

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

TRIDENT IMPORTS, INC.

FILE NO. S-81-009

from a determination of the Director,  
Department of Construction and Land Use

The decision of the Director is AFFIRMED.

#### Introduction

On March 10, 1981, the Department of Construction and Land Use, hereinafter the Department, published an interpretation that for 1101-1205 Alaskan Way (Piers 55 and 56), floats must be included in lot coverage. Appellant Trident Imports, Inc. filed a timely appeal on March 24, 1981. The parties waived the 41 day post publication decision requirement.

The appellant exercised its right to appeal pursuant to Section 24.10.030, Seattle Municipal Code (Section 25.40, Ordinance 86300, as amended).

Parties to the proceeding were: Appellant by Edward A. Rauscher, Attorney-at-Law; the Department by Joyce Kling, Manager, Land Use Support Services.

For purposes of this decision, all section numbers, unless otherwise indicated, refer to the Zoning Code, Title 24 Seattle Municipal Code (Ordinance 86300, as amended).

This matter was heard before the Hearing Examiner on May 14, 1981.

After due consideration of the evidence elicited during the public hearing, the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

#### Findings of Fact

1. The subject property is located at 1101-1205 Alaskan Way. The legal description appears in the interpretation of the Director and is incorporated herein by reference.

2. The property is zoned Manufacturing (M) and is designated Urban Central Waterfront (U/CW).

3. At issue is a proposal to construct floats to be located between Piers 55 and 56, the present location of Harbor Tours. The floats would be used as a tourist ship-shore walkway or as a walkway between Piers 55 and 56. The floats would require tying to pilings that would have to be placed in the bed of water. The floats would be connected to the fixed structures by a ramp. The property owner testified that a tenant, not present at the hearing, owns the Harbor Tour business. The property owner could not testify whether the proposed three floats would be removed during the winter or off season. The floats would project approximately 1 ft. above the water with 3 ft. of the float below the water surface. Three float-walkways are planned which would be connected to the more fixed facilities at the float's eastern origin. According to the site plan the floats take on the appearance of finger piers projecting waterward.

4. Appellant contests the interpretation of the Director that the floats should be included in lot coverage.

### Conclusions

1. Although the appeals before the Examiner are considered de novo the ruling or interpretation of the Director is to be regarded as prima facie correct and the burden of establishing the contrary shall be upon the appellant. Section 24.10.070. Appellant urges that a common sense reading of the Code in conjunction with the Department's prior history of construction leads to an inescapable conclusion that a float is not a building and should not be included in the computation of lot coverage.

2. The term "float" is not defined in the zoning code. Lot coverage is defined in the Shoreline Master Program regulation component of the zoning code as "that portion of a lot occupied by the principal building and its accessory buildings, expressed as a percentage of the total lot area." 24.60.100. Accord, 24.08.130"L". A lot is defined as a platted or unplatted parcel of land unoccupied occupied or to be occupied by a principal use or building and accessory buildings together with such yards and open spaces as are required. Section 24.60.090. Accord, 24.08.130"L". A building is defined in the Shoreline Master Program Regulations as:

...any structure built for the support, shelter, or enclosure of persons, animals, mechanical devices or chattels or property of any kind... (Emphasis added.)

The term "building" shall include signs and fences over 6 ft. high. See also 24.08.030(d). A structure is defined as anything constructed or erected, the use of which requires location on the ground or attachment to something on the ground but "not including fences and wall less than 6 ft. in height."

3. As described the proposed floats are structures built for the support of persons boarding or alighting from Harbor Tour boats. While it is recognized that a building in an ordinary sense of the word typifies a structure for the shelter of persons, animals or things, the specific definition provided in the ordinance does not require speculation as to whether a structure built merely for the support of persons, such as a float, may qualify as a building. Further, the code definition of building states that it shall include signs and fences over 6 ft. high. Therefore, if a building by definition may include signs and fences, we cannot adopt the conclusions that the term building only means a structure for shelter.

4. The interpretation by the Director is consistent with the purpose of the Shoreline Master Program Regulations to regulate development of the shorelines of the City. The practical effect is not the outright prohibition of the floats along the waterfront; rather the imposition of the requirement that an application from the literal requirements of the ordinance be sought.

5. The configuration area of the lot in question (related to necessary percentage) is not the issue before the Examiner. Floats are specifically mentioned in 24.60.685 wherein restrictions for water dependent recreational uses are listed. In addition, in the US/CW environment new development over water is permitted which will strengthen water-oriented recreation tourist activity. 24.60.355"A". However, the overall purpose of the Shoreline Master Program includes regulating development in order to preserve, enhance, and increase use of the water and access to the water. Thus, there is no necessary conflict. Finally, as pointed out by the appellant where terms are not defined they should have their ordinary accepted meaning within the context with which they are used. Appellant's Exhibit No. 3. In the instant case, the terms building and structure are clearly defined to include a float within that definition.

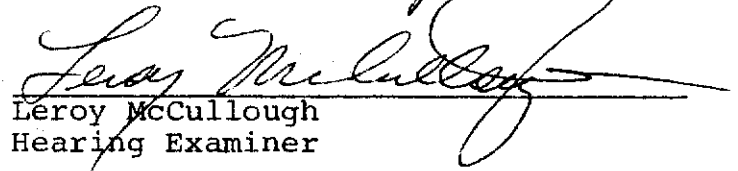
6. Section 24.62.180 provides that in any zone an underground structure used for accessory purposes may occupy any part of the entire lot. Section 24.60.390 provides that buildings or structures in the Shoreline District are not to occupy any greater percentage than indicated per table with one exception, for that "land portion

of the lot where some portion of a proposed structure will be placed below the grade existing prior to construction..." (Emphasis added.) Assuming a conclusion contrary to the Examiner's, that for purposes of 24.62.180 the floats are underground structures, there is presented a conflict between the two provisions. The Shoreline Master Regulation supersedes per 24.60.285, and the proposed development is not included in the exception. Again, we do not consider the float as an underground structure. Nor, in view of the surface area involved, do we agree that the portion of the floats above the water is necessarily de minimis.

Decision

The decision of the Director is AFFIRMED.

Entered this 28th day of May, 1981.

  
Leroy McCullough  
Hearing Examiner

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981).