

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

In the Matter of the Appeal of

CARL H. NEU, JR.

FILE NO. 8706019

C.F. NO. 295985

for an amendment to the  
Official Zoning Map pursuant  
to Title 23, Seattle Municipal  
Code (Ordinance 86300, as amended)

Introduction

Carl H. Neu, Jr., initially proposed to rezone approximately three acres of property located in Hawthorne Hills from Lowrise 2 to Single Family 5000. Neu, who will be referred to hereinafter as petitioner or applicant, revised the petition to request rezoning of the property to SF 5000 and to Lowrise 1.

For purposes of this recommendation, all section numbers refer to the Seattle Municipal Code, Title 23, as amended (Ordinance 86300, as amended) unless otherwise indicated.

Correspondence and testimony in support and opposition were entered into the record.

This matter was heard before the Hearing Examiner on February 4, 1988. In response to petitioner's request, applicant's revised petition was reevaluated by DCLU and a supplemental recommendation thereon was issued February 11, 1988. The record remained open to February 18, 1988 for responses thereto.

The DCLU Director's Supplemental Report recommended that the petition as revised be granted.

After due consideration of the evidence presented by the Petitioner and all witnesses, the information provided by the Director's reports and the correspondence of record, the following shall constitute the findings of fact, conclusions and recommendation on this revised petition.

Findings of Fact

1. Carl H. Neu, Jr., applied to rezone approximately three acres of property located in the Hawthorne Hills area of Seattle from the multi-family classification of Lowrise 2 to Single Family 5000 (SF 5000). On December 10, 1987, the DCLU Director entered her recommendation that the rezone petition be granted in part and that a part of the rezoned site remain zoned L-2.

2. The matter came before the Hearing Examiner on February 4, 1988. During the public hearing, applicant indicated a willingness to consider an alternative, reduced rezone. On February 11, 1988, following Hearing Examiner procedural approval, the DCLU Director entered a Supplemental Analysis and Recommendation which recommended approval of the applicant's alternative petition. The record remained open to February 18, 1988 for community response to the DCLU's Supplemental Recommendation. By letter received by the Hearing Examiner February 18, 1988, applicant requested that his initial application "be revised to follow, exactly, the zoning parameters detailed in the supplemental analysis."

3. The property that is the subject of the rezone petition consists of a strip of lots that essentially lie along the north and south sides of N.E. 55th Street from approximately 43rd Avenue N.E. on the west for roughly 1.5 blocks east beyond 45th N.E. to the intersection of N.E. Tulane Place and N.E. 55th. The legal description is in the application of record and is incorporated herein by reference. (See also attached maps showing

existing zoning and applicant's alternative.) This segment of N.E. 55th is an arterial.

4. There is little dispute as to the facts. The proposed rezone area includes some 36 development sites that contain 20 single-family residences, three duplexes, one triplex, two four-plexes, two eight-unit apartments, and a vacant City Light substation site.

5. According to City Light correspondence of record, the utility purchased Lots 1, 2, 3, and 4, Block 3, C.B. Niblock's Addition in 1929 for use as an electrical substation site. The October 15, 1987 letter to DCLU continued that "the property was recently declared surplus...and disposal procedures have been initiated."

6. The Bryant substation site is bordered on the north by N.E. 55th Street and on the east by 45th Avenue N.E. An 8-unit structure with frontage to 45th N.E. and to N.E. 55th lies directly west of 45th Avenue N.E. from "Lot 1" of the City Light property. South of the City Light property is the Burke-Gilman Trail which borders all of the rezone property that is located on the south side of N.E. 55th.

7. As of December 24, 1987, the Seattle Housing Authority wished to develop the substation site with two duplexes to be rented to low-income families. Seattle Housing Authority and City Light therefore oppose the rezone which could reclassify the substation to single-family and theoretically halt the development proposed. Petitioner and others object to this and to other potential multi-family proposals within the rezone area. There is information of record which suggests that a compromise in building development may be reached between rezone proponents and SHA. According to petitioner, SHA appears willing to agree to develop Lots 3 and 4 with duplexes and to sell off their remaining lots as single-family lots. Per the DCLU analyst, DCLU has already received the application for development of the proposed SHA duplexes. Some correspondence indicates opposition to any increase in special housing within the area.

8. Other vicinity development includes the grocery store and other commercial development within the Neighborhood Commercial 2, 30 ft. height limit zone which lies west adjacent to the applicant's initial rezone site. South of the Burke-Gilman Trail is a "Coast Guard PUD low income housing project." Single family residences lie to the north and east of the rezone demarcation.

9. Beginning at the westernmost point of the modified rezoned area and on the north side of N.E. 55th are two apartments. The Del-Mar is the more westerly. The more easterly apartment also fronts on 43rd N.E. and bears a street address of 4054 N.E. 55th Street. Fifty five eleven - 43rd N.E. is north adjacent to the 4054 parcel. Applicant's alternative map excludes the 5511 parcel from the petition, but includes the lot west (behind) the 5511 site which site incidentally is north adjacent to the Del-Mar Apartment. The petition recommends that the 4054, Del-Mar, and the north adjacent Del-Mar site retain L-2 zoning.

10. Continuing easterly across 43rd N.E. and still within the rezone petition area are two properties which have frontage on 43rd N.E. The more northerly, 5510 - 43rd N.E., is presented by petitioner's use map as single-family. The more southerly property, 5502 - 43rd N.E., is a corner parcel which borders N.E. 55th Street on the south. East adjacent to the 5502 - 43rd N.E. property is 4312 N.E. 55th Street. The modified petition is to rezone these three properties from their present L-2 zoning to L-1. DCLU's recommendation accords with this recommendation.

11. The corner property at 5502 N.E. 55th Street is proposed for demolition under Application No. 8703326 for construction of

an 8-unit apartment. Accordingly, per the owner of north adjacent 5510 43rd N.E., her lot should not be downzoned to single-family, but to L-1, since she will be adjacent to an L-2 scale-building anyway. The DCLU analyst reports that DCLU has already received the application for the 8-unit apartment which will be "more like an L-2 development."

12. The remaining properties east of the 4312 N.E. 55th Street site to 45th Avenue N.E. are proposed for downzoning to SF 5000. East of 45th N.E. are two adjacent duplex or triplex uses, 4502 and 4510 55th N.E., that applicant proposes to downzone from L-2 to L-1.

13. Applicant also proposes rezoning the first six lots that lie east of 45th N.E., along the south side of N.E. 55th, from L-2 to L-1. Those lots are developed with, from east to west, two apartments, a single-family dwelling, an apartment, a duplex or triplex, and another apartment. The owners of the first apartment, Hawthorne Place, testified against any rezone which would "devalue" the property, e.g. by imposition of single-family zoning and limitations on that site.

14. Returning westerly along N.E. 55th Street from 45th N.E. to 43rd N.E., the properties along the south side of N.E. 55th are all developed with single-family dwellings, with the exception of the City Light substation site referenced above. Applicant wishes to rezone all of these sites from L-2 to Single Family 5000. The two most westerly lots within the rezone petition area and slightly west of 43rd N.E. are presently in duplex or triplex use. Applicant proposes to rezone those two sites from L-2 to L-1.

15. There is substantial community support for an immediate downzone of the area. According to the president of the Hawthorne Hills Community Club and others the neighborhood is under attack from a rash of high density buildings that increase congestion and diminish the single-family ambiance and character of this established Seattle neighborhood.

16. The subject area, originally zoned RD-5000, has been zoned for duplexes, triplexes and townhouses since 1957. In 1982, the zoning was changed to L-2. As noted above, the central block of the rezone area has remained in single-family use.

17. In fact, this "block" between 43rd Avenue N.E. and 45th Avenue N.E. along N.E. 55th contains 16 single-family residences and one vacated City Light substation. Inclusive of the proposed apartment for 5502 - 43rd N.E., the percentage of single-family use along this "block" approximates 87 percent.

18. The "block" consisting of the east and west sides of 43rd N.E. contains 7 single family residences and one apartment (4054 N.E. 55th) for approximately 87.5 percent of single-family use. If the 5502 corner property is considered as an apartment, as proposed the percentage is reduced to 75 percent single-family use. It should be noted that the revised petition requests L-1 and L-2 zoning for this block as opposed to single-family zoning.

19. The "block" consisting of the north and south sides of N.E. 55th and west of 43rd N.E. contains no more than one single-family residence. The general area consisting of properties along the north and south sides of N.E. 55th Street and east of 45th N.E. to N.E. Tulane Place are developed with 6 single-family structures.

20. Neither "block" of the rezone area facing 45th N.E. shows single-family use of 50 percent or more.

21. All of the present multi-family rezone area development is ground-related and predominantly single-story or of the townhouse variety.

22. Approval of the rezone would mean a decrease in the number of multi-family redevelopment of existing sites. Con-

comitantly, there would be reduced potential for exacerbation of traffic, parking, density and related concerns.

23. The record reflects no adopted neighborhood plan for the area, nor any greenbelt or other overlay district designation of the rezone area.

24. The area proposed for L-1 zoning has prevailing structure heights of 30 ft. or less. The area is not a "view" area. Although adjacent to the Burke-Gilman Trail, the area is not one overlooked from this or any public open space or scenic route. The proposed L-1 area is near shopping and transit service. Its traffic would traverse the single-family zone.

#### Conclusions

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

2. The Hearing Examiner will first evaluate the proposed rezone of the L-2 zoned areas to L-1 per the revised petition. By way of review, those areas include the three corner properties at the northeast corner of N.E. 55th Street and 43rd Avenue N.E.; two duplex or triplex properties directly southwest of the N.E. 55th Street - 43rd Avenue N.E. intersection; and the L-shaped area directly east of 45th N.E.

3. The general rezone criteria are located at Seattle Municipal Code Section 23.34.008. The first requires an evaluation of the match between established L-1 criteria and the development characteristics of the subject area.

4. The L-1 locational criteria, delineated at Seattle Municipal Code Section 23.34.014, are generally compatible with existing development. The proposed L-1 areas contain structures of "consistently low height" (25-30 ft.), and contain a mix of small bulk, single and low scale, ground-related housing. Seattle Municipal Code Section 23.34.014(A). The one exception, per the DCLU admonition, is the L-2 type development proposed for the corner property at 5502 - 43rd Avenue N.E.

5. The areas proposed for L-1 zoning border the single family zone on at least one side "where no transition to greater scale is desirable." There are no topographical or similar breaks which might "otherwise provide the necessary transition between areas of different scale." Seattle Municipal Code Section 23.34.014(B).

6. The areas are not "view areas." The topography and prevailing structure heights are not such that a 30 ft. height limit is necessary to "retain" views. Seattle Municipal Code Section 23.34.014(C). It is nevertheless noted that the areas are generally flat with prevailing development of 30 ft. height or less. Seattle Municipal Code Section 23.34.014(C)(1).

7. Notwithstanding proximity to the Burke-Gilman Trail, the proposed L-1 areas are not overlooked from public open spaces or scenic routes. Seattle Municipal Code Section 23.34.014(D). The rezone areas are in fact served by the N.E. 55th Street arterial, contrary to the first part of L-1 criterion Section 23.34.014(E); but consistent with the second, disjunctive portion of the cited criterion, a substantial portion of the L-1 development traffic "would go through single-family residential zones."

8. Since the L-1 proposal areas are near shopping and other services (west) and are served by transit, the proposal sites do not satisfy L-1 criterion Section 23.34.014(F). This factor suggests that L-2 zoning is more appropriate.

9. On balance, the L-1 locational criteria generally match the areas' development characteristics.

10. The second general rezone criterion requires evaluation of zoning history and precedential effect. The subject area has

been zoned multi-family since 1957. The area proposed for L-1 zoning contains primarily smaller development which is concluded to be generally more compatible with L-1 than L-2 zoning. There could be some negative precedent viewed by such a recent modification to the 1982 zoning scheme. However, any such precedent could be outweighed by the other factors which suggest that the change to L-1 could be consistent with the zoning criteria and the area development extant.

11. The third general rezone criterion of Seattle Municipal Code Section 23.34.008 requires consideration of zoning principles related to compatible land use patterns, size, configuration and boundaries. The proposed L-1 segments would face dissimilar zoning. The most westerly pocket would face L-2 zoning north across N.E. 55th Street. The northeast corner parcels at 43rd N.E. and N.E. 55th would face single-family zoning across N.E. 55th and would face L-2 zoning west across 43rd N.E. The edges of the most easterly L-1 section would face single-family zoning to the west, across 45th N.E., as well as to the north and east. (Within this segment L-1 zoning would face L-1 zoning across N.E. 55th Street). The proposed L-1 zone would serve as transition between higher intensity zoned uses and the (proposed and existing) single-family zone.

12. The proposed configuration of the westerly areas proposed for L-1 zoning gives rise to a series of questions which relate to zoning principles discussed above. The westernmost pocket of proposed L-1 zoning, two lots, is east adjacent to NC-2 zoning and is across N.E. 55th Street (south) from L-2 zoning. By the proposal it would be adjacent to single-family zoned property on the east. The three northeast corner properties at 43rd N.E. and N.E. 55th Street would face an L-2 zone to the west and single-family zoning to the north, east and south. It was noted that in contradistinction with L-1 criteria, these L-1 proposed acres have access to services and to transit and are in fact served by an arterial. One of the L-2 criterion states as follows:

Areas where the prevailing scale is small but where there is proximity to transit, open space, neighborhood business areas, and other amenities.

Seattle Municipal Code Section 23.14.16(C). Another L-2 criterion to consider is whether the area is between areas of single-family and medium scale multi-family structures "suggesting the need for a gradual transition between areas." Section 23.14.16(B). A third L-2 criterion suggests a review of areas that feature a mix of single-family structures, duplex, and small-medium sized apartments with a prevailing height of 2-3 stories.

13. Based on the foregoing, the configuration of the westerly L-1 zone proposed would be staggered and irregular. It would not be justified by the development pattern, the zoning principle related to similar facing zoning, nor by the consideration of L-2 vs. L-1 zoning criteria. As to the last item, it should be underscored that L-2 zoning is considered an acceptable transition to single-family zoning. Weighed in the balance is the fact that the community appears to generally favor the L-1 designation as proposed.

14. The more easterly area proposed for L-1 zoning would result in some similar facing L-1 zoning across N.E. 55th. Although this area also comports with some of the L-2 criteria, its larger size and greater adherence to the zoning principle of similar facing zoning makes it a stronger candidate for L-1 zoning.

15. The proposal would decrease the bulk and intensity of any redevelopment and would thus cause reduced traffic, density and related impacts. Section 23.34.008(D). The proposal areas are included within no adopted neighborhood plan or overlay district. Section 23.34.008(E)(G). Petitioner suggests that the

explosion of high density multi-family units in the area is a changed circumstance which supports the rezone petition.

16. Remaining for consideration is the question of whether the bulk of the approximately 3 acre site should be downzoned from L-2 to single-family. The focus must again be placed on the general rezone criteria of Seattle Municipal Code Section 23.34.008.

17. The area proposed for single-family zoning is developed in a way that is compatible with established single-family zone locational criteria of Seattle Municipal Code Section 23.34.12. For example, the "block" between 43rd Avenue N.E. and 45th Avenue N.E. (along N.E. 55th Street) contains 87 percent single-family uses. One locational criterion for single-family designation is that the area consist of blocks with at least 70 percent of existing structures in single-family use. Because the easternmost of the structures also face 45th Avenue N.E., one could raise the question of the single-family percentage along the 45th N.E. "block." If the north end of the "block" terminates at N.E. 56th Street, from N.E. 55th Street, the use map indicates that there are two single-family uses and one multi-family use within the "block."

From N.E. 55th Street south, the 45th Avenue "block" has no single-family uses. The Hearing Examiner concludes, however, that it is appropriate to consider those easternmost properties as within the block defined along N.E. 55th Street.

18. The area proposed for single-family zoning abuts an existing single-family zone, Seattle Municipal Code Section 23.34.012(B), and has for boundaries platted lot lines to the north and the Burke-Gilman natural feature to the south. Seattle Municipal Code Section 23.34.012(C).

19. Regarding zoning history, the "block" defined by N.E. 55th Street between 43rd and 45th Avenues N.E. has remained single-family even though the area has had a multi-family designation since 1957. In terms of zoning principles, the newly-zoned single-family properties would generally face like zoning across N.E. 55th Street. Those properties on the north side of N.E. 55th Street would be south adjacent to other SF 5000 zoned properties that generally face N.E. 56th Street. The new Single Family zone would then extend south to the Burke-Gilman Trail, a natural boundary. The downzone would decrease the potential for nonvested multi-family projects within the rezone area and would signal a reduction in traffic, density and related concerns. (Relative to the Seattle Housing Authority proposal, DCLU indicates that the application has been submitted, theoretically vesting that proposal's development rights. Absent this vesting, the social and other housing-related impacts would militate strongly against rezoning the SHA property.) In sum, the criteria for rezoning the subject strip of land to Single Family are satisfactorily met.

20. For the above-stated reasons, the Hearing Examiner recommends that the revised petition to rezone the parcels from L-2 to SF 5000 be granted.


21. The Hearing Examiner also recommends that the petition to rezone from L-2 to L-1 be granted for the easternmost portion per the revised petition, i.e. east of 45th N.E.

22. The Hearing Examiner recommends that the two westernmost parcels requested for L-1 designation remain L-2.

#### Recommendation

The Hearing Examiner recommends that the City Council grant the petition in part as per Conclusions 20-22 above.

Entered this 4/4 day of March, 1988.

  
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.