

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

In the Matter of the Petition of

SPINNAKER BAY LIMITED PARTNERSHIP,  
AGENT ELDON UNGER

FILE NO. CC-82-004  
C.F. NO. 291321

for an amendment to the Shoreline  
Environmental classification of  
the subject property pursuant to  
the Seattle Municipal Code  
(Ordinance 86300, as amended)

Recommendation: The petition should be DENIED.

Introduction

Applicant seeks to amend the Shoreline Environmental classification of the dryland property generally located north of Rainier Avenue South on the east side of Seward Park Avenue South from Conservancy-Management to Urban-Stable.

For purposes of this recommendation, all section numbers refer to the Seattle Municipal Code, Title 24, as amended (Ordinance 86300, as amended) unless otherwise indicated.

The Director's report, submitted by the Department of Construction and Land Use (DCLU), recommended that the petition be granted. The petitioner was neither present nor represented at the public hearing.

This matter was heard before the Hearing Examiner on May 4, 1982.

After due consideration of the evidence presented by the petitioner, the information provided by the Director's report, all evidence elicited during the public hearing, and as a result of the personal inspection of the subject property and surrounding area by the Examiner, the following shall constitute the findings of fact, conclusions and recommendation of the Hearing Examiner on this petition.

Findings of Fact

1. The subject crescent-shaped site is in the Rainier Beach area of Seattle, south of S. Henderson Street, on the east side of Seward Park Avenue S., and on the north side of Rainier Avenue S. The legal description appears in the application of record and is incorporated herein by reference.

2. In February, 1982, applicant petitioned to reclassify the Spinnaker Bay Condominium property, 9500 Rainier Avenue South, from its current Shoreline Master Program (SMP) Conservancy Management (CM) classification, to Urban Stable (US). As residential units are not permitted in the CM environment, the condominium is a nonconforming use. By changing the classification to US, the residential use would be conforming, and a desired canopy could be erected, so the petitioner reasoned, and this subject application followed.

3. At DCLU's suggestion, the petition was amended to include "a larger area with similar characteristics." Consequently, the current petition is for approximately 7.4 acres of dryland property extending between the Atlantic City Park to the north and another Park Department property to the south.

4. The subject property is zoned General Commercial (CG) except for the southeastern portion, which is zoned Community Business (BC). The subject property, privately owned, is the only CM zoned lot in Seattle which is not occupied by parks, boulevards or public institutions.

5. The northern portion of the subject site is developed with a 60 unit condominium and a marina facility. The central portion of the site is a large vacant tract, in some use as a parking area. The southern half of the site is developed with a yacht club and two large multiple residential developments. Continuing south and around the bend of the Seward Park Avenue S.-Rainier Avenue intersection, there is an auto repair business, a gas station and a single family residence. Covered and open moorages extend eastward from the subject site into the inner harbor line of Lake Washington. West and northwest of the Seward Park-Rainier Avenue intersection are some commercial uses, including a 7-11 store. However, west of the subject property is a 12 acre multifamily development comprised of roughly 30 two story apartment buildings.

6. Rainier Avenue South has a daily traffic volume of 12,000 trips; Seward Park Avenue S., 8,800 trips.

7. The subject area was designated CM in 1976. The weight of the testimony and correspondence of record was that the CM designation was imposed after extensive input from local community groups, residents and after deliberate consideration by the City Council. DCLU and applicant, however, were of the view that the CM designation was erroneous.

8. The stated purpose of the CM shoreline environment is

...to protect areas for environmentally related, usually public, purposes, such as public and private parks and marinas...Section 24.60.335.

Uses permitted in the CM environment include swimming pools, open wet moorages, passenger and auto ferry terminals, bicycle and pedestrian ways, public parks, and research and educational uses. Residential uses are prohibited as are offices, retail shops, restaurants, hotels, motels, marine sales and covered wet moorages. Section 24.60.420.

9. The US classification allows single and multifamily residential uses; retirement and group homes; offices; retail shops; restaurants; marine sales; marine construction repair and dismantling; marine service stations; cargo terminal, cargo handling and water-dependent manufacturing; warehousing and wholesaling. Sand, gravel, and concrete mix and cement plants are allowed in the US environment subject to the additional conditions of Section 24.60.525H. Section 24.60.420. The US environment is designed to

...provide areas for controlled development and redevelopment, encouraging a variety and mixture of compatible uses while also maintaining the existing character, scale and intensity of use. Section 24.60.345.

10. The Seattle Comprehensive Plan map shows the area fronting Rainier Avenue S. as suitable for intermediate shopping and the remaining portion north, as suitable for major or community shopping. Under the proposed new zoning map the area is designated for mixed use zoning, which according to DCLU, is "intended for compatible Residential 'and Business/Commercial' uses." This was suggested by DCLU as a change in circumstances for the site. No other construction or other changes were alleged to have occurred since the original 1976 CM environmental classification.

11. Four letters of support from persons not in attendance at the hearing were entered into the record: three from businesses within the subject site and the fourth from the owner of the three business properties. Another letter of support was submitted into the record by a witness.

12. The reclassification would not unduly burden the public utilities, services or transportation facilities for the subject vicinity.

13. According to the DCLU witness testimony, the petitioner could not apply for a variance in order to build the desired canopy. This conclusion was contested by one witness opposing the petition.

14. An earnest money agreement to sell the subject property is outstanding, which agreement is contingent on the reclassification of the subject property to US. The potential seller has knowledge of the potential buyer's interest in the construction of a 40 unit condominium on the subject property's vacant tract. Council approval will be required for construction of any residential units in the underlying CG zone.

15. The Hearing Examiner in XS-78-259 recommended denial of a similar proposal for the same area.

16. Opposition to the current petition can be briefly summarized as follows:

objection to a 40 unit condominium on the center vacant site which, if constructed, will exacerbate parking difficulties and increase view blockage of the water; the view that the "retail sales" area is on Rainier Avenue, that the majority of the subject property is not business oriented; that the subject property, between two public uses, is water oriented; that the petition simply repeats the efforts defeated earlier; that the reclassification would destroy chances of preserving the little open remaining land in the vicinity; that reclassification is an excessive reaction to a request to build a canopy; and that the reclassification will allow more intense development and signal a walling off of the lake.

In addition to testimony from several individuals, testimony and correspondence in opposition came from the Rainier Beach Community Club, the Lakewood-Seward Park Community Club and the South End Seattle Community Organization (SESCO).

17. Some housekeeping amendments to the Shoreline Master Program, Chapter 24.60, Seattle Municipal Code, are being proposed which, if adopted, would result in modified bulk and use provisions for upland lots. While no new uses are proposed for CM lots, principal use parking and non-water dependent manufacturing are suggested as uses allowed in the US environment. Further, amendments would incorporate the conditional use criteria but not the procedure for Council review for residential uses in the business and commercial area. Section 24.52.100.

18. On October 23, 1978, a final declaration of non-significance (DNS) was filed for the proposed shoreline environment reclassification which involved the same properties as the subject proposal. DCLU determined that the current petition would not result in any additional impact discerned in the 1978 DNS.

### Conclusions

1. Section 24.60.365 provides that environment classifications may be amended in the same manner as map amendments, Chapter 24.72, subject to "such approval by the Department of Ecology as may be provided by law." Chapter 24.72, Zoning Amendments, requires that findings and conclusions on amendments demonstrate the

manner in which the action carries out or tends to implement the goals and objectives of the Comprehensive Plan of Seattle, the Zoning Ordinance and other official policies and objectives of the City. Section 24.72.100.

2. This state's Supreme Court has declared that a rezone must bear a substantial relation to the public health, safety, morals, or welfare. Parkridge v. Seattle, 89 Wn. 2d 454 (1978). Rezoning actions are not afforded any presumption of validity. They will be upheld

...only if there is substantial evidence indicating that the rezone furthers the public welfare and that changed circumstances warranted its passage. Cathcart v. Snohomish County, 96 Wn. 2d 201 (1981) at 211-12.

3. The principles pertaining to rezoning apply to environmental reclassifications. Section 24.60.365, and WAC 173-19-060, reading in part, as follows:

At any time after adoption or approval of the master program by the department (of Ecology), local government may pursuant to RCW 90.58.190, propose additions, deletions, or modifications to the master program deemed necessary by local government to reflect changing local circumstances, new information, or improved data. (emphasis added)

4. The purpose of the Shoreline Master Program regulations is to regulate development of shorelines of the City in order to "preserve, enhance and increase views of the water," "encourage water-dependent uses" and "provide for maximum public use and enjoyment of the shorelines of the city." Section 24.60.005.

5. Based on the evidence of record, the petition should be denied. Petitioner has failed to meet the burden of showing changed circumstances or that the proposed action would have a substantial relation to the public welfare, particularly as that welfare is reflected in the objectives of the City.

6. The CM shoreline environment is designed to protect areas for environmentally related, usually public purposes. Accordingly, the private ownership of the subject site is not a decisive factor. Section 24.60.035.

6. US classification would allow residential use as conforming. However, other, more intense uses would also be allowed which would not further the public welfare, as for example, cargo handling and water-dependent manufacturing, warehousing, marine construction, repair and dismantling. The subject vicinity is heavily residential and water-oriented. If residential development follows, it could effectively "wall-off" the remaining public view of the water and city shoreline. The classification could, therefore, frustrate the spirit and purposes of the Shoreline Master Program, Section 24.60.005, and of the zoning ordinance, Section 24.06.020(1), although it is recognized that currently, Council review of CG zoned housing is required.

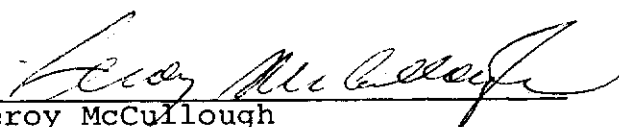
8. Further, the weight of the evidence shows that the CM designation resulted from extensive community discussion and input; that there was no simple mistake of designation, and that circumstances have not changed. Finally, the proposed 7.4 acre reclassification appears to be an overreaction to a request for a minor alteration. Alternatives as defined by a City attorney opinion should be pursued before the existing classification is disturbed.

Recommendation

For each of the above reasons the recommendation of the Hearing Examiner to the City Council is as follows:

The petition should be DENIED.

Entered this 18th day of May, 1982.

  
Leroy McCullough  
Hearing Examiner

NOTICE OF RIGHT TO PETITION  
FOR FURTHER CONSIDERATION

Pursuant to 24.72.090, Seattle Municipal Code, as amended, (Section 27.51 of the Zoning Ordinance 86300, as amended) any party affected by a recommendation of the Hearing Examiner may submit a petition in writing to the City Council requesting further consideration. The petition must be submitted within fourteen days after the date of mailing the recommendation of the Hearing Examiner and addressed to: City Council, Land Use Committee, Municipal Building, Seattle, Washington 98104.

The petition should state clearly and concisely the reason(s) why further consideration is necessary, and should refer specifically to any errors alleged to exist in the Hearing Examiner's Findings and Conclusions. The City Council's consideration of the petition will be based upon the record of the Hearing Examiner's hearing, and new exhibits or other evidence in support of the petition should not be submitted. In its discretion the Council may allow oral or written arguments based on the record when it considers the petition.