

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

WESTERN TOURS, INC.

S-80-014

from a determination of the
Superintendent of Buildings

Introduction

The appellant, Western Tours, Inc., filed an appeal of an interpretation by the Superintendent of Buildings regarding the definition of "commercial vehicle storage", for property at the southerly half of Tract 12, Tract 17 and Tract 18 of the Excelsior Acre Tracts.

The appellant exercised its right to appeal pursuant to Section 25.40 of the Zoning Ordinance (86300, as amended).

Appellant by its attorney John T. Rassier, Inslee, Best, Chapin, Uhlman and Dolzie, P.S. and the Superintendent of Buildings by Joyce Kling, Zoning Administrator.

This matter was heard before the Hearing Examiner on April 16, 1980 and continued, for submission of additional authority, to April 28, 1980.

For purposes of this decision, all section numbers, unless otherwise indicated, refer to the Zoning Ordinance (86300, as amended).

After due consideration of the evidence elicited during the public hearing, the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The legal description of the subject property is as follows:

The southerly one-half of Tract 12, Tract 17 and Tract 18 of the Excelsior Acre Tracts of the City of Seattle.

2. An amended rezone petition (File X-78-209) was submitted October 31, 1978, requesting a change in the zoning classification of the subject property from RS 5000 (Single Family Residence High Density) to IG (General Industrial). The petition is still pending.

3. Section 17A.23(i) permits "commercial vehicle storage" in the CMT zone so long as inside a completely enclosed building when the use is within 50 feet of an R zone.

4. The subject property abuts an R zone.

5. Applicant proposes to construct a tour bus parking area to provide overnight "parking" or "parking" for several hours for motor coaches.

6. The Superintendent concluded that "a parking area providing overnight parking or parking for several hours for commercial buses constitutes storage of commercial vehicles." Publication of that interpretation occurred on March 18, 1980.

7. On March 26, 1980, appellant filed its notice of appeal of the interpretation.

Conclusions

1. If the appellant's proposed use constitutes commercial vehicle storage, a 50 ft. setback from any R zoned property would be required under Section 17A.23. The Superintendent has ruled that Section 17A.23 applies to the proposed use, appellant contends it does not.

2. "Commercial vehicle storage" is not defined by the ordinance nor is any of those words individually. "Parking" is not specifically defined in the ordinance.

3. A rule of construction often stated and used by the courts is that when words used in an ordinance are not defined they are to be given their ordinary and everyday meaning. See New York Life Insurance v. Jones, 86 Wn.2d 44, 47 (1975). Of equal or greater importance is the context of the ordinance in which the term is used. See Alderwood Water District v. Pope and Talbot, Inc., 62 Wn.2d 319, 321 (1963), Krystad v. Lau, 65 Wn.2d 827, 844 (1965).

4. The structure of the zoning ordinance is such that a use is permitted if stated under that zone designation. Any use not specifically provided for is not permitted. Since many uses do not fit precisely a stated category and would not be permitted otherwise, undefined words are often used to envelop closely related uses. This practice is necessary since zoning ordinances are in derogation of the common law and must to be construed in a way to favor the property owner where a use might otherwise be prohibited. (See State ex rel Standard Mining and Development Corp. v. Auburn, 82 Wn.2d 321 (1973).

5. Although the definitions of storage and parking provided by appellant show that "storage" connotes a degree of permanency while "parking" is associated with a more transient use, those connotations do not apply in the context of the zoning ordinance which has no specific provision for principal use "parking" for anything but private passenger vehicles. Therefore, for overnight parking of any vehicles other than private passenger cars to be permitted, the term "storage" must be construed to include temporary or transient parking or the ordinance would operate to deny owners the right to store or park commercial vehicles overnight.

6. Section 17.21(i) permits parking garages and commercial parking lots for private passenger vehicles in the Metropolitan Commercial (M) Zone. Uses under Section 17.21 are permitted in more intensive zones as well. Except for accessory parking the code does not provide for any other "parking" of commercial vehicles.

7. The provisions of Article 23, entitled Offstreet Parking and Loading Requirements, deal with required accessory parking except for the downtown area (Area B) where it provides that new principal use parking may be permitted by conditional use as it was excepted from the general provision permitting parking in Section 17.21(i). Considering the scheme of the ordinance, no right is granted in Section 23. Section 23.41, Parking Areas in RM-MD, B, C, M and I Zones, must be read to regulate development of parking otherwise permitted or required rather than a new source of permission for principal use parking.

8. Reading the entire ordinance as a whole in a manner which carries out its scheme and intent, the parking of tour coaches overnight or for short periods of time is properly considered "commercial vehicle storage".

Decision

The appeal is DENIED and the Decision of the Superintendent of Buildings is AFFIRMED.

Entered this 14th day of May 1980.

M. Margaret Klockars
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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 appeal to the Superior Court should be filed within 20 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977).