

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

In the Matter of the Petition of

RALPH GENE WATERS

FILE NO. 8708036
C.F. 296184

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

Introduction

Ralph Gene Waters petitions to rezone approximately 12,954 sq. ft. of property located on the north side of North 87th Street from Single Family 5000 to Neighborhood Commercial One/30'. The street address is 202 North 87th Street.

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 (DCLU), recommended that the petition be denied.

This matter was heard before the Hearing Examiner on November 15, 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, and following a visit to the site and environs, the following shall constitute the findings of fact, conclusions and recommendation of the Hearing Examiner on this petition.

Findings of Fact

1. The subject petition is to rezone approximately 12,954 sq. ft. of property addressed as 202 North 87th Street from Single Family 5000 (SF 5000) to Neighborhood Commercial 1, 30 ft. height limit (NC1/30'). Per the petitioner's statement, he desires "to establish a small fresh produce market or professional offices on the site." Exhibit 14. DCLU has recommended that the petition be denied.

2. The subject property consists of three contiguous lots that are bounded on the west by Palatine Avenue North; on the south by North 87th Street; and on the east by a 16 ft. wide paved alley. Directly east of the alley is property with frontage to the Greenwood Avenue North arterial that is developed with a major Texaco Service Station. This and other parcels east of the alley are zoned NC2/40' to North 90th Street where the Greenwood-fronting parties fall within the Commercial 1 (C1-40') zone.

3. The westernmost of the rezone lots has approximately 102 ft. of frontage along west abutting Palatine North and approximately 40 ft. of frontage to south adjacent North 87th Street. This parcel is developed with a one-story single family residence and detached garage that accesses to Palatine.

4. The subject center lot also measures roughly 40 ft. by 127 ft. It, too, is developed with a single family residence. The attached garage is accessed from a North 87th curb cut. The easternmost of the three rezone lots is vacant but paved. It has been used for parking. This lot's single family residence was demolished in 1965.

5. The number of single family structures in this North 87th Street block has been stable since 1965. In fact, the

evidence of record shows that there has been no single family construction, renovation or rehabilitation along the North 87th Street block face since 1965.

6. The existing development on the subject parcel rests on a layer of peat that is approximately 15 ft. deep. Some settling has occurred, approximately 3 ft., since the c. 1920 site construction. The Hearing Examiner is unable to find from this record that the siting makes it unsuitable for residential use even though it is indicated that piling construction would be needed and construction-sale prices prohibitive.

7. The Greenwood Business district generally extends along Greenwood Avenue and along North 85th Street. The Texaco Service Station at 87th and Greenwood is a part of the business district. North of the service station is a fast food restaurant. Other uses along the Greenwood strip include automotive and appliance repair shops.

8. The property along Greenwood Avenue and south of North 87th is zoned NC 2/65' - P2, representing a greater height allowance and a pedestrian designation. Development in this area consists primarily of retail and restaurant uses. The southwest corner parcel at North 87th and Greenwood is developed with a bank use. The present Greenwood Business District includes no NC1/40' zoned parcels.

9. Across North 87th Street from the site are properties zoned for lowrise multifamily residential use. A limited range of businesses are permitted on the ground floor of sites within this L1/RC zone which extends west for 1.5 blocks to 1st Avenue North. The two L1/RC parcels that face the rezone site are bounded on the west by the Palatine North right-of-way and on the east by the alley. Each of the two lots is presently developed with apparent single-family structures. The more westerly structure is in triplex multi-family use.

10. The rezone site is bounded on the north by SF 5000 sites that are developed with single family residences oriented west to Palatine North. There is no topographical or other natural distinction between the rezone site and its neighboring parcel, an approximately 127 ft. deep lot that extends from Palatine to the alley. The residences on the east side of Palatine face other SF 5000-zoned and developed properties west, across Palatine. The subject SF 5000 zone, north of North 87th Street, extends west for several blocks. Consequently, the rezone site is in the southeast corner of an extended single family zone that radiates north and west from the subject site. The Palatine Street frontage north of North 87th is in 100 percent single-family use.

11. The area north of North 85th was first covered by Seattle zoning in 1947. Since then, Greenwood-fronting properties north and south of North 87th have been zoned for business-commercial uses. And, the north and south sides of North 87th Street, west of the alley, have been zoned single family residential. The change to L1/RC zoning for the parcels on the south side of North 87th Street occurred in 1985.

12. North 85th is a principal arterial which carries more than 24,00 vehicle trips on an average weekday. North 87th is impacted by the North 85th pattern. A major department store and other businesses front on North 85th, one block west of the site, but have accessory parking from North 87th. Also, North 87th receives some of the North 85th overflow or bypass traffic.

13. North 87th Street and Palatine Avenue North are residential access streets that are paved and curbed.

14. The Seattle Engineering Department plans to install in 1989 a full traffic signal for vehicles and pedestrians at the North 87th - Greenwood intersection where there is presently a 4-way flashing stop. This and a planned mid-block south pedestrian signal will be "interconnected" to the North 85th-Greenwood

existing signal. Exhibit 12.

15. The vicinity has ready access to transit service.

16. There is a clear, distinct pattern of greater traffic volumes on North 87th east of Greenwood, vs. west of Greenwood Avenue as indicated by the following morning (7:15-8:15 a.m.) comparative statistics:

| <u>Date</u> | <u>Traffic west of Greenwood on 87th</u> | <u>Traffic east of Greenwood on 87th</u> |
|-------------|--|--|
| 6-3-87 | 207 | 149 |
| 5-16-83 | 138 | 69 |
| 4-11-73 | 121 | 62 |

Exhibit 10.

17. Further proof of this pattern is in Exhibit 11, Seattle Engineering Department average daily and average weekday traffic for North 87th Street, with the 7-day count beginning date of June 3, 1987:

| | <u>West of Greenwood</u> | <u>East of Greenwood</u> |
|-------------------------|--------------------------|--------------------------|
| Average weekday traffic | 3471 | 1792 |
| Average daily traffic | 3359 | 1678 |

18. Carol Eychaner testified for petitioner that a vehicle count of 2000 (AWDT) is typical for residential streets. This conclusion was based on Eychaner's contact with Phil Thordarson of the Seattle Engineering Department.

19. The North Greenwood Neighborhood Plan, adopted in 1981, designated Greenwood Avenue and the south side of 87th for "community shopping." The Plan recommended that the area north of North 87th be designated low medium density residential (RD 5000), approximately 17 units per acre.

20. Development of the rezone site to NCl specifications could result in temporary increases in noise and erosion and a decline in air quality. Depending on the function and design ultimately chosen and approved the development could have specific adverse impacts on traffic volumes, parking, light and glare, height, bulk and scale and housing. Specifically, increased developmental coverage is permitted in commercial zones. Future development exceeding 4000 sq. ft. in area would require a separate environmental review.

21. To mitigate potential impacts petitioner proposes consideration of several limitations to the rezone. Generally denoted in the DCLU Recommendation and Analysis, the following uses would be prohibited although normally permitted outright or conditional uses under the proposed zoning:

- gas stations
- minor vehicle repair
- minor vessel repair
- research and development laboratories
- recycling collection stations
- utility service uses
- communication utility
- park and pool lots
- brewpubs, taverns
- off site commercial accessory parking

22. Per the petitioner's agreement, each lot's development would need to provide a 10 ft. landscaped setback along the north property line. A west setback would also be required for the westernmost of the lots. "Commercial" vehicular access would be limited to North 87th and the east-adjacent alley, and the hours for non-residential use operation would be limited from 7:00 a.m. - 10:00 p.m.

23. The community generally favors the rezone. The Land Use Chair of the Greenwood Community Council testified that while he appreciated DCLU's desire to protect single family housing, he favors application of the rule of "common sense." Since most people assumed the lots were already commercially zoned, and since the North 87th traffic queues, the peat bog and other factors make the site undesirable for residential use, the site should be, he concluded, rezoned.

24. The Greater Greenwood Chamber of Commerce also submitted correspondence to DCLU in favor of the rezone. More than 60 letters, affidavits and other written communications were received in support of the rezone.

25. Among those concurring in the request for a rezone are most of the property owners-residents of the east and west sides of Palatine between North 87th and North 90th Streets. Included in the count of approving neighbors are residents that are north adjacent to the subject site; those directly west, across Palatine; and those directly south, across North 87th. Exhibit 13.

Conclusions

1. The Hearing Examiner has jurisdiction of this matter pursuant to Title 23, Seattle Municipal Code.

2. The rezone criteria are included in Chapter 23.34, Seattle Municipal Code. Regarding reclassification of single family-zoned land, Seattle Municipal Code Section 23.34.010(A) 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 "Locational Criteria" are delineated at Seattle Municipal Code Section 23.34.012. The first indicates single-family classification for "areas which consist 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). The rezone parcel is part of two "blocks," Seattle Municipal Code Section 23.84.006"B." The first "block" consists of the east and west sides of Palatine North from North 87th to North 90th. This "block" consists of two facing "block fronts" and the westernmost rezone lot (which also has frontage to North 87th). The existing structures in this "block" are 100 percent single-family, including the westernmost rezone lot.

4. The second "block" consists of the north and south sides of North 87th Street between Palatine North and Greenwood Avenue North. Within the north block front are three structures: two single-family structures on the westernmost and central rezone lots; and the Texaco Service Station. Within the south block front are three structures: a triplex, a single-family residence, and a bank which also fronts to Greenwood North. Therefore, of the existing six structures, three (50 percent) are single family. Consideration of the triplex as a single family structure would raise the percentage to 67 percent, less than the 70 percent indicated in Seattle Municipal Code Section 23.34.012(A)(1).

5. Regarding the adopted neighborhood plan, the 1981 North Greenwood Neighborhood Plan does not designate the subject area "as appropriate for single-family residential use." Seattle Municipal Code Section 23.34.012(A)(2). The Plan simply calls for "low medium density residential" use of the site. Neither does the plan indicate commercial use of the site.

6. The third single-family zone locational criterion acknowledges and gives consideration to areas with less than 70 percent of the existing structures in single family use "but in which an increasing trend toward single-family residential use can be demonstrated." Seattle Municipal Code Section

23.34.012(A)(3). In this case, the North 87th Street "block" is the one to be viewed under Section 23.34.012(A)(3) and examples since the single family usage is less than 70 percent. One stated example of an "increasing trend" toward single-family use is the following:

(c) The number of existing single-family structures has been very stable in the last...5...years

There has been no change of record in the number of single-family structures since the 1965 demolition of the structure on the easternmost lot. It is not clear whether the function of the triplex (south side of North 87th) commenced within the last five years. Assuming that it did, the remaining question is whether the single-family stock has nevertheless been "very stable."

7. The rezone site generally fails to comport with the other examples of "increasing trends." However, the examples are stated in the disjunctive, and either may serve as an indicator of the determinative trend.

8. Since the rezone site abuts an existing single-family zone, it comports with the "size criterion" for single-family zones. Seattle Municipal Code Section 23.34.012(B)(1).

9. Regarding single-family zone boundaries, Seattle Municipal Code Section 23.34.012(C) requires consideration of lakes, streams or other "natural features;" freeways "and other major traffic arterials; and platted lot lines. The existing (and proposed) boundaries fall along platted lot lines. No "natural feature" or "major traffic arterial" demarcates the existing single family zone boundary. Also, the general policy is to include

half-blocks at the edges of single-family zones which have more than...50 percent... single-family structures...

This policy, applied to the subject property, supports classification of the subject site as single family. The site is part of two half blocks that are greater than 50 percent developed with single-family structures. However, as will be further indicated, traffic and other adverse environmental factors suggest close screening of the present single-family zoning.

10. In sum, Seattle Municipal Code Section 23.34.010 states that a single-family zoned area may be reclassified "only if" the applicant can demonstrate that the area fails to meet single-family designation criteria. The subject area meets the single-family criteria. The rezone area consists of one block that is 100 percent single family. The second block is less than 70 percent single family but has a stable number of existing single family structures. The rezone area abuts an existing single-family zone and is bounded by existing platted lot lines. While other factors discussed below may suggest a contrary result, the Hearing Examiner concludes that the overwhelming number of single family criteria are met and the rezone should be denied, environmental and other factors notwithstanding. The following analysis is, however, submitted for the record.

11. The general rezone criteria are delineated at Seattle Municipal Code Section 23.34.008. The first factor for review is the "match between established locational criteria and area characteristics." Seattle Municipal Code Section 23.34.008(A). This means that the locational criteria for Neighborhood Commercial 1 (NC1), the proposed category, must be examined.

12. The NC1 locational criteria are specified at Seattle Municipal Code Section 23.34.074. An NC2/40' Texaco station is directly east of the subject site, beyond a 6 ft.-wide alley. South, across North 87th, is the L-1/RC zone which allows limited commercial ventures. The L-1/RC zone is developed with one single family and one multi-family, (triplex) residence.

Southeast of the site, with frontage to Greenwood, is an NC2/40' - pedestrian zone developed with a bank. West, northwest and directly north of the rezone site are single-family zoned and developed parcels. These uses do not show the subject area as

A small area composed primarily of businesses providing convenience retail sales and services to the adjoining residential neighborhood.

13. Nor does the area's "character" comport with the NC1 "character." Seattle Municipal Code Section 23.74.074(B). This is not an area where "shoppers walk from store to store;" where there are continuous storefronts (i.e. along North 87th or Palatine North); or where it is "pedestrian-friendly."

14. Some physical conditions, however, do favor NC1 designation. There are no physical edges to buffer the residential areas and access would be through low-density residential neighborhoods. Seattle Municipal Code Section 23.74.074(C). On the other hand, transit service is not "limited;" and there is no showing of a lack of commercially-zoned land that is "appropriate for additional commercial development." In fact, the commercial potential south of North 87th is unrealized. Seattle Municipal Code Section 23.34.074(C)(3)(6).

15. Further relating to designation of commercial areas is Seattle Municipal Code Section 23.34.072. The criteria discourage the "encroachment of commercial development into residential areas." Seattle Municipal Code Section 23.34.072(B)(1). Approval of the rezone would facilitate such an encroachment. The Palatine block in particular would be adversely impacted since it is 100 percent single family.

16. Although they have some frontage to North 87th and more intensive zoning, the three rezone lots are at the southern edge of a half block that is 100 percent single-family developed. Thus, whether one concludes that the lots are oriented west (to single family development) or south (to commercial zoning), the lots are at the edge of a solid, single-family zone and are separated from the single-family zone by no major arterial or natural boundary. The rezone would therefore conflict with the straightforward, platted lot line zone boundaries and with the protection of single family edges. Seattle Municipal Code Section 23.34.072(B)(3),(8). The rezone would also conflict with the North Greenwood Neighborhood Plan's designation of the area as (low density) residential. Section 23.34.072(B)(7).

17. Petitioner proposes a 10 ft. west and north setback from residential lot lines. This would comport with the commercial area indication for boundaries. Seattle Municipal Code Section 23.34.072 (B)(3). Further, if the westernmost rezone lot were to be excluded, the (potential) commercial uses could face other (potential) commercial uses across North 87th Street.

18. The proposed rezone would be consistent with the "preservation and improvement of the existing (Greenwood-fronting) commercial area." Seattle Municipal Code Section 23.34.072(B)-(4,5). In sum, however, the foregoing suggests that the commercial designation of the site would be inconsistent with the criteria.

19. After reviewing the match between locational criteria and area characteristics, consideration must be given to "zoning history and precedential effect." The subject site and other properties north of North 85th and west of the alley have been zoned Single-Family since their 1947 coverage by the Seattle Zoning Code. The Greenwood-fronting properties have been consistently zoned for commercial or business use. These designations have withstood city-wide multi-family and neighborhood commercial zoning reviews, although it should be noted that many residents assumed the rezone sites were already commercially zoned. Approval of the rezone could establish a negative precedent since the single family edge would be eroded

and an inconsistent zone classification imposed in contravention of the prohibitory language of Section 23.34.010. Seattle Municipal Code Section 23.34.008(B).

20. NCl zoning of the site would not be consistent with zoning principles relating to regular boundary configurations. Present zone boundaries north of North 87th are along street or alley demarcations. The proposed rezone would mutilate that pattern by using interior lot lines to break up a fluid course of single family zoning and development along the subject block front. It should be noted, however, that the zoning and developmental incompatibility would be attenuated by proposed setbacks and by the nature of the use ultimately selected and approved for the site. Seattle Municipal Code Section 23.34.008(C).

21. Seattle Municipal Code Section 23.34.008(D) addresses impacts. Again, the nature and degree of the impacts will depend on the approved uses. It is concluded, nevertheless, that the impacts will be minor. It should be noted that commercial use of the site will in all probability add to the 87th Street traffic volume extant, which activity is already a concern of the community and of the Seattle Engineering Department.

22. While a less intensive, commercial permissive category may be an appropriate item for consideration, the rezone to NCl/40' would be inconsistent with the "low density residential" reconsideration of the North Greenwood Neighborhood Plan. Seattle Municipal Code Section 23.34.008(E).

23. In terms of changed circumstances, Seattle Municipal Code Section 23.34.008(F), there appears to be an increase in the traffic volume along North 87th on the east and west sides of Greenwood North. And, one single family structure was demolished in 1965. However, the demographic and other circumstances have remained generally static.

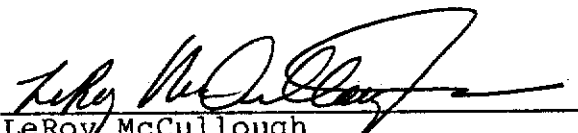
24. No overlay or greenbelt issue is presented by this site. Seattle Municipal Code Section 23.34.008(G)(H).

25. Based on the foregoing, the proposed rezone to NCl should be denied. While it may seem to be a "good idea" to reclassify the site, consideration of the clearly defined code criteria dictates a contrary recommendation. If the City Council considers a reclassification as appropriate, the Hearing Examiner recommends limiting the rezone to the the two easterly lots or remanding the matter to DCLU with directions that it consider a less intensive classification. If the Council determines that this proposed NCl/40' is appropriate the Hearing Examiner recommends that setback, use and other proposed restrictions be imposed by a property use and development agreement approved by the office of the City Attorney.

Recommendation

The Hearing Examiner recommends that this rezone be DENIED.

Entered this 30th day of November, 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.