the Scarborough, had an average monthly moorage fee of \$152.60. Respondents proposed \$231, \$241 and \$251 per month, roughly \$124 of which could be argued as average interest expense per moorage sites.

10. Concerning the Consumer Price Index, petitioners have noted that from January-February, 1979, the date of the last moorage fee increase, to September 1980, the date of the proposed increase, there was a 27.8 percent increase in consumer price increase; Respondent assessed the increase as 24 percent. The \$112, \$122, and \$132 current rates adjusted per the 28 percent CPI yield additions of \$31.14, \$33.92, and \$33.70, respectively. Using the 24 percent CPI factor the additions would be \$26.88, \$29.28 and \$31.68, respectively. The CPI is one of several factors to be considered.

11. Concerning a reasonable return on leased land, the Lake Shore Moorings' budgeted amount for payment for leased land is \$2,068. Respondent projected no return for this item.

12. Application of the reasonable and necessary expenses and the Section 7.20.060 A and D factors provides a general annual expenditure of \$81,402. Division by the 12 months yields a general monthly figure of \$6,783 which, prorated among 32 moorage sites, would provide an average operating figure of \$212. The ordinance does not dictate the precise weight to be given these factors, however. In considering the entire record, including the limited number of moorages in Seattle, the singular consideration of the CPI, the automatic Section 7.20.050 adjustment to benefit the moorage owners, other moorage fees averages of \$141 or \$152.60 per month, although the moorages do present varying circumstances, and that the owners are entitled to a fair and reasonable return, the respondent is entitled to a monthly moorage fee for 1980-1981 not to exceed the following: F-80-003, \$212; F-80-002, \$202; F-80-001, \$192.

Decision

The owner is entitled to a monthly moorage fee not to exceed the following:

F-80-001, \$192; F-80-002, \$202; F-80-003, \$212.

Entered this 23rd day of November, 1981.

Leroy McCullough
Leroy McCullough
Hearing Examiner
Margaret Lockhart

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981). Should an appeal 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.

BEFORE THE HEARING EXAMINER

CITY OF SEATTLE

In the Matter of the Petition of)

LINDA SCHAEFFER, ET AL.,)
ELIZABETH SPRINGER, ET AL.,)
ROBERT LILLY, ET AL.)

FILES NO. F-80-001
F-80-002
F-80-003

ORDER ON MOTION FOR
RECONSIDERATION

A decision in the above-entitled petitions was issued by the Hearing Examiner on November 23, 1981.

Respondent Lake Shore Moorings, Inc. submitted a Motion to Alter or Amend Decision/Motion for Reconsideration, received in the Office of Hearing Examiner November 30, 1981.

Petitioners' Memorandum In Opposition was received in the Office of Hearing Examiner December 4, 1981.

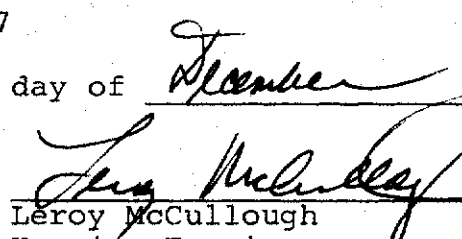
Conclusion 12 of the November 23, 1981, decision references a general annual expenditure of \$81,402. However, the "reasonable and necessary expenses" found in Finding of Fact No. 7 totalled \$83,198.00. The figure in Conclusion No. 12 was a clerical error, and is hereby corrected to \$83,198.00. The monthly expenditure approximate is amended to \$6933. The average per moorage site expenditure is amended to \$217.00.

Sentence 3 of the Conclusion No. 12 is amended to read as follows:

In considering the entire record, including the limited number of moorages in Seattle; the singular consideration of the CPI (see Conclusion No. 10, supra); the automatic Section 7.20.050 adjustment to benefit the moorage owners; other moorage fee averages of \$141 or \$152.60 per month, although the compared moorages do present varying circumstances; and that the owners are entitled to a fair and reasonable return; the respondent is entitled to a monthly moorage fee for 1980-81 not to exceed the following:

F-80-003 - \$217
F-80-002 - \$207
F-80-001 - \$197

Entered this 7th day of December, 1981.


Leroy McCullough
Hearing Examiner

BEFORE THE HEARING EXAMINER

CITY OF SEATTLE

In the Matter of the Petition of)
LINDA SCHAEFFER, ET AL.)
ELIZABETH SPRINGER, ET AL.)
ROBERT LILLY, ET AL.)

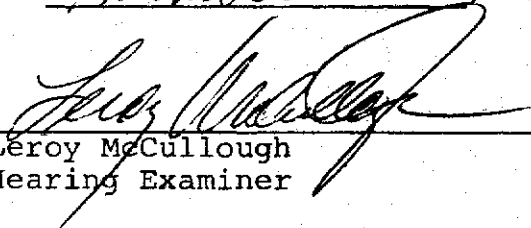
FILES NO. F-80-001
F-80-002
F-80-003

ORDER ON ATTORNEY FEES

Pursuant to Section 7.20.090, Seattle Municipal Code, the Hearing Examiner has examined the final offers from all parties and hereby enters the following order on attorney fees:

The petitioners and respondents shall bear their own attorney fees.

Entered this 8th day of December, 1981.


Leroy McCullough
Hearing Examiner