

## FINDINGS AND DECISION

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

In the Matter of the Petition of

ROBERT BARTLESON, ET AL.,  
Petitioners,

v.

FILE NO. F-81-005

ROBERT E. SKARPERUD,  
Respondent.

#### Introduction

Petitioners, Robert Bartleson, et al., requested a fact finding hearing regarding the increase in floating home moorage fee demanded by Robert E. Skarperud for moorage at 2420 Westlake Avenue North. The sole issue in the dispute is whether certain land is to be treated as being in the moorage.

The hearing was held before the Hearing Examiner on February 22, 1982. Robert Skarperud represented the petitioners and Frank Granat, Jr., assistant dock manager, represented respondent.

The following findings of fact and conclusions constitute the decision of the hearing examiner.

#### Findings of Fact

1. Robert Skarperud, respondent, operates a floating home moorage at 2420 Westlake Avenue North. The land under respondent's control is comprised of approximately 196 ft. of land owned in fee simple and 150 ft. leased from the State. The dock on the outer 85 ft. has not been used. Fourteen floating homes are moored at the site.

2. Respondent notified the dock tenants of a moorage fee increase effective January 1, 1982, which excluded the outer 85 ft. from the denominator of the fraction of the CPI factor. The increase demanded was \$13.48 to raise the fee from \$152.60 to \$166.08.

3. The respondent had raised the moorage rent effective December 1, 1977, to \$120. Part of the increase was to cover cost involved in leasing "the property adjacent and East of the Dock." Petitioner's Exhibit 6.

4. The increase in moorage rate effective January 1, 1979, included the increase in the fee for the rental of the State land.

5. For the January 1, 1981, moorage rental increase the ordinance's formula for increase based on the increase in the CPI was used. The State leased land was first excluded but then included in the denominator by respondent after correspondence with floating home occupants.

6. Respondent applied for a master use and construction permit on August 26, 1981, to change the use of part of 2420 Westlake Avenue North from floating home moorage to commercial boat moorage and to construct three finger piers. The permit was issued October 16, 1981, for the use and construction "per plan and conditions specified in SMA...."

7. The requirements of the Shorelines Management Act (SMA) permit had not been satisfied at the time of the hearing.

8. Section 7.20.050, as amended, permits the moorage owner to increase the moorage fee on certain bases which include the CPI factor. Section 7.20.050(C) provides:

The CPI factor for a floating home moorage shall be determined by multiplying the percentage increase in the CPI since the last moorage fee increase by the current moorage fee, and by multiplying the product thereof by a fraction, the numerator of which shall be the number of square feet of land at the moorage owned by the moorage owner or leased from a private, non-governmental owner and the denominator of which shall be the total number of square feet of land in the moorage (privately owned or leased land plus land leased from or licensed by any governmental entity).

9. Section 7.20.020(C) provides:

"Floating home moorage" or "moorage" means a waterfront facility for the moorage of one or more floating homes, and the land and water premises on which such facility is located."

#### Conclusions

1. The "moorage" referred to for the computation of the CPI factor is the facility for moorage of floating homes and land on which it is located, using the definition of a floating home moorage in Section 7.20.020(C). A facility for moorage of boats and the land on which it is located would not be included in the definition.

2. The zoning code regulates the use of land within the City. An owner is required to obtain a permit for the change of use of any part of a structure, building or premises. Section 24.10.020, Seattle Municipal Code. The owner, in this case made a master use permit application and the permit was approved which established the use of commercial boat moorage. The use of those premises is legally a commercial boat moorage. No occupancy can take place, of course, until all requirements or conditions are met.

3. Since the use changed in October, 1981, the owner could properly exclude that area from the computation of the CPI factor to be used.


4. Fairness would seem to require an adjustment, as requested by petitioner, for the increased rent paid by the floating home owners due to the acquisition of these State leased lands by the owner even though that use was treated as floating home moorage because the cost incurred in that lease did not benefit petitioners. The examiner is without jurisdiction to reduce the moorage fee on that basis, however, since petitions must be filed within 15 days of the notice of increase and time for challenging those earlier increases has long passed. Section 7.20.050. Only the filing of a timely petition gives the Hearing Examiner jurisdiction.

5. The application of the CPI factor would allow the demanded fee increase.

#### Decision

The demanded moorage fee increase of \$13.48 is permitted by Section 7.20.050.

Entered this 8th day of March, 1982.

  
M. Margaret Klockars  
Deputy Hearing Examiner

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981). Should an appeal 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.