

**FINDINGS, RECOMMENDATION AND DECISION**  
**OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE**

In the Matter of the Application of

**WASHINGTON STATE CONVENTION AND  
TRADE CENTER**

FILE NO. CC-8705871  
C.F. NO. 295976

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

and

In the Matter of the Appeal of the

**SEATTLE DISPLACEMENT COALITION  
ET AL.**

FILE NO. W-87-009

from a threshold environmental  
determination by the Director,  
Department of Construction and  
Land Use

**Introduction**

The Washington State Convention Trade Center (WSCTC) petitions to rezone approximately 1.9 acres of land, address 700 Union Street, from Downtown Office Core 2 (DOC 2/400') to DOC-1.

DCLU recommended approval of the rezone and issued a determination of non-significance, both with conditions. Appellant Seattle Displacement Coalition (SDC) appealed the determination of non significance (DNS) Members of the SDC and others also opposed the rezone.

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

This matter came on for hearing before the Hearing Examiner on December 4, 1987. Applicant was represented by Jerome L. Hillis of Hillis, Clark, Martin & Peterson, P.S.; the appellants were represented by component representatives John V. Fox, Downtown Neighborhood Alliance and by Margaret Pageler, Allied Arts. The DCLU Director was represented by Cheryl Waldman. The record remained open to December 7, 1987 for supplements.

After due consideration of the evidence presented by the DCLU Director's representative, the appellant, petitioner and others; the following shall constitute the findings of fact, conclusions and recommendation on the rezone and the decision on the appeal of the DNS.

**Findings of Fact**

1. The applicant proposes to reclassify the subject property from Downtown Office Core 2, 400 ft. height limit, to Downtown Office Core 1. The request is principally to accomodate construction of a single, 550 ft. high office tower on site containing approximately 1,063,500 sq. ft. of area.

2. Generally, the subject site is bounded on the north by Pike Street and on the south by Union Street. The property, east of the downtown retail core, is also between 7th and 8th Avenues. There is an exit from Interstate-5 to nearby Union Street.

3. Present on site development includes the 7-story Eagles Building, which is listed on the National Register of Historic Places. Applicant urges that the rezone will facilitate complete restoration of this building found near the southeast corner of 7th and Union. Also on the west half of the subject block is a 50 space commercial parking lot, then a 5-story, 76 unit resi-

4. The east half of the subject site, from an intervening alley, is under development as roughly 158,900 sq. ft. of the Convention Center proposal. Expected is a multi-tiered galleria that will extend from Pike to Union Street. More extensive and intensive Convention Center development is underway for the area extending as far east and southeast as Hubell Place and the 5-acre Freeway Park area. The Convention Center facility spans Interstate 5.

5. Vicinity development is mixed. Across Pike Street to the north of the site are the Waldorf Towers apartments and a commercial parking lot at the intersection of 7th and Pike Street. Across 7th Avenue to the west is the Sheraton Hotel site. Located in a DOC-2 zone, this 34 story, 400 ft. structure was constructed in 1982.

6. South of the proposal site is the Two Union Square construction site. This site is directly north of the existing One Union Square building, and is proposed for 55 stories or 670 ft. in height. The 29-story Sixth and Pike Building is approximately 2 blocks northwest of the site within a DRC/240' zone. Under construction between 5th and 6th on Pike is a 585 ft. high Pacific First Building (formerly known as the Stimson Center). A 32-story hotel is proposed for the northwest corner of 8th and Pine in the DOC-2 zone. Farther north, at the southwest corner of Terry Avenue and Pike Street in the DOC-2 zone is the New World Center (21 stories) proposal site.

7. The subject site is within a high transit accessibility area.

8. The principal difference between the DOC-1 and DOC-2 zones is in floor area ratio (FAR) allowances and in the fact that the DOC-1 has no height limit. The DOC 2 height limit is 400 ft. The maximum FAR under the DOC-2 zone is 14; under DOC-1, 20.

9. In 1984, applicant proposed to build two towers on site, a 32-story, 566,000 sq. ft. office structure; and a 900 room hotel structure that would approximate 34 stories. The base for these "twin-towers" would have been adjacent to the Eagles Building. A Draft Environmental Impact Statement (DEIS) was issued February 18, 1985 showing the two towers, 550 ft. in height, as the preferred alternative. The applicant and DCLU indicate that the twin-tower project is vested to the Title 24 (Commercial Metropolitan) zoning.

10. In June 1985 implementation of the Downtown Code limited development height on the subject site to 400 ft. Applicant urges that the proposed rezone and resulting construction, as an alternative to the "vested" twin tower project, would be more favorable for the Eagles and better for the Convention Center site.

11. As a result of City Council conditions imposed on the Convention Center, there is a limit of 1.6 million sq. ft. for the Convention Center property located west of 8th Avenue, and at least 67,500 sq. ft. of "bonusable" public space is to be developed west of 8th Avenue.

12. As noted above, roughly 158,900 sq. ft. of the Convention Center property is being developed on the subject site. Subtracting this area from the 1.6 million sq. ft. ceiling, a net potential of approximately 1,441,100 sq. ft. remains for development per City Council imposed restrictions.

13. As presently perceived by applicant, the single 550 ft. high office tower now proposed is far preferable economically and otherwise to the vested twin tower project. Depending on configuration, the towers would have more of a walling and shadowing effect on the Convention Center, i.e. more light, air and sunshine would be allowed onto the Convention Center grounds by the single building alternative proposed. The natural light impact would be significant on the glassed lobby proposed for the Center. Finally, per applicant's lead witness, funding for "real" preservation of the Eagles Building is facilitated by the

present proposal. In other words, the rezone would allow the transfer of development privileges to someone who would include funds to "completely" restore the Eagles; it would preclude the dwarfing of the Eagle by twin towers, and upper level views from the Convention Center would tend to be less impacted.

14. According to testimony in opposition to the rezone, the DOC-2 zoning for the subject site and others was arrived at after careful, intense deliberations. Further, that the DOC-2 area was to be a transition area between the First Hill area uses and the retail core. Continued statements in opposition urged that public projects conform to and support the hard-fought Downtown Plan delineations, and that these projects should not establish a precedent for eliminating those guidelines under the guise of economic preference.

15. Testimony in opposition to the rezone was to the further effect that the office tower could or would attract approximately 1700 employees who would look for housing and thus negatively impact availability and market rates. Increased pressure for hotel construction would lead to more destruction of low income housing, argued the witness.

16. There was testimony suggesting that the increased traffic from the 1700 employees modal split would significantly impact rush hour traffic and access.

17. Appellants raised several questions about the proposal, such as energy cost differences between the "vested" and proposal project; differences in wind pattern; and the differences between hotel and office vs. all office use on peak hour traffic. Questions were also raised about the different light and glare, aesthetics, view, height, bulk, and other items that appellants urged would and should be covered by an environmental impact statement (EIS).

18. Applicant and DCLU presented no evidence of changed circumstances since the imposition of the current DOC-2 zoning. It was noted that the Stimson Center and the II Union Square developments have been under construction since the rezoning.

19. The DOC-2 zoned properties are generally north of Union Street and the DOC-1 properties generally south. The subject site is therefore across the street from DOC-2 zoning on the west, across 7th Avenue, and on the north, across Pike Street. The subject site's DOC-2/400' height zoning became effective in June 1985 with the implementation of Chapter 23.49, Seattle Municipal Code. From 1959 to 1984, the subject site and nearby properties were zoned Commercial Metropolitan.

20. There have been no rezone requests in the proposal vicinity or in the larger downtown area since the 1985 rezoning.

21. The proposed rezoned site encompasses one rectangular city "block," and is near the proposed transit mall and station.

22. The rezone is expected to result in no greater degree of adverse environmental impacts than those of the "vested" project. However, the nature of the impacts will vary, as suggested by appellants. The apex of office core heights would be extended one block to the north.

23. The proposal site is located within no overlay, shoreline, greenbelt or other special review district.

24. Development of the site is likely to yield an increase in property tax revenues and employment. There is no significant difference between the benefits of the "vested" vs. the proposed project. It is likely that the McKay Apartments would be demolished under existing or proposed zoning or under the vested project. As noted by the DCLU Report,

The Council Conditional Use Permit required that certain housing mitigation measures be met, both in connection with development of the subject site. To date, all conditions,

with the exception of the McKay and...68 units, have been met. Mitigation for the McKay is anticipated to involve the release of escrow funds to the City's housing fund.

at p. 31.

25. The DOC-2 zone is primarily for office use with a mix of other activities.

26. City Light's property management division, offered "no comment on the proposed rezone." The Seattle Fire Department had no objection. After reviewing the proposed the rezone, the Health Department had no comments. The Board of Public Works deferred comment until a more specific action would be presented. The Seattle Water Department indicated "water service and public hydrant available-approve application."

27. With pointed caveats, the Department of Community Development "supports the rezone as reasonable and finds it to be consistent with DCD's concerns for economic development for housing and landmark preservation." For example, DCD noted that

...more flexible height limits would allow an economic amount of development in a form which is more responsive to site conditions...;

that the prior ceiling of 1.6 million sq. ft. of development west of 8th Avenue should be retained; and that the negative financial consequences of lost development potential, in light of prior parties' bankruptcy and other issues, indicates "that a rezone would be in the financial public interest."

28. Per the referral sheet, the Plan Review and Street Use Divisions of the Engineering Department noted "no comment on the proposal." However, the file contains a memorandum from the Plan Review Section which projects that the proposed "Phase II development at the rezone site will only compound the traffic problems expected when the Convention Center opens..."

29. Comments opposing the rezone as inappropriate, special interest legislation or as spot zoning were received from the International District Improvement Association, the League of Women Voters of Seattle, the Sierra Club Puget Sound Group and from the Church Council of Greater Seattle.

#### Conclusions

1. The Hearing Examiner has jurisdiction of this application and this appeal pursuant to Chapter 23.76, Seattle Municipal Code.

2. Regarding the challenge to the DNS, the Hearing Examiner must give "substantial weight" to the DCLU's environmental determination. Seattle Municipal Code Section 23.76.022(C)(7). Appellants must therefore meet the burden of showing the DCLU determination to be clearly erroneous. Brown v. Tacoma, 30 Wn.App. 762, 637 P.2d 1005 (1981).

3. If it is determined that the proposal "may have a probable significant adverse environmental impact," it is appropriate to require an environmental impact statement.

4. Seattle Municipal Code Section 25.05.055 indicates that either the threshold determination or EIS, if required, should be prepared

at the earliest possible point in the planning and decisionmaking process, when the principal features of a proposal and its environmental impacts can be reasonably identified.

This section does not require that an EIS be issued at this stage.

5. The action before the Hearing Examiner is sufficiently presented as a "nonproject action." Seattle Municipal Code Section 25.05.774. Specific review of the proposed office tower configuration, traffic pattern and other items is not required at this stage. Seattle Municipal Code Section 25.05.330(B)(2).

6. As to the general question of whether a probable significant adverse impact may be presented by the rezone, the basic difference is in what use of land will be permitted. Maximum on-site development is limited by prior City Council action to 1.6 million sq. ft. less existing development, or approximately 1.4 million sq. ft. Existing DOC-2 zoning would allow up to 1,346,859 sq. ft. Thus, the density in this context is roughly comparable. Questions have been raised about DOC-2 vs. DOC-1 differences in traffic and energy levels, in the amounts of light and glare and in other areas. However, the appellant's presentations fell short of the threshold required to show the DCLU determination to be "clearly erroneous." Further, the allowable height difference between the two zones, particularly as conditioned by the Director and in light of vicinity development, does not support the requirement of an EIS at this stage.

7. As to the rezone, the Land Use Code criteria of Chapter 23.34 must be considered along with those of the Land Use and Transportation Plan for Downtown Seattle (June 1985). The proposed land use category, DOC-1, is to apply to the area of most concentrated office activity. By the rezone, applicant is proposing office use (limited in density by prior Council action) adjacent to the Convention Center development, near a transit mall and proximate to 400-600 ft. proposed or existing projects. There is an adequate match between established criteria for the DOC-1 zone and the subject site. Section 23.34.008(A); Policy 28, Land Use and Transportation Plan.

8. The zoning history militates strongly against the rezone. The 1985 implementation followed careful and deliberate review of transitions and other constructs. No circumstances have really changed which indicate a zoning mistake or oversight. There is, however, sufficient distinction between this application and others such that this rezone would be of limited precedential effect. This rezone would rest substantially on the fact that a less attractive, vested, public project hangs in the balance as an alternative, and further on the fact that the density impacts would be limited by prior Council action. Seattle Municipal Code Section 23.34.008(B).

9. The proposed site is directly across Union Street from a line of DOC-1 zoned properties. With rezoning of the site, a DOC-1 pocket aberration would exist north of Union Street and would not present a favorable configuration or zoning pattern. The surrounding development, proposed and existing, does tend to minimize this inconsistency as does the presence of the freeway immediately north. Seattle Municipal Code 23.34.008(C).

10. In terms of impacts, there will be little difference in density, due in large measure to prior Council restrictions. Instead of a (vested) combined hotel-office tower structure, the rezone - as conditioned - will facilitate a single office building structure that could allow more light and air on the public space to the east. The Hearing Examiner is also persuaded that the Eagles building restoration would be enhanced by the rezone proposal.

11. Policies from the Land use and Transportation Plan for Downtown Seattle are discussed in detail in the DCLU Report. Those policies address Rezones, Framework, Land Use, Office Core 1 and Building Height. Generally, the proposed rezone site's environment presents a sufficiently equitable change of boundaries. The character of the area and services and benefits provided support the rezone, but as indicated above, the zoning history does not.

12. The proposed rezone would not conflict with Framework Policies designed to maintain downtown Seattle as a preeminent regional activity center. The proposal is not shown to have any negative impact on growth or economic development of the area.

Regarding transportation impacts, the site is near the transit mall and is within a high transit availability area. The rezone would not have any special benefits for the housing stock per se, nor would it significantly impact human services, culture and entertainment. Many of the other Framework Policies are not directly applicable, e.g. the Shoreline, residential neighborhood, mixed use neighborhood policies.

13. Regarding the Land Use Policies, the site would remain in use as an "office." The site has direct access to Interstate-5, the transit mall, and to frequent transit availability. The rezone would therefore not conflict with the transportation and infrastructure capacity criterion of the Office Core 1 policies. With the height of the surrounding proposed and existing development, the proposed change would not prohibitively impact the height limit transition elements of the Building Height Policy. Cf. Seattle Municipal Code Section 23.34.008(E).

14. The remaining general rezone criteria of Seattle Municipal Code 23.34.008 are not applicable. The site is included within no overlay or greenbelt district, Section 23.34.008(G)(H), and applicant is asserting no changed circumstances as a reason for the rezone. Section 23.34.008(F). Seattle's code does not require a demonstration of changed circumstances. Cf. Parkridge v. Seattle, 89 Wn.2d 454, 573 P.2d 359 (1978). It is also noted that consideration of the vested project is in consonance with consideration of the public interest and welfare relative to the rezone request. Valley View Industrial Park v. Redmond, 107 Wn.2d 621 (1987).

15. On balance, the rezone request should be granted. Although the history strongly suggests caution, the other factors of Section 23.34.008 sufficiently suggest that a contract rezone would be appropriate.

Based on the Foregoing the Hearing Examiner enters the following

#### Recommendation

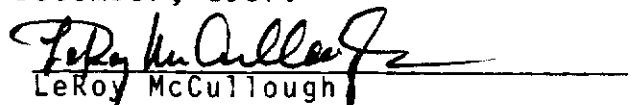
The rezone should be Approved by contract or property use and development agreement subject to the following conditions recommended by DCLU and as revised by the Hearing Examiner:

- The height limit should be 550 ft. to effect an orderly transition in height.
- Future development shall be subject to the applicable conditions imposed by the City Council on the Convention Center's conditional use permit
- An environmental impact statement review shall be required for the subject site's future development proposal.

#### Decision

The DNS is AFFIRMED.

Entered this 22nd day of December, 1987.

  
LeRoy McCullough  
Hearing Examiner

#### NOTICE OF RIGHT TO PETITION FOR FURTHER CONSIDERATION (CC 8606899)

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 reconsideration 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.

CONCERNING FURTHER REVIEW  
(W-87-009)

The decision of the Hearing Examiner in this case is final 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 of the decision must be by application for writ of review filed in King County Superior Court within fifteen days of the date of this decision. Seattle Municipal Code Section 23.76.22(C)(12)(c).

Judicial review under SEPA shall without exception be of the decision on the underlying governmental action together with its accompanying environmental determinations. RCW 43.21C.075(6)(c). SEPA issues may be added to the request for review within 30 days after the date of the decision on the underlying governmental action if a notice of intent to seek judicial review of SEPA issues is filed with the Director of the Department of Construction and Land Use, 408 Seattle Municipal Building, Seattle, Washington 98104, within fifteen days of the date of this decision. Seattle Municipal Code Section 25.05.680(D)(4).

If the Superior Court orders a review of the decision, the person seeking review must arrange for and bear the cost for preparing a verbatim written transcript of the hearing but will be reimbursed if successful in court. Instructions for preparation of the transcript are available in the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104. In the alternative, RCW 43.21C.075(6)(b) provides that a tape may be used for the court review. If a taped transcript is to be reviewed by the court the record shall identify the location on the taped transcript of testimony and evidence to be reviewed. Parties are encouraged to designate only those portions of the testimony necessary to present the issues raised on review, but if a party alleges that a finding of fact is not supported by evidence, the party should include in the record all evidence relevant to the disputed finding. Any other party may designate additional portions of taped transcript relating to issues on review.