

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

In the Matter of the Appeal of

HARRISON JEWELL

FILE NO. S-86-003
DCLU NO. 8500915

from an interpretation of the Director,
Department of Construction and Land Use

Introduction

The appellant exercised the right to appeal pursuant the Chapter 23.88, Seattle Municipal Code.

Parties to the proceedings were: appellant Harrison Jewell, represented by attorney James Hanken and assisted by John Crull of Construction and Development Services; and the DCLU Director by Judy Talman.

This matter was heard before the Hearing Examiner on June 12, 1986.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Titles 23 or 24, as amended, unless otherwise indicated.

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

Findings of Fact

1. The appellant owns the subject property which is addressed as 5523 Seaview Avenue N.W.

2. The subject property consists of two separately platted parcels. The legal descriptions are in the appeal letter of record and are incorporated herein by reference.

3. As illustrated in Exhibit 1 the more easterly parcel is developed with a 3-story residential structure built pursuant to a 1947 building permit. The second parcel is vacant.

4. The two parcels are sandwiched between the Salmon Bay Waterway to the west and the Great Northern Railroad right-of-way property to the immediate east. The U.S. Army Corps of Engineers controls the waterway and the adjacent canal. Seaview Avenue N.W. is east adjacent to the Great Northern right-of-way over which there is access to parcels 1 and 2.

5. With the exception of one corner of the developed lot, both lots are submerged at high tide and dry at low tide.

6. Consistent with vicinity properties, appellant's property is zoned General Commercial (CG) and is designated Urban Stable (US) by the Seattle Shoreline Master Program. Adjacent and nearby waterfront lots are developed primarily with single family residences. A smaller number of duplexes also appear along the Seaview Avenue stretch. Two bait sale operations are present within the immediate vicinity of the subject property.

7. In 1984 appellant hired Construction and Development Services (CDS) to identify permissible uses for the subject property. CDS commenced efforts to secure approvals from DCLU and from the Corps of Engineers. After it appeared that the several uses proposed would run afoul of either the Corps of Engineers or of the City designations of the site, appellant requested a DCLU interpretation as to the feasibility of developing the property. Key to the inquiry was whether a water-related or water-dependent use could be established without water access or boat mooring facilities.

8. DCLU concluded that any additional site development would be required to be water-dependent or water-related "and that development of the site with a water-dependent or water-related use does not appear to be feasible." The Corps of Engineers controls the water access to the subject site.

9. Appellant submitted this appeal on two particulars: 1) DCLU's failure to sufficiently and adequately acknowledge that two separate lots exist and 2) DCLU's failure to more conclusively state that under the combined constraints of city designations and Army Corps restrictions, site development is not feasible.

10. The Corps of Engineers responded to appellant's past requests for development by noting that a live bait business would be acceptable. The essence of that position is excerpted from Exhibit 5:

While the addition of a second or third business for live bait sales might generate some small overall additional boat traffic, it more likely could be expected to divide the current boat traffic between those businesses. The addition of a business other than live bait sales, on the other hand, would serve to increase total boat traffic because it would generate boat traffic concerned with such other use in addition to the boat traffic associated with live bait sales.

11. Appellant does not wish to have a bait sale operation, but was unable to isolate a point at which the market for bait sales would be saturated.

Conclusions

1. The Hearing Examiner has jurisdiction of this proceeding pursuant to Chapter 23.88, Seattle Municipal Code. The Hearing Examiner is to give "substantial weight" to the DCLU Director's decision and it is the appellant's burden to show that the interpretation is clearly erroneous. Seattle Municipal Code Section 23.88.020(E)(4).

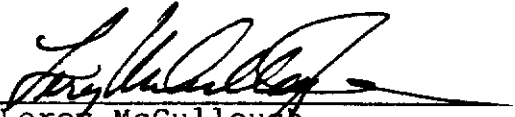
2. In this case, both parties agree that appellant is between the proverbial "rock and a hard place." The property waterward of the subject property is controlled by the Army Corps of Engineers which indicates that they will give consent only to a live bait operation. Appellant suggests that it is impractical to use his property for a third vicinity live bait operation. On the other hand, parties agree that the US environment allows only water-dependent or water-related uses to be located on this overwater site, DCLU conclusion number 2; and that the Corps of Engineers-controlled property provides the water access to the site.

3. It does not follow, however, that the Director's interpretation should be reversed or modified. The evidence of record and concomitant recommended changes to the language do not, singly or jointly, overcome the substantial weight that must be accorded the Interpretation by the terms of the ordinance. Although it is clear from the record that restrictions significantly limit development potential, it was not sufficiently shown that a bait operation was infeasible; nor that all development alternatives had been adequately explored and been found to be unworkable. Cf. Exhibit 4, DCLU letter from Patricia Lambert. Further, it is not the opinion of the Hearing Examiner that DCLU is mandated to suggest development alternatives for a specific site or sites. Therefore, DCLU's conclusion that "development of the site with a waterdevelopment or water-related use does not appear to be feasible" (emphasis added) is apropos for the circumstances presented.

Decision

The DCLU Interpretation is AFFIRMED.

Entered this 17th day of June, 1986.


Leroy McCullough
Hearing Examiner

Concerning Further Review

The decision of the Hearing Examiner in this case is the final administrative determination by the City, and is not subject to reconsideration 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. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104.