

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

In the Matter of the Petition of

DARIGOLD, INC.,

FILE NO. CC-8502791  
C.F. NO. 294086

for an amendment to the Official  
Zoning Map pursuant to Title 23,  
Seattle Municipal Code

Introduction

Darigold, Inc., petitions for the reclassification from Lowrise 3 zoning to Community Business zoning for property at 4100 36th Avenue South.

For purposes of this recommendation, all section numbers refer to the Seattle Municipal Code, Title 23, 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.

This matter was heard before the Hearing Examiner on April 8, 1986. The record remained open until April 23, 1986, for certain additional materials and responses.

After due consideration of the evidence elicited during the public hearing, the information provided by the Director's report, and all evidence elicited during the public hearing, the following findings of fact and conclusions shall constitute the recommendation of the Hearing Examiner on this petition.

Findings of Fact

1. The property, the subject of this petition, is located east of 36th Avenue South and between South Dakota and South Adams Streets. It comprises the westerly half of Lot 2 and Lots 3-17, Block 10, Squires Lakeside Addition. }

2. Darigold's operation occupies the block to the north of the subject property between Rainier Avenue S., Courtland Place S., S. Dakota Street and S. Andover Street, and property to the west between 36th Avenue S. and Rainier Avenue S., south of S. Dakota Street.

3. The subject site is now zoned Lowrise 3 (L-3) as is most of the block to the south, the remainder of the block in which the subject property lies and the northerly 3/4 of the west half of the long block to the east.

4. Darigold property to the west, across 36th S. from the site, to the northwest along Rainier and 36th S. north of Dakota, is zoned Manufacturing (M). The half blocks on both sides of Courtland Place S., directly north of the subject site, are zoned SF 5000.

5. The subject site is occupied by seven single family residences and one six-plex. Five of the single family houses are going through the abatement process because of deterioration. The other structures are proposed to be moved.

6. Development to the north along Courtland Place is single family; to the east is mixed residential; to the south is mixed residential and a community center; and to the west is parking associated with Darigold and a Safeway parking lot.

7. Darigold proposes to develop the subject site into a parking lot for employees and guests. The lot would accommodate 143 vehicles. Landscaping would be provided on the north, south and east sides of the lot and within the lot.

8. The new parking lot is part of a planned reorganization and expansion of the Darigold facility. The plan includes the vacation of 36th Avenue S. in the block north of the subject site, which has been approved, converting the existing parking lot on the northerly property to truck parking and expanding the facility's milk cooler.

9. The Land Use Code requires a total of 104 parking spaces for facility. With the proposed parking lot, 201 spaces will be provided.

10. People residing near the facility are disturbed by the noise from refrigeration trucks on the site of the main facility and parked on surrounding streets. Providing the new employee parking increases the area on-site for trucks and may reduce the number of trucks parked on the street. Trucks also should be able to enter the main site without traveling into the residential area.

11. As a condition of the vacation of 36th Avenue S., in 1983, the City Council required the construction of an earthen berm topped by a 12 ft. fence along the zone boundary between M and SF 5000 on the northern portion of the block immediately north of the subject site to reduce the noise from the facility's operations received by the residences. Neighbors are disturbed that that berm has not been constructed to date.

12. The Director issued a determination of nonsignificance (DNS) for the combined proposed rezone and cooler expansion. In addition to truck and other noise, expected environmental impacts are: earth disruption from fill dirt being moved from the cooler expansion area to the rezone area; increased noise and particulate levels in the air from construction activity; alteration of traffic patterns; increase in vehicular movement, carbon monoxide emissions, automobile headlights and noise in the area of the rezone; and the aesthetic impact of the parking lot. Conditions were imposed on the DNS by the Director to mitigate construction noise impacts and requiring landscaping and street improvements, regulating truck parking and delivery of resin and requiring the provision of 61 parking spaces over the number required by the Land Use Code.

13. From 1923 until 1947 the zoning of the area of the proposed rezone and the two blocks south was as an Industrial District. The same area was zoned a Commercial District between 1947 and 1957. In 1957, the subject area, the remainder of that block and the northern 3/4 of the block south of that block were rezoned RM 800 and the main Darigold site was rezoned to M. In 1982, the RM 800 zoned area was rezoned to Lowrise 3.

14. Darigold, Inc., acquired Lots 4-10 of the subject site in the Fall of 1985. It has an option to purchase the west half of Lot 2, Lot 3 and Lots 11-18. The deterioration of the structures leading to the abatement process occurred prior to Darigold's acquiring any interest in the property.

15. The rezone site would be filled to be level with the streets, be landscaped with a border of trees and shrubs, have 14 trees in the parking area and a fence along the eastern edge of the lot according to Exhibit No. 2. The parking lot would be lighted.

16. There is no topographical break at the north, east or south margins of the area proposed to be rezoned.

17. The residences, a fourplex and a single family, on the property abutting the east side of the rezone site face 37th Avenue S. One is located very near the joint property line, according to Exhibit 3.

18. Development to the north, east and south is generally one and two stories in height. The Genesee Community Center appears, from Exhibit 4, to be about the height of a two story house.

19. The examiner finds that, contrary to the Director's finding, Safeway is not "tall". The heights of the Darigold buildings do not appear in the record.

20. The Mt. Baker Neighborhood Plan, an adopted neighborhood plan, applies to the rezone area. The Director's analysis points out that retail development is encouraged around the intersection of Rainier and Genesee, south of the subject site, which area is zoned CG, and limited retail expansion east of the Safeway store, including the subject site, is suggested. Parking, accessory to a manufacturing use, is not a retail use.

21. The proposed rezone would not carry out the intent of the neighborhood plan, as the plan is described in the Director's analysis.

22. The new NC2 zoning designation permits accessory parking and creameries.

23. There is no nearby CG zoned vacant land which Darigold could acquire for the intended use.

24. The Rainier Merchants Association has received a grant to fund a Commercial Redevelopment Plan for the Genesee business area.

#### Conclusions

1. Section 23.34.008 sets out the factors to be considered in evaluating a rezone request. The first of the factors is whether the characteristics of the area match the locational criteria adopted for the zoning classification requested. There are no locational criteria in Title 24 for the BC classification requested by petitioner. However, the petitioner has agreed that the NC2 classification would be the zoning designation it desires under the new commercial zoning of Title 23, not yet effective. The Commercial Area Designation Policies of the Neighborhood Commercial Area Land Use Policies are available for use. Specific locational criteria for the NC2 zone have been adopted but are not effective, as of the date of this recommendation. Since they are the implementation of the policies, it should not be improper to use those criteria as guides in evaluating how appropriate the area is for the proposed zone classification.

2. The area characteristics match closely the locational criteria adopted, but not yet effective, for designation as NC2. Section 23.34.076. As in criterion C.1, the area is surrounded, on three sides, by low to medium density residential areas; the zone would lack strong edges to buffer the residential area (C.2); there is a lack of vacant land for additional commercial development (C.3); the access to the lot is on streets which go through residential areas (C.4); it is located on streets with good capacity, however, contrary to the criterion C.5, it is just off a major transportation corridor; and the parking capacity is limited because of existing uses (C.7). The final criterion indicates that a parking area for a supermarket or other larger use may be included. The proposed use does not fit with the stated function of the NC2 zone, i.e., a pedestrian-oriented shopping area, nor with the desired characteristics: small to medium-sized neighborhood serving businesses; continuous storefronts; pedestrian-friendly; etc. The existing character of the area is described by one of the types in the locational criteria: "a medium-sized node generally surrounded by low to medium density residential areas."

3. Though the proposed use is not remotely related to the intended function of the zone, stated in the policies, one of the criteria specifically states that parking areas for large uses can be included. The examiner concludes from an evaluation of the locational criteria, and the statement that parking areas are included, that if a commercial designation is appropriate, the NC2 classification should be applied to the property.

4. The second general rezone criterion is zoning history and precedential effect. The zoning history shows a trend away from industrial and commercial toward residential. The rezone would reverse that trend. While no direct precedential effect is expected, there could be increased pressure for commercial zoning on that part of the L-3 zone left between the subject site and CG zoning to the south.

5. Other Zoning Principles, the third criterion, have been discussed within the locational criteria discussion and relate chiefly to the improvement of the boundary relationship to the west and deterioration on the north and south.

6. The possible negative impacts on the area from a rezone of the site would include: an increase in vehicular movement, CO emission, vehicle headlights on residences, and auto and people noise in the area; temporary dust, mud, etc., from fill activity; and the aesthetic impact from a parking lot full of cars rather than houses and yards, mitigated to some degree by landscaping. Though not mentioned in the description of the criterion, positive impacts should be considered to the extent that they offset the negative impacts. The reduction of employee parking on the streets should be a positive impact.

7. Neighborhood planning efforts, if any, are to be considered. The proposal is not consistent with the existing neighborhood plan.

8. The petitioner did not rely on changed circumstances to justify the rezone. However, the need for expansion by Darigold and the deterioration of the residences on the subject site were found by the Director to be changed circumstances warranting the rezone.

9. The site is not located within an overlay district nor is it subject to a greenbelt overlay district.

10. From the evaluation of the factors set out in the code as general rezone criteria and discussed above, a conclusion is to be reached as to whether the requested rezone serves the public interest. The conclusions, above, as to most of the individual criteria are ambiguous. None shows clearly that the rezone should or should not be granted. The greatest reliance must then be placed on the policies adopted by the City Council to determine if an area should be designated commercial. Those are to be used during the legislative mapping process and after that for individual rezones. The ideal situation would be to have this large parcel considered in that process along with the remainder of the L-3 zone and the commercial area. One option would be to delay a decision on this rezone until the area is considered as a whole. However, if the petition is to be decided separately, the designation policies of the Neighborhood Commercial Area Land Use Policies should be reviewed. The following objectives are listed in the Neighborhood Commercial Area Land Use Policies as general criteria for determining whether an area should be designated commercial as opposed to noncommercial:

- a. The encroachment of commercial development into residential areas shall be discouraged.
- b. Preferred configuration of commercial zones shall not conflict with the preferred configuration and edge protection of residential zones as established in the Single Family Policies.

- c. Whenever possible, commercial zones shall be located where impacts on other zones can be minimized by the use of transition zones or buffers. Boundaries between commercial and residential areas shall generally be established so that commercial uses face each other across the street on which they are located, and face away from adjacent residential areas....
- d. Compact, concentrated commercial areas, or nodes, shall be preferred to diffuse commercial sprawl.
- e. The preservation and improvement of existing commercial areas shall be preferred over the creation of new business districts.
- f. The cumulative impact of development in the area shall not exceed the capacity of infrastructure such as streets, utilities and sewers.
- g. Community objectives contained in City Council adopted neighborhood and business district development plans shall be given careful consideration.
- h. Changes in commercial boundary, zone designation, height or special district overlay shall occur in an orderly, equitable and predictable fashion.

An evaluation of how the proposed rezone satisfies those objectives results in the following conclusions.

11. The requested rezone would expand the commercial zone and could be seen as an encroachment into residential area, contrary to the first objective. The Director suggests that the resulting configuration would be better, however, than that which exists now because the zoning on facing sides of 36th would be commercial. The change would create two new conflicting edges though, that on the north where commercial would face single family and on the south where commercial would face L-3, so the objective in b., above, would not be met.

12. A commercial zone with a limitation on use to parking could be considered a kind of transition between the CG and M zones to the west and the remaining L-3 zone to the east, which objective c., above, suggests is desirable. The new boundary on the east would leave residential zones facing across the street but, again, create new conflicts on the north and south sides. No physical buffer exists to improve the situation.

13. The new area of commercial zoning would not create commercial sprawl, which is to be avoided according to criterion d, unless it contributes to the change of the remainder of the L-3 zone south of the site to commercial. A new business district is not proposed so there would be no conflict with criterion e.

14. The new parking area would have no negative effect on the capacity of the infrastructure and could have the positive effect of making on-street parking available to the residents of the area.

15. The existing neighborhood plan does not approve expansion of the commercial zone at this location.

16. Finally, the rezoning of this parcel, when a study of commercial zoning for the Genesee area is being undertaken, does not contribute to orderly changes in commercial boundaries and zone designations which is the objective of g.

17. Those conclusions, while mixed, weigh more heavily against rezoning the site. The designation policies also list considerations under 3. Rezone Evaluation, at p. 16.20.08, which relate to the match with locational criteria plus effects on the environment, transportation, parking and housing and consistency with neighborhood improvement plans or business district plans. These also appear as considerations under the general criteria in the Code for evaluating rezones and were evaluated in that context.

18. One further source of policy guidance is the Goals of the policies which provide some support for the rezone not found in the goals and objectives selected for the Designation Policies. Those goals include

4. Establish a healthy business climate for the creation, retention and expansion of businesses;

9. Encourage a diversity of employment and economy and provide employment for the widest possible range of skills.

12. Preserve employment within the City for Seattle residents.

These goals may be thwarted if denying the rezone stifles the growth or well-being of petitioner.

19. The clearest policy direction is in the designation policies, and those policies, when applied to the subject site, tend to show that the site should have a noncommercial zoning designation. Since the other considerations were inconclusive as to the effect on the public interest and the designation policies indicate noncommercial zoning, the petition should be denied without prejudice to be reconsidered if the area-wide study results in a proposal which includes a commercial designation for property to the north and south of the subject site. If the City Council grants the rezone petition, petitioner's agreement contractually limiting the use of the property to a parking lot should be obtained so that creamery expansion onto the site will not be permitted in the future without further Council action.

#### Recommendation

The petition should be denied without prejudice.

Entered this 1st day of <sup>May</sup>~~April~~, 1986.

*M. Margaret Klockars*  
M. Margaret Klockars  
Deputy Hearing Examiner

Notice of Right to Petition  
For Further Consideration

Pursuant to Seattle Municipal Code Section 23.76.054, as amended, any person substantially 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 fifteen days after the date of mailing the recommendation of the Hearing Examiner and addressed to: City Council, Urban Redevelopment Committee, Municipal Building, Seattle, Washington 98104. The request for further consideration shall clearly identify specific objections to the Hearing Examiner's recommendation, facts missing from the record, and the relief sought.

Pursuant to Seattle Municipal Code Section 23.76.054(D), if there is no request for further consideration, Council action shall be based on the record established by the Hearing Examiner.

The City Council Urban Redevelopment Committee should be consulted for further information on the Council review process.