

## FINDINGS AND RECOMMENDATION .

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Petition of

DOJAC CORPORATION AND  
PENDLETON AND ELISABETH MILLER

FILE NO. CC-84-007  
C.F. NO. 293067

for a special review district  
boundary adjustment pursuant  
to Titles 23 and 24, Seattle  
Municipal Code

Recommendation: The petition should be Conditionally GRANTED.

#### Introduction

Petitioners seek to alter the special review district status of a  $\frac{1}{2}$  block area site addressed as 108 - 4th Avenue S. Petitioners propose that the site be excluded from the Pioneer Square Review District boundary but remain within the International Special Review District.

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

The Director's report, submitted by the Department of Construction and Land Use (DCLU), recommended that the petition be conditionally granted.

This matter was heard before the Hearing Examiner on August 3, 1984. Petitioners were represented by Karen L. Gilbert, attorney at law; the Pioneer Square Preservation Board by John Chaney, coordinator; and the Department of Construction and Land Use (DCLU) Director William Justen by Melody McCutcheon, senior land use specialist.

After due consideration of the evidence presented by participants; the other information of record, including the DCLU report and file; and subsequent to a personal review of the subject property and environs by the Hearing Examiner, the following shall constitute the findings, conclusions and recommendation of the Hearing Examiner on this petition.

#### Findings of Fact

1. The subject site has a proposal address of 108 4th Avenue S. It is legally described in the Comptroller's file as:

the west half of Lots 1 and 2, Block 30, Town of Seattle, as laid out by D.S. Maynard, commonly known as D.S. MAYNARD'S PLAT OF SEATTLE, et al; located at the southwest corner of Fourth Avenue at Yesler Way.

The description was subsequently revised to state the location as the southeast corner of 4th at Yesler Way, and to state that the entire half-block fronting on 4th Avenue (lots 1-4) is included.

2. The subject site is a 28,800 sq. ft. parcel bounded on the south by S. Washington Street. To the west is "six-lane" 4th Avenue S., and the east facade (rear) of the historic Prefontaine Building. A mid-block alley is east adjacent to the

subject site; east of that alley is a parcel bounded by 5th Avenue S. Immediately north of the subject site is the "unadorned" support wall of the elevated Yesler Way Bridge. The Old Public Safety Building has some frontage on the north side of this Yesler Way segment.

3. The subject site is zoned Metropolitan Commercial (CM) and lies within both the Pioneer Square and International Special Review Districts. The site is near the edge of both review districts.

4. The southern half of subject site, Lots 3 and 4 of Block 30, is owned by the petitioners' Miller. It is in use as a surface parking lot, as is the parcel across the mid-block alley. There is a total of 313 parking stalls on Block 30. Other vicinity blocks south, east and southeast of the subject site are also substantially developed with parking lots.

5. The northern portion of the subject site, Lots 1 and 2, Block 30, is owned by Dojac Corporation. Dojac also owns the east half of Block 30, Lots 5-8. Since Lots 1 and 2 were adjacent to Dojac's Lots 5-8, Dojac purchased in 1983 Lots 1 and 2 of Block 30. The 1983 purchase included its on-site development, the delapidated Roberts Hotel.

6. The Roberts had been listed on the National Register of Historic Places. By the time of Dojac's purchase, however, it had been vacant some 17 years, and was subject to an Order of Abatement. Demolition had already been approved by the Pioneer Square Preservation Board. Dojac nevertheless decided to study the building's rehabilitation and lease potential.

7. By letter dated April 27, 1983, to Dojac general manager Glenn Gallagher, Jr., the retained general contractor advised that the Roberts building was horizontally and vertically unstable; that masonry walls were totally deteriorated; and that the foundations were incapable of carrying the building load. The contractor succinctly recommended that Dojac "tear the... thing down fast!" Exhibit 2. Demolition of the Roberts Hotel proceeded in May, 1983.

8. Dojac then decided to use the vacant site as surface parking for approximately 26 vehicles and therefore requested a use permit to establish non-accessory parking on-site. Although the application was approved by the International District Review Board, the Pioneer Square Review Board - and subsequently the Department of Community Development Director (DCD) - denied the application, citing Seattle Municipal Code Section 24.68.130. That code section provides in relevant part that vehicle oriented uses, including "non-accessory parking lots..." are prohibited in the subject area.

9. Dojac, along with the Millers, then submitted this petition to delete all of the subject site from the boundaries of the Pioneer Square Review District. If the boundary is adjusted per petitioners' request, Dojac proposes to seek DCLU administrative conditional use approval to establish the on-site parking lot. A DCD Certificate of Approval still is necessary since the site would still be within a special review district. Landmarks and Pioneer Square Boards also report recommendations to the DCD Director.

10. By report of July 27, 1984, DCLU recommended approval of the boundary adjustment petition on the condition that "a landscaping/screening plan... be submitted with the application for a conditional use." The Pioneer Square Board opposes the petition. They consider the site important to the Pioneer Square district and one constituting a strong visual edge open to the view from City Hall Park. City Hall Park is also included in the Pioneer Square Special Review District and is located just northwest of the subject site.

11. Non-accessory parking is a prohibited use in the Pioneer Square District. International Special Review District regulations allow non-accessory parking lots to continue in defined areas, including the subject site, as a conditional use. Although an expressed intent was to phase out pre-existing lots, the compliance date for some has been extended from January 1, 1981; to January 1, 1983; and recommendations to the Council are pending to extend the compliance to January 1, 1986. That recommendation is from DCD, DCLU and the International District Special Review District Board. According to the testimony of Phillip Fujii, DCD urban conservation specialist, periphery lots like the subject site have not proved necessary thus far to accommodate the International District retail core population.

12. Petitioners' witness Barry M. Getzel, an urban consultant, was formerly employed by the Seattle City Council. He then worked for 5½ years as a project manager in the DCD development division. During the DCD tenure, Getzel worked with Pioneer Square property owners "to encourage district rehabilitation." At the request of a property owner Getzel undertook a general review of the subject area, including zoning history and overlays. Much of the following is adopted from Getzel's credible testimony and evidence, and is consistent with the DCLU historical synopsis.

13. In 1970, city legislation was effected creating the Pioneer Square Historical District in order to protect the area and its buildings considered of "consistent historical or architectural character." Section 25.28.010 (Ordinance 98852, Section 1, 1970). A portion of 3rd Avenue Between S. Main Street and Yesler Way constituted the easternmost boundary. The general western boundary was the east side of the S. Alaskan Way viaduct.

14. A May, 1983 report by DCD recommended district expansion as did a March, 1973, citizens report. In August, 1973, the City Council passed legislation which established the Pioneer Square and International Special Review Districts, to be distinguished from the earlier Historical District. The subject site was included in the International Review District. However, the Pioneer Square District's eastern boundary was the mid-point of 4th Avenue S. and thus excluded the subject site.

15. These special review districts were generally created to:

... conserve and enhance the appearance of ... Seattle...;  
(and) to preserve areas of historical note or  
architectural merit...

Seattle Municipal Code Section 24.68.010. The Pioneer Square Special Review District, in particular, was designed to:

... preserve and enhance the Pioneer Square area and  
the buildings therein; to return unproductive structures  
to useful purposes;...(and) to avoid a proliferation of  
vehicular parking and vehicular oriented uses...

Section 24.68.100.

16. The International Special Review District was established to:

... ameliorate the adverse impact which the location and  
operation of the King County domed stadium is expected  
to have on the cultural, ethnic and commercial values of  
the International District, and to protect the area and its  
periphery from the proliferation of vehicular parking  
and other automobile - oriented uses at the expense of  
viable pedestrian uses and structures... to promote,  
preserve and perpetuate the cultural, economic,  
historical and otherwise beneficial qualities of the area,  
particularly the features derived from its Asian heritage...

Seattle Municipal Code Section 24.68.250.

17. All properties in the defined special review districts are to be developed and used only "in accordance with" specific development regulations and guidelines. Sections 24.68.120; 24.68.250(B). International District regulations do not directly address (Pioneer Square) historical design aspects while Pioneer Square regulations do, as well as design of new construction, public spaces and parking.

18. The boundaries of the Pioneer Square Historical District were extended in 1974. See Exhibit B, Seattle Municipal Code Chapter 25.28. At the southern and northern edges the new eastern boundary extended in some places as far east as 5th Avenue S. From S. Jackson Street at 5th Avenue the east boundary jogged westerly to a 3rd Avenue S. - 4th Avenue S. mid-block area and extended north to S. Washington Street. There the boundary resumed east for  $\frac{1}{2}$  block and proceeded north to Yesler Way, (encompassing the subject property) where it again extended east across 5th Avenue. The Roberts Hotel site was thus included and became subject to dual special district regulations, a rarity. From Yesler Way and 5th Avenue, the new boundary extended north to the north edge of Terrace Street and proceeded jaggedly west, enveloping the 400 Yesler (Old Public Safety) Building. Petitioner Pendleton Miller, attorney at law, testified that to the best of his knowledge, they received no notice of the decision to extend the Pioneer Square boundary to include their property. Therefore, he continued, he pursued no court action relative to the resulting dual regulations.

19. According to witness Getzel the Roberts Hotel was included in the boundary expansion at the behest of the then-property owner and because the structure was considered by some to be historically significant and worth saving. Exhibit 1, p.3.

20. Chapter 25.28, the Pioneer Square Historical District legislation, was repealed in 1981 by Ordinance 110058. The Pioneer Square Historical District and the Pioneer Square Special Review District were merged into one Pioneer Square Historical Preservation District. The boundaries remain those of the expanded Pioneer Square Historical District.

21. With regard to the action proposed in this application, a declaration of non-significance (DNS) has been prepared by the responsible official pursuant to the State Environmental Policy Act of 1971 (SEPA) and Ordinance 105735, as amended, Chapter 25.04, Seattle Municipal Code, and is part of the record.

### Conclusions

1. Section 24.68.020 provides that:

A petition or proposal to establish, alter or abolish a special review district shall be filed and considered in the same manner as provided in Chapter 24.72 for zoning map amendments...

2. The current procedure for zoning map amendments is stated in the Land Use Code at Chapter 23.34, Seattle Municipal Code.

3. No specific criteria appear in Title 23 addressing a boundary change such as proposed herein. However, Title 23 does indicate general rezone criteria, or factors to be considered in evaluating a rezone request. Although there is no perfect application of the Section 23.34.28 criteria to the boundary adjustment process, a general analysis follows.

4. The thrust of Section 23.34.28(A), "match between established locational criteria and area characteristics", is to ensure "compatibility of new and existing development." To do so, the decision-makers are asked to weigh the adopted locational criteria for the proposed land use category against the characteristics of the subject area. No "locational criteria" per se appear for the International Review District. However the subject site is already a part of the International District as well as the Pioneer Square District, although on the periphery of both. The jurisdiction and relevance of International District guidelines are neither directly nor indirectly challenged in this proceeding. In terms of absolutes, no disqualifying incompatibility is expected if the now vacant lot is removed from Pioneer Square jurisdiction. The vicinity is awash with parking lots. Dojac's proposed parking lot development would not appear as of this record to adversely affect the compatibility with International District guidelines or existing development, particularly since the guidelines allow continued and newly established non-accessory parking.

5. In terms of zoning history and precedential effect, Section 23.34.28(B), there are limited instances where a special review district dual overlay is present, such as in the case of the subject site. The subject site's history and environs are sufficiently unique that the effect of granting this boundary adjustment petition should not prove to be precedentially significant or adverse. The initial eastern boundary for the Pioneer Square Historical District was the mid-point of 3rd Avenue, excluding the subject site. The site did become subject to International District Review jurisdiction in 1973. In 1974, due in substantial measure to the location of the legendary Roberts Hotel on site, the Pioneer historic boundaries were extended to include the site as well as other properties north of the site, such as the Old Public Safety Building. Despite Dojac efforts to consider Hotel building restoration and marketing, the Robert's Hotel met its fate and was demolished in May 1983, leaving in its stead the present subject parcel owned by petitioner Dojac. That hotel demolition is an adequate change in circumstances to support deleting the site from the Pioneer Square Historical District boundary. Section 23.34.28(F).

6. The proposal would conform to zoning principles related to land use patterns, compatibility and the like. Section 23.34.28(C). Although the new Pioneer Square boundary line would be shifted no less than  $\frac{1}{2}$  block west, to 4th Avenue S., the re-alignment is reasonable and in fact reduces the extremity of the Pioneer Square boundary outline. Further, as declared by DCLU, "it is not sound zoning to have overlapping and conflicting (land) use regulations." Again, the Pioneer Square regulations prohibit non-accessory parking on site; International District guidelines do not. Other than the specific district guidelines, there appear no applicable adopted neighborhood plans, to be distinguished from downtown and other draft proposals. Section 23.34.28(E). Neither is the site included in any Greenbelt plan. Section 23.34.28(H).

7. Regarding impacts, Section 23.34.28(D), the district boundary adjustment would leave the site without specific Pioneer Square historic controls. This could be considered a negative impact since the site is just east of the historic Prefontaine Building and immediately south of the Yesler Bridge and the Old Public Safety Building. Also there is a view from City Hall Park to the site. The boundary change would facilitate parking lot use of the site which could hardly be considered an historic use.

8, On the other hand, parking uses already exist on 3/4 of Block 30. The former Roberts Hotel site directly faces to its north neither the Old Public Safety Building, nor the Yesler Way Bridge. Instead, it is confronted by a stark, unadorned support wall for the Yesler Bridge. The Prefontaine Building is separated from the subject site by a "six lane" street. The site is well - removed from the Pioneer Square district core. This record reflects no significant adverse impacts related to traffic, parking, or similar factors enunciated in Chapter 23.34, expected to result from the proposal. Only to a slight degree would the Pioneer Square district purposes be frustrated by removal of this vacant, undeveloped site from district guidelines. Further, the Examiner notes the relationship between the various historical boards and the DCD Director which could affect DCD decisions on development within International and other special review district parameters.

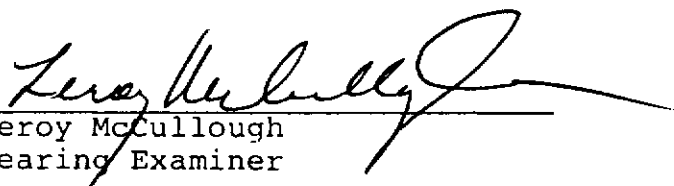
9. Accordingly, the Hearing Examiner recommends that the petition be approved. The Examiner questions the propriety of imposing a parking lot landscape plan as a condition of the reclassification. Such a condition appears to be premature and insufficiently related to the essential petition, although landscaping could be one means of minimizing specifically the visual disparity between the historic Prefontaine Building, City Hall Park and the subject site. The condition itself is too closely aligned with the development proposal yet to be evaluated. The petition should, however, be approved on the specific condition that any development proposals for the site be subject to review and recommendation by the Director of DCD, acting on input from the Pioneer Square Historic Review Board and from the International District Special Review Board.

#### Recommendation

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

That the petition be granted on the condition that any proposed site development be subject to review and recommendation by the Director of DCD with input from the Pioneer Square district review board.

Entered this 17th day of August, 1984.

  
Leroy McCullough  
Hearing Examiner

NOTICE OF RIGHT TO PETITION  
FOR FURTHER CONSIDERATION

Pursuant to Section 23.34.14, Seattle Municipal Code, as amended, any party affected by a recommendation of the Hearing Examiner on a rezone 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.