

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

In the Matter of the Appeal of

RUSSELL KEYES JR.

FILE NO. S-81-035

from an interpretation of the Director
of the Department of Construction and
Land Use

Introduction

Russell Keyes Jr. appealed an interpretation of the Director of the Department of Construction and Land Use concerning property located in the middle of the 1700 Block of Westlake Avenue North.

The appellant exercised his right to appeal pursuant to the Seattle Municipal Code, Section 24.10.030, as amended.

Parties to the proceedings were: appellant, pro se; Director of the Department of Construction and Land Use (DCLU) by Judy Talman.

This matter was heard before the Hearing Examiner on December 22, 1981.

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

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

Findings of Fact

1. The following findings were stipulated. The subject property is located in the middle of the 1700 Block of Westlake Avenue, legal description

Lots M and N, Union Lake Addition Supplement.

2. The property is zoned Manufacturing (M). Approximately the eastern 25 percent of the property falls within the shoreline district and is designated US/LU (Urban Stable/Lake Union).

3. Appellant proposes to construct a mixed use building to include office space on the approximately 75 percent of the site which falls outside the Shoreline District. Access to the structure is proposed off east abutting Westlake Avenue across the shoreline area. The proposed underground utilities system and sewer line will also traverse the Shoreline area.

4. Appellant appeals the interpretation of the Director which includes the assessment that development as defined in Section 24.60.035 should exclude the proposed utility system and access drives.

Conclusions

1. The decision of the Director is afforded substantial weight and the burden of establishing a contrary position rests with the appellant.

2. Approximately 25 percent of the subject property is within the Shoreline District. Section 24.60.190; 24.60.275. Whether the subject site happens to be located "upland" is of no consequence so long as it is part of the lands

...extending landward for 200 ft. in all directions...Section 24.60.275.

3. Section 24.60.310 provides that

Where a single development is proposed for a site which is partly within and partly without the Shoreline District, the regulations of this chapter shall apply where any part of the development occurs within the Shoreline District.

4. By the terms of the Shoreline Master Program development means

...a use consisting of the construction... of structures; dredging; drilling; dumping, filling, removal of any sand, gravel, or minerals; bulk heading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this subtitle at any state of water level...

5. The subject project is subject to the Shoreline Master Program regulations. Proposed is a single development, i.e., construction, for a site partly within the Shoreline District. Section 24.60.310. A part of the drilling, filling, removal of sand, gravel or minerals will occur within the Shoreline District. Section 24.60.035. The clause in the definition of development "or any project...which interferes with the normal public use of the surface of the waters..." is read to further elucidate restrictions and not as an effort to attempt to capsulize the previously delineated items.

6. An office use is not a permitted use in the US/LU environment.

7. The subject DCLU interpretation concluded that

Single project utility lines, sewer lines, and paved areas are not the type of accessory uses which are precluded...they are sufficiently distinguishable from most accessory uses to be allowed.


Appellant had appealed based on his reading that the interpretation meant that underground utilities and automobile access drives were not considered uses.

8. As to the issues directly appealed the Director is affirmed. It is recognized, however, that the subject site is located on the Queen Anne side of Westlake and has no direct water frontage. The language of Section 24.60.310, however, is direct, and the issue is one of legislative direction as opposed to one of interpretation.

Decision

The decision of the Director of the Department of Construction and Land Use is AFFIRMED.

Entered this 5th day of January, 1982.


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). Should an appeal be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court.