

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Petition of

CHARLES P. KOINES, ET AL.,

FILE NO. F-87-002

for review of a moorage fee
increase

Introduction

A group of floating homeowners petitioned for the review of a moorage fee increase imposed by Lakeshore Moorings Inc., respondent, as the homeowners' proportional shares of the costs of improvements as permitted by Section 7.20.090, Seattle Municipal Code. On July 20, 1987, after the exchange of information and offers required by Section 7.20.080, a hearing was held before the City Hearing Examiner. Petitioners were represented by J. Richard Aramburu, attorney at law. Respondent was represented by Todd Warmington, vice president.

After considering the relevant evidence filed by the parties and adduced at the hearing, the Hearing Examiner enters the following findings of fact and conclusions.

Findings of Fact

1. Lakeshore Moorings, Inc. ("LMI"), imposed a rate increase on moorage lessees for certain improvements made, and to be made, by LMI.
2. Item 7 of the rate increase notice was:

Landscape area along shore between the two docks including a sprinkler system and repairs to the bulkhead. Cost \$2240.75.
3. Item 10 of the rate increase notice was:

Construction management and coordination of subcontractors, permit fees and drawings. Estimated cost \$2000.
4. The landscaped area between the two docks is within the Fairview Avenue right-of-way. Trees and other shrubbery had been planted by residents in the area over the years and the area may not have been well maintained. Underground were water, telephone and side sewer lines.
5. The "landscaping" done by LMI consisted of removing an old concrete vault with a broken lid, trees, shrubs and debris. Lawn sod was laid and new shrubs planted. A sprinkler system was installed.
6. The bulkhead had gaps between the ties so water had eroded the ground behind the bulkhead. The ties were straightened and timbers added. Gravel was dumped in the eroded areas behind the bulkhead.
7. Also, included in the cost for "landscaping," was wooden curbing added to the parking lot.
8. Respondent's witness, Mr. Warmington, stated that the landscaping was needed to protect the utilities, improve the appearance of the area and make it safer.
9. Warmington and North Co. was hired and paid by LMI to provide construction management and coordination of the subcontractors on the project. The project included many improvements, not contested by petitioners, including replacing one-half of one of the docks.

The estimated cost of all improvements was approximately \$36,700. Mr. Warmington testified that the project was fairly complicated with some 8 or 9 subcontractors to be coordinated.

10. Mr. Warmington testified that an architect or contractor would charge a minimum of 10 percent to do the construction management. This testimony was uncontroverted.

11. Warmington and North Co. charged LMI 5 percent for its services.

12. Todd Warmington and his wife, Julie North, are the principals in Warmington and North Co.

13. Todd Warmington's ownership interest in LMI is less than 20 percent.

14. A 1981 decision on a petition for review of a general moorage fee increase recognized a reasonable and necessary expense of \$1100 per year for "repairs," the term being used for costs that are effectively capital improvements. The actual increases allowed by that decision, however, provided for less income than the total of the reasonable and necessary expenses.

15. Since the 1980 request for increase, the total monies expended for repair and capital improvements is \$65,542, according to Warmington. The total of the amounts passed through directly to homeowners by moorage fee increase, seven years of \$1100 in the Hearing Examiner budget and seven years of \$610 per year listed as maintenance in the Hearing Examiner budget is \$63,119.

Conclusions

1. The Hearing Examiner has jurisdiction over these parties and the subject matter pursuant to Chapter 7.20, Seattle Municipal Code.

2. LMI imposed the rate increase under Section 7.20.090 which provides that:

A. Moorage owners or operators shall be permitted to increase the moorage fee demanded of a floating home owner without fact-finding in an amount not exceeding...(3) the floating home owner's proportional share of reasonable costs to be incurred to replace substandard or defective bulkheads, floats, piling, piers and utility services....

3. The Hearing Examiner's role, when petitioned for review of the rate increase, is to determine

whether the capital improvements costs are reasonable and whether the monthly fee increases and/or amortization periods are reasonable.

Section 7.20.090C.

4. Petitioners contend that the landscaping done by LMI is not replacement of a bulkhead, float piling, pier or utility service and, therefore, may not be "passed-through" under Section 7.20.090. LMI urges that since one of its reasons for improving its landscaping was the protection of utilities from random gardening, the landscaping relates to utility service and should be treated as an improvement for purposes of the pass-through provision.

5. It appears the City Council created the pass-through provision, section 7.20.090, to allow via the CPI factor a reasonable increase to reflect increased costs, the CPI factor, and two other specific categories of costs. The scheme allows other costs of improvements to be considered when a general rate increase is requested. One category of the pass-through costs is the replacement of the listed items substandard or defective. The plantings, curbing, sprinkler system, removal of the vault, etc., do not constitute replacement of any of the listed items. The repair of the bulkhead was not shown to be a "replacement", and further, its cost was not segregated from the costs which are not within this category, so the entire Item 7, \$2,240.75 must be disallowed.


6. Mr. Warmington's unrefuted testimony that construction management and coordination is a normal expense for a complicated project and is usually at least 10 percent of the cost plus his testimony that the work was actually performed supports a conclusion that the expense is part of the cost of the items which were undisputed "pass-throughs" and is reasonable. The part of the fee based on costs which are not permitted, 5 percent of \$2,240.75, should be deducted for a total fee of \$1,878.

7. The record does not support petitioners' contention that some part of the cost of the improvements has been included in the moorage fees paid since 1981. The increases permitted did not fully fund the anticipated costs and LMI showed that the total outlay for capital improvements, repairs and maintenance has been greater than the budgeted amounts plus those costs already passed-through to the homeowners in earlier increases.

Decision

The basis for the rate increase must be reduced by costs requested in Item 2 for landscaping of \$2,240.75, and by \$122 for that part of Item 10 relating to landscaping.

Entered this 18th day of August, 1987


M. Margaret Klockars
Deputy Hearing Examiner