

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CITY OF SEATTLE
2016 FEB 12 PM 2:03
CITY CLERK

BEFORE THE CITY COUNCIL
CITY OF SEATTLE

In the Matter of the Application of
MARIA BARRIENTOS
for approval of a Rezone for property
Located at 2203 Eastlake Avenue East

CF #314127
BARRIENTOS' RESPONSE TO THE
MID-EASTLAKE NEIGHBORS'
APPEAL OF THE HEARING
EXAMINER'S RECOMMENDATION TO
APPROVE A CONTRACT REZONE

1. INTRODUCTION

The applicant, Maria Barrientos ("Barrientos"), responds to the Mid-Eastlake Neighbors' ("Appellant") appeal of the Hearing Examiner's recommendation to approve a project-specific contract rezone for property located at 2203 and 2209 Eastlake Ave. E. The project is titled the Waterton. If the City Council approves the rezone, Barrientos will construct a pedestrian-oriented, mixed-use building on the corner of Eastlake Ave. E. and East Boston St., just across the street from Serafina. The Waterton includes 45 new housing units, 3,423 square feet of commercial space at ground level, an active pedestrian-oriented plaza, and below-grade parking for 39 vehicles. The Waterton's new residential units include family-sized units and nine affordable housing units.

The Waterton is precisely the type of thoughtful and equitable development that the City of Seattle ("City") seeks to encourage. To construct the Waterton, the City Council will need to

1 rezone two parcels on Eastlake Ave. E. from NC1P-30 and LR2-RC to NC2P-40. The Hearing
2 Examiner recommended approval of the rezone based upon thousands of pages in the record,
3 written and oral public testimony, Appellant's PowerPoint presentation,¹ and the Hearing
4 Examiner's independent analysis of the Code's contract rezone approval criteria. Here is an
5 image of the proposed structure:



6
7
8
9
10
11
12
13
14
15
16 Barrientos respectfully requests that the City deny the Appellant's attempt to unravel
17 nearly three years of process and destroy this project. The City Council should deny the appeal
18 and approve the contract rezone because:

- 19 • Barrientos requested to meet with project neighbors early in the process. Based upon
20 these conversations, Barrientos revised the project to address concerns. For example,
21 Barrientos added structured parking at significant cost to address the neighbors' desire for
22 additional off-street parking.² Barrientos also completed a transportation study, a view
23 study, and a shadow / sun study to further analyze and address concerns.³

24
25 ¹ Exhibit R27.

26 ² Testimony of Maria Barrientos.

³³ Exhibit R11-13 (Heffron Traffic Study); Exhibit R4, Attachment B (View Study); Exhibit R4, Attachment C (Sun / Shade Study).

- 1 • The Waterton received the Design Review Board’s unanimous approval, DCI’s
2 recommended approval, and the Hearing Examiner’s recommended approval.⁴
- 3 • The Waterton provides generous setbacks along East Boston St. to maximize public
4 views of Lake Union from the street.⁵
- 5 • The LR3 zone to the west and east at the site already allows 40-foot tall structures.⁶ The
6 rezone will allow Barrientos to provide affordable housing, underground parking, and
7 beautifully designed and detailed street-level plaza and retail.
- 8 • The requested rezone complies with the Seattle Municipal Code’s (“Code”) rezone
9 approval criteria. The requested rezone also advances the adopted policies of the
10 Eastlake Neighborhood Plan. Most of Appellant’s arguments address events that
11 occurred in the 1980s or hypothetical area-wide legislative rezones that may occur in the
12 future.
- 13 • The Code requires that the City Council support its decision with written findings and
14 conclusions. The Hearing Examiner’s written recommendation includes 13 pages of
15 findings and conclusions, which support her recommendation that the City Council
16 approve the requested contract rezone. Appellant does not challenge most of the findings
17 and conclusions, and the alleged errors provide no justification to overturn the Hearing
18 Examiner’s recommendation.
- 19 • The Appellant has not carried its burden to prove that the Hearing Examiner’s
20 recommendation is not supported by substantial evidence. The Appellant’s arguments
21 also do not provide the City Council with any factual basis to strike and replace the 13
22 pages of Hearing Examiner’s findings and conclusions that support the requested rezone.

23 ⁴ Exhibit A6 (Design Review Board Reports); Exhibit A2 (DCI Decision and Rezone
24 Recommendation); *In the Matter of the Application of Maria Barrientos*, CF 314127
(Recommending approval of the requested rezone).

25 ⁵ Exhibit A11 (Design Review Board Recommendation Packet, p. 11, also see p. 37-38 showing
26 the setback and vegetation along East Boston St.).

⁶ Exhibit R30, 32; SMC 23.45.514 (permitting 40-foot structures in the LR3 zone surrounding
the subject property).

1 Barrientos' response begins by identifying the applicable Code provisions for this appeal.
2 Barrientos then identifies uncontested findings and conclusions in the Hearing Examiner's
3 recommendation, followed by a response to each of Appellant's objections in the order raised by
4 Appellant.

5 2. CONTROLLING CODE PROVISIONS

6 The Appellant's appeal must "clearly identify specific objections to the Hearing
7 Examiner's recommendation and specify the relief sought." SMC 23.76.054. Here, the only
8 relief sought is to deny the contract rezone and "to revise the proposed building to fit within the
9 current zoning ..." Appeal, p. 3. The Appellant seeks no other relief. Because the Hearing
10 Examiner recommended approval, the Appellant carries the burden of proving that the City
11 Council should reject the Hearing Examiner's recommendation. SMC 23.76.056.A.

12 The City Council's decision on the contract rezone proposal must be based on the law.
13 SMC 23.76.054.A. The City's legal standard for contract rezone approval is set forth, in part, in
14 SMC 23.34.007 and .008, which direct the City Council to analyze a number of items, including:

- 15 • effect on zoned capacity,
- 16 • match between zone criteria and characteristics,
- 17 • consistency with the Neighborhood Plan,
- 18 • zoning principles,
- 19 • changed circumstances, and
- 20 • impact evaluation.

21 The City Council is directed to balance and weigh the rezone approval criteria because "no
22 single criterion ... shall be applied as an absolute requirement or test of the appropriateness of a
23 zone designation ..." SMC 23.34.007.B. To inform the City Council's decision, the Hearing
24 Examiner's recommendation analyzed the contract rezone approval criteria, and summarized the
25 record with written findings and conclusions.
26

1 The City Council's contract rezone decision must be based on substantial evidence. SMC
2 23.76.056.A. To satisfy this standard, the Code requires the decision to be based upon adopted
3 findings and conclusions. SMC 23.76.056.B. The Hearing Examiner's recommendation
4 includes 13 pages of findings and conclusions. These findings and conclusions support her
5 recommendation that the City Council approve the contract rezone.

6 Thus, in order to prevail, the burden is on the Appellant to prove that Hearing Examiner's
7 recommendation is in error. In order for this to occur, the appeal must (1) "identify specific
8 objections" to applicable findings and conclusions; (2) prove that the challenged findings and
9 conclusions are in error; and (3) provide the City Council with substantial evidence upon which
10 the City Council could draft new findings and conclusions that support the requested relief,
11 which, in this case, is to deny the contract rezone. As detailed below, the Appellant has failed to
12 satisfy its burden.

13 3. UNCONTESTED FINDINGS AND CONCLUSIONS

14 Appellant challenges the Hearing Examiner's recommendation, but Appellant does not
15 challenge most of the findings and conclusions supporting the Hearing Examiner's
16 recommendation. The Appellant challenges only the following provisions in the Hearing
17 Examiner's recommendation (recited in the order they appear in the appeal):

- 18 • Conclusion #18 (regarding precedential effect). Appeal, p. 5.
- 19 • Conclusion #5 (zone capacity analysis). Appeal, p. 6.
- 20 • Findings #7-8 (zoning history). Appeal, p. 7.
- 21 • Finding #12 (providing nine units of affordable housing). Appeal, p. 8.
- 22 • Finding #4 (height of a structure across the alley). Appeal, p. 9
- 23 • Finding #6 (description of East Boston St.). Appeal, p. 9.
- 24 • Finding #13 (typo regarding setbacks). Appeal, p. 9.
- 25 • The Hearing Examiner's recommendation to approve the contract rezone.

26 Appellant does not challenge Findings 1-3, 5, 9-11, and 14-30. Appellant also does not
challenge conclusions 1-4, 6-17, and 19-38. Thus, Appellant does **not** challenge the Hearing
Examiner's conclusions that:

- The proposed zone matches the codified zone criteria and characteristics (Conclusions 6-17);
- The proposal is consistent with zoning principles listed in SMC 23.34.008.E (Conclusions 19-20).
- The proposal will have a positive impact on the City's housing supply, provide right-of-way and pedestrian safety improvements, and provide more and varied commercial uses along Eastlake Ave. E (Conclusions 23-24).
- Circumstances have changed since the mid-1980s that support the rezone (Conclusion 27).⁷
- The proposal conforms to the Pedestrian overlay (Conclusion 28).
- "The 40-foot height limit requested as a part of the rezone would be consistent with the newer development in the area, which is representative of the area's overall development potential," and "The requested height limit of 40 feet would be compatible with the actual and zoned heights in the surrounding area ..." (Conclusions 30-36).

Thus, even if we hypothetically presume that each appealed finding and conclusion is in error (and they are not, as described below), the City Council should still approve the rezone because no one factor is dispositive and the Hearing Examiner's recommendation is supported by substantial evidence, as demonstrated in the findings and conclusions that Appellant did not appeal. Appellant has failed to satisfy its burden and has failed to provide the City Council with the substantial evidence necessary to reverse the Hearing Examiner's recommendation.

4. RESPONSE TO APPELLANT'S OBJECTIONS

The appealed findings and conclusions do not demonstrate any error in the Hearing Examiner's recommendation.

⁷ Appellant alleges that "the Hearing Examiner was unable to find any significant changed circumstances that affected the site (Conclusion 23 on page 11). This is a curious reading of Conclusion 23 where the Hearing Examiner identified the City's adoption of its Comprehensive Plan, the adoptions of the Eastlake Residential Urban Village, and the transportation improvements in the area. Regardless, the Appellant did not challenge Conclusion 27.

1 **4.1 Conversations From The 1980s Do Not Trump The City's Codified Contract**
2 **Rezone Criteria Approval Criteria.**

3 Appellant cites conversations from the 1980s as a purported basis to challenge the
4 Hearing Examiner's decision. Thirty-year-old conversations are not applicable to the contract
5 rezone criteria set forth in SMC 23.34.007 and .008.

6 The City Council is not bound to conversations that occurred before the Growth
7 Management Act, before the City adopted its urban village growth strategy, and before the City
8 encountered the current wave of population growth. For example, the City Council increased
9 height limits throughout the Eastlake neighborhood when it amended the lowrise zone in 2011
10 (City Council Ordinance 123495, Section 31). This amendment increased the LR3 zone's height
11 limit to 40 feet in urban villages such as the Eastlake Residential Urban Village. Thus, the
12 zoning code currently allows 40-foot height limits in the residential zone adjacent to the
13 property, but it imposes lower height limits along the Eastlake Ave. E. arterial that runs through
14 the Eastlake Residential Urban Village. The codified rezone approval criteria provide the City
15 Council with an established process to review and analyze these issues and sites on a case-by-
16 case basis. Appellants provide no basis here for overturning any Hearing Examiner findings and
17 conclusions, or her ultimate recommendation.

18 **4.2 The Proposal Is For A Site-Specific Rezone, Not An Area-Wide Rezone.**

19 Appellant is concerned about an area-wide rezone in Eastlake, but the proposal before the
20 City Council is for a site-specific rezone that is specific to one structure that has undergone three
21 years of review. The Appellant's concern about hypothetical future area-wide rezones (which
22 will require City Council action) provides no basis for overturning the Hearing Examiner's
23 findings or recommendation, and Appellant does not challenge the Hearing Examiner's Finding
24 #9 (stating that there are no city-initiated zoning changes proposed for the Eastlake
25 neighborhood or sites surrounding the subject property).

1 The Hearing Examiner properly analyzed the proposal's "precedential effect", because
2 this analysis is required by SMC 23.34.008.C. In contrast to Appellant's vision for Eastlake,
3 other neighbors, businesses, the DCI Staff, and the Hearing Examiner recommend approval of
4 the requested rezone because, in part, the Waterton advances the adopted Neighborhood Plan.
5 Here are just some of the goals advanced by the proposed rezone:

6 EL-G10: A neighborhood including all socioeconomic groups with some housing units
7 affordable to people with low incomes.

8 EL-G4: A safe and interesting streetscape with pedestrian activity, a strengthened
9 commercial identify and residential community, and reduced conflicts between
10 residential and commercial uses along Eastlake Ave. E.

11 EL-P25: Seek to attract new businesses and customers.

12 The Waterton also provides strong precedent for future growth along Eastlake Ave. E.
13 For example, Jules James, a long-time Eastlake resident, testified: "I expect 2203 Eastlake to
14 quickly become a positive neighborhood landmark."⁸ The Hearing Examiner's findings and
15 conclusion demonstrate that the Hearing Examiner's analysis conforms to the Code, and that the
16 proposal satisfies the contract rezone approval criteria set forth in SMC 23.34.008.C
17 (precedential effect) and 23.34.009.D (consideration of adopted Neighborhood Plans).

18 **4.3 The Code Does Not Cap Growth In Urban Villages, As The Appellant**
19 **Suggests.**

20 The City's growth targets do not establish a cap on growth. It is true that the City
21 Council must consider the urban village's zoned growth capacity. The City Council completes
22 this analysis to ensure that the City can fulfill its obligation to accommodate planned growth
23 under the Growth Management Act and the City's Comprehensive Plan. Appellant attempts to
24 turn this requirement on its head to block the City's efforts to accommodate growth. The plain
25 language of the Code does not support Appellant's argument:

26 ⁸ Jules James Comment Letter, Filed on October 16, 2015 with the City Clerk; Testimony of
Jules James beginning at 10:11:42 AM.

1 In urban centers and urban villages the zoned capacity for the center or village
2 taken as a whole **shall be no less** than one hundred twenty-five percent (125%) of
the growth targets adopted in the Comprehensive Plan for that center or village.⁹

3 There is no error here because the Code sets a floor, not a ceiling. The proposal satisfies the
4 contract rezone approval set forth in SMC 23.34.008.A (growth capacity analysis).

5 **4.4 Unchallenged Findings and Conclusions Support The Hearing Examiner's**
6 **Recommendation that the NC2P-40 Zone Is the Most Appropriate Zone For**
7 **The Property.**

8 The Appellant argues that 30-feet is the most appropriate height for the property, but the
9 Appellant does not contest the Hearing Examiner's findings or conclusions that support her
10 recommendation that the property is best suited for the NC2P-40 zone, which allows 40 feet of
11 height. *See e.g.*, Conclusions 6-17 (zone criteria analysis) and Conclusions 30-36 (height limit
analysis).

12 In support of its argument, the Appellant again discusses inapplicable conversations from
13 the 1980s; the Appellant mischaracterizes Conclusion 27 (which indeed identifies changed
14 circumstances supporting the rezone); and the Appellant argues that the rezone is inappropriate
15 because "zoning immediately to the north and south of the project is limited to 30 feet."
16 Appellant raised this same argument in its design review appeal. The Hearing Examiner rejected
17 this argument because it is not representative of the built environment in Eastlake:

18 The Appellants' presentation on this issue focused on the immediate
19 neighborhood context often approximately one-half block to the north and one-
20 half block to the south, pointing out cottages and one-story to three-story
21 structures in that area. Many of those structures are well below the zoned
22 development potential of the property. Further, the Design Review process looks
to the broader nearby neighborhood, which includes taller buildings, including
some with much greater bulk than the proposal.¹⁰

23 Appellant also cannot contest that the LR3 zone, which is prevalent in Eastlake, already allows
24 40-foot structures. Unchallenged findings and conclusions support the Hearing Examiner's

25
26 ⁹ SMC 23.34.008.A (emphasis added).

¹⁰ *In the Matter of the Application of Maria Barrientos*, MUP-15-027(DR), Conclusion 2.

1 recommendation. The Appellant has not provided any basis for overturning the Hearing
2 Examiner here.

3 **4.5 The Proposal Provides Myriad Public Benefits.**

4 The City uses contract rezones to rezone property from one zone that is less appropriate
5 for the property into another zone that is more appropriate for the property. This decision is
6 based upon the City's codified contract rezone criteria, which demand an analysis of each zone's
7 functional and locational criteria. The Appellant argues that the City Council should deny the
8 contract rezone because it does not provide "substantial public benefit." But the Code does not
9 demand that the City exact "substantial public benefit" for a proposed contract rezone. Thus,
10 objection #5 is devoid of legal argument and provides no basis for overturning the Hearing
11 Examiner's decision.

12 Setting this legal issue aside, Barrientos reiterates the myriad public benefits provided by
13 the project identified in the Hearing Examiner's conclusions:

- 14 • The Waterton provides 45 dwelling units, while current zoning would only permit 25
15 dwelling units.¹¹
- 16 • The Waterton provides family-sized units.¹²
- 17 • The Waterton provides nine units of affordable housing.¹³
- 18 • The Waterton provides underground parking at significant cost to Barrientos.¹⁴
- 19 • The Waterton is set back from the corner of Eastlake Ave. E. and East Boston St. to
20 provide vegetated courtyard corner plaza that was designed to encourage pedestrian
21 interaction and to expand views of Lake Union looking west from the Eastlake Ave. E.¹⁵

22
23 ¹¹ Hearing Examiner, Conclusion #5 (Appellant does not contest the Hearing Examiner's
24 calculation).

¹² Exhibit A3 (MUP Plan Set).

25 ¹³ Exhibit R29. Appellant incorrectly argues that Exhibit R29 is not part of the record. The
26 Hearing Examiner admitted this item into the record, as demonstrated by it being labeled Exhibit
R29. See e.g., Hearing Examiner Exhibit List for CF 314127.

¹⁴ Testimony of Maria Barrientos; Hearing Examiner, Finding #12.

- At great expense, the Waterton's commercial base will be constructed with masonry (i.e. brick) to reinforce the character of the Eastlake neighborhood.¹⁶
- The Waterton has already secured two local businesses as tenants, including a sister restaurant for Serafina.¹⁷

There is no basis for overturning the Hearing Examiner's recommendation here.

4.6 The Three Contested Findings Provide No Basis For Overturning The Hearing Examiner's Recommendation.

Finally, the Appellant challenges three findings in the Hearing Examiner's recommendation. The three challenged findings provide no basis for overturning the Hearing Examiner's recommendation:

- Finding 4. It is unclear what structure the Hearing Examiner referenced in her recommendation, or what structure the Appellant references in its appeal. But this issue appears to be of no consequence because all property across the alley is unquestionably zoned LR3, which permits four-story structures by right.¹⁸
- Finding 6. The fact that East Boston St. is not a collector arterial does not change the Hearing Examiner's recommendation or her analysis. The undisputed facts show that East Boston St. is sixty-feet wide, that Barrientos completed a traffic study, and the record before the Council includes no evidence of any traffic-related issues on East Boston St. because of the proposal.
- Finding 13. Appellant correctly notes a typo. The project is not setback 75 feet from Eastlake, 60 feet from East Boston St., and 20 feet from the alley. These

¹⁵ Exhibit A11, DRB Recommendation Packet, p 32, 27 (showing the plaza), p. 37-38 (showing setback on East Boston St.).

¹⁶ Exhibit A11 (DRB Recommendation Packet, p. 20-24); Testimony of Maria Barrientos.

¹⁷ Testimony of Maria Barrientos.

¹⁸ SMC 23.45.514.

1 setbacks would be silly (and inconsistent with the City's design standards). The
2 setbacks are clearly identified in the Master Use Permit Plan set.¹⁹

3 **5. CONCLUSION**

4 The Hearing Examiner's recommendation is well reasoned, supported by substantial
5 evidence, and provides the City Council with the findings and conclusions necessary to approve
6 the requested contract rezone. Appellant has failed to satisfy its burden in its appeal. Barrientos
7 respectfully requests that the City Council deny the appeal and approve the contract rezone.

8
9 Dated this 12th day of February, 2016.

10
11 FOSTER PEPPER PLLC

12
13
14 By: _____

15 Patrick J. Schneider, WSBA # 11957
16 Jeremy Eckert, WSBA # 42596
17
18
19
20
21
22
23
24
25
26

¹⁹ Exhibit A3 (Master Use Permit Plan Set).