

FINDINGS AND CONCLUSIONS
OF HEARING EXAMINER ON REMAND

In the Matter of the Petition of

WESTERN TOURS, INC. BY JOHN RASSIER, AGENT

FILE NO. X-78-209
C.F. NO. 286603

for an amendment to the Official
Zoning Map pursuant to Title 24,
Seattle Municipal Code (Ordinance
86300, as amended)

Introduction

Petitioner, Western Tours by John T. Rassier, agent, petitioned for a contract rezone of property located on the west side of 8th Avenue South from the City limits north 458 ft. from SF 5000 to IG. The hearing examiner conducted a public hearing on the petition on January 19, 1982, and made a recommendation to the City Council February 17, 1982. Requests to the City Council for further consideration were made. The City Council Land Use Committee remanded the petition to the hearing examiner for the purpose of acquiring additional information at a public hearing.

A public hearing was held December 7, 1982, to take evidence on the following issues as defined by the remand:

- a description of the proposed street buffer, its location, its dimensions, its funding status, its legal status, and expert testimony as to whether or not such a buffer could effectively make the subject site feasible for residential use
- what other noise reduction measures could be reasonably imposed to reduce noise from the industrial sector and the extent to which those measures would render the property feasible for residential use
- what other zoning classifications, with or without contract limitations, would accomplish the petitioner's plans and thus avoid the drastic change from SF 5000 to IG.

After due consideration of the evidence elicited at the hearing, the following further findings of fact and conclusions are submitted to the City Council on this petition.

Findings of Fact

1. A specific proposal for a street buffer has not been made. Conceptual alternatives were suggested to the community by the Engineering Department. Several involved only visual buffering. Sound barrier alternatives suggested included two with an 8 ft. high concrete wall with landscaped earth berm, one with a 7 ft. high gravel-filled gabion wall with landscaped earth berm and one with a 6 ft. high rock wall with landscaped earth berm. These were considered only for the east, or industrial, side of the street.
2. The property owners on the east side of the street rejected the construction of a wall on that side of the street.
3. Any wall on the east side of the street would be ineffective as a sound barrier because of wide openings necessary for truck access to existing businesses.
4. The block grant funds allocated for street buffers have been exhausted. Contracts have been entered into and the design completed for a buffer at 5th S. and Cloverdale which accounts for the \$165,000 allocated. An allocation of \$87,000 of the 1983 block grant funds has been made for South Park and application can be made later for 1984 block grant funds.

5. The Director of the Engineering Department estimated the cost of the various sound barrier alternatives to be \$800 to \$1,100 per lineal foot for the concrete wall, \$525 per lineal foot for the gabion wall with earth berm and \$376 per lineal foot for the rock wall with earth berm. The length needed for the subject block was estimated to be 1,000 ft.

6. The expert testifying for the Concerned Citizens of South Park expressed doubt that such walls would be as costly as estimated by the Engineering Department but had not made such estimates himself.

7. Stevan C. Johnson, architect, testifying for the Concerned Citizens of South Park, offered a schematic plan for a 25 unit townhouse, two single family development utilizing the subject site and the adjoining leg to the southwest with access from 7th Avenue and a berm and masonry wall along the west side of 8th Avenue South. He opined that the location would be reasonable for residential use and that the units would be marketable. The wall would have to be solid and as high as the line of sight between source and receiver estimated by all to be 15 ft. Mr. Johnson anticipates a 6-9 dBA reduction in noise level at the location of the proposed units. He had not calculated the cost at the time of hearing but believed it would be financially feasible with site costs of \$8,000-10,000 per unit.

8. Others challenged the economic feasibility of the plan, in part because of the high cost of the acoustic barrier which would make the units too expensive to sell even if the costs estimated by the Engineering Department of \$800-\$1,100 per foot for such barrier at 8 ft. were high. The cost of a 15 ft. wall could easily add \$10,000 to the cost of each unit according to Hauge.

9. Dennis Loeb, a developer, opined that the type of development proposed would not be economically feasible. The units would not be saleable because people would not be willing to pay the price for these units at this location. He expects the acoustical benefits of the proposed wall to be offset by its appearance.

10. The noise sources which affect the subject property are air traffic from Sea-Tac and Boeing Field, industry and commercial truck traffic.

11. Jets landing at Sea-Tac represent the single greatest contributor to the noise level in the area according to the South Park Noise Study (SCOPI report). The reading by Jan Hauge, P.E., petitioner's expert, showed levels of 81 dBA from planes. Means to reduce noise levels due to air traffic inside homes are to change the air traffic patterns and insulate the houses. Insulation will not change the level outside the home and is expensive.

12. Noise from truck traffic varies depending upon the number and kind of trucks. The SCOPI report referred to an Engineering Department flow map for May, 1981, showing about 100 trucks of 10,000 pounds gross vehicle weight or larger per day but recognized that the volume may have changed over time and may be considerably greater in the area of the subject property.

13. The number of truck trips generated by Puget Sound Coatings, across from the subject property, varies greatly depending upon the business climate from a low of about 10 trips on the day readings were taken for the SCOPI report to over 300 trips per day. On busy days in October nearly 200 trips per day were generated.

14. Noise level readings by Hauge at the subject site showed that trucks produced readings of 89 dBA twice and 87 dBA once during the 1.5 hours readings were taken and represented the noisiest source at that time.

15. Ways of reducing the noise from street traffic suggested by the SCOPI report are erection of barriers on the west side of 8th, reduction of volume or speed, elimination of truck traffic and insulation of residences. For truck traffic, however, decrease in speed would not necessarily reduce noise level.

16. Re-routing of truck traffic to Puget Sound Coatings is not possible.
17. Levels of industrial noise on 8th vary depending on the particular industry the receiver is close to and the activity that is occurring at the time the reading is taken. The SCOPI readings for long duration were taken north of the subject site and showed an Ldn from industrial activity alone of 58 dBA. The SCOPI report indicates, based on readings at the sidewalk across from Puget Sound Coatings (up to 65 dBA) and the level of business activity at the date of the readings, that the loudest noise measured could occur up to 8 hours per day with a maximum Ldn of 60 dBA.
18. Readings of sound levels by Hauge on October 27, 1982, showed that the industrial noise averaged about 65 dBA and was exceeded the Seattle Noise Ordinance 60 dBA standard about 95 percent of the time. At times it exceeded 80 dBA.
19. Continuous barriers of adequate height, weight and length, properly placed can significantly reduce noise level from industrial sources. Such a barrier could result in noise levels on the west side of 8th compatible with residential use as long as air traffic noise is not taken into account according to the SCOPI report.
20. Complete enclosure of industrial activity would reduce noise levels as would moving certain of the activities.
21. Hauge pointed out that industry south of the subject site also contributes to the noise level and would not be affected by a barrier to the east of the site.
22. The SCOPI report indicates that allowing buffering land uses which incorporate acoustical barriers in their design on the west side of 8th is another means of reducing noise levels from industrial sources providing substantial benefit.
23. No finding as to the legal status of a barrier on the east side of 8th is made because such barrier would not be effective in reducing the noise levels.
24. The cost of unconventional construction to reduce noise levels in the interior of residences on the site would require sales prices too high to be marketable given the lack of desirable attributes of the site.
25. Susan Appel, Manager, Office of Neighborhood Assistance, regards the Johnson schematic as an example of a creative solution which could meet the need for preserving residential zoning and adding residential use without making the conditions worse for industry.
26. The Johnson townhouse proposal could be permitted as a planned residential development by conditional use. The 15 ft. high wall on the property would be illegal without a variance from the Land Use Code.
26. Loeb sees no type of residential use feasible on the subject site.
27. Hulbert Rice believes no prudent investor would risk capital on development of residences on this site.
28. Curt Horner, Seattle-King County Health Department, finds that living on the site would be unhealthy because of excessively high ambient noise levels.
29. A General Commercial (CG) zoning classification for the subject property would permit the petitioner's proposed development of the site. The contract restrictions proposed by petitioner would be more restrictive as to uses than the CG provisions.

Conclusions

1. From the record it is not reasonable to conclude that the creation of an effective acoustic buffer along 8th Avenue South is likely to occur. Therefore, the Hearing Examiner's recommendation must stand.

Entered this 21st day of December, 1982.

M. Margaret Klockars
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Deputy Hearing Examiner

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

In the Matter of the Petition of

WESTERN TOURS, INC. by
JOHN T. RASSIER, AGENT

FILE NO. X-78-209
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for an amendment to the Official
Zoning Map pursuant to Title 24,
Seattle Municipal Code (Ordinance
86300, as amended)

Introduction

Petitioner, Western Tours, Inc., by John T. Rassier, agent, requests the reclassification from RS 5000 to IG of property located on the west side of 8th Avenue South from the City limits north 458 ft. A contract is proposed to limit uses and impose landscape and circulation requirements and limitations.

For purposes of this recommendation, all section numbers, refer to the Seattle Municipal Code, Title 24, as amended (Ordinance 86300, 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 January 19, 1982. The record remained open until February 8, 1982, to include additional information about proposed buffering on 8th Avenue South. A request to reopen the record for additional evidence was made by the Concerned Citizens of South Park but that additional evidence was not considered in this recommendation.

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 as a result of the personal inspection of the subject property and surrounding area by the Examiner, the following findings of fact and conclusions shall constitute the recommendation of the Hearing Examiner on this petition.

Findings of Fact

1. The property, subject of the petition as amended, is approximately 97,000 sq. ft. or over 2 acres in size and is comprised of Tracts 17 and 18, Excelsior Acre Tracts, a rectangular parcel located on the west side of 8th Avenue S. extending 458 ft. north of the City limits (Cambridge Street extended) and 208 ft. to the west. (See map attached, Appendix A).

2. The property was zoned Single Family Residence High Density (RS 5000) in 1957 and has retained that zoning classification to date. Properties to the north, northwest and west are also zoned RS 5000. The subject site is part of a peninsula of residentially zoned land pushing south between more intensive zoning on each side.

3. The site contains one single family house. On the same blockfront are six or seven other single family residences, the most recent built in 1957. To the west are located single family residences on large lots and to the north are more single family residences.

4. Across 8th Avenue S. is a General Industrial (IG) zone. That facing blockfront, with the exception of the northernmost property, was rezoned from RS 5000 to IG in 1967. In 1969, there were four properties in residential use, one in industrial use and the rest, on the east side of 8th Avenue, vacant or in agricultural use. Since that time three permits for industrial buildings were issued in 1976 and buildings constructed and one in 1981. The uses now consist of Merlino Construction where construction equipment and materials are stored, Concrete Composites which fabricates concrete walls, Superior Air, a manufacturing concern, and Puget Sound Painting, which does metal container repair, sandblasting and industrial painting.

5. The subject site is joined on the south by property in King County zoned Heavy Manufacturing (MH). Property along 8th Avenue in the county is developed with uses such as Fruehauf Trailer for storage of semi-trailers, Imperial Bolt and Nut which is a manufacturing concern, warehouses and Advance Electroplating. Permits for those developments were granted in 1967, 1969 and 1974. To the west of the RS 5000 zone, which goes one half block beyond 7th Avenue South, is more MH zoned land in the county which is currently in agricultural use.

6. Petitioner requests reclassification of the subject site to IG. When the petition was filed over 3½ years ago, Petitioner intended to construct a tour bus maintenance and storage facility on the site. The petition and proposal has been amended and now proposes a contract limiting uses to: (a) professional and/or business offices; (b) warehouse, wholesale stores and/or whole-sale offices; (c) the following Light Manufacturing uses provided they are in a completely enclosed building or completely enclosed portion of a building: manufacture or assembly of electrical appliances, electronic instruments and devices, radios and phonographs, manufacture, compounding, processing, packaging or treatment of such products as bakery goods, candy, cosmetics and food products except food products permitted in Sections 26.38.040, .050 or .060, or prohibited in Section 26.38.140; or other Light Manufacturing uses whose processes and equipment employed and goods processed or sold are not objectionable by reason of odor, dust, smoke, cinders, fumes, noise, vibrations, refuse matter or water-carried waste. Commercial vehicle storage and outdoor storage of equipment, machinery, material or products would be prohibited uses. The contract would also have provisions regarding design criteria, requirement of an earth berm and screening and imposition of traffic restrictions.

7. South Park is an area which combines residential and industrial development. Much of the area had been designated on the Comprehensive Plan as appropriate for industrial use. A substantial residential community was being eroded by industrial area expansion so a second look at the area is being taken through development of a South Park Neighborhood Plan, an effort begun in 1973.

8. The proposed South Park Neighborhood Plan (SPNP) proposes adoption of four policies relevant to this property.

The low density residential character of one and two family residential areas should be preserved and protected from the encroachment of incompatible uses.

An effective buffer should protect residential areas from the impacts of industrial activity.

The City should protect residences from the adverse impacts of industrial development within 600 feet of a lot in a residential zone in South Park by prohibiting objectionable uses, establishing special controls for permitted industry, and by providing for community input on land use decisions.

The SPNP specifically recommends changing the designation of an area, which includes the subject site, to One and Two Family Residential and retaining its RS 5000 zoning and providing a landscape buffer on streets between residential and industrial areas including 8th Avenue South at the subject site.

9. The Single Family Residential Policies (SFRP) which have replaced the Comprehensive Plan where they apply establish the City policy toward preservation and protection of areas in predominantly single family use including protection of the edges of those areas.

Implementation Guideline 1: Areas with the following use characteristics shall be considered for single family designations;

A. Areas which consist of blocks (see Definitions) with at least 70% of the existing structures in single family residential use....

10. The South Park residential neighborhood suffers from truck traffic on neighborhood streets. The traffic creates hazard, noise, vibration and dust.

11. Eighth Avenue South is designated an arterial and has a 60 ft. wide right of way. It carries truck traffic associated with industry along 8th Avenue. Puget Sound Painting alone is estimated to generate 40 trucks in and 40 out each day. Many carry empty metal containers adding to the trucks' noise and vibration. Eighth Avenue S. intersects S. 96th Street, in the county, which leads to SR 99. S. 96th is 40 ft. wide. In the SPNP 8th Avenue S. would be de-emphasized as a truck route and S. 96th is a route to be emphasized.

12. Noise level readings were taken in 1978 to determine existing noise levels at the site, at non-peak hours. At 8th Avenue S. the L_{50} level was 70.3 dBA and the L_{10} , 76.0 dBA. On 7th Avenue S. to the west of the subject site the L_{50} level was 62.8 dBA and the L_{10} 77.0 dBA. The L_{50} level at the site of 70.3 dBA is accounted for largely by activity at Puget Sound Painters. The higher level represents passing truck noise and periodic hammering on metal containers at Puget Sound Painters.

13. Seattle's Noise Ordinance limits daytime noise levels in a residential zone caused by an industrial source to 60 dBA. Puget Sound Painting would be in violation of the ordinance. The Health Department has not utilized its full enforcement powers for lack of complaint from the affected residential properties.

14. A nearby resident who works a swing shift finds it almost impossible to sleep.

15. A comparative study of air quality and respiratory health of South Park residents and another similar community showed a trend toward more respiratory problems to be reported each day of the study by South Park residents where suspended particulates are considered to be a problem. The emissions of diesel engines contain suspended particulates.

16. The size of subject site is such that up to 14 single family residences would be permitted. Trip generation schedules indicate 140 vehicle trips per day could be expected from single family development. Trip generation tables for light industrial use show 120 trips per day for a use such as proposed. Some of those would be trucks, however, which would not be so likely with residential development.

17. Petitioner's proposed design criteria would result in a building on the western half of the site no closer than 25 ft. to the west property line or 35 ft. from the north and south property lines. The height would not exceed 24 ft. above the elevation of 8th Avenue S. Lot coverage would not exceed 36 percent of the area of the site. Any loading openings or personnel entries would be located on the east side of the building. Commercial loading would not be closer than 65 ft. to the north property line.

18. An earth berm is to border the north and west property lines and would be 15 ft. above the street level of 8th Avenue South, at least 35 ft. wide along the north property line and 25 ft. along the west property line and the slope would not be greater than 22.5 degrees. The earth berm is to be landscaped with an evergreen ground cover and broadleaf or coniferous evergreen trees which at planting would be 4-8 ft. in height and provide 35-40 percent screening along the berm. After 10 years the screening effect is to be 75 percent.

19. The effect on noise levels of the building and berm would be to reduce the level immediately west of the building to around 45 dBA and west of the berm south of the building to around 50 dBA, both well under the noise ordinance maximum.

20. The view from residences to the west of the site along 7th Avenue of the existing industrial development would be eliminated. The upper 9 ft. of the building would be visible above the berm on the west and north sides of the property. Eight feet of the berm would be seen along with trees.

21. Petitioner also proposes provisions restricting commercial access to 8th Avenue S. north of the subject site, requiring that the driveway to the site be designed to preclude right turns by commercial vehicles into the site and left turns from the site, and offering of an amount up to \$5,000 toward the construction of a traffic diverter at the intersection of 8th Avenue S. and S. Director to discourage truck traffic from other commercial development from entering the residential area to the north.

22. Petitioner provided the following evidence regarding the economic value of the property and feasibility of development under RS 5000 zoning.

Hulbert F. Rice, M.A.I., S.R.E.A., found a total lack of buyer demand for residential property in the immediate area but activity in industrial zoned property. The value of the subject site if the residential zoning is retained would be close to nothing. He predicts that the property will remain as is as long as it remains under single family.

Dennis Loeb, a developer and builder of single family housing with much experience in lower priced residences and in central and south Seattle, does not see single family development as feasible on the site. He sees, as its main drawback, the "window" to the possible development approach on 8th Avenue S., with its industry he describes as "noisy", "cluttered", "unsightly", "unimpressive" and the uses of the immediate area. He commented that not only are they industrial but unappealing industrial uses. He observed that the industrial development is very recent, large, solvent and probably will expand.

William M. Conner, a builder of single family units and land developer, stated in a letter (Petitioner's Exhibit 16) that he "would not consider tracts 17 and 18 to be suitable for residential use of any kind."

James Braman opined that single family would be a poor development option in part because likely platting would result in shallow lots. He also pointed out that the site is part of a prohibited area for federal subsidized housing and too remote from most services to meet HUD criteria.

23. The condition of housing in South Park is fairly sound. Several community members have made additions to or remodelled their houses within the last three years. Houses from close to Sea-Tac Airport have been moved to South Park.

24. A funding policy of the 1982 Community Development Block Grant Policy Plan is to "(p)rotect the residential areas of South Park and Georgetown from further industrial encroachment." The plan indicates that the City will consider proposals for barriers to divert truck traffic and for buffers on public rights-of-way to screen industrial uses from residential uses. The Engineering Department has been working with the South Park Community Council on the latter. The alternative solution favored by community members is one which would eliminate parking on the industrial side of 8th Avenue S. and provide a structural wall along the right-of-way line as a buffer.

25. Curt Horner, Coordinator of the Noise Abatement Program of the Seattle-King County Department of Health, and a civil engineer specializing in noise, reviewed the proposed solution and found it would be "virtually ineffective in protecting residential development to the West from noise" because of required openings for access and traffic noise reflection.

26. Another response by David E. Nordfors, architect, indicates that besides not achieving noise reduction the wall proposal is not realistic because of its probable cost.

27. Opponents of the rezone argue that alternative access is proposed in the SPNP for existing industry and would remove the need for the openings in the buffer. The only recommendation dealing with access found (No. 11), however, deals with industry in an area north of Cloverdale.

Conclusions

1. The petition for a rezone must prove that conditions have substantially changed since the previous zoning action regarding the subject property and that the requested rezone bears a substantial relationship to the public health, safety, morals or welfare. Parkridge v. Seattle, 89 Wn.2d 454 (1978), Cathcart v. Snohomish County, 96 Wn.2d 201 (1981).

2. Petitioner produced evidence of substantial change since the property was zoned RS 5000 in 1957 including the rezoning from RS 5000 to IG of the east side of 8th Avenue and heavy industrial development on that property and property south of the subject site in the county with attendant traffic and noise.

3. The relationship of the proposed rezone to the public health and welfare can be assessed by looking at the City's policies, community's desires and the proposed development under the rezoning.

4. The Single Family Residential Areas Policies are to be the basis for land use decisions where applicable and thus replace the Comprehensive Plan where it conflicts with the policies. The policy intent, to preserve and protect single family areas, may be carried out by the rezone in this case. While retaining the single family designation would keep the two acres nominally "single family", the record shows that under current conditions no development would occur.

If rezoned, however, the property would not be "single family" but the development, as proposed, would "protect and preserve" the remaining single family zoned area by making it more desirable for residential use through reduction of the noise level and elimination, for some properties, of the view of unsightly industrial development and activity.

5. Opponents from the community contend the same improvement may occur without the loss of sites for residential development through adoption and implementation of the draft SPNP and the execution of the block grant proposal for buffering. Serious flaws in the latter proposal were pointed out by petitioner's evidence but hope remains among City staff and community members that effective measures can be implemented.

6. Retention of every parcel of residentially-zoned land is strongly supported by the community. Because the residential area is so small an action resulting in the loss of a two acre parcel from potential residential use should be undertaken only if it does benefit the public welfare by improving the area and no other alternative means of achieving the same improvement, which all parties agree is needed, exist.

7. The implementation of the street buffer proposal seems to be in early stages of consideration. Whether it can be constructed and provide sufficient noise reduction is in doubt at this time. Because the effort is funded, underway and has its purpose just the improvement to the area offered by the requested rezone but with the possible benefit of making the site feasible for residential use, the Council should delay action on the instant rezone petition until the results of the planning and design work are known. If a buffer can be provided along 8th Avenue South with monies now available or reasonably expected to be secured and it will provide both a reduction of the noise level on the site and aesthetic screening so that residential development and use is feasible, the petition should then be denied. If not, the petition should be granted as the development proposed under it would provide protection for the remaining residentially-zoned land.

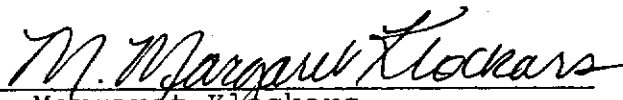
8. The Court in Farrell v. Seattle, 75 Wn.2d 540 (1969), upheld the City's decision to deny a rezone even though the property had become unsuitable for residential purposes because the effect on the quality of the greater area was considered. In this case, the quality of the other residentially-zoned property would be improved by the rezone. If the area's environmental conditions are not improved by City or community action, then denying the rezone request could be viewed as unreasonable.

Recommendation

For each of the above reasons, the recommendation of the Hearing Examiner to the City Council is as follows:

Council action on the petition should be delayed until final plans for a buffer along 8th Avenue South can be reviewed for effect on noise levels on the subject site and visual enhancement. If the effects of the buffer are to make the subject site feasible for residential use the petition should be denied. If the buffer cannot be established or will not reduce noise levels and improve the appearance of the area sufficiently to make residential use feasible, the petition, as amended, should be granted.

Entered this 17th day of February, 1982.


M. Margaret Klockars
Deputy Hearing Examiner

NOTICE OF RIGHT TO PETITION
FOR FURTHER CONSIDERATION

Pursuant to 24.72.090, Seattle Municipal Code , as amended, (Section 27.51 of the Zoning Ordinance 86300, as amended) any party 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 fourteen days after the date of mailing the recommendation of the Hearing Examiner and addressed to: City Council, Land Use Committee, Municipal Building, Seattle, Washington 98104.

The petition should state clearly and concisely the reason(s) why further consideration is necessary, and should refer specifically to any errors alleged to exist in the Hearing Examiner's Findings and Conclusions. The City Council's consideration of the petition will be based upon the record of the Hearing Examiner's hearing, and new exhibits or other evidence in support of the petition should not be submitted. In its discretion the Council may allow oral or written arguments based on the record when it considers the petition.