

SUPPLEMENTAL FINDINGS AND RECOMMENDATION
OF THE SEATTLE HEARING EXAMINER

In the Matter of the Application of

PRESCOTT, INC.

APPLICATION NOS. 8800564 & 8805690
C.F. NO. 297454

for a Council conditional use
pursuant to the provisions of
Title 23, Seattle Municipal Code
as remanded

It appearing that a oversight has been made in that Findings, Conclusions and Recommendation were inadvertently omitted with respect to argument and evidence presented as to what constitutes the roof area of the proposed project for purposes of determining whether the elevator penthouse exceeds 25 percent of that roof area, the Hearing Examiner hereby makes the following Supplemental Findings of Fact, Conclusions and Recommendations:

Supplemental Findings of Fact

1. As noted in Finding of Fact number 18 of the Findings and Recommendation of December 1, 1989, the proposed retail tower has been substantially redesigned since the initial application in order to modify its profile, primarily to mitigate its shadow impacts on Westlake Park. This mitigation is to be achieved by terraced upper level setbacks of the project tower.

2. As originally designed the mechanical penthouse, consistent with the provisions of Seattle Municipal Code Section 23.49.008C.3 would not exceed twenty-five percent (25 %) of the roof area of the tower. Tower design modifications required to mitigate Westlake Park shadow impacts result in the roof area of the uppermost terraced level being reduced in surface area such that the penthouse occupies more than twenty-five percent (25 %) of that available area.

3. Applicant contends that shrinkage of the penthouse, so that only twenty-five percent (25 %) of the top terraced roof area is covered, would limit the use of the penthouse machinery to such an extent that it would eliminate air conditioning and elevators. Applicant therefore asks that the twenty-five percent (25 %) limitation imposed by the Land Use Code be waived or, in the alternative, that all of the surface areas of the terraced roofs be considered as one roof.

4. The Director contends that it is solely the roof area on which the penthouse rests which is to be considered in computing the percentage of total roof area covered. Moreover, the Director states that applicant has neither sought a waiver nor requested an interpretation as to the meaning, application, or intent of Seattle Municipal Code Section 23.49.008C.3, the Land Use Code provision which regulates rooftop features.

Supplemental Conclusions

1. Any person substantially affected by or interested in the Hearing Examiner's recommendation regarding a Type IV land use decision may submit in writing to the Council a request for further considerations of the recommendation. Seattle Municipal Code Section 23.76.054; also see Seattle Municipal Code Section 23.76.036A.5. By letter dated December 18, 1989 applicant has made a request for further consideration of the meaning and application of Seattle Municipal Code Section 23.49.008C.3 to the proposed project. Consistent with the provisions of Seattle Municipal Code Section 23.76.054E the Council, after examining the record and determining that a factual error exists or that essential information is missing from the record, may, inter alia, open the record to correct the factual error or receive the new information. Seattle Municipal Code Section 23.76.034E.3. Therefore, in acting on the request for further consideration, the Council may open the record to receive the corrected information contained herein. Although no request for new or corrected information has been received by the Hearing Examiner from the Council, it is concluded that this information would facilitate Council deliberations on applicant's request.

2. A decision by the Director as to the meaning, application or intent of any provision of Title 23, Land Use Code, as it relates to a specific piece of property is known as an "interpretation." Seattle Municipal Code Section 23.88.020A. A code interpretation may be initiated by the Director or be requested in writing by any person. Id. In the matter before the Hearing Examiner no interpretation has been initiated, requested, or appealed to this office pursuant to Chapter 23.88.

3. The authority and jurisdiction of the Hearing Examiner to affirm, reverse or modify an interpretation of the Director derives from Chapter 23.88. Pursuant to this Chapter, the Hearing Examiner may adjudicate an interpretation of the Land Use Code only after the Director has published timely notice of that interpretation decision and it is then appealed to the Hearing Examiner. Seattle Municipal Code Section 23.88.020D and E. Since no interpretation decision has been published by the Director, it is concluded that there is no jurisdiction pursuant to Chapter 23.88 for the Hearing Examiner to decide this issue.

4. The Council, however, has jurisdiction pursuant to the Council conditional use process, Chapter 23.76, to grant changes in development standards, if the desired quality of the public environment can be maintained. Seattle Municipal Code Section 23.49.096B. Thus, height limits and development standards may be modified so long as the primary objective of preservation of the existing sense of openness and human scale development in the Downtown Retail Core is maintained. Seattle Municipal Code Section 23.49.096B.4. The modification sought by applicant does not have a negative impact on this objective. The Hearing Examiner, therefore, concludes that the Council has authority to take action on the request for further consideration.

5. General rules of construction apply to the interpretation of zoning ordinances or regulations which restrict the architectural and structural design of buildings. Thus, zoning provisions regulating the height of buildings or other structures are to be reasonably construed. 101AC.J.S. Zoning and Land Planning Section 115. Seattle Municipal Code Section 23.49.008C.3 states in pertinent part that:

The following rooftop features may extend up to fifteen feet (15') above the maximum height limit, as long as the combined coverage of all features listed in this subsection does not exceed... twenty-five percent (25%) [of the roof area] if the total includes stairs or elevator penthouses or screened mechanical equipment...

"Rooftop features" as a general term, is defined under Title 23, Seattle Municipal Code as being:

...any parts of or attachment to the structure which projects above the roofline...

Seattle Municipal Code Section 23.84.032 "R." There is no definition within Title 23 as to what constitutes a roof, roofline, or rooftop. Nor has the Hearing Examiner been able to ascertain Council intent as to the meaning of these terms from the applicable ordinances themselves.

6. Undefined terms are accorded their usual and ordinary meaning. Department of Rev. v. Hopper, 82 Wn.2d 549, 552, 512 P.2d 109A (1973); R/L Associates v. Klockars, 52 Wn. App. 726, 731, 763 P.2d 1244 (1988). In ordinary usage a roof or rooftop is defined as the "outside top covering of a building" or simply "the cover of a building." Webster's New World Dictionary, Second College Edition (1987). As such, "roof" "rooftop" or "roof area" could reasonably be construed, as urged by applicant, as all of the surface area covering the top of a building. However, the meaning to be accorded "roof" and related terms requires a definition as to what constitutes the "top" of a building. Webster's New World Dictionary, Second College Edition in relevant part defines "top" as "the upper or highest part, section, point, or surface of anything". Similarly, Webster's Ninth New Collegiate Dictionary (1987) defines "top" as "the highest point, level, or part of something." Thus, "rooftop" could also reasonably be construed as the covering of a building at its upper or highest part, point, section or level, consistent with DCLU's interpretation of its meaning. It is therefore concluded that the usual and ordinary meaning of "roof" or "rooftop" is of no aid in resolving the ambiguity at issue here. As such, applicant's compliance with Seattle Municipal Code Section 23.49.008C.3 cannot be conclusively determined on this basis.

7. The Hearing Examiner notes that this issue arises solely because of substantial redesign of the lower profile to mitigate its shadow impacts on downtown open public spaces. The original tower design did not encompass terraced upper level setbacks, which serve to reduce the top surface area of any one segment of the terraced levels. Applicant has made considerable effort to mitigate the adverse, negative shadow impacts of the project proposal on the public open spaces. That effort does not warrant the inflexible imposition of development standards which do not effect preservation of the existing sense of openness and human scale development which is appropriately desirable in the DRC zone. Moreover, the public benefits which this project will provide would serve to enhance the downtown public environment.

8. Based on these foregoing conclusions, it would be reasonable and prudent for the Council to either define "roof", "rooftop" or "roofline" in a manner which does not penalize an applicant for using terraced upper level setbacks to meet a laudable code mandated goal of protecting the public environment. In so doing, the Council would also provide the Director and the Hearing Examiner guidance as to the Council intent with respect to the meaning of these terms. In the alternative the Council should consider granting applicant's request to permit a modification of the development standards of Seattle Municipal Code Section 23.49.008C.3 in order to minimize its impact on this project's feasibility.

Supplemental Recommendation

In accord with the foregoing, the Hearing Examiner again recommends that the Council conditionally approve the Council Conditional Use application.

Entered this 18th day of January, 1990.



Stan Taylor
Acting Hearing Examiner