

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

In the Matter of the Petition of

TIM SPEARBECK

FILE NO. CC-8603260  
C.F. NO. 295180

from an amendment to the  
Official Zoning Map pursuant  
to Title 23, Seattle Municipal  
Code

and

In the Matter of the Appeals of

LAKESIDE SCHOOL

WILLIAM LEIGH

WOLODYMYR KLOS

JOHN S. AND IRENE R. WILLEY

HALLER LAKE IMPROVEMENT CLUB

FILE NOS. W-87-005

W-87-006

W-87-007

W-87-008 and

W-87-010

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

Introduction

Tim Spearbeck petitions to rezone land addressed as 13329 - 1st Avenue N.E. from Single Family 7200 to Neighborhood Commercial 1 (40 ft. height limit). Petitioner proposes to construct on site a 72-unit apartment building with ground floor retail space.

DCLU recommended approval of the rezone and issued a determination of nonsignificance, both with conditions. Appellants appealed the determination of nonsignificance (DNS).

For purposes of this Recommendation and Decision, all section numbers refer to Titles 23 and 25, Seattle Municipal Code, unless otherwise indicated.

This matter came on for hearing before the Hearing Examiner on January 6 and 7, 1988. Applicant Tim Spearbeck appeared pro se. Appellant Lakeside School appeared pro se by Craig W. Stewart, Director of Development. Appellants John S. and Irene R. Willey appeared pro se by John Willey (W-87-008). Appellant Haller Lake Improvement Club appeared pro se by Sue Linnabary, zoning chairperson (W-87-010). No appearance was made by or on behalf of appellant William Leigh (W-87-006) or Woldymyr Klos (W-87-007). DCLU Director Holly Miller appeared by land use specialist Patrick Doherty.

After due consideration of the evidence presented by the DCLU Director's report and other information of record, including appellants', petitioner's and other's evidence; the following shall constitute the findings of fact, conclusions and recommendation on the rezone and the decision on the appeal of the DNS.

Findings of Fact

1. The proposal site is a rather narrow, rectangular site addressed as 13329 1st Avenue N.E. The legal description is in the application of record and is incorporated herein by reference.

2. The site is located in the Haller Lake District on the west side of 1st Avenue N.E. near Roosevelt Way N.E. and extends west for some 300 ft.

3. The proposed site has a north-south dimension of 90.79 ft. The northern 50 ft. of the proposal site is zoned Neighborhood Commercial 1 with a 40 ft. height limit (NC1/40'). No rezone is requested for this portion. The petition is to rezone the southern 40 ft. of the site, presently zoned Single Family (SF) 7200, to NC1/40'.

4. Total site area approximates 29,958 sq. ft.

5. The northern 25 ft. of the proposal site for approximately 184 ft. is encumbered by an access and utility easement that serves a north adjacent apartment building.

6. The development site is presently developed with a single family house addressed as 13329 - 1st N.E. The Hearing Examiner finds that the structure has been used as a residence and secondarily as a real estate, printing or other business. One witness indicated present use as a computer business.

7. Petitioner-applicant petitioned to rezone the southern SF-zoned portion of the proposal site to NC1/40' in order to build a single, 4-story, 72-unit apartment building approximately 275 ft. deep. Plans were revised in response to DCLU's preliminary assessment that a determination of significance would issue.

8. The current proposal is to build two modulated, 4-story apartment buildings with ground floor retail space. The two buildings would be separated by approximately 10 ft. and would offer a total of 72 units. An underground garage with spaces for 75 cars is also proposed.

9. The current proposal also includes a landscaped 10 ft. setback along the southern property line, landscaped courtyards and balconies.

10. DCLU recommended stipulations to the rezone as follows:

All developments on the area proposed for rezone to NC1 40' shall be limited to residential structures only of no more than two stories, except for pitched roofs or other features necessary to accomplish the architectural transition to the remainder of the structure in the existing NC1 40' zone, which may reach the maximum permitted height.

11. DCLU also imposed conditions on the permit pursuant to the State Environmental Policy Act (SEPA). On such condition states

1. In order to reduce the impacts of height, bulk, and scale, the owner(s) shall submit revised plans indicating reduction of the southern halves of the two buildings to two stories with pitched roofs, and also a detailed landscape plan.

12. Applicant has no dispute or disagreement with the DCLU recommended and imposed conditions.

13. The northern segment of the proposal site is part of a small NC1 40' zone directly south of North 135th Street that is diagonally bisected by Roosevelt Way N.E. Across 1st N.E. from the site, the NC1 zone extends east to approximately one lot and contains a dental clinic and professional office.

14. Directly north of the project site within the NC1 zone is a lot developed with a service station. The service station fronts on 1st N.E. to the east and also on Roosevelt Way to the north. Across Roosevelt to the north within an NC-1 triangle formed by North 135th, Roosevelt Way and 1st Avenue N.E. is a 17-unit apartment. See Exhibit 3, Board Illustration, Plot Plan Vicinity Map and the Kroll.

15. West of the service station is an 8 unit apartment that

is north adjacent to the proposal site. This apartment is accessed by the easement described in Finding 6, above. North perpendicular from the 8-plex is a 7-11 store, also with frontage to Roosevelt Way.

16. Northwesternly from the 7-11 is a 22-unit condominium which has frontage on North 125th and on Roosevelt Way. South of the condominium and west/northwest of the proposal site are several other apartment buildings. Two are 8-unit structures adjacent to each other. Directly west of the proposal site is an apartment building that also bears "split zoning," i.e. single family south and NCl north.

17. West adjacent to the NCl-zoned condominium and apartments are single family zoned properties that are oriented west to Corliss Avenue North. The land surrounding the NCl zone is zoned SF 7200 and is predominantly developed with single family residences.

18. Generally, the vicinity apartment structures are 2-story although the north adjacent 8-plex, within the NCl zone, is indicated as 3-story. The prevailing single family development is one-story. Three of those single family structures are south adjacent of the proposal site. Vicinity commercial development is also generally of a low scale.

19. A segment of North 134th deadends northwest of the project site at midblock from Corliss between North 135th and North 133rd. One opponent with an address to the "cul-de-sac" complained that the proposed 4 story with balcony structure would impact her privacy. Other nearby multi-family units are of the townhouse variety, she explained.

20. One Kroll Map copy shows the northwest corner of 1st N.E. and North 133rd Street to be developed with YWCA activity center; another shows the corner use as Haller Lake Methodist Church. Appellants' Exhibit 3 shows the use as Daycare/Sunday School. The principal Haller Lake church structure is at the southwest corner of this intersection.

21. Interstate 5 is two blocks east of the site and is typically accessed by North 130th. The 1st N.E. - N.E. 130th intersection is signalized and currently operates at an average Level of Service of B during the morning peak (the southbound LOS is LOS D). The afternoon peak operation is at LOS C and the northbound approach at LOS D, the bottom range of acceptable delays in an urban environment. The 36-43 morning and afternoon peak vehicle trips expected by DCLU to be generated by the proposal will cause no marked deterioration of the intersection Levels of Service. The Hearing Examiner is persuaded that there are at present periods of intense congestion and that some areas call for pedestrian caution.

22. The northern portion of the proposal site was zoned from neighborhood business to NCl in June 1986 as part of a city-wide rezoning effort. The Single Family 7200 - business/commercial zoning split was retained by the 1986 rezoning; however, the record reflects no special Council attention to this particular site.

23. There is no evidence of any air quality problem for the vicinity that would be exacerbated by increased auto emissions or by the "possible 72 fire places" that could add particulates to the environment. Nor does the evidence show that the anticipated increase in vehicular and human noise will detract in any particular way from the environment.

24. The Haller Lake Elementary School site is located at the northeast corner of N.E. 135th and 1st N.E. Farther north is the Lakeside School property. The high school is near 145th and the middle school near 135th. Per the school representative, Lakeside has 664 grade and high school students and approximately 120 employees that traverse 1st N.E. on a daily basis at least 5 days per week. On 3-4 occasions per month, the school has night

activities which can attract the student population, staff, parents and other visitors. In addition, the school rents out the gymnasium. The school is therefore concerned that construction and occupation of a 72-unit apartment will exacerbate the 1st Avenue N.E. congestion, the parking "shortage," and the pedestrian hazard along 1st N.E., described as an asphalted two lane roadway with partial sidewalk.

25. The vicinity generally has no defined street edges, curbs or sidewalks. Several of the nearby street fronts have ditches that substantially impede parking availability. See Appellants' Exhibits 6, 9.

26. The 75 parking spaces proposed by applicant exceed the zoning code requirement of 1:1. Utilizing the standard 1.5 vehicles per unit for multi-family residential developments, the total parking required would be 108 spaces, or a spillover of 33 spaces. If 2.0 vehicles per unit were used as a factor, the spaces required would be 150. The would raise the spillover to be accommodated from 33 to 75. Based on the plans for 12 studio (330 sq. ft.); 48 one-bedroom (558 sq. ft.) and 12 two bedroom (794 sq. ft.) units, use of the 1.5 factor is reasonable.

27. Applicant's parking consultant conducted a midweek post 9:00 p.m. parking utilization study Tuesday, June 30 and Wednesday, July 1, 1987, during typical school summer recess. The study area extended along 1st N.E. from N.E. 130th to N.E. 137th; along Corliss Avenue North from North 133rd to North 135th; and along North 133rd Street from Corliss to 34rd N.E. The study concluded that 209 parking spots were available and that the average on street utilization was 13, or 6 percent. Acknowledging the problem with open ditches, the report indicates

The areas available for on-street parking are those which have been culverted and filled in and allow space for vehicular parking between the edge of the traveled roadway and the property line.

According to the report, Seattle Engineering Department measuring techniques were utilized to measure the spaces. SED standards typically call for an 800 ft. distance from project site for consideration of parking availability.

28. There is a general indication that the Lakeside populace utilizes some of the on-street parking during evening events.

29. Appellants presented counts which show that the consultant overestimated parking availability. For example, appellants indicate 13 as opposed to 23 spaces possible along the east side of 1st N.E. between N.E. 130th and N.E. 133rd. Exhibit 6. Appellants subtracted for mailboxes (in deference to the mail carrier), telephone poles and other items which the consultant report does not address. The appellants exhibit also modifies the consultant's study area, e.g. it adds N.E. 130th Street and indicates no parking there because of ditches.

30. Appellants and others also questioned the proposal's impact on Thornton Creek, Haller Lake and on drainage generally. There is no storm sewer system presently in operation, and witnesses suggest that the drainage goes to ditches and ends up in Thornton Creek, a unique inner-city spot because of visits by salmon. If the development increases the water runoff or alters its composition, neighbors wonder, what will be the impact on the lake and creek?

31. The Hearing Examiner finds that any on-site development would be required to comply with a drainage control plan. The drainage control would include on-site detention and oil separation prior to the water's measured release into the existing course of discharge. At present, the site is partially paved.

32. An October 29, 1986 Seattle Engineering Department

memorandum projects that the proposed rezone could generate an estimated 565 daily vehicle trips, assuming "6.1 trips for each of the 74 units" and a set figure for the "2800 sq. ft. of retail space." DCLU projects up to 475 average daily vehicle trips, plus an amount to accommodate the presently planned 1160 sq. ft. of retail. There is no indication that the vehicle trips will alter local Levels of Service.

#### Conclusions

1. The Hearing Examiner has jurisdiction of this application and this appeals pursuant to Chapter 23.76, Seattle Municipal Code.

2. Regarding the SEPA appeal, the Hearing Examiner must give the DCLU environmental determination "substantial weight." Seattle Municipal Code Section 23.76.022(C)(7). It is therefore appellants' burden to show that the DCLU decision is clearly erroneous. Brown v. Tacoma, 30 Wn.App. 762; 637 P.2d 1005 (1981).

3. In order to deny a proposal under the State Environmental Policy Act (SEPA),

...an agency must find that the proposal would be likely to result in significant adverse environmental impacts identified in a final or supplemental environmental impact statement...

Seattle Municipal Code Section 25.05.660(A)(6)(a)

4. As there is no EIS of record in which adverse, significant impacts are described, the Hearing Examiner is without authority at this juncture to deny the proposal.

5. Appellants have, however, requested an EIS for the project. If determined that the subject proposal "may have a probable significant adverse environmental impact" a declaration of significance (DS), to be followed by preparation of an EIS, is appropriate. Seattle Municipal Code Section 25.05.360. Appellants have not proved in this case that an EIS is required.

6. With respect to traffic, appellants have not proved that the anticipated traffic count will decrease peak hour or other existing Levels of Service. Concerning parking, it is more reasonable to use the 1.5 parking space per unit ratio because (a) it is in accord with the more common Seattle Engineering practice and (b) because only 12 of the 72 units will be 2-bedroom units. The spillover would therefore approximate 33 spaces. Notwithstanding Lakeside School activities, the lack of vicinity curbing and other factors, the Hearing Examiner is unable to conclude that the spillover could not be accommodated within the consultant's study area. Therefore, appellants showed no significant adverse probable impact from the proposal related to parking and traffic.

7. Nor does the possibility of some unidentified eventual impact on Haller Lake or Thornton Creek habitats amount to a showing of "clear error" on the part of the DCLU threshold determination. Application of drainage controls will ameliorate any water runoff impact.

8. The record fails to show that increased air particulates from the additional vehicles and residences would "significantly" impact air quality.

9. With respect to bulk, height and scale, appellants showed that the proposed buildings would be bulkier and taller than the present buildings in the vicinity, especially in relation to the single story single-family zoned dwellings to the south. The appellants showed that the scale of the development would adversely impact the pattern extant. But is the impact "significant?" The northern portion of the building would be sited within an NCl 40' height built environment of 2-story

multi-family uses and of commercial uses. As conditioned, the southern component of the building would be limited to two stories in height, with landscaping. The proposed building could be considered as aesthetically imposing; however, the adverse impacts were not proved to be "significant". The DNS is therefore affirmed.

10. The remaining issue is whether the request to rezone the southerly portion from SF 7200 to NCl should be granted.

11. Seattle Municipal Code Section 23.34.010 states that single family zoned areas may be rezoned "only if the applicant can demonstrate that the area does not meet the criteria for single family designation." One such criterion is stated at Seattle Municipal Code Section 23.34.012: "Areas which consist of blocks with at least... 70%...of the existing structures in single family residential use." It is undisputed that the at least 70% of the structures fronting 1st N.E. between Roosevelt Way and N.E. 133rd are in single family use. The Hearing Examiner is satisfied that the present on-site structure should be considered single family for purposes of the calculation. The Hearing Examiner does not read the code to require mathematical consideration of the single family homes that do not front on 1st N.E. Further, the rezone site is part of 15 contiguous or more acres of single family zoned land "or abuts an existing single family zone." Seattle Municipal Code Section 23.34.012(B)(1).

12. Seattle Municipal Code Section 23.34.012(C) indicates that platted lot lines are to be considered in the question of establishing single family zone boundaries. On the one hand, the criterion suggests moving the NC boundary south to correspond with the plat line. On the other hand, it could suggest that the single family zoning be moved north to correspond to the northern plat line. The Hearing Examiner also notes that "portions of blocks on an arterial" with a majority of single family structures are to be generally included into the single family zone. Seattle Municipal Code Section 23.34.012(C)(4). Given the clear preference against reclassifying single family zoned properties, it does not appear that the boundary criterion favors the rezone. The conclusion at this stage would therefore be that the property does meet the single family locational criteria and should therefore not be rezoned.

13. Further code review yields a similar conclusion. There are no changed circumstances, overlay district; greenbelt; or "adopted" neighborhood planning issues to address in this question. Seattle Municipal Code Sections 23.34.008(E)(F)(G)(H). To be discussed are issues of zoning principles, impacts, history, and the matching of criterion to area characteristics. Seattle Municipal Code Section 23.34.008(A)(B)(C)(D).

14. In 1976 the Council could have elected to rezone the subject SF 7200 site to NCl. They did not. While no particular attention may have been given this split-zone site, the preference for single family zoning and the recent review by the legislative branch suggest that a 1988 rezone from Single Family would not be appropriate. Further, it would be a negative precedent to rezone an area of this size and surrounding from single family to commercial. Weighed against this caution is the unique, split-zone nature of this size.

15. Consideration of zoning principles also militates against the rezone. Although the platted lot line would be able to accord with the zone boundary, a zone change would extend commercial zoning from primarily Roosevelt frontage to frontage along 1st Avenue. The newly rezoned site, although conditioned, would face dissimilar zoning to the east, across Roosevelt and would erode the existing single family boundary to the south. In terms of impacts, a contract rezone would offer development prohibitions which would tend to ameliorate potential adverse development impacts. Nevertheless, it would appear that fewer adverse impacts would accompany development in accord with existing single family zoning.

16. Seattle Municipal Code Section 23.34.008(A) requires evaluation of the site characteristics as against the locational criteria of the proposed classification. Seattle Municipal Code Section 23.34.074 contains locational criteria for NCl zones. Seattle Municipal Code Section 23.34.072 contains general criteria for commercial designations.

17. First the general commercial criteria. Although the proposal's commercial component could, by condition, be restricted to the existing NCl portion of the site, the rezone nevertheless constitutes an encroachment of multi-family commercial development into a single family residential area. The modification of the zone line would tend to contradict the edge protection thrust of the Single Family Residential Areas Policies, Seattle Municipal Code Section 23.16.002. Depending in some measure on the development of the presently-zoned commercial site, a rezone to commercial would provide no particular buffering amenity to properties to the south. Present commercial uses to the north are low scale.

18. The proposal would allow a moderate expansion of the existing NCl commercial node and would not cause problems with the infrastructure capacity. On the other hand, an incremental encroachment into the single family zoned area to address a split-zoning glitch may not be considered orderly or predictable. On balance, the Hearing Examiner is unpersuaded that the general commercial rezone criteria are met. Seattle Municipal Code Section 23.34.072.

19. The rezone would, however, generally comport with the NCl locational criteria. The subject area (the west side of 1st N.E.) is, for example, one of convenience, neighborhood business surrounded by low density residential areas. Seattle Municipal Code Section 23.34.074.

20. In summary, since the site meets the single family locational criteria, it should not be rezoned. Seattle Municipal Code Section 23.34.010. In addition, the weight of the general rezone criteria and of the general commercial designation criteria suggest that the rezone petition be denied.


#### Recommendation

The Hearing Examiner recommends that the rezone be denied. If the rezone is granted, the rezone should be conditioned as recommended by DCLU.

#### Decision

The DNS is affirmed.

Entered this 22nd day of January, 1988.

  
LeRoy McCullough  
Hearing Examiner

#### NOTICE OF RIGHT TO PETITION FOR FURTHER CONSIDERATION (CC8603260)

Pursuant to Seattle Municipal Code Section 23.76.054, as amended, any person substantially 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 fifteen days after the date of mailing the recommendation of the Hearing Examiner and addressed to: City Council, Urban Redevelopment Committee, Municipal Building, Seattle, Washington 98104. The request for further reconsideration shall clearly identify specific objections to the Hearing

Examiner's recommendation, facts missing from the record, and the relief sought.

Pursuant to Seattle Municipal Code Section 23.76.054(D), if there is no request for further consideration Council action shall be based on the record established by the Hearing Examiner.

The City Council Urban Redevelopment Committee should be consulted for further information on the Council review process.

CONCERNING FURTHER REVIEW  
(FILE NOS. W-87-005, 006, 007, 008, 010)

The decision of the Hearing Examiner in this case is final 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 of the decision must be by application for writ of review filed in King County Superior Court within fifteen days of the date of this decision. Seattle Municipal Code Section 23.76.22(C)(12)(c).

Judicial review under SEPA shall without exception be of the decision on the underlying governmental action together with its accompanying environmental determinations. RCW 43.21C.075(6)(c). SEPA issues may be added to the request for review within 30 days after the date of the decision on the underlying governmental action if a notice of intent to seek judicial review of SEPA issues is filed with the Director of the Department of Construction and Land Use, 408 Seattle Municipal Building, Seattle, Washington 98104, within fifteen days of the date of this decision. Seattle Municipal Code Section 25.05.680(D)(4).

If the Superior Court orders a review of the decision, the person seeking review must arrange for and bear the cost for preparing a verbatim written transcript of the hearing but will be reimbursed if successful in court. Instructions for preparation of the transcript are available in the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104. In the alternative, RCW 43.21C.075(6)(b) provides that a tape may be used for the court review. If a taped transcript is to be reviewed by the court the record shall identify the location on the taped transcript of testimony and evidence to be reviewed. Parties are encouraged to designate only those portions of the testimony necessary to present the issues raised on review, but if a party alleges that a finding of fact is not supported by evidence, the party should include in the record all evidence relevant to the disputed finding. Any other party may designate additional portions of taped transcript relating to issues on review.