

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

In the Matter of the Petition of

MARINE POWER AND EQUIPMENT COMPANY

FILE NO. CC-82-0018
C.F. NO. 292-008

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

Introduction

Marine Power and Equipment Company here petitions to change the shoreline environment classification of Waterway 21 and adjacent submerged lands near 1441 N. Northlake Way from Conservancy Management (CM) to Urban Stable/Lake Union (US/LU).

For purposes of this recommendation, all section numbers refer to the Seattle Municipal Code, Title 24, 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 May 16, 1983.

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

Findings of Fact

1. The subject property consists of Waterway 21 and adjacent submerged lands located on Lake Union near 1441 N. Northlake Way. The legal description appears in the rezone application and is incorporated herein by reference.

2. The nearly three acre site is owned partly by petitioner Marine Power and Equipment Company (MPE) and partly by the Washington State Department of Natural Resources. Petitioner has leases from the Department of Natural Resources (DNR) for part of the areas currently proposed for rezone.

3. The subject site is currently classified Conservancy Management (CM). That zoning is designed to

...protect areas for environmentally related,
usually public, purposes, such as...parks and
marinas... Section 24.60.335.

4. This petition is to rezone the property to Urban Stable/Lake Union (US/LU).

5. The US/LU environment purpose is similar to the controlled development-compatible mix-maintenance of scale-purpose of the US environment, Section 24.60.345. However, based on particular characteristics of Lake Union, some of the more specific goals of the US/LU environment are to:

- A. Enhance the form and appreciation of Lake Union and environs as a major component in Seattle urban structure;
- B. Preserve a maximum of open water commensurate with reasonable economic development;
- C. Develop a diversity of commercial and residential activities related to the use and enjoyment of the waterfront, the service and maintenance of water-related activities, and public access to the water...Section 24.60.350.

6. From N. Northlake Way seaward the shoreline classifications are US/LU, (to the pierhead line); Conservancy Management from the pierhead line to the construction limit line as extended; and Conservancy Natural (CN) seaward of the construction limit line. Due to the angle of Waterway 21 and the configuration of the pierhead and Construction Limit Line as extended, east of Waterway 21, the Construction Limit Line is approximately 100 ft. seaward of the pierhead line, and west of Waterway 21 150 ft.

7. The underlying zoning for the shoreline and general area is Manufacturing (M).

8. The upland portion of the M zone is developed with manufacturing, warehousing and commercial uses.

9. Marine construction, sales, service and transportation services are among the several water-dependent uses in the US/LU environment seaward of N. Northlake Way. Continuing seaward the CM classified area is developed with moorage or related accessory uses.

10. The Comprehensive Plan Map shows the upland areas abutting west and north of Waterway 21 as industrial. The land east of Waterway 21 is designated for commercial. Farther east is a designated park and recreation area.

11. Petitioner, MPE, has conducted its marine repair business at the present site since approximately 1974 (or earlier) when the Seattle Board of Public Works issued the first Waterway Use Permit to the company. Petitioner proposes to reclassify the property from CM such that the zoning would be consistent with the business activity.

12. Seattle Implementation of the 1977 Shoreline Master Program, now codified as Chapter 24.60, Seattle Municipal Code, prohibits marine vessel construction, repair and dismantling in the CM zone. Section 24.60.420. This activity is also prohibited in the CN zone.

13. Marine sales, construction, repair and dismantling are allowed in the US/LU environment. Section 24.60.420.

14. In August, 1982, the Seattle Board of Public Works renewed MPE's one year waterway permit for the continued use of Waterway 21 for marine repair and construction on several conditions. One required application for a shoreline environmental redesignation of the waterway as is here proposed. The other condition required that "use of the waterway...conform with all applicable Federal, State and local regulations relating to air, water and noise pollution". A third condition required installation and maintenance of buoys or markers at the east and west ends of the waterway "at the Federal pierhead and State harbor lines". Liability insurance and hold harmless agreements were also included as was a provision for construction of a public viewing area.

15. Per petitioner's credible representation, bank (soil) construction delays have been resolved and construction of the viewing platform is expected within 30 days of the hearing. Requisite buoys have also been placed, according to petitioner.

16. To date of the Director's report, petitioner had not installed dolphins for moorage southwest of Waterway 21 pursuant to an Order of the State Shorelines Hearing Board (SHB No.80-40) "due to delays in...lease negotiations with the State".

17. Based on a background study of Lake Union activity and a number of proposals received for DCLU review, the Director perceives a trend towards displacement of water dependant uses by restaurants, retailers, offices and other non-water dependent businesses.

18. The representative of the Lake Union Association, speaking in support of the rezone, testified that the Lake Union property owners wish to see the lake as a working lake, with opportunities for the Lake front private sector businesses to improve. This would, she concluded, benefit the local employment and business market.

19. The representative of the Seattle Marine Businessmen's Coalition, speaking in favor of the rezone, noted that on Lake Union the Metro water quality testing lab had displaced Holiday Fiberglass; that the H.C. Henry Pier Project has displaced Blue Water Boats, currently relocated to Everett; and that the Rusty Pelican, a third non-water dependent use, has displaced the Northwest Diesel Repair.

20. The Examiner finds that Lake Union is experiencing a trend toward increased non-water dependent uses.

21. There is also an industry trend for use of and conversion to larger sea vessels.

22. The petitioner's activity in Lake Union has not been authorized by DCLU as a legal nonconforming use.

23. An opposite Lake Union resident wrote and testified against the rezone, essentially because the rezone is expected to do nothing about petitioner's vessels or dry docks extending into the CN environment in violation of the Zoning Code. According to the Director's representative, however, the Department is by separate forum addressing the issue of shoreline code compliance. The majority of the dry docks, 200-400 ft., will be within the depth area of the waterway.

24. The change in the shoreline classification would allow more intensive use of the site which could affect area transportation/circulation, noise levels, and air quality. Additional water service and lines may be required if the site is more intensively developed. Environmental Checklist, pp.3, 6, 7-9.

25. However, the final declaration of nonsignificance notes an expectation of continued existing use, the size of the site and Seattle Waterway Resolution restrictions in its assessment that no increased significant adverse impact is expected to result from the redesignation.

26. The Washington Department of Natural Resources submitted a letter in favor of the rezone.

Conclusions

1. Local governments may amend Shoreline Master Program (SMP) regulations, including environmental designations, pursuant to Chapter 90.58, RCW.

2. Seattle's SMP regulations may be amended "in the same manner as for map amendments in Chapter 24.72", subject to approval by the State Department of Ecology. Section 24.60.365.

3. Pursuant to Chapter 24.72, City Council findings and conclusions are to

Set forth and demonstrate the manner in which the action carries out or tends to implement the goals and objectives of the Comprehensive Plan of Seattle, the Zoning Ordinance, and other official policies and objectives of the city. Section 24.72.100.

4. The underlying zoning for the subject site is Manufacturing (M). Dry land nearby and adjacent to the subject site is developed with manufacturing, warehousing and commercial uses. Seaward of N. Northlake Way are marine construction, sales and related uses. The proposed reclassification from Conservancy Management to Urban Stable/Lake Union thus would merely sanction and complement the development extant.

5. Further, the Comprehensive Plan does not directly address submerged lands; accordingly no direct conflict therewith is presented by this proposed reclassification. Instead, as suggested by the Director, the Comprehensive Plan map designates adjoining dry land as industrial. This suggests indirect support for the proposition that the CM designation should give way to the US/LU classification proposed.

6. Petitioner must comply with the several Board of Public Works conditions, including the one requiring provision of a public viewing platform. This feature addresses and retains one key (public viewing) aspect of the CM classification. Approval of the petition will thus further the goals of the Shoreline Management Act by its encouragement of petitioner's "water dependent uses" attendant with preservation of some view of and access to the water. Section 24.60.005. The economic development, compatible location goals and policies of the Shoreline Master Program are also met by the proposal. Further, the "reasonable economic development-commercial diversity" goals of the US/LU environment are met by the proposal. Section 24.60.345.

7. Reclassification is expected to further protect the desired working, water-dependent nature of Lake Union development, and thus meets the necessary relationship to the public general welfare. Parkridge v. Seattle, 89 Wn.2d 454 (1978).

8. In Hayden v. Port Townsend, 93 Wn.2d 870 (1980), the rezone application came only five years after the adoption of the zoning plan. The Court determined that nevertheless, in view of the circumstances, the rezone request was not unreasonable. At p. 68. Earlier in the decision the Court conjectured that where, as here, the property owner is seeking to expand the (legitimate) use of the property, less scrutiny may be required of the relationship between the public health, safety and welfare and the rezone. At p. 877.

9. In this case the petitioner's non-CM allowed activity predated the CM zoning by several years. And since the reclassification, nearby and Lake Union development activity have tended to support a more intensive classification and the legitimization of use by physically larger areas for marine vessel repair and construction, and for water dependent industry.

10. The petition is not without its problems, however. There is, for example, no guarantee that petitioner's dry docks or vessels will comply with CN classification prohibitions. Further, the petitioner's use of the property has not been recognized as a legal nonconforming use. Third, reclassification could permit more intensive use of the site and attendant increases in noise levels, and transportation and circulation problems.

11. However, based in great part on the development pattern extant, no point would be served by continuing the zoning nonconformity. Violations of CN classification restrictions are proper subjects of intense scrutiny by the Director's code compliance division. Third, the conditions are specified under which more intense development would signal a problem for area development. Finally, impositions of conditions on the rezone should provide a more permanent redress of opponent's valid concerns. The conditions should be imposed as part of the rezone approval, to be effected concurrently with whatever conditions made relevant by Board of Public Works Waterway Permit approval.

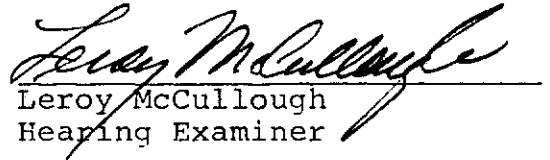
Recommendation

For each of the above reasons, the recommendation of the Hearing Examiner to the City Council is as follows:

The petition should be GRANTED on the following conditions, essentially from the Board of Public Works approval:

1. All structures and development, other than vessels temporarily moored in the waterway, shall be located on private or leased property.
2. Use of the waterway must conform with all applicable Federal, State and local regulations relating to air, water and noise pollution.
3. Applicant shall install and maintain a viewing area for public use.

Entered this 26th day of May, 1983.


Leroy McCullough
Hearing Examiner

NOTICE OF RIGHT TO PETITION FOR FURTHER CONSIDERATION

Pursuant to Section 23.80.10.E, Seattle Municipal Code, any person substantially affected by or interested in this recommendation may submit a petition in writing to the City Council requesting further consideration. The petition must be filed with the Council within fourteen days of the date of this recommendation and should be addressed to the City Council, Land Use Committee, Municipal Building, Seattle, Washington, 98104.

The petition should clearly identify specific objections to this recommendation and the relief sought; however, the petitioner should not include any additional evidence or exhibits as the Council's consideration will be based upon the record of the Hearing Examiner's hearing. If the Council determines that a factual error exists in the record or that important information is missing, the Council may have the record supplemented pursuant to Section 23.80.10.E.3 or 23.80.10.E.4. At its public meeting the Council may allow oral or written arguments based on the record.