

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

In the Matter of the Appeal of

WILLIAM KEASLER

FILE NO. S-81-012

from a determination of the Director,  
Department of Construction and Land Use

The decision of the Director is AFFIRMED.

Introduction

The appellant exercised his right to appeal pursuant to 24.10.030, Seattle Municipal Code, Section 25.40 of the Zoning Ordinance (86300, as amended).

Parties to the proceeding were: Appellant by Bruce Corker and George Yeannakis; property owner by Frank Granat, pro se; the Department of Construction and Land Use by Charles Duffy; limited intervenors Todd Warmington and Julie North, pro se.

After stipulated continuances the matter was heard on Friday, June 5th, 1981, and the record closed June 8th, 1981.

For purposes of this decision, all section numbers refer to Title 24, Seattle Municipal Code (Zoning Ordinance 86300, as amended).

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 appeal.

Findings of Fact

1. The subject moorage facility is located at 2201 Fairview Avenue East. The legal description appears in the interpretation of the Director and is incorporated herein by reference.

2. The property is zoned General Commercial (CG) and is designated Urban Stable/Lake Union (US/LU). The tidelands seaward of the pierhead line are designated Conservancy Management (CM).

3. The owner of the moorage facility also owns floating home KCA 97. KCA 97 was the second most seaward houseboat between the pierhead line and the Lake Union construction limit line, site 9. The owner of the moorage then completed a moorage site exchange between KCA 97 and KCA 535, the latter of which extended the most seaward from the pierhead line. The owner, Mr. Granat, proposes remodeling and reconstruction for the purpose of that owner's personal residency.

4. KCA 535 and KCA 97 are less than 16 ft. in height.

5. By public interpretation, timely appealed from, the Director concluded inter alia that houseboats KCA 535 and 97 may be exchanged; that an existing floating home outside the pierhead line may be conditionally reconstructed, remodeled or replaced.

### Conclusions

1. Section 24.60.535 generally acknowledges that floating homes and floating home moorages are water dependent uses and, as such, are preferred uses to occupy the surface of the water. The special privilege accorded floating homes is also acknowledged in 24.60.530, stating that "except for floating homes, new residential structures constructed over water are prohibited."

2. Among general prohibitions concerning floating homes is the following: They are permitted only in the US/LU and UR environments as provided in the table prepared pursuant to 24.60.420. That table provides, for example, that floating homes and existing floating homes are not permitted uses in the CM environment.

3. Section 24.60.420 states in its preface that "uses are permitted in the seven Shoreline District environments in accordance with the following table, subject to the provisions of that chapter...." The table is therefore not represented as conclusive.

4. Section 24.60.535(A)(6) specifically states that "floating homes shall not be located between the combined pierhead/harbor line and the Seattle Construction limit line in Lake Union." Section 24.60.650 provides that the only uses permitted between the pierhead line and the construction limit line in Lake Union shall be open wet moorage and existing house boats. The requirements for new floating homes and floating home moorages appear in Section 24.60.535.

5. The general proscriptions for floating homes in Section 24.60.535(A) appear to be modified by the specific replacement and remodeling provisions of 24.60.535. That section provides that the replacement, remodeling, or new construction of a floating home at an existing moorage not meeting the lot coverage, open water, site area, yard or location provisions of (the) chapter shall be permitted if it results in no increase in the total float area as of the effective date of the adoption of (the) chapter, and the height of the floating home does not exceed 16 ft. Section 24.60.535(b).

6. The essence of appellant's arguments is that houseboats located seaward of the pierhead line may not be replaced by new floating homes, suggesting that if a floating home is evicted or otherwise removed from its moorage site seaward from the pierhead line, the moorage site cannot be used for the moorage of a newly constructed houseboat; rather only as an open wet moorage pursuant to Section 24.60.650.

7. As both KCA 535 and KCA 97 were and presently are at moorage sites seaward of the pierhead line, they constitute floating homes at a moorage not meeting the location provisions of the ordinance.

8. The decision of the Director is prima facie correct and the burden of establishing the contrary is upon the appellant.

9. We conclude that the general prohibition against the location of floating homes between the pierhead line and the construction limit line is modified by the specific exemption concerning replacement and remodeling of floating homes. The language states that "the replacement, remodeling, or new construction of a floating home at an existing moorage may be permitted."

10. If we were to adopt the appellant's view, the removal of a floating home for purposes of replacement, remodeling or new construction would signal a loss of an existing moorage, and of existing floating home status which would mean that the moorage site could only be utilized as a wet moorage pursuant to 24.60.650. This interpretation is not consistent with the thrust

of the Shoreline Master Program Regulations, nor with the legislative history preceding those regulations.

11. Ordinance 106804 specifically provides that any residential structure located outside the construction limit line prior to December 18, 1968, shall be permitted as a "lawful non-conforming structure." Existing houseboats are not classified as nonconforming structures, which are subject to one year abatement conditions. Section 24.16.060.

12. The subject exchange of houseboats would not increase float area density or height.

13. Ordinance 109280 includes protections for floating home owners from certain arbitrary actions of the moorage owner.

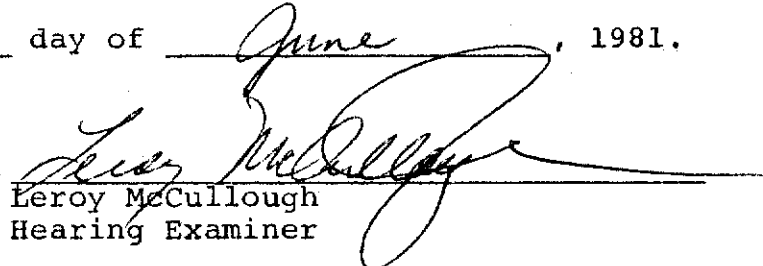
14. Under the circumstances, prohibiting the exchange of the subject houseboats would contravene the spirit and purpose of the ordinance regulatory scheme. The exchange of the houseboats is a replacement of the houseboats. We discern no legislative purpose of abating floating homes seaward of the pierhead line.

15. Prohibiting the exchange in those circumstances would also violate the spirit of Kennedy v. Seattle, 94 Wn.2d 376 (1980), which case disfavored the perpetual right of the floating home owner as against the moorage owner, to use the moorage.

#### Decision

The decision of the Director of Construction and Land Use is AFFIRMED.

Entered this 22nd day of June, 1981.

  
Leroy McCullough  
Hearing Examiner

#### 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).