

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

In the Matter of the Petition of

B. DOUGLAS WEBB, AGENT, FOR  
DUJARDIN CUSTOM HOMES

FILE NO. CC-81-013  
C.F. NO. 291038

for an amendment to the Official  
Zoning Map pursuant to Title 24,  
Seattle Municipal Code (Ordinance  
86300, as amended)

Introduction

Petitioners, Dujardin Custom Homes and Takeshi Kubota, by B. Douglas Webb, agent, request the reclassification of the property commonly known as Kubota Gardens from RS 7200 to RM 800 subject to restrictions on development imposed by contract.

For purposes of this recommendation, all section numbers refer to the Seattle Municipal Code, Title 24, as amended (Ordinance 86300, 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 December 15, 1981. The record remained open until January 7, 1982, for comment upon the issue of the financial feasibility of single family development.

After due consideration of the evidence presented by the Petitioner, the information provided by the Director's report, all evidence elicited during the public hearing and as a result of the personal inspection of the subject property and surrounding area by the Examiner, the following findings of fact and conclusions shall constitute the recommendation of the Hearing Examiner on this petition.

Findings of Fact

1. The subject of the rezone petition is a 25-acre parcel extending between 51st and 55th Avenues South, located to the southwest of the intersection of Renton Avenue South with 55th Avenue South.

2. The legal description of the property is:

The south 115 feet of Tract 7 and all of Tracts 9, 10, 11, 12 and 17, Rainier Beach Garden Tracts, according to the plat recorded in Volume 9 of Plats, page 37, in King County, Washington.

EXCEPT that portion of Tracts 7 and 9 condemned for street purposes in King County Superior Court Cause No. 98096, as provided under Ordinance No. 30673 of the City of Seattle and EXCEPT that portion thereof condemned in King County Superior Court Cause No. 241252 for City of Seattle Transmission Line Right-of-Way as provided by Ordinance No. 59599 of City of Seattle.

Subject to easement for sanitary sewer per Cause No. SC 837835.

3. The property contains one occupied house, two abandoned houses, structures associated with a landscaping business, the nursery stock associated with a landscaping business and Japanese gardens established by the Kubota family in 1929.

4. The site is part of a large Single Family Residence Medium Density (RS 7200) zone. To the north of the site are single family residences on large lots and a recent subdivision of ten lots not yet developed. Land to the east is platted for single family. St. Paul's Catholic Church and School occupies the block southeast of the site, across 55th. To the west are single family houses of generally one story in height. A large vacant area in unplatted parcels adjoins the south side of the site. One parcel contains a recently built church.

5. A core garden area of 6.4 acres has been designated by the Landmarks Preservation Board as a City of Seattle landmark. The area includes a Japanese garden, a wooded ravine and stream areas.

The report on designation states:

The Kubota Gardens from the cultural criterion represent an interpretation, resulting from 50 years of labor and aesthetic planning by one family, of the Japanese approach (informal) to planning and planting. Certainly, this important series of designed open spaces represents an outstanding achievement on the part of its original designer and planner, Mr. Fujitaro Kubota. The gardens, as they exist now represent a pronounced contrast of siting and treatment in relation to the urban, built-up environment around them, and provide a much needed series of planted open spaces in Southeast Seattle. These aspects, combined with the superior display and disposition of plant materials, provide a site of importance to the entire city and regions.

The proposed controls recommended to the City Council would require a certificate of approval from the Landmarks Preservation Board or that the time for denying that approval pass before any significant change could be made to the physical features within the core garden including plant materials, garden elements, structural and nonstructural elements such as roadways, pathways, waterways, ponds, and garden support systems. A conceptual approval is given in advance for certain activities and development such as curbs, surfacing of roadbeds and new paths and picnic areas in the ravine.

6. The site slopes generally down to the northeast, however, a ravine cuts through the central portion of the property in a north/south direction and has steep banks sloping down to a creek at the bottom. The western portion can be described as an upper plateau and the portion along Renton is at the lowest level except for the ravine portion. The southeastern portion is also a plateau but is lower than the western plateau. The stream cutting through the property goes through a series of pools utilized in the garden and providing water for irrigation of the garden.

7. Petitioners request a contract rezone from RS 7200 to Multiple Residence Low Density (RM 800).

8. Petitioner Dujardin Custom Homes, Inc., hereinafter Dujardin, initially proposed to construct 480 dwelling units in onetwo-story, 64-unit building and the remainder in thirteen four-story buildings with a maximum height of 60 ft.

9. The proposal at the time of the hearing was for 480 units in thirteen two to three story, 32-unit buildings and one two-story, 64-unit building with a maximum height of 48 ft.

10. The Department of Construction and Land Use (DCLU) recommended limiting the total number of dwelling units to 450 and restricting the height of the structures adjacent to 51st Avenue South and 55th Avenue South to two stories and all others to 35 ft. The agent representing petitioners agreed to those recommended restrictions.

11. DCLU also recommended other conditions to mitigate impacts during the construction period and relating to water quality, light and glare, transportation and circulation, landscaping and garden maintenance, and utilities and fire protection. Dujardin agreed to many of the recommended conditions and variations of others.

12. All proposals include preservation and maintenance of the Japanese gardens with cost eventually borne by a condominium homeowners association.

13. The project's design leaves approximately 70% of the site open. Parking is to be under the buildings except for a few surface spaces. Private roads, walks and trails would provide access.

14. Development would occur over a period of up to five to six years with buildings constructed according to market demand. Two buildings would be constructed initially.

15. An environmental impact statement (DEIS or FEIS) was prepared by DCLU for the proposed action pursuant to the State Environmental Policy Act of 1971 (SEPA) and Chapter 25.04, Seattle Municipal Code.

16. The site is part of an area which has been designated as appropriate for one and two-family development on the Comprehensive Plan. Zoning to the northwest, west and south is RS 7200. To the north and east is RS 5000. The record has no indication of change in zoning in the area since the adoption of the Zoning Ordinance.

17. The site is located in Census Tract 119 and the Rainier Beach area. The addition of 480 condominium units could add approximately 1350 persons to the area, representing an increase of approximately 20% in the population of Census Tract 119.

18. The number of school age children in 480 condominium units is estimated at between 38 (Seattle Public School's estimate) and 71 (Bill Munday and Associates, Inc. estimate). The additional children would increase the level of public service for which Seattle Public Schools is responsible to the extent that the children go to public schools but, because of declining enrollments, the increase would not necessarily be an adverse impact of the rezone.

19. The development, as proposed, would provide access to 51st, 55th and Renton Avenues South. Renton and 51st are described as minor arterials with two lanes and parking on each side of the street. 55th Avenue South is a local access street, right-of-way of 18 ft. in width, in poor condition and has inadequate shoulders and no sidewalks. Creston Street, the first street to the south connecting 51st and 55th Avenues, is an 18 ft. wide local access street also without curbs or shoulders.

20. The EIS projects, for the worse case, that the completed project would generate 3900 vehicle trips per day

(one way) and 290 in and 100 out during the peak hour period. The percentage increase over non-project traffic on the adjacent streets with the access points initially proposed by Dujardin is projected to be 8 percent on Renton Avenue south of the site and 21 percent north of the site; 18 percent north of the site on 51st and 11 percent south of the site; and 90 percent on 55th Avenue South. The percentage increase on 55th may be as high as 225 percent according to comments on the EIS and responses to those comments.

21. Traffic accidents may increase in number in proportion to the increase in traffic. The increase in traffic on 55th and resulting increase in accidents is of special concern because of that street's poor condition.

22. The site is one-half mile east of I-5. Routes to access the freeway are described in the EIS. Two routes to get to northbound on-ramps cover 3.5 miles and 4 miles. No distance is given for the route to southbound lanes via South Ryan Way. Another means of going north also involves use of Ryan Way. That route would probably take drivers from the east side of the project along 55th to Creston and 51st, thus increasing traffic on those streets. The use of 55th is considered a short cut means to get to the freeway north and to the freeway south.

23. From an engineering viewpoint the impact of the additional traffic on the adjacent roads would be changing the level of service from A or B, which is very good, to B or, at lowest, C, which are still good. Those changes are not considered to be significant.

24. There are no existing traffic signals near the site. Stop signs are located at the intersections of 51st with Renton and 51st with Ryan.

25. Because of the narrowness and other problems with 55th Avenue South, the staff recommendation includes a condition removing the access point proposed on 55th South and connecting the buildings that would have used that access to a looping road which would have access on Renton Avenue South in an attempt to discourage traffic from using 55th. Christopher Brown, P.E., opines that 55th will still be used whether or not the entrance is moved because of the use of that street as a short cut to I-5. The EIS at p. 89 (FEIS) states that "the additional traffic on 55th Avenue S. would not be changed by limiting the eastern access of Kubota Gardens to Renton Avenue South" (emphasis supplied). Dujardin has agreed to the change in the access point.

26. The proposal includes 1.5 parking spaces per unit. An additional 24 surface units may be provided at various locations. No parking is proposed to be provided on the site for visitors to the garden. Street parking on Renton is available at this time. Demand for on-street parking is low because of the vacant property.

27. The EIS predicts that demand for parking generated by the project will be accommodated on site. Christopher Brown, P.E., disagrees as do other residents of the area.

28. Dujardin proposes to restore the garden to "a first class condition" and then provide continuing maintenance of the gardens." (FEIS p. 314). The costs of restoration will be considered one of development. The proposal includes having the homeowners association take over the share of maintenance costs proportionate to the membership's ownership with the developer funding the remainder until all units are sold. The staff recommendation would require a landscaping plan to be approved and a reserve escrow account of \$234,000 for garden restoration and \$45,000 for each year

that Dujardin would have the responsibility for maintenance of the garden. Dujardin agrees to that recommendation except would add language to the effect "or other financial guarantee acceptable to the City."

29. The garden, under the proposal and DCLU's recommended conditions, would be open to the public in the same manner it has been historically, that is, upon obtaining permission. The proponent proposes having inquiries going to a staff person who will grant permission for access during weekday hours of 9 to 4 and reasonable hours on weekends. DCLU recommends that the staff person be available for longer hours in the summer and Dujardin agreed that this may be appropriate.

30. Sanitary sewer service for the site is provided by a 10" line in 51st Avenue South and an 8" line in Renton Avenue South. The Engineering Department does not expect sewage from the proposed development to overload the existing lines.

31. A separate storm sewer would handle runoff from the storm drainage collection system on site. A 24" line is located in 51st and a 15" line in Renton. A retention system would not be provided because the existing public storm drains have a capacity to carry all runoff from the drainage basin.

32. Eight-inch water mains are located in 51st Avenue and in Renton Avenue and an 8" water main stub in 55th near the southeast corner. An extension of the water main from 55th to Renton would be done at the developer's expense. Water service to the proposed development would cause a drop in water pressure which could be significant for an area to the southeast of the subject site which now has barely adequate water pressure. The FEIS at page 312 describes several measures which could be taken to mitigate that impact. Dujardin indicated a willingness to carry out any necessary measure.

33. Telephone and electric lines are available adjacent to the site.

34. The proposed Kubota Gardens project can be viewed as meeting some goals or policies and conflicting with others according to the analysis in the EIS. An example is Seattle's Growth Policies, policy number 1, City Population, which provides that:

"Seattle shall strive for a population level of 500,000 to 550,000 by 1990... The desired population shall be achieved by:

a. Maintaining and adding to the existing single family housing stock in order to provide potential for housing families with children primarily through a strong public and private commitment to residential conservation, rehabilitation, restoration and new construction;

d. Offsetting potential population losses... through constructing a variety of 1200 to 1800 new housing units per year in areas where their addition will not threaten the existing character of neighborhoods...

While the addition of 480 new multi-family units would aid in meeting the goal of new housing units, that development would preclude the construction of single family

homes and may not be as attractive to large families as a single family development. It also may be considered threatening to the character of the neighborhood. The development would be consistent with another goal, Police 2b: Regional Population, in which Seattle is directed to support efforts to direct future growth to existing urban areas to avoid the cost of new transportation, water and sewer systems which, in this case, would be avoided.

35. The Single Family Residential Areas Policies, which are a part of the new Comprehensive Plan for the city, would apply because the site is currently zoned single family except that the area designation policy allows areas of vacant land larger than 5 acres to be excluded from that designation.

36. The Multi-Family Land Use Policies portion of the Comprehensive Plan should be applied. The scale of the proposed buildings would place them between the Lowrise 3 and Midrise classifications in the Multi-Family Land Use Policies. One area of conflict would be that the Policies provide for a maximum building length of 150 ft. while one building, as proposed, would have a length of 230 ft.

37. There are no distinct topographical breaks separating the subject site from surrounding property for most of the perimeter. The 18-ft. wide 55th Avenue South right-of-way is too narrow for any substantial separation. On the west, 51st Avenue South has a 44 ft. wide right-of-way.

38. A fence is proposed to be constructed around the site of a material commonly used for residential fencing. Community residents are concerned that such a fencing will give the impression of an enclave.

39. DCLU has recommended that the property be rezoned with a series of conditions. In determining whether the area is more appropriate for single or multi-family zoning DCLU accepted the conclusion by Dujardin that construction of single family homes is not financially feasible because of the high land acquisition cost and the cost of continuing garden maintenance. Also considered was the increase in the amount of impervious surface and reduction in the amount of open space which could detract from the gardens.

40. Dujardin purchased 5 acres from Kubotas and others in December, 1979, for \$206,100. Dujardin obtained an option to purchase the remaining 20 acres. The purchase price under that option would be \$1,750,000, the seller taking a real estate contract at 11% interest. A rezone, to allow at least 280 units, is contemplated by the purchase and sale agreement and if the rezone were denied, the agreement would terminate.

41. Dujardin Custom Homes deems the development of the site with single family homes economically infeasible. That conclusion is based on the following considerations. 1) Dujardin has paid or agreed to pay \$1,956,100 for the entire parcel if zoned to allow a minimum of 280 units. 2) If the property were zoned RS 5000 instead of RS 7200, a total of 125 lots could be created, avoiding the core garden area which includes the ravine. 3) Garden restoration is estimated to cost \$189,543. 4) Garden maintenance during the development at \$44,325 per year could cost the developer \$132,975 for three years of single family development or \$221,625 for five years of multi-family development. 5) The cost of development of roadways and sidewalks and installation of sewer, water and storm drainage systems is placed at \$15,000 per single family lot in the EIS (p. 301) and \$10,681 plus a factor for unexpected expenses bringing it to \$15,000 in the responsive letter from Subdivision Management, Inc. 6) City

engineering review and inspection fees were projected to be \$30,420 for either single or multifamily development. 7) Costs of engineering and management of site development are estimated to be 10% of the cost of utilities and roadways development for either type of development. 8) Financing costs of \$1,766,179 or \$14,199 per single family lot were based on interest of 20% on the full development loan for two years for single family and 4 years for multifamily.

Those estimates total \$44,419 per lot. The EIS states that the relationship between lot value and house value is 1:3 to 1:4. The sales price of a house would then be between \$133,000 and \$178,000.

42. SouthEnd Seattle Community Organization, (SESCO), Calvin W. Locke, P.E., and others challenge the conclusion that single family development is not economically feasible. They contend that the \$2,000,000 acquisition figure should be applied only to multi-family development and, without other appraisal, the County assessment figure of \$567,700 should be used for single-family.

Locke estimates a cost of \$801,500 for roadways and utilities development. That figure, according to Subdivision Management, does not include improvements to 55th Avenue adjacent to the site, sidewalks, a manhole/inlet storm drainage system required by the City instead of a standard catch basin system, pit run gravel backfill specified in the EIS, or sufficient sewer footage. Locke included a 15% estimating factor to cover missed items but additional costs cited by Subdivision Management would amount to nearly 70%. The recommendations by DCLU do not include required improvement of 55th Avenue except for a sidewalk so those costs could be lower than proponent's estimate.

For financing costs, Locke assumes acquisition costs based on an installment sale with deed release, 29% down, interest at 17% for 4 years with a balloon payment in the fifth year. He based costs of the construction loan on a rate of 17% since the prime rate, at the time of the projection, was around 15%. With these cost estimates Mr. Locke projects development costs per lot to be \$20,806 and with a single family house \$80,000.

43. Subdivision Management asserts that the standard practice is to pay off the real estate contract and final development costs at the same time, making the interest rate the same for both. Locke counters that lenders will require some developer investment reducing the amount of loan to below 100% of the total cost.

44. The interest rate is likely to be 2 points over prime plus a 2 point loan fee but for one-time not over two years as used by Subdivision Management according to Locke.

45. Subdivision Management assumed an average prime rate of 17% during the life of the loan. Locke assumed 15%, citing a forecast by Henry Kaufman, Wall Street Journal, December 9, 1981. Forecasts, including that from Mr. Kaufman, for long term rates do not include much change from the current high levels.

46. Using an acquisition cost of \$1,030,000 (value based on the \$206,000 sale of 5 acres for the full 25, development costs of \$1,357,645 and financing costs with Subdivision Management's assumptions but these acquisition and development costs of \$1,279,233, and the other costs not disputed, the cost per lot would be \$33,658 or sales prices of \$100,000-135,000 based on the 1:3 or 1:4 rule of thumb.

47. Because the acquisition figure of \$2,000,000 was based on multi-family development, that figure may be appropriately used only for the proposed multifamily development and should not be used for the single family analysis.

48. Single family development of the site would result in smaller amounts of open space around each unit instead of the large expanses under the proposal. The amount of impervious surface is estimated to be greater (45% of the site as opposed to 30%) for single family development.

49. The proposed contract rezone would, if the project were completed, provide 450 new units of housing in the city. The sales prices could be from \$60,000-110,000 per unit (p. 21, FEIS) in 1980 dollars or \$64,600-130,000 (p. 119, DEIS). The EIS states that the minimum annual income to carry the purchase of a condominium unit would be approximately \$28,000.

50. The mean sales price of single family houses in the Rainier Beach area between January and June of 1980 was \$56,165. For Census Tract 119, the mean sales price was \$59,885 for the same period and \$62,693 for the period July to December.

51. The least expensive unit in the proposed project would be priced at or above the mean selling price of a single family house in the area.

52. The rate of vacancies in multi-family units in the Rainier Beach area appears to be considerably higher (8.55% in 1980 and 9.12% in 1981) than other areas of Seattle (e.g., 4.53% in 1980 for Beacon Hill and 4.41% in April, 1981, overall).

53. Dujardin disagrees with the recommended condition #23 by DCLU that a looping road system connecting all the buildings on the eastern half of the site be created. Such a condition would require all vehicles to drive through the garden with a full road going past one of the ponds which Dujardin sees as undesirable. As an alternative, Dujardin proposes to leave the access to buildings 2 and 3 as it is with a two-way street and construct a lane for emergency vehicle use only and otherwise a walkway between buildings 2 and 3 and the road to the southern buildings.

54. Dujardin proposes as a condition that steps be taken to provide an off-site connection to avoid reduction in water pressure for the residences above described.

55. Dujardin recommends a condition which provides that the development be in substantial compliance with the site plan presented.

56. As to DCLU's recommendation #22, Dujardin would add the words "the sloping portion" before gardens.

57. Besides opposing the recommendation, the proponent would add the words after road system "acceptable to the City" to #23.

58. Number 24, which requires realignment of the access point on Renton Avenue South to correspond with 55th Avenue South, the proponent believes to be less desirable than the location they are proposing and would like to have that read "or other location acceptable to the City."

59. For #28, since a road may be provided parallel to 55th to provide access to some of the buildings, a sidewalk



60. For #30, with respect to garden access, Dujardin agrees that the time could be longer than they proposed for the summer but should be shorter than 8:00 to 6:00 in the winter and suggests perhaps 9:00 a.m. to 4:00 p.m. for the winter and later for the summer. DCLU suggests 9:00 a.m. to 7:00 p.m. for summertime hours.

61. The Office of Policy and Evaluation provided a comment on DCLU's recommendation and recommends ground related housing, which could be townhouses or stacked units each with its own private open space. That Office suggests that that type of development would be compatible with the surrounding community and sensitive to the site. The Office also recommends redesign of the proposal with particular attention to layout of buildings so that structures are not located immediately adjacent to the core garden area, elimination of unnecessary or interior roadways, clustering of buildings so that maximum amount of natural vegetation is maintained, buildings located and designed so that minimum amount of cut and fill is required, buildings tucked into hillsides and roofs break with the topography, breaking buildings into smaller widths where the topography breaks, and all buildings be ground related. Other recommendations were made as well.

62. A large segment of the community, represented by individuals, elected officials, clergy and SESCO, opposes the rezone and project. In addition to a large attendance at the public hearing, some 1200 to 2000 signatures on petitions opposing the project were submitted. The concerns range from very specific impacts such as from the loss of habitat for small animals and birds to the more general concern for the change in character of the community and the potential precedent for further change to more density on nearby vacant land.

The charge was made that the city decided "public interest" in the south end differently from that for the north end using as an example the proposal for 150 dwelling units on the 20-acre Coast Guard site with the Mayor's commitment to the community that "the density of housing on the site will be less than in the surrounding area".

One concern repeated by many opponents is the possibility that the development would stop before the whole proposal is completed leaving the garden without adequate funding for maintenance or resulting in a Greenwood Gardens situation.

63. The petitioners originally requested a variance from Section 24.30.110 to allow building heights up to 60 ft. instead of the 35 ft. otherwise permitted. The request had been changed, by the time of hearing, to permit a maximum height of 48 ft. DCLU failed to give the required public notice of that request so it could not be considered at the hearing. DCLU proposed to add a height limitation to their condition No. 19 which would have the effect of denying a height variance.

### Conclusions

1. The test by which residential rezone requests are to be evaluated, according to Policy 2, Multi-Family Land Use Policies, is "whether the locational criteria for the proposed designation more closely match the characteristics of the area proposed for rezone than the locational criteria of the designation currently in place." Where a vacant parcel, zoned Single Family and larger than five acres is involved, the Policies direct that the test will be "(1) whether the area is more appropriate for single family or multi-family designation, and (2) if multi-family is more appropriate, whether the relevant locational criteria of the multi-family designation which is proposed more closely match the particular characteristics of the area than do the locational criteria of any other multi-family designation."
2. In making the first determination, whether the site is more appropriate for single family or multi-family zoning, Dujardin and DCLU urge that the following considerations dictate their proposed and recommended classification: the proposal presents an opportunity for the City to have a large number of dwelling units added to the housing stock; no housing displacement would occur; a City landmark would be restored and preservation would be assured; multi-family would leave greater open space; single family development is not financially feasible because of high acquisition costs, cost of maintenance of the garden and market value of properties in the surrounding area; and adverse environmental impacts are either not significant or can be minimized.
3. Proponents of retention of the single family classification submit that the single family option is economically feasible assuming a lower acquisition cost; that the proposal is not compatible with the character of the area; that rezoning would establish a precedent which could be applied to the large amount of vacant land nearby; that this represents a substantial opportunity to add to the single family housing stock of the City; that demand for condominium units at this price range in this area has not been shown and the project could fail; and that adverse impacts on the street system are serious and have not been resolved by the conditions recommended.
4. Part of the determination whether a zoning classification should be changed must be the test used by the courts in reviewing a rezone, i.e., whether "there is substantial evidence indicating that the rezone furthers the public welfare and that changed circumstances warranted its passage." Cathcart v. Snohomish County, 96 Wn.2d 201, 211, 212 (1981). An earlier case suggested that the requirement of showing changed circumstances may be less for an "up zone" than a "down zone". Cathcart's use of this language reaffirms the changed circumstance requirement.
5. The landmark designation of the gardens is one indication of the value to the public placed on it and a proposal involving its preservation, alone, would evidence furtherance of the public interest. Adding a large number of units to the City's housing stock would also advance the public welfare. Together they present substantial evidence of furtherance of the public welfare by the rezoning, as proposed.
6. The record does not reflect changed circumstances in any physical sense since 1957, when the current zoning would have been adopted. Dujardin's representative suggested that a change which has occurred is that single family houses are now out of the financial reach of a good part of the population. If single family development is, in fact, not economically feasible, this may constitute a change from the time the property was zoned. Because of the uncertainty about the validity

of the conclusion rejecting the single family option created by the condition of purchase at the given price of achieving at least 280 units, that conclusion may not be given the weight necessary to satisfy the "changed circumstances" test. The burden of proof is on petitioners. Since petitioners have failed to prove such changed circumstances, the rezone should be denied.

7. The fact that there is substantial evidence of benefit to the public welfare does not require a conclusion that multi-family is more "appropriate" under the policies. The evidence supporting retention of the zoning is also substantial and includes the negative impacts of the increased density on the street system, and the change in character in the area in both the density and scale. An additional adverse effect, suggested by speakers at the hearing, could be the further alienation of the residents of that area from the government of the City.

Because of the City's desire to increase housing opportunities, a definite proposal for multi-family units could be considered more attractive than the possible feasibility of single family development. That, coupled with a specific proposal for the preservation of the landmark garden, may overcome the other drawbacks and make the site more appropriate for multi-family zoning. The conditions proposed by DCLU and largely accepted by Dujardin would have the effect of providing a transition of scale along the edges reducing some of the visual conflict in character.

8. If the Council finds that circumstances have in fact changed to warrant a change in zoning the conditions which should be imposed follow:

Conditions Nos. 1-18, as set forth in the Analysis and Recommendation of the Director of the Department of Construction and Land Use, Relative to Construction Impacts, Water Quality, and Light and Glare should be adopted.

(19) The two structures adjacent to 51st Avenue South, and the northern structures adjacent to 55th Avenue South, shall not exceed two stories (30 ft. in height). Height shall be calculated in accordance with existing regulations, including exceptions to height limits (Reference Sections 24.08.090 "H" and 24.62.040, Seattle Municipal Code). Building bulk of such structures shall not be further increased to make up for the reduction in the number of stories. The height of all other structures on the site shall not exceed 35 ft.

(20) The total number of units shall be limited to 450.

(21) The proposed access road at the western end of the 64 unit building, from the building to the looping internal road, shall be eliminated. As the alternative, the proposed access at the eastern end of the building shall be made two-way to connect with Renton Avenue South.

(22) The existing path traversing the gardens from east to west shall be used for pedestrians only.

(23) The proposed access point on 55th Avenue South shall be eliminated, and replaced by a road system acceptable to the City of Seattle, which connects all the buildings on the eastern half of the site, with access only to Renton Avenue South.

(24) The Renton Avenue South access point shall be re-aligned in intersection format to correspond with 54th Avenue South directly across the street. A location for said access point approximately midway between 54th Avenue South and 55th Avenue South may be substituted if upon further review the Engineering Department approves that location.

(25) A ratio of .25 spaces per unit shall be provided to meet anticipated guest parking demand. Such parking shall be signed "For guests only". All parking shall be provided underground with the exception of the 24 surface spaces shown on the plot plan. The spaces eliminated by Condition No. 21 are not included in the 24. Thirty-two additional surface spaces may be added provided they are constructed of "grass-crete" or alternative acceptable to the City of Seattle and their location is approved by DCLU.

(26) Bicycle racks shall be provided in the underground garage for each building in a safe and secure location.

(27) In keeping with Metro's recommendation, a site shall be reserved on 51st Avenue South for a possible transit shelter.

(28) The proponent's proposed change to Condition No. 28 which would allow the sidewalk inside a fence should be rejected since additional traffic from the project will make 55th more hazardous and a sidewalk accessible to non-project pedestrians may offer some mitigation of that impact. Therefore No. 28 should read:

In accordance with Engineering Department standards, all buildings are to be connected by a system of pedestrian paths or sidewalks; a sidewalk is to be provided from Renton Avenue South to the entrance to the gardens in order to facilitate safe pedestrian access by residents and public visitors, and a sidewalk is to be provided along 55th Avenue South in order to ensure safe and easy pedestrian access from structures in the southeast corner of the site to Renton Avenue South, along which the Metro bus travels and some safety to other pedestrians along 55th.

(29) The Condominium Association is to make permanent provisions for the assignment of a crossing guard near the access point on Renton Avenue South during the hours of nearby school operation, in order to help minimize the accident potential from increased vehicular movement from the project. (Renton Avenue South is used by a number of area school children.)

(30) With respect to public access, provision shall be made for predictable and controlled access to the gardens by the public. Such access shall be maintained on a continuous and permanent basis, even during the construction period. Such access may be limited by the Condominium Association to 9:00 a.m. to 4:00 p.m. on weekdays from November through April,

9:00 a.m. to 7:00 p.m. on weekdays, May through October and to reasonable hours on weekends. The Association shall also designate a regular full-time employee, such as the building manager, to serve as the contact person for permission to enter the gardens. The covenants prepared by the Association, which convey ownership and maintenance responsibilities of the garden from the proponent to the Association, shall be submitted to DCLU for review and approval as to the fulfillment of this condition.

(31) A landscaping plan shall be submitted for the review and approval of the Department of Construction and Land Use, in connection with the master use permit application. Approval of the plan shall be coordinated with the Landmarks Preservation Board by that Department.

(32) Following removal of the nursery stock by the Kubotas, as much natural vegetation is to be retained as possible, especially in ravine areas and around the gardens. Vegetation to be retained shall be shown on the landscaping plan submitted to the City.

(33) Each building shall be landscaped upon its completion in accordance with the approved landscaping plan.

(34) Restoration and maintenance of the gardens shall be the responsibility of Dujardin Custom Homes during the construction period and up until the time the Condominium Association formally assumes that responsibility. The proponent's responsibility shall be assured by the establishment of a reserve escrow account, or other financial guarantee acceptable to the City, of \$234,000 for garden restoration, and of \$45,000 for each year the proponent is expected to have that responsibility. When the Condominium Association is activated, the proponent shall accept the responsibility of the remaining unsold units. The responsibility for the continuing maintenance of the gardens shall be vested in the Condominium Association by recorded covenants running with the sale of each condominium unit and binding on all future owners as part of the Condominium Association. Such covenants are to contain guidelines for maintenance of the gardens, which are to be approved by the Department of Construction and Land Use in consultation with the Landmarks Preservation Board.

Conditions Nos. 35-41, as set forth by the Department of Construction and Land Use, should be adopted.

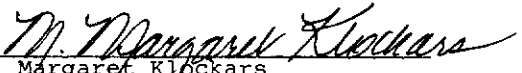
(42) A provision should be added that the site shall be developed in substantial conformance with the site plan submitted as Exhibit No. 11 at the hearing on December 15, 1981, with any modifications approved or required by these conditions.

Recommendation

Because of petitioners' failure to prove changed circumstances the recommendation of the Hearing Examiner to the City Council is as follows:

The petition should be DENIED.

Entered this 19th day of January, 1982.

  
M. Margaret Klockars  
Deputy Hearing Examiner

NOTICE OF RIGHT TO PETITION  
FOR FURTHER CONSIDERATION

Pursuant to 24.72.090, Seattle Municipal Code, as amended, (Section 27.51 of the Zoning Ordinance 86300, as amended) any party 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 fourteen days after the date of mailing the recommendation of the Hearing Examiner and addressed to: City Council, Urban Development and Housing 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.