

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

In the Matter of the Petition of

BCE DEVELOPMENT

FILE NO. 8704361
C.F. NO. 296110

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

Introduction

BCE Development petitions to rezone certain Westwood Village Shopping Center property from Single Family 7200 to Commercial 1, 40 ft. height limit zoning.

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 June 6, 1988.

Petitioner was represented by Peter Buck of the law firm of Buck & Gordon and the DCLU Director by John Doan.

The DCLU Director recommended that the petition be conditionally 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 of this petition.

Findings of Fact

1. Applicant, BCE Development, proposes to rezone a portion of the Westwood Village Shopping Center from Single Family 7200 to Commercial 1/40', and to subdivide the present parcel into three parcels (under a different application not before the Hearing Examiner).

2. The site's legal description appears in the Comptroller's File of record and is incorporated herein by reference. The street address is 2500 S.W. Barton Street.

3. The subject site is a large, roughly 25.3 acre site that is located approximately two blocks from Seattle's south city limits.

4. The site is bordered on the east by the 25th Avenue S.W. right-of-way and on the north by two intervening parcels which are bordered by the S.W. Trenton Street right-of-way. Twenty-fifth S.W. is a collector arterial improved with curbs, sidewalks, two driving lanes, and parking on both sides. Southwest Trenton Street is also a collector arterial with curbs, sidewalks and parking on both sides.

5. The property's south border is S.W. Barton Street, a minor residential arterial. The L-shaped west side is bordered by 29th S.W., a portion of S.W. Henderson Street and by rear lot lines of properties oriented west to 28th Avenue S.W.

6. Property directly east of the subject site, across 25th S.W., is zoned Lowrise 3 and Neighborhood Commercial 3-40 ft.

height limit. These properties are developed with large multi-family developments extending from S.W. Barton Street. A State Employment Security Building is located on 25th S.W. near the north portion of the site.

7. As noted above, the subject site is separated from S.W. Trenton Street by two north adjacent properties. The two parcels are zoned C-1/40'. The more easterly of these parcels is vacant and is the potential site of a new Ernst Hardware store. L-3, multi-family development properties are across S.W. Trenton. The more westerly site was recently developed with a U.S. Post Office facility. Across S.W. Trenton from this parcel is the Chief Sealth High School site, zoned single family. Between 29th Avenue S.W. and 28th Avenue S.W. on the north side of S.W. Henderson Street are two single family structures. A third structure is directly east of 28th S.W. north of the vacated portion of S.W. Henderson.

8. The vicinity directly south of the subject site, across S.W. Barton Street, is developed with the SF 7200-zoned Roxhill Playground, an L-3 zoned strip, a strip of SF 7200-zoned single family homes and, continuing easterly, the western edge of S.W. Barton Street.

9. As noted above, the subject site's west border is L-shaped with frontage near the south to 29th Avenue S.W. Near mid-site is a portion of vacated S.W. Henderson Street, vacated at its eastern terminus. The northern portion of the site is bordered by a strip including ten single family lots oriented west to 28th Avenue S.W.

10. A row of nine single family homes located on 29th S.W. between S.W. Henderson Street and S.W. Barton Street are oriented east, toward the shopping center. These homes would be more than 150 ft. from the shopping center buildings. In addition to the residential access street separation, these properties are topographically and visually removed from the shopping center site. This is due to a 30 ft. decline in grade from the 29th S.W. street level to the shopping center.

11. Applicant proposes to supplement an existing landscape strip with a dense row of deciduous and evergreen trees. In fact, the landscape plan includes a 38 ft. - wide landscape strip along the western slope that will feature a variety of pine trees.

12. There is landscaped buffering along the east and south property lines also. Applicant intends to retain and supplement all of the perimeter buffers.

13. The present development of the subject site includes in the southwest section an Ernst store, a restaurant and a bank. Between 29th and 25th Avenues S.W. on the south side of S.W. Barton Street are four single family structures per the Kroll, and the playground. From the site plan, shopping center buildings with some orientation to S.W. Barton include (from west to east) a single story commercial building, a "Pay-N-Save" commercial building, a Lucky-Big 5 et al. commercial building and a Sea Galley facility at the southeast corner.

14. Applicant's Phase I includes the proposed relocation of the Ernst store. Applicant's Phase II includes connecting the shops and enclosing the mall.

15. In more detail, applicant's total proposal will include demolition and removal of approximately 120,000 sq. ft. of retail and commercial mall area and new construction of approximately 160,932 sq. ft. of additions to the existing development. Included in the construction will be space for new tenant stores in an enclosed mall, a new "anchor" store and a new bank structure. Applicant also proposes to restripe and landscape the existing asphalted parking area, presently striped for more than 1400 vehicles, to accommodate 1584 vehicles. The restriping is facilitated by newer city regulations which recognize the in-

creasing presence of 7 ft.-wide compact cars (vs 9 ft. wide standard cars).

16. Although the great majority of the subject site is zoned C-1/40', the "rezone portion" of the site is zoned SF 7200 and is located along the westerly edge of the subject site. While the northern portion of this SF 7200 strip is developed for shopping center accessory parking, the southern portion is used for parking, storage and truck loading and unloading. Increased interior (parking lot) landscaping is also proposed.

17. Applicant is seeking to rezone this SF land by a "contract" which would limit the north portion to accessory parking. The southerly portion would not be subject to development restriction.

18. The street system and general infrastructure are adequate to respond to increases in traffic and population attributable to the overall project. Taken separately, the rezone will have only a slight effect on the vicinity environment.

19. The rezone area is subject to no adopted neighborhood or business plan. There are market and multi-family development indications that West Seattle commercial and land use activity is increasing.

20. The site was annexed into Seattle in 1907. From 1923-1957 the property was zoned for single family. Later in 1957, the zoning changed to Business-Commercial. In September 1959, the zoning was changed to add a 100 ft. single family buffer along the site's perimeter. In 1968 the north and east buffers were zoned commercial. In 1982, SF 5000 zoning was effected along the south and west properties lines.

21. In June, 1986, a city-wide commercial rezone was implemented. During this process, the Council retained the west property line residential buffer. The NCA Mapping Staff Report, Exhibit 6, recommended SF retention in this area "to buffer impacts on the residential areas across Henderson and across 29th..." at p.2.

22. The proposed 1584 parking spaces, equivalent to 4.34 spaces per 1000 gross sq. ft., exceeds the Urban Land Institute study suggested figure of 4.0 parking spaces per 1000 gross sq. ft. of shopping center area during normal conditions. (Holiday, i.e. peak conditions may require from 4.5 to 5.1 per 1000 sq. ft.). The Land Use Code requires 1065 spaces for the project.

23. Generally, shopping center traffic can be divided into 35 percent new trips, i.e. created by a new place to shop, and 40 percent diverted trips, i.e. diverted from another shopping center to the subject center. Application of this 75 percent factor to the net projected daily trips of 5200 yields 3900 daily trips. Applying the 75 percent factor to the net projected (P.M.) peak hour 865 trips yields 655 p.m. peak hour trips. Given the projected trip distribution, e.g. that 30 percent of the new trips will be to and from the southeast, 22 percent to and from the northeast, the anticipated LOS impacts are minimal.

24. No appeal was filed from the DCLU determination that traffic or other impacts would not be significant. Recognizing that the impacts could be adverse (although not "significantly" adverse) DCLU conditioned the general project (vs. the rezone) on several conditions. One requires that the "owner and/or responsible party" contribute \$75,000 to the city for installation of a traffic control signal at the corner of 25th S.W. - S.W. Barton Street. This intersection is expected to decline in LOS C (1991, without expansion) to LOS D (1991, with expansion).

25. One witness, residing near 30th Avenue S.W. and S.W. Trenton, voiced concern with the increase in traffic. Based on the traffic distribution and LOS data of record, there is no indication that the 30th-Trenton Street area will be particularly

affected by the expansion or by the (smaller scale) rezone.

26. No appeal was filed against the DCLU decision to approve applicant's requested short plat. The short plat was requested so that the subject parcel could be divided into three parcels. One parcel would belong to the bank (southwest corner, 16,320 sq. ft.); another to the anchor tenant (westerly portion, 267,105 sq. ft.); and the remainder developed with the shopping center (817,221 sq. ft.). These ownerships would obviate leases from the shopping center owner.

27. The DCLU recommended conditions on the rezone are as follows:

1. The owner(s) and/or responsible parties shall provide a landscaped buffer along the western property line. The buffer shall be at least 35 feet wide along 29th Avenue S.W. and 20 feet wide along S.W. Henderson Street and along the remainder of the westerly property line. The buffer shall be planted significantly similar to the plan approved with the Master Use Permit. All landscaping shall be provided prior to occupancy of the shopping center.
2. The owner(s) and/or responsible parties shall maintain the landscape buffer as shown in the plans for the life of the project.

Conclusions

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

2. The rezone criteria are delineated at Chapter 23.34, Seattle Municipal Code. A threshold test is presented at Seattle Municipal Code Section 23.34.010(A) which provides that

Single family zoned areas may be rezoned to another classification only if the applicant can demonstrate that the area does not meet the criteria for single family designation.

3. The single family zone locational criteria are found at Seattle Municipal Code Section 23.34.012. One criteria suggests single family zoning for areas consisting of "blocks with at least...70 percent...of the existing structures in single family residential use." Seattle Municipal Code Section 23.34.012-(A)(1).

4. A "block" is defined at Seattle Municipal Code Section 23.84.004(B) as consisting of

two...facing block fronts 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...

5. "Block front" is also defined at Section 23.84.004(B). It means 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 line.

6. For analysis, DCLU constructed three blocks from which they concluded that single family use was less than 70 percent. DCLU's Block 1 extends from the rear lot lines of the houses

abutting the east side of 28th Avenue S.W. and extends east across the shopping center property to 25th Avenue S.W. and north to S.W. Trenton. The Hearing Examiner is unable to adopt this description. No two facing "block fronts" are presented by the DCLU construct.

7. DCLU's Block 2 extends from the centerline of 29th Avenue S.W. north of S.W. Henderson Street, extends east to the interior of the subject parcel, south to S.W. Barton and west to 29th S.W. This configuration has the advantage of including the S.W. Henderson - facing block fronts. If this "block" configuration is adopted, the "3 single family structures and 2 non-single family structures" indicate 60 percent single family use.

8. Regarding DCLU's Block 3, the configuration

extends from S.W. Henderson Street along 29th Avenue S.W. to S.W. Barton Street. The adjacent single family homes on the west side of 29th Avenue S.W. and the shopping center on the east side are included...

See DCLU Figure 2, Analysis and Recommendation.

With 9 of the 15 structures in single family use, the single family percentage is 60 percent.

9. As opposed to the DCLU configurations, it appears more appropriate to consider the blocks as consisting of the block fronts between S.W. Barton and S.W. Henderson Street along 29th S.W. The Kroll shows 9 (topographically removed) single family dwellings on the west side of 29th S.W. If the shopping center properties are considered, e.g. (1 restaurant, 1 bank, 1 hardware - nursery) 3 of the 12 properties are in non-single family use, 75 percent would be in single family use.

10. Another appropriate "block" would be that formed by the S.W. Henderson Street block fronts. The Kroll shows 2 single family homes on the north side of S.W. Henderson Street between 29th and 28th S.W. A third home is north of a vacated portion of S.W. Henderson Street. If the Ernst building and the 2 single family homes are considered, the "block" would consist of 67 percent single family homes. The single family percentage increases to 75 percent if the home east of 28th S.W. is considered. This should not be the case, however, since 28th S.W. would be an "intervening" street. Cf. Section 23.84.004(B), "block."

11. It is unclear from Seattle Municipal Code Section 23.34.012(A) whether the "areas of 70 percent single family development must be adjacent to the rezone parcel. This specific rezone site fronts only to 29th S.W. and S.W. Henderson Street (and to a rear lot line which offers no block "front").

12. If "area blocks," Seattle Municipal Code Section 23.34.012(A), should be considered, the S.W. Barton block, between 29th and 25th Avenues S.W. would offer a bank building, a Pay-N-Save building, a Lucky Store building and a Sea Galley along the north side of S.W. Barton and 3 single family residences along the south side of S.W. Barton Street. The percentage of single family developed structures would not equal 70 percent. Whether 25th, 26th or 27th Avenues S.W. are considered as intersecting, the single family percentage is less than 70 percent. Similarly, the 25th Avenue S. W. "block" consists of commercial buildings, multifamily and Employment Security uses. There is no single family use of the block.

13. The Hearing Examiner concludes that the area does consist of blocks that are more than and less 70 percent single family developed. On balance, however, the S.W. Henderson Street percentage and the mega-block, unified status of the shopping center property suggest that the rezone site is appropriate to consider for a non-single family classification.

14. The subject property abuts a single family zone and

therefore meets another single family locational criterion. Seattle Municipal Code Section 23.34.012(B)(1).

15. Consideration of boundaries, Section 23.34.012(C), suggests that the single family zone should terminate at the 29th Avenue S.W. roadway because of the steep (30 ft.) elevation difference between the street and the shopping center/subject property. Regarding the northerly portion of the rezone property, platted lot lines may be considered. Section 23.34.-012(C)(3). Therefore, the rear lot lines of the properties fronting 28th Avenue S.W. can be considered as a boundary of that west - adjacent single family zone.

16. In sum, while a close question, it can be and is concluded that the subject property does not meet the (locational) criteria for single family designation, Seattle Municipal Code Section 23.34.010, which means that the other tests can and should be applied.

17. Seattle Municipal Code Section 23.34.008 indicates the general rezone criteria. Section 32.34.008(A) requires an evaluation of the match between established (C-1/40) locational criteria and existing characteristics.

18. The locational criteria for C1 zones are found at Seattle Municipal Code Section 23.34.080 and are met by the proposal. The Westwood Village area functions as an area of retail, commercial and other service to the community and is auto-oriented. Section 23.34.080(A). No new center is proposed, Seattle Municipal Code Section 23.34.080(B)(1). Further, the Village is "readily accessible from a principal arterial," Section 23.34.080(C)(1), and is surrounded, particularly on the west, with topographical and other buffers. Seattle Municipal Code Section 23.34.080(C)(2).

19. The 40 ft. height proposed will be compatible with the zone function and will be consistent with community height, scale and topography. This is particularly so since there is a 30 ft. drop from the 29th S.W. Street level to the shopping center area. No issue of the service capacity is presented. Seattle Municipal Code Section 23.34.084.

20. As to designation of commercial areas in general, Seattle Municipal Code Section 23.34.072, the recommended condition would allow the northern rezone property to be used only for parking and landscaping. The southerly portion, separated by the topography and distance, is not recommended for any similar restriction. The rezone would therefore cause no "encroachment of commercial development into residential areas." Seattle Municipal Code Section 23.34.072(B)(1). For similar reasons, the edges of single family zones would not be unduly affected. Section 23.34.072(B)(2). Further, extensive landscaping, topographical and other barriers will tend to minimize impacts on the other zones. Section 23.34.072(B)(3).

21. As the commercial unit will not extend beyond the perimeter streets, no "diffuse commercial sprawl" would be presented by the rezone. What will be presented is a "preservation and improvement" of an existing commercial area. Sections 23.34.072(B)(4)(5).

22. Infrastructure capacity would not be exceeded. In fact, environmental impacts in general will be slight. There is no Council-adopted neighborhood or business district plan for the site. Section 23.34.072(B)(6)(7).

23. Because of pre-existing buffering and landscaping, which can be enhanced by the conditions to the rezone, and because the rezone would merely facilitate an existing commercial use, the commercial boundary extension presents as sufficiently "predictable and orderly." Seattle Municipal Code Section 23.34.072-(B)(8). There are indicators that the West Seattle commercial market and real estate activity are increasing. The proposed rezone would in a measured way respond to this change in cir-

cumstances. Seattle Municipal Code Section 23.74.072(C).

24. Continuing with the general rezone criteria, Section 23.34.008, the zoning history suggests that the site should not be rezoned. In 1959 the site was zoned to add the 100 ft. single family perimeter buffer. As recently as 1986, during a City-wide commercial rezoning effort, the west property line buffer was retained. There would be no negative precedential effect from the rezone since the shopping center activities are predictable and confined within the "mega-block." Section 23.34.008(B).

25. The rezone would be consistent with zoning principles relating to boundaries, land use patterns and configurations. The new C-1 zone would be bordered by streets, topography or rear lot lines. Section 23.34.034(C).

26. As noted above, the infrastructure will be able to handle the minor anticipated traffic and other impacts from the proposal. The kind of uses will essentially remain constant. While the rezone strip will facilitate the general redevelopment, the rezone itself will sponsor de minimis impacts. The topography, street grid, project conditions, and projected traffic characteristics together will work to minimize impacts on the vicinity. Seattle Municipal Code Section 23.34.008(D).

27. The property is within no greenbelt or other overlay district. Seattle Municipal Code Section 23.34.008(G)(H). The increasing trend in multi-family and commercial development for the general area suggests approval of the rezone. Seattle Municipal Code Section 23.34.008(F).

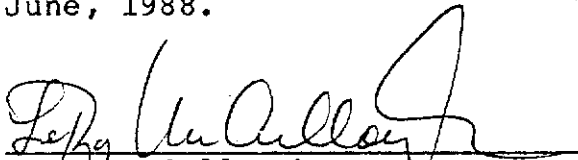
28. Chapter 23.34, Seattle Municipal Code indicates no particular weight for specific locational or other rezone criteria. Upon this Hearing Examiner's weighing and balancing of the various criteria and the project's compliance with them, it is concluded that the rezone should be granted upon conditions as generally recommended by DCLU.

Recommendation

The rezone should be granted on the condition that

1. The owner(s) and/or responsible parties shall provide a DCLU-approved landscape plan and shall provide a landscaped buffer along the western property line. The buffer shall be at least 35 feet wide along 29th Avenue S.W. and 20 feet wide along S.W. Henderson Street and along the remainder of the westerly property line. The buffer shall be planted significantly similar to the plan approved with the Master Use Permit. All landscaping shall be provided prior to occupancy of the shopping center.
2. The owner(s) and/or responsible parties shall maintain the landscape buffer as shown in the plans for the life of the project.
3. The owner(s) and/or responsible parties shall limit the use of the rezone area north of the extension of S.W. Henderson Street to parking for automobiles accessory to the shopping center and landscaping. This shall not prohibit the provision of aisles for access and maneuvering.

Entered this 21st day of June, 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, Land Use and Community Development 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 Land Use and Community Development Committee should be consulted for further information on the Council review process.