

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

In the Matter of the Appeal of

BATTELLE NEIGHBORS

FILE NO. S-88-005

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

Introduction

Appellant challenges the interpretation by the Director, Department of Construction and Land Use, of the Land Use Code as it applies to use of property at 4000 N.E. 41st Street.

The appellant exercised the right to appeal pursuant to Seattle Municipal Code Section 23.88.020, as amended.

Parties to the proceedings were: appellant, by Peter J. Eglick, attorney at law; the applicant, Battelle Seattle Research Center, by its attorney, Robert Johns; the Director, Department of Construction and Land Use, by attorney Guy Fletcher, land use specialist.

This matter was heard before the Hearing Examiner on September 19, 20, 1988.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code unless otherwise indicated.

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

Findings of Fact

1. The subject property, known as the Battelle Seattle Research Center, is located within the Single Family 5000 zone at 4000 N.E. 41st Street in the city of Seattle.

2. The Seattle campus is one in an expansive network of facilities established pursuant to the will of the one Gordon Battelle. According to a Pacific Northwest Division communication

Battelle Memorial Institute serves industry and government in generating, applying and commercializing technology. As a worldwide research and development organization, Battelle solves problems and develops business opportunities for clients in 40 countries.

Battelle maintains a staff of 7,700 scientists, engineers and specialists at its major U.S. and European research operations. This Institute's major business areas are life sciences, biotechnology, manufacturing technology, advanced materials, electronics, and information sciences...

Exhibit 9.

3. The Battelle will and interpretation thereof by decree from the Ohio court of Common Pleas indicate that the Battelle program shall generally consist of scientific research and development; creative scientific activities; related education; and the advancement of education and learning for employment.

4. The Battelle Memorial Institute is a "not-for-profit" corporation established pursuant to Ohio state law, and is regulated as an Ohio charitable trust. Although it is nonprofit, the Internal Revenue Service does not consider the organization to be tax exempt.

5. The Hearing Examiner finds that some Institute subsidiaries are "for-profit" organizations. One such group applies technology to plant operations. No "for-profit" entity operates out of the Seattle (Laurelhurst) campus. The Hearing Examiner also finds that Battelle makes significant financial contributions to specific charitable associations. These contributions, salaries, equipment and land and facility costs are derived from Battelle "profits."

6. Appellant group, Battelle Neighbors, questions the nature and operation of the Seattle facility particularly as it concerns the Seattle Land Use Code. Consequently, appellant submitted this challenge to the DCLU Interpretation that "Battelle Institute is a use permitted in single family zones under the terms of Section 23.44.022A."

7. The Battelle Seattle Research Center is sited on 18 acres east of the University of Washington campus and of University Village Shopping Center. The facility offers food service, lodging rooms and meeting spaces. Exhibit 4. There are five conference rooms. The largest of these will seat 100 and the second largest from 35-40 people. (Testimony of J. Swor). There is also some limited use by public and private projects such as those for young artists and youth offender reconciliation.

8. The Seattle campus (a) offers a seminar program (b) houses a conference center and (c) hosts the Seattle branch of the Human Affairs Research Center (HARC) which concentrates on the behavioral and social sciences (as opposed to applied physical sciences).

9. Included among the 1988 HARC projects are requests to:

- investigate trace metal alteration of renal porphyrin metabolism
- analyze contraceptive use - failure among U.S. teens
- evaluate effectiveness of a state program to encourage unemployed to seek work
- investigate the demographic, attitudinal and economic changes affecting women in the U.S.
- evaluate cost-effectiveness, cost-benefit and quality-of-life aspects of various client products (some clients and products are confidential pursuant to agreement with Battelle.)

Similar projects were undertaken in 1987. Exhibits 25, 26.

10. Approximately 20 percent of the HARC work is for industrial clients while roughly 80 percent is for the federal government. The HARC does submit competitive bids to secure the projects.

11. The seminars program includes programs designed to educate and disseminate information, e.g. computer training to facilitate "adaptation to modern technology." Some 10 percent of the seminar instructors are Battelle staff; the other instructors are paid a "platform fee."

12. Professionals' seminars scheduled for July-December 1988 are listed on Exhibit 12 and include such programs as "Creative

Thinking Strategies (for scientists, engineers and project managers);" "Continuous Quality Improvement (How to increase quality, productivity and market share);" and "Computer Disaster Recovery Planning (How to support business functions in the event of a major computer crisis)." Also, Battelle advertises the advantage of producing an on-site seminar at the customer's place of business. Roughly 90 percent of the seminars are held away from the Seattle campus.

13. Organizations that have "sent representatives to Battelle Seminars" include Arthur Young & Co., AT & T, Tennessee Valley Authority, Stanford University, Honeywell, Westinghouse and Weyerhaeuser.

14. Battelle's Pacific Northwest Division was established in 1965. Ordinance 93617 was passed in February 1965. A building permit was issued July 16, 1965 "to allow scientific and technological seminar center in RS 5000 zone" for the subject property, Exhibit 22, as a conditional use. Ordinance 93617 listed

scientific and technological seminar centers
and institutes for advanced study and other
institutes organized as nonprofit entities for
the advancement of knowledge...

Exhibit 2, Section 6.22(j), as one of several uses permitted when authorized by the "Board."

15. There are approximately 183 employees on the Battelle Seattle staff, including hourly employees. Roughly 120 are with the HARC, 11 with the seminar component, and 20-22 with the conference center component. The other employees are in various support functions. Approximately 50 research scientists, most with doctorates in sociology, demographics, anthropology, statistics or related fields, are included in the 120 HARC employee count.

16. The general parameters for use of the Battelle facilities are spelled out in a Corporate Policy statement of record. Battelle uses have priority, but use by outside groups is permitted "when the use has substantial causal relationship to the purposes of Battelle." Exhibit 6. The criteria have been read to allow law firm retreats, business dinner functions, staff training, staff social functions and other activities. Of the approximately 545 scheduled 1987 events, approximately 6-7 were "Christmas" parties.

17. Private wedding or other such banquets, non office-related, are not permitted on the campus. Some 3-4 use applications are rejected each month. Prohibited by policy statement are

- meetings for religious purposes or to advocate any religion
- meetings for any political party or to advocate political action or social reform
- meetings and events held primarily for commercial gain, such as those where products would be sold on-site or where registration fees would go directly to individuals.

Exhibit 6.

18. Applications for facility use are screened, usually by telephone. Once the threshold is reached, a client form is completed by Battelle staff.

19. Outside groups use the Battelle facilities approximately 70 percent of the time, Battelle per se 30 percent.

20. In an effort to balance the operational costs, and

offset estimated losses of \$300,000 per year, Battelle engages in sales and marketing of the Seattle facility. The devices include inquiry calls, brochure mailing e.g. Exhibit 4, and other direct contacts with businesses and other potential clients. One resource is the Standard Industry Code list which list includes names of some private law firms. Currently Battelle has one full time sales person. That person's function is to assist with development of marketing materials, implement the marketing plan and to provide conference coordinator support. This individual is on straight salary and is not paid by commission.

21. Recognizing food and beverage as "the number 1 reason people book," Battelle has emphasized improvements in food service and dining amenities. As stated above, however, banquet and food service is required to be connected with some employee or other business-related function.

Conclusions

1. The Hearing Examiner has jurisdiction of this appeal pursuant to Chapter 23.88, Seattle Municipal Code.

2. Seattle Municipal Code Section 23.88.020(E)(5) provides that appeals

...shall be considered de novo, and the decision of the Hearing Examiner shall be made upon the same basis as was required of the Director. The interpretation of the Director shall be given substantial weight, and the burden of establishing the contrary shall be upon the appellant.

3. The DCLU decision here appealed concludes that Battelle Institute is a use permitted in single family zones under the terms of Seattle Municipal Code Section 23.44.022(A).

4. Chapter 23.44, Seattle Municipal Code, addresses single family zone conditional uses, uses permitted outright, nonconforming uses and accessory uses. Seattle Municipal Code Section 23.44.002 states that the chapter "details those authorized uses and their development standards which are or may be permitted in the3...single family residential zones..."

5. Seattle Municipal Code Section 23.44.022(A), the section at issue in this appeal, provides as follows:

A. Institutions Identified. The following institutions may be permitted as conditional uses in single-family zones:

Community centers
Day care centers
Private schools
Religious facilities
Public or private libraries
Other similar institutions

The following institutions are prohibited in single-family zones:

Hospitals
Colleges and universities
Museums
Private clubs

6. DCLU concluded that the Battelle Research Center "is, for purposes of the Seattle Land Use Code, an institutional use...." and that "of the various types of institutional uses identified in the Land Use Code, Battelle is most closely defined as an Institute for Advanced Study." Seattle Municipal Code Section 23.44.022(A) includes no institution for advanced learning within the permitted or prohibited categories. The

record is unclear as to why the successor to Ordinance 93617 failed to include any direct reference to institutes for advanced study.

7. Seattle Municipal Code Section 23.42.010 is relevant to principal uses allowed for respective zones. It states as follows:

Principal uses not listed in the respective zones...of this Land Use Code or of Title 24 shall be prohibited in those zones. If a use is not identified in this part or in Title 24, the Director may determine that a proposed use is substantially similar to other uses permitted in the respective zones and should also be permitted (emphasis supplied).

8. Battelle Seattle is an "institution" within the meaning of the Land Use Code. Institutions are defined as

structures and related grounds used by organizations providing educational...social and recreational services to the community, such as hospitals and nonprofit organizations such as colleges...private clubs...museums, and institutes for advanced study.

Seattle Municipal Code Section 23.84.018"I". It is of minor legal consequence that Battelle study results and facilities are available to selected groups or individuals. The Land Use Code does not require that an organization be "public" in order to qualify as an "institution."

9. The Hearing Examiner also concludes that Battelle Seattle appears to be an institute for advanced study since it is

...operated by a nonprofit organization for the advancement of knowledge through research, including the offering of seminars and courses, and technological and/or scientific laboratory research.

Seattle Municipal Code Section 23.84.018"I".(6). The record is sufficiently clear that Battelle is a nonprofit organization, federal income tax status notwithstanding. Battelle is also operated to advance knowledge through sociological, demographic and other research. Section 23.84.018"I" does not require that the organization offer seminars, courses or laboratory research. Those kinds of activities are included among those that would serve to advance knowledge through research. The Hearing Examiner cannot ignore the fact that staff social functions could have but a fleeting connection to the advancement of knowledge through research. However, the Hearing Examiner concludes that the bulk of Battelle Seattle activity is through the HARC. The HARC projects, singly or in conjunction with the seminar program, represent the primary function of Battelle Seattle, which function can and does accord the definition of an "institute for advanced study."

10. Regarding the conference component, the banquet - food service is restricted to the business or other functions related to Battelle program. The Battelle Seattle use is therefore markedly distinguished from the Red Lion Inn or other businesses whose principal purposes are commercial.

11. It should be noted that the issue is not whether Battelle Seattle complies in absolute degree with the Battelle founder's will and the related court decree. The question is where and how the activities fall within the definitions and provisions of the Seattle Land Use Code.

12. The determination that Battelle Seattle is 1) an institution and 2) would qualify as an "institute for advanced study" does not resolve whether the use is permitted in the

single family zone. The question remains whether, in the absence of specific permission or prohibition, the use is allowed in the zone.

13. To address this question, attention must be redirected to Seattle Municipal Code Section 23.44.022(A) and its enumeration of permitted and prohibited institutions within the single family zone.

14. The Hearing Examiner concludes that Battelle Seattle is not an institution "similar to" community centers, day care centers, private schools, religious facilities, or public or private libraries. Battelle Seattle is an institute that offers seminars, conferences and human research activity. It is not similar to a community center even though there is some public use of the grounds.

15. Although it does not offer college degrees, Battelle Seattle is more similar to a research educational type of institution such as a research hospital or college or university. The comparative size and impacts of the institutions are nondeterminative. Some colleges and hospitals, prohibited in the single family zone, may be smaller than religious facilities or community centers, allowed in the single-family zone.

16. Seattle Municipal Code Section 23.42.010 provides that principal uses not listed (as permitted) in respective zones "shall be prohibited" unless the nonenumerated use is determined to be substantially similar to permitted uses. The Hearing Examiner has previously determined that the Battelle research-seminar-conference use is not "generally" or "substantially similar" to uses permitted in the single family zone. The DCLU interpretation is therefore in clear error.

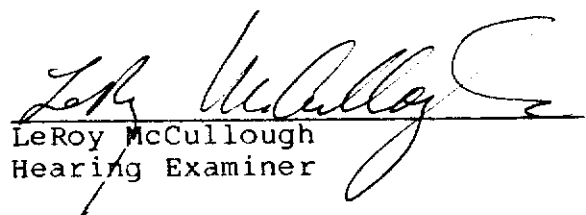
17. It is clear that Section 23.44.022(A) is written as illustrative of permitted uses and more definitive as to prohibited single family zone uses. Seattle Municipal Code Section 23.42.010.

18. Finally, the issue here is not whether Battelle's rights to use the property are abrogated by this interpretation. Secondly, the question of whether Battelle Seattle is a nonconforming use as a result of 1965 zoning code approval is not before the Hearing Examiner.

Decision

The DCLU interpretation is reversed.

Entered this 5th day of October, 1988.


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 a 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.