

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

In the Matter of the Appeal of

ALKI COMMUNITY COUNCIL

FILE NO. S-81-013

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

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

Introduction

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

Parties to the proceeding were: Alki Community Council, by Margaret Cummings, pro se; proponent-developer by Sandra Cohen, Hillis, Phillips, Cairncross, Clark and Martin; Construction and Land Use by Dorothy Kelly.

This matter was heard before the Hearing Examiner on April 29, 1981.

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

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 between 1567 and 1573 Alki Avenue S.W.
2. The property is zoned RMH-350 and designated UR (Urban Residential) in the Shoreline Master Program.
3. The property is separated from the shoreline and Alki Beach Park by Alki Avenue S.W. The property has no water frontage.
4. The subject property is located on Alki Avenue S.W. between California Avenue S.W. and Alki Point.
5. The subject property lies within 200 ft. of the shoreline.
6. The structures adjacent to the subject property are set back approximately 10 ft. and 18 ft. respectively from Alki Avenue S.W.
7. On March 26, 1981, Notice was published of the CLU interpretation that the shoreline setback requirements did not apply to the subject property. Alki Community Council appealed contending in essence that the interpretation fostered conflict with the purpose and intent of the UR environment; that the specific setback requirements of the Shoreline Master Program supersede conflicting setback requirements; and that as the first offshore lot adjacent to the shoreline, the subject property should be considered as waterfront property, intervening Alki Avenue S.W. notwithstanding.

Conclusions

1. The property in question is within 200 ft. of the shoreline and is subject to Shoreline Master Program Regulations (SMP). See 24.60.190, defining shorelines to include wetlands; and 24.60.275, defining wetlands as "those lands extending landward for two hundred feet...."

2. SMP purposes include the preservation, enhancement and increase of water views. 26.60.005.

3. The SMP regulations are supplemental to existing zoning regulations, "provided that in case of irreconcilable conflict, the provisions of ...(the SMP) shall apply." 24.60.285.

4. Section 24.60.395(c) provides that residential structures shall not be located closer to the shoreline than adjacent structures. This section has been the subject of designated Superintendent's Ruling 14-79, amended by Ruling 20-80, to state that in the instance where adjacent structures are located on both sides of the subject property and the shoreline is regular, the setback line is to be determined by the line drawn between the nearest shoreside corners of the existing principal buildings located on either side of the subject lot.

5. Section 24.32.120 sets 10 ft. as the front yard requirement for the RMH 350 zone.

6. If the subject parcel is an upland lot, compliance of the view corridor element of the SMP is not required, as "there is an intervening street between the property and the shoreline...." 24.60.395(B)(4). Footnote 4 of Table 2, Basic Shoreline Bulk Requirements, provides that when an upland lot is zoned RMH-350, the requirements of 24(.32), supra, govern.

7. The subject property is separated from the shoreline by park area and an intervening street. Accordingly the interpretation at issue does not necessarily conflict with the access and view protection concerns of the SMP.

8. A waterfront lot is a lot:

"...any portion of which is offshore of or abuts upon the line of higher regulated lake level of Lake Washington, Lake Union and connecting fresh waters, or the line of ordinary high tide, or the line of ordinary high water of nonnavigable lakes. 24.60.110.

An upland lot is a lot within the shoreline district "which is not a waterfront lot." 24.60.105.

9. The appellant's argument that the subject lot is a waterfront lot is not specious. Although the subject lot does not abut upon the water, the language of 24.60.110 defining waterfront lot is disjunctive, viz. "a lot...which is offshore or abuts...." (Emphasis added.) 24.60.110. No reference is made in the definitions or in the Superintendent's Rulings that an intervening street necessarily alters the character of a lot.

10. However, several factors militate against accepting the appellant's view. First, the ruling of the Director is to be considered prima facie correct. Secondly, the SMP provides no definition of the term "offshore". Webster's New Collegiate Dictionary (c) 1973, defines the term simply as "from the shore: at a distance from the shore." Appellant's contention could therefore lead to the conclusion that all lots "from the shore" are waterfront. This would render the provisions of the SMP nugatory. Thirdly, the Examiner was afforded no ordinance

reference that required the subject lot's consideration as waterfront simply because it is (or might be) the "first lot offshore from the line of ordinary tide."

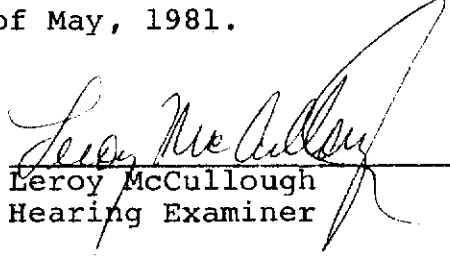
11. No irreconcilable conflict is present such that the SMP setback requirements prevail. The subject lot is an upland lot; and as such is specifically exempted from SMP setbacks but subject to the RMH-350 setback requirement.

12. The ordinance should be read as a whole to effect its purpose. Based on the foregoing, the Director's interpretation is affirmed.

Decision

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

Entered this 6th 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).