

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

In the Matter of the Petition of

TIMOTHY MUIR

FILE NO. 8707004

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

Introduction

For purposes of this recommendation, all section numbers refer to the Seattle Municipal Code, Title 23, as amended unless otherwise indicated.

The Director's report, submitted by the Department of Construction and Land Use, recommended that the petition to rezone the land to SF 5000 be denied; but that consideration be given to L-1 or L-2 zoning for the subject area.

This matter was heard before the Hearing Examiner on April 6, 1988.

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, the following shall constitute the findings of fact, conclusions and recommendation of the Hearing Examiner on this petition.

Findings of Fact

1. Timothy Muir submitted a petition to rezone property in his resident neighborhood from Lowrise 3 to Single Family 5000. DCLU recommended denying the downzone to SF but consideration of a downzone to Lowrise 1.

2. The principal subjects of the rezone petition are properties fronting on Greenwood Avenue North between North 42nd and North 43rd Streets. Included within the petition area are the corner properties that front on the north side of North 42nd Street, i.e. 202 North 42nd, 4203 Greenwood and 300 North 42nd (also known as 4200 Greenwood Avenue North).

3. The legal description of record shows the rezone area as including Lots 16-30, Block 7, Sunset Heights Addition (east side of Greenwood); and Lots 1-7, Block 13, Palantine Hill Addition (west side of Greenwood). The total rezone area approximates 79,500 sq. ft.

4. Lots 8-10, Block 13, Palantine Hill Addition, are directly north of the rezone area and extend to a jogged, extended portion of North 43rd that is vacated and marked by a pedestrian stairway. These lots are developed with 6, two story four-plexes.

5. Each of the rezone parcels on the west side of Greenwood is developed with a single family residence. Lot 4, addressed as 4217 Greenwood North, is included within the rezone area and is the subject of Master Use Permit application No. 8707653 for a 9-unit, 3-story over basement apartment building. There is no dispute with the DCLU position that project 8707653 is "vested."

6. All of the rezone area lots on the west side of Greenwood Avenue North are through lots, i.e. extend to west parallel Palantine Avenue North.

7. There is mixed development in the rezone area located on the east side of Greenwood. The southernmost parcel, which fronts to Greenwood and to North 42nd Street, is developed with a

four-plex. Proceeding northerly, the development sequence includes two single family residences, a four-plex, a duplex, and two single family residences. The northernmost rezone parcel has frontage on North 43rd Street and Greenwood and is developed with a triplex.

8. The rezone area is located in the southwest edge of an L-3 zone that extends north and east for several blocks where it adjoins Neighborhood Commercial or other Lowrise zoning. This L-3 zone is developed with a mix of low-medium bulk and scale structures.

9. The L-3 zoned area is included within a Fremont Pilot Study Project initiated in November 1987 by the City Council. The study, conducted by the City Office for Long-range Planning, is expected to result in recommended mapping revisions in 1988. DCLU projects City Council hearings in August 1988 on these proposed revisions. By letter dated December 15, 1987, Petitioner nevertheless requested the DCLU analyst to proceed with this rezone petition "with alacrity and dispatch." The City has imposed an interim reduction in L-3 and L-2 development standards for new development in this area.

10. For several blocks west and south of the rezone, the area is zoned SF 5000 and is primarily developed with single family residences.

11. The rezone application form states that this rezone is requested "to prevent the adverse impacts of L-3 development and to help preserve the character of (the) neighborhood." Some of the anticipated benefits include "stability, security to homeowners, strong neighborhood unity, maintenance of current quality of life." The great majority of rezone area residents favor the rezone and have so indicated by petitions, comment letters and by testimony before the Hearing Examiner.

12. The October 19, 1987 petition requested L-1 zoning. By letter of November 7, 1987, petitioner requested SF 5000 zoning.

13. The Office for Long-range Planning commented to DCLU that Lowrise 1 or Lowrise 2 would be more appropriate for the rezone area than SF 5000 zoning. OLP observed that the area is one of appropriate transition between the existing single family development and the more intense development east of the rezone site; that L-1 or L-2 would be consistent with the character of existing development; and that a significant topographic break along Palantine Avenue North separates the single family zone to the west of Palantine from the rezone area east of Palantine.

14. The segment of Greenwood Avenue North north of North 42nd Street has a lane improvement width of 25 ft. Parking is prohibited on the east side of this street. The segment of Palantine Avenue North located north of North 42nd Street also has a lane improvement width of approximately 25 ft.

15. The Greenwood and Palantine Avenue rights-of-way are from 60-66 ft. wide. The North 42nd Street right-of-way declines from 60 ft. wide east of Greenwood to 36 ft. wide west of Greenwood. Generally, all vicinity streets are improved with 25 ft. roadways and prohibit parking on one side.

16. The rezone area is generally one block west of Phinney Avenue North, an arterial, and the Number 5 Phinney bus route. The bus route proceeds easterly from Phinney North to North 43rd Street. The Kroll map of record shows some increase in development intensity along Phinney Avenue North.

17. No single family structures have been built in the rezone area in the last 5 years. The number of single family homes in the rezone area has been stable.

18. The single family residence at 4222 Greenwood was recently refurbished and several of the single family homes in the rezone area are in good repair. The record also reflects

that the 4206 home of petitioner has been "restored" to single family use from duplex.

19. In general, the area property slopes to the southwest such that properties located on the east side of Greenwood are generally 4-6 higher than those on the west side. As one proceeds north on Palantine, the topography inclines steeply such that the apartments north of the rezone site, to vacated North 43rd Street, are on stilts. Because of the topography, access to these Palantine-fronting properties is not from Palantine North. At the south end of Palantine, the break is only 2-4 ft.

20. From 1957-1982, the rezone area was zoned multiple residence (RM 800). In 1982, it was zoned to its present L-3 classification. According to 1923 and 1947 zoning maps, the area was considered as a Second Residence District. Apartment uses were allowed in second residence districts.

21. The proposed downzone would have the effect of generally stabilizing the present development pattern and therefore reducing the number of potential new dwelling units. Utilizing the L-3 average density of 581 sq. ft. of lot/per unit Fremont Pilot Study Background Report, November 1987 (See Exhibit 1), the rezone area could accommodate roughly 137 units. There is a total of 27 "units" in the rezone area. This means that the net potential increase could be 110 units. Applying the factor to only single family developed lots, the estimated potential increase would be 75 units. If the L-2 zone were adopted, an estimated 51 units of potential housing would be precluded.

22. Petitioner complained that a parking shortage already exists in the area. Some vehicles park on planting strips. The environmental checklist indicates, without annotation or revision, that the proposal would help maintain "currently limited number of parking spaces..." and "the current number of vehicular trips." From the record, the Hearing Examiner is unable to find that there would or would not be a shortage of parking within a reasonable distance with granting or modification of the rezone petition.

23. A rezone would also cause the existing multi-family structures to become "nonconforming."

24. A substantial portion of traffic generated by new development could go through lower intensity areas nearby.

25. The rezone area is subject of no current adopted neighborhood plan. The prior plan, superseded by the Title 23 Multi-family Policies, considered the properties fronting Greenwood Avenue N. between N. 42nd and N. 46th as appropriate for Medium Density Residential.

26. The rezone area is included within no Greenbelt Overlay District.

#### Conclusions

1. The Hearing Examiner has jurisdiction of this matter pursuant to the procedures of Chapter 23.76, Seattle Municipal Code.

2. The general rezone criteria are delineated at Seattle Municipal Code Section 23.34.008. The first factor to be considered is the match between area characteristics and established locational criteria of the proposed category.

3. The locational criteria for the single family zone are found at Seattle Municipal Code Section 23.34.012.

4. Seattle Municipal Code Section 23.34.012(A)(1) indicates as one criterion

Areas which consist of blocks with at

least...70%...of the existing structures in single-family residential use...

5. Seattle Municipal Code Section 23.84.004"B." defines a "block" as consisting of two facing "block fronts" that are

bounded on two...sides by alleys or rear property lines and on two...sides by the centerline of platted streets, with no other intersecting streets intervening...

The Land Use Code defines a "block front" as

the frontage of property along one...side of a street bound on three...sides by the centerline of platted streets and on the fourth side by an alley or rear property lines...

Seattle Municipal Code 23.84.004"B."

6. The east portion of the rezone area has frontage on Greenwood Avenue, North 42nd Street and on North 43rd (undisputed platted streets), and is bound on the fourth side by rear property lines. This east portion meets the definition of a "block front."

7. The rezone area on the west side of Greenwood Avenue presents a more interesting situation. One of the included properties, addressed as 202 North 42nd Street, has no frontage to Greenwood. That parcel has frontage on North 42nd Street (to the south) and on Palantine Avenue North (to the west). Secondly, the nearest "platted" street is North 43rd Street, unopened, which is several lots north of the rezone area's north boundary. Because this intervening area to North 43rd is developed with six multifamily structures, its inclusion or exclusion has serious implications for the count or percentage of single family homes within the "block."

8. In the absence of formal interpretation request or appeal pursuant to Chapter 23.88, the Hearing Examiner must conclude that the west "block front" extends to North 43rd Street and excludes the 202 North 42nd Street dwelling. This west "block front" is bounded on the south by platted North 42nd Street; on the east by platted Greenwood Avenue North; on the north by platted North 43rd Street and on the fourth side by rear property lines. Seattle Municipal Code Section 23.84.004"B." This conclusion is compelled by the plain language used by the legislative body in defining a "block front." Block fronts are defined by streets that are "platted," i.e. planned, mapped, or charted. Webster's Ninth New Collegiate Dictionary (1987).

9. Therefore the "block," extending to North 43rd Street, would consist of nine single family residences on the west side and four on the east side, or 13, inclusive of the single family residence proposed for demolition under Application No. 8707653. The total number of structures, including the six 4-plexes north of the rezone area, equals 23. The percentage of single family homes in this "block" is therefore 57%, less than the 70% suggested in the single family locational criteria.

10. One could argue that the northern terminus of the western "block front" should be the most northerly lot line of the rezone area, i.e. the north lot line of 4241 Greenwood North. Such a configuration is suggested by Office for Long-range Planning documents and by the Seattle Crime Prevention Block Watch coordinator (see Exhibit 1). By this configuration, the block would have 17 structures of which 13 would be single family (approximately 76%). Utilizing this configuration would lend more substance to the terminology of "two facing block fronts" since the area north of the rezone area (west side of Greenwood) does not "face" the block front east of Greenwood between North 43rd and North 42nd Streets. As noted above, however, this approach has major inconsistencies with the definition of "block

front." It would, for example, allow a distinction to be made between the northern boundaries of the "block fronts." On the west, the block front's northern boundary would be a lot line, and on the east a platted street. This is contrary to the illustration of Seattle Municipal Code Section 23.84.004A1. Secondly, a block front must be bounded by three platted streets "and on the fourth side by an alley or rear property line." Assuming the petitioner's configuration, the west "block front" is bounded by three streets, Palantine Avenue North, North 42nd Street and Greenwood Avenue North. However, the fourth side would be bound by no "alley or rear property line." The 4241 Greenwood property is represented as oriented to Greenwood. Its rear lot line would therefore be to Palantine Avenue North. Seattle Municipal Code Section 23.84.024"L."

11. A specific DCLU or other rule on this issue of defining block fronts could reduce the potential of future questions on this topic.

12. Other single family zone locational criteria concern adopted neighborhood plans; and areas "in which an increasing trend toward single family residential use can be demonstrated..." Seattle Municipal Code Section 23.34.012(A)(2)(3).

13. The subject area is designated by no adopted neighborhood plan as single family. The superceded neighborhood plan called for multi family designation of the subject property.

14. Seattle Municipal Code Section 23.34.012(A)(3) provides examples of factors which may suggest single family zoning as appropriate for an area, even if the area does not have 70% single family structures within it, "if an increasing trend toward single-family residential use can be demonstrated."

15. No single family structures have been built within the rezone area in the past 5 years. Seattle Municipal Code Section 23.34.012(A)(3)(a). However, the number of existing single family structures has been stable during this same period. The noted exception is that demolition of the single family structure at 4217 Greenwood Avenue North is proposed, MUP application 8707653, to be replaced by a 9-unit structure. Section 23.34.012(A)(3)(c).

16. While the rezone area single family structures have been generally stable in number and are in good repair, there are suggestions but inadequate information of record from which to conclude that there is "an increasing number of improvements and rehabilitation efforts to single family structures..." Seattle Municipal Code Section 23.34.012(A)(3)(b). The record does include a reference that the 4206 Greenwood property was converted from duplex to present single family use.

17. The area, bordered by single family zoning to the south and west, is "topographically and environmentally suitable for single family residential development." Section 23.34.012(A)-(3)(d).

18. In sum, it can be concluded that there are 14 single family residences in the rezone area, 13 of which front to Greenwood. One of the residences is scheduled for demolition. The majority of vicinity residents favor the downzone. However, it is also concluded that the single family dwellings do not constitute 70% of the existing structures.

19. As the number of single family structures has been stable in the last 5 years, the area can nevertheless be considered for single family zoning. Section 23.34.012(A)(3)(c). Further, the area is topographically and environmentally suitable for single family zoning. Section 23.34.012(A)(3)(d). These disjunctive factors are sufficient examples with which a trend toward single family residential use may be considered.

20. Since the rezone area meets "at least one" locational criterion, a size criterion must also be satisfied. This size

criterion is met in that the area abuts to the south and west "an existing single-family zone." Section 23.34.012(B)(1). In establishing boundaries for single-family zones platted lot lines may be considered. Section 23.34.012(C). Thus, the northern lot line of 4241 Greenwood could serve as a single-family zone boundary.

21. The Hearing Examiner further observes that some L-1 criteria are also met by the area. The existing structures establish a pattern of small bulk, low height development. Section 23.34.014(A). Further, the area is near to but not directly served by the Phinney arterial and a substantial portion of new development traffic would be expected to traverse single family residential zones south and west. Although the west side of Greenwood borders on single family residential zone, the inclined topography could serve as a physical edge. For this reason, the L-1 second criterion is not met. Section 23.34.014(B).

22. Some Lowrise 2 criteria are also met. Section 23.34.016. Again, there is a mix of small scale single and multi-family development in the rezone area. Section 23.34.016-(A). The rezone area is between single family structures south and west and multi-family structures to the east. Section 23.34.016(B). The prevailing scale of development is small and there is proximity to transit. Section 23.34.016(C).

23. After examining the match between the locational criteria and the area characteristics, the zoning history and precedential effect should be considered. Seattle Municipal Code Section 23.34.008. The zoning history fails to support a rezone of the subject area to single family. The rezone site has consistently been zoned for multiple residence use. The classifications have been Second Residence District, per 1923 and 1947 zoning maps, and RM 800 (1957 - 1982). In 1982, the area was classified Lowrise 3, another multi-family classification.

24. Approval of this rezone could be considered as a negative precedent in that it would allow a pocket of homes to be reclassified although the deliberate, historical context suggests otherwise. Further, there is strong indication that the area street system, building scale and building development support multi-family zoning. Third, in light of the parking study of the broader area's zoning, this rezone could be considered premature. On the other hand, approval of the rezone could send a positive signal to area single family homeowners and others similarly situated that stability of the single family-developed area can be influential in the question of whether a rezone to single family should be granted.

25. Generally, approval of the rezone would present no particular violation of traditional zoning principles. Section 23.34.008. While the Palantine North topographical break serves as a reasonable boundary between single and multi-family zoning, that topographical break is not extreme at the rezone area. The single family zoning would be an extension of like zoning to the south and west. The Hearing Examiner does note a concern that the west portion of the rezone area represents roughly half of a "block front." The rezone could therefore result in the onset in this area of irregular mid-block zoning lines. Similar, irregular zoning demarcations are present in certain other areas of the city.

26. Approval of the rezone to single family 5000 would mean that existing multi-family structures would become nonconforming with the attendant limits. Also, the rezone would reduce housing opportunities within the city, i.e. the downzone could preclude the construction of from 75-110 dwelling units. On the other hand, the reduced construction potential would mean that there would be reduced impacts on the community from increases in traffic, parking and other environmental impacts typically associated with increases in human population. Seattle Municipal Code Section 23.34.008(D).

27. The rezone area is included within no Greenbelt Overlay District. Seattle Municipal Code Section 23.34.008(E). As noted above, however, the area's former plan suggested medium density for the area. Also, the rezone area is included within a current Pilot Study which may result in area-wide mapping revisions.

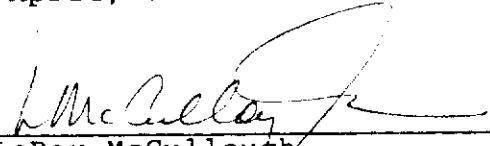
28. The record reflects no particular change in circumstances related to structure height and scale; new uses; or in traffic or transit patterns. Seattle Municipal Code Section 23.34.008(F).

29. In summary, some of the rezone criteria tend to support a rezone of this area to SF 5000. On review of the entire record, however, the Hearing Examiner recommends that the rezone to SF 5000 be denied at this time. The single family structures in the "block" constitute only 57% of the existing structures. The zoning history suggests multifamily zoning as appropriate for the area. As recently as 1982, multifamily zoning was reaffirmed for the area. The area meets many of the multi-family locational criteria, the L-2 zone in particular. Although slight, there is a topographical break at Palantine Avenue North which provides a boundary between the rezone area and the single family homes to the west. Further, the rezone area is presently included within a Pilot Study which may result in revisions to mapping. Finally, reduced in-city housing opportunities could result from the rezoning. These factors suggest that a rezone to single family is inappropriate at this time.

#### Recommendation

The Hearing Examiner recommends that the petition to rezone the area to SF 5000 be Denied, without prejudice.

Entered this 21st day of April, 1988.

  
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LeRoy McCullough  
Hearing Examiner

#### NOTICE OF RIGHT TO PETITION FOR FURTHER CONSIDERATION

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.