

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

In the Matter of the Appeal of

ROANOKE REEF ASSOCIATION OF
HOUSEBOAT MOORAGE OWNERS

FILE NO. S-85-002
INT. NO. 85-001

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

Introduction

Appellant appeals the interpretation issued by the Director, Department of Construction and Land Use (DCLU), of the Land Use Code as applied to live-aboard use of pleasure boats at the Roanoke Reef Moorage, 10 East Roanoke.

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

Parties to the proceedings were: appellant, Roanoke Reef Association of Houseboat Moorage Owners by James McAteer, Lenihan, McAteer, Hanken and Borgersen; the Director by Judy Talman; and the property owner, Lucile Flanagan, and the Roanoke Reef Association of Boat Moorage Owners, by Richard L. Barbieri, Edwards and Barbieri.

This matter was heard before the Hearing Examiner on August 29, 1985.

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

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. In its request for an interpretation, the Roanoke Reef Association of Houseboat Moorage Owners posed six questions to the Director. Those questions, as stated in the interpretation, were:

1. Whether live-aboard use of a pleasure boat is a permitted use in US/LU portion of Shoreline District.
2. Whether live-aboard use of a pleasure boat constitutes residential use over water accessory to a principal use of a pier or dock, 24.60.530B.
3. Whether live-aboard use of a pleasure boat is or should be classified as a residential use or other use which may be permitted only as a conditional use authorized by the Director upon approval of the Department of Ecology, under 24.60.530A, 24.60.475.
4. Whether the Roanoke Reef Moorage contemplated by SMA 80-019 constituted a non-residential pier within the meaning (sic) of 24.60.680.
5. Whether a live-aboard pleasure boat is for use purposes the equivalent of a floating home, 24.60.060.

6. Whether a live-aboard pleasure boat is for use purposes the equivalent of a dwelling unit, 24.08.050; 23.84.008.

2. The Roanoke Reef Moorage is located at 10 East Roanoke Street. It is within a General Commercial (CG) zone and is designated Urban Stable/Lake Union (US/LU) by the Shoreline Master Program (SMP).

3. Overwater development of the subject site including 20 floating home moorage facilities and open wet moorage for 14 pleasure boats was authorized by SMA 80-19. There were no express conditions in the permit relating to the type of use of the boats to be moored at the open wet moorage. Any off-street parking for the moorage was limited to short-term, i.e., four or fewer hours.

4. Exhibit 3 reflects a portion of the last published draft of the proposed Shoreline Master Program. That draft included a prohibition on the occupation of a boat as a dwelling unit.

Conclusions

1. Section 24.60.300 provides that "(t)he regulations of this chapter (the SMP) shall not apply to the operation of boats, ships and other vessels designed and used as such...." The central issue presented on appeal is whether the Director erred in concluding that residential use of a boat does not effect its status as exempt from regulation under the SMP. Three arguments are made by appellant on appeal: the residential use of the boat makes it a dwelling unit; a vessel may be designed as a boat but not used as one and therefore may not qualify for exemption; and it was not the City Council's intent to exempt "live-aboards" from regulation.

2. The Zoning Code defines "dwelling unit" as

...A room or rooms located within a building, designed, arranged, occupied or intended to be occupied by not more than one family and permitted roomers or boarders, as living accommodations independant from any other family. The existence of a food preparation area within such room or rooms shall be evidence of the existence of a dwelling unit.

Section 24.08.050"D"(11). "Building" is defined as "...any structure for the support, shelter or enclosure of persons, animals, mechanical devices or chattels, or property of any kind". Section 24.08.030"B"(8). And a "structure" is "...anything constructed or erected, the use of which requires location on the ground or attached to something having location on the ground...." Section 24.08.200"S"(14). The Director is correct that according to these definitions a boat cannot qualify as a dwelling unit because its use does not require location on or attachment to the ground.

3. As a basis for its second argument appellant calls attention to the difference between the language "designed and used as such" in Section 24.60.300 and that contained in RCW 88.02.010(1) where a vessel is defined as a watercraft "used or capable of being used...." The conjunction "and" in the SMP exemption results in a dual requirement that the boat be designed as a boat, i.e. meet flotation standards, have means of propulsion, navigational equipment and marine hardware, and that it be used as a boat. Therefore, the fact that the boat is capable of being used as a boat alone is not sufficient for exemption. There must be actual use as a boat, actual operation resulting in propulsion over water. To the extent that the Director's conclusions do not reflect that second requirement, they are incorrect. However, the decision, "that pleasure boats which qualify as vessels designed and used as such are not subject to regulation under the SSMP" is correct.

4. Appellant seems to infer a further requirement that the use as a "boat" must be the principal use and the residential use merely incidental. Even if this was intended by the Council, the legislature failed to place such qualifying words in the ordinance. Our courts have repeatedly stated that they cannot read into an ordinance words which are not there. See Jepson v. Department of Licenses and Industries, 89 Wn.2d 394, 573 P.2d 10 (1977).

5. The third approach taken by appellant is that the City Council did not intend to exempt boats used by live-aboards from the SMP or they should not have, if they did. Legislative intent is to be found in the language of the ordinance, Malone v. Seattle, 24 Wn.App. 217, 222 (1979), which, here, does not appear to be ambiguous. If there is ambiguity, the legislative history should be examined. Here, regulation of live-aboard use was proposed, but was not included in the adopted Section 24.60.650, nor later added in the amendments to that section. At the same time Section 24.60.300, exempting boats from regulations, was added. These actions showed the Council's clear intention to leave boats, including those used by live-aboards, unregulated by the SMP.

6. Appellant points to the restriction in the permit to short-term parking which it urges is an indication of the agency's understanding that residential use would not be permitted since long-term accessory parking is usually required to legally establish such use. At that time, however, the Code prohibited long-term parking facilities in the Shoreline District without regard to the needs of the uses. That prohibition has since been removed. This situation is ambiguous in itself so does not aid in clarifying Council intent and certainly cannot change the meaning of language, otherwise unambiguous.

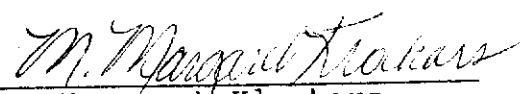
7. Since policy issues are settled at the time of adoption of the ordinance, Pearson v. Evans, 51 Wn.2d 574 (1958), the wisdom of exempting live-aboards from zoning regulation cannot be considered by the Director. See Pearson v. Evans, 51 Wn.2d 574 (1958).

8. The Hearing Examiner is required to give substantial weight to the interpretation decisions issued by the Director. Section 23.88.20(E)(4). Appellant has not shown the interpretation to be clearly erroneous. Therefore, it should be affirmed.

Decision

The decision of the Director is AFFIRMED.

Entered this 12th day of September, 1985.


M. Margaret Klockars
Deputy Hearing Examiner

CONCERNING FURTHER REVIEW

The decision of the Hearing Examiner in this case is the final administrative determination by the City, and is not subject to reconsideration except to correct errors on the ground of fraud, mistake, or irregularity in vital matters. Any request for judicial review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within fourteen days of the date of this decision. Should such request 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. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104.