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

In the Matter of the Appeal of

WILLIAM CONNER

Hearing Examiner File:
LP-07-001

from a decision issued by the
Landmarks Preservation Board

Board File:
493/07

Introduction

The Landmarks Preservation Board denied an application for a certificate of approval to construct three new residences on property commonly known as "Satterlee House". The Appellant exercised the right to appeal pursuant to Chapter 25.12 of the Seattle Municipal Code (SMC or Code). To allow time for discovery and prehearing motions, the Appellant waived the a pplicable deadlines of Chapter 25.12 except for the decision deadline of SMC 25.12.760.

Several issues were resolved by prehearing orders, including the scope of the landmark designation for Satterlee House. The Hearing Examiner determined that the designation encompassed the entire exterior of the house and the entire property on Beach Drive owned by David Satterlee at the time of the designation.

The appeal was heard before the Hearing Examiner on March 5, 10, 13, 14, 18 and 19, 2008. Parties represented at the hearing were: the Appellant, William Conner, by G. Richard Hill, attorney-at-law; and the Landmarks Preservation Board (Board), by Judith B. Barbour and Eleanore Baxendale, Assistant City Attorneys. The record was held open through April 11, 2008, for post-hearing memoranda and the Examiner's site visit.

Having considered the evidence in the record and inspected the site, the Examiner enters the following findings of fact, conclusions and decision on the appeal:

Findings of Fact

Landmarks Preservation Board

1. The Board consists of eleven members and includes at least two architects, two historians, a structural engineer, representatives from the fields of finance and real estate management, one representative of the City Planning Commission, and three additional members. SMC 25.12.270. In accordance with procedures prescribed in Chapter 25.12 SMC, the Board designates landmarks, negotiates controls and incentives for landmarked properties with the property owners, and determines whether to issue certificates of approval for alterations and significant changes to landmarks.

2. Pursuant to Chapter 25.12 SMC, the Board has adopted rules. The current rules, adopted in 1987, incorporate the Secretary of Interior's Standards for Rehabilitation (Secretary's Standards), which the Board interprets and applies frequently in the course of its work.

3. The Board's Architectural Review Committee (ARC) is an advisory committee composed of Board members who are design and development professionals. Although the ARC has no approval authority for certificates of approval, and does not redesign a prospective applicant's proposal, it meets with the applicant to consider alternatives and provide advice and feedback on preparing the proposal for Board review.

Landmark Designation Process for Satterlee House

4. Satterlee House is addressed as 4866 Beach Drive Southwest, in West Seattle, and is approximately one acre in size. The property slopes gently down from a rise at the base of a wooded hill on the east, to Beach Drive on the west. It is developed with a large, three-story, single-family residence built in approximately 1906 in an architectural style known as the "Seattle classic box". The house is located on the rise, facing west toward Puget Sound across an extensive front lawn. The property also includes a gazebo to the northwest of the house, a garage on the southeast part of the site, and landscaping features. For many years, an eight-foot high laurel hedge was planted along the north and west sides of the property, with two walkway openings and a driveway opening along Beach Drive through which the public could view the house and setting. The hedge was removed sometime prior to May of 1980.

5. Until recently, the property consisted of two lots. David Satterlee and his spouse purchased both lots from his aunt at different times during the 1970s but lacked the resources to maintain and upgrade the house. With the idea of securing historic preservation funding, Mr. Satterlee contacted the City's Historic Preservation Officer in November of 1980 concerning the possibility of having the "house and grounds" nominated as a historic site. (Exhibit 7) He followed up with a letter to pursue the possibility of nomination. (Exhibit 6)

6. The City's Office of Urban Conservation prepared the nomination for the property, which included a Statement of significance". (Exhibit 16) The Board considered the nomination on August 5, 1981. Mr. Satterlee received notice of the meeting by certified mail (Exhibit 8), but did not attend. The notice stated that if a "designating ordinance" was adopted, a certificate of approval would be required before anyone could make alterations or significant changes to the house exterior and the site." (Exhibit 8)[1]

[1] Under the scheme of Chapter 25.12 SMC, the Board designates a landmark, but the designation has little practical effect unless the Council then adopts a "designating ordinance" acknowledging the designation and imposing controls on the designated landmark. *See* SMC 25.12.420, .110 & .660.

7. The Board met and voted to designate the house exterior and the site as a landmark. The Report on Designation states that the "entire exterior of the house, as well as the entire site" met two Code designation criteria:

> It embodies the distinctive visible characteristics of an architectural style, or period, or of a method of construction.
>
> Because of its prominence of spatial location, contrasts of siting, age, or scale, it is an easily identifiable visual feature of its neighborhood or the city and contributes to the distinctive quality or identity of such neighborhood or the city.

(Exhibit 59, *quoting* Ordinance 106348, codified as SMC 25.12.350, in part) The Report also states that the property "is in significant contrast to the surrounding, rather crowded (albeit atmospheric) area, with its long 'front yard' extending back and up the slope, climaxed by location of the house near the top of the slope." (Exhibit 59)

8. The Board recommended that the City Council impose controls on the landmark requiring that a certificate of approval be obtained "before the owner may make alterations or significant changes that would affect the identified features of the Landmark. A Certificate of Approval would be required for proposed changes to the grounds only when those changes would propose alterations to the existing site plan *or if new structures were being proposed for the site.*" (Exhibit 9, emphasis added) Mr. Satterlee received a copy of the recommendation by certified mail. (Exhibit 9)

9. In February of 1983, the City Council adopted Ordinance 111022 imposing controls on the property. The Ordinance acknowledges the Board's designation of the property and recites that "on October 7, 1981, the Board and the owners of the designated property agreed to controls and incentives". The Ordinance also recites the two landmark criteria quoted in the Report on Designation and imposes the following controls on the property: "a Certificate of Approval must be obtained ... before the owner may make alterations to the entire exterior of the house, as well as the entire site." (Exhibit 3) Mr. Satterlee did not attend the Council session at which the Ordinance was adopted. Although he recalled going to the Board's offices to "sign something," a copy of the controls and incentives agreement referenced in the Ordinance has not been located.

10. Under SMC 25.12.570, if the Board and the property owner fail to reach agreement on controls and incentives for a landmark property, the Hearing Examiner holds a hearing and makes a recommendation to the City Council on controls. There is no record of a Hearing Examiner hearing or recommendation on controls and incentives for the subject property.

Sale and Historic Seattle Easement

11. In 2000, approximately 17 years after landmark controls were imposed on the property, Mr. Satterlee sold it to William Conner, the Appellant, for $900,000. The Real

Property Transfer Disclosure Statement for the sale disclosed the landmark designation (Exhibit 10 at 1, 2 and 5).

12. Mr. Satterlee was concerned that any future development of the front lot preserve the integrity of the landmark and, in particular, views of the house from Beach Drive. Therefore, in conjunction with the sale, Mr. Satterlee and the Appellant agreed that a "Historic Preservation Easement and Covenants" (view easement) in favor of the Historic Seattle Preservation and Development Authority (Historic Seattle) would be recorded to preserve a view corridor from the street to the house. (Historic Seattle is a public development corporation not affiliated with the Board.) Mr. Satterlee obtained tax benefits as a result of granting the view easement.

13. The view easement recited the parties' understanding that "the Property" that was the subject of the easement included both the house and "an undeveloped lot between" the house and Beach Drive, and that "the Property has substantial and important historic, aesthetic, architectural, visual, spatial and scenic character *and has been designated as a Seattle Landmark" by the City.* The view easement also stated that if "an action with regard to the Property requires approval from the [Board]," the Grantor was not to undertake the action *without obtaining a certificate of approval from the Board* and notice to Historic Seattle. (Exhibit 4, emphasis added) The view easement also gave Historic Seattle two first rights of refusal in the event the property was offered for sale.

14. The Appellant acknowledged at hearing that he knew the Satterlee property was landmarked when he purchased it and understood that the landmark designation could be construed to be broader than just the features protected by the view easement.

Appellant's Marketing of the Property

15. In November of 2006, the Appellant and Historic Seattle amended the view easement to state their new understanding that only the house on the Satterlee property had been designated a landmark by Ordinance 111022, and that any alterations to the house "or the site" requires a certificate of approval. (Exhibit 39)

16. The Appellant testified that he first offered the property for sale sometime in 2006. It has been listed six times and has been marketed in several different ways: as a residential estate; as three vacant lots available for development; and as a house together with three developable lots. It is currently being offered as a residential estate at a list price of $2,200,000.

17. Marie Strong, a real estate broker with a certification in residential and luxury homes who specializes in "homes with history," testified that the marketing for the property has been confusing to the real estate community; they do not really understand what is being offered or the nature of the landmark designation and view easement. Ms. Strong has recently listed and sold luxury and historic properties in West Seattle and stated that an agent for such properties must research and understand the implications of landmark controls and any existing covenants, and must clearly convey that information and

explain the multiple purchase options to the real estate community and prospective buyers. It is also important to repair obvious defects like the sagging foundation in the Satterlee residence, to make the residence readily available for showings, and to stage the home because staged homes sell more quickly and for a higher price. None of this has been done for the Satterlee property. Ms Strong opined that not much effort had gone into favorably presenting the property to the market, and that the condition of the house, in comparison to other similar properties in the area, compromises the property's desirability. (Testimony of Strong)

18. Mark Lawless, a general contractor and certified professional estimator, visited the property and estimated that the cost to repair the Satterlee residence foundation, and the damage related to lifting the house back to level, would be between $275,000 and $300,000.

19. Despite the lack of effective marketing for the property, the Appellant received numerous purchase offers between September of 2006 and November of 2007.

20. In September of 2006, the Appellant received an offer from WGC Inc. to purchase the westerly three lots for $1.2 million. The prospective buyer contacted the Board's staff about the certificate of approval process, submitted an incomplete application for a certificate of approval, and met once with the Board's ARC in 2007 before deciding not to proceed with the purchase.

21. In late June of 2007, the Appellant received an offer of $1,100,000 from Trend Development to purchase the three easterly lots on the property. Because of the view easement ("complications with the covenants and easements of the landmark,"), the offer was reduced to $1,050,000. Ultimately, the sale did not close in October of 2007 as expected because Trend Development was "nervous about spending time & money on design work if [Historic Seattle] decides to" exercise its rights to purchase the property. (Exhibits 53 and 63) The Appellant's listing agent, A.C. Braddock, testified that Historic Seattle later waived both of its rights of first refusal under the easement for any proposal by the Appellant that is approved by the Board.)

22. In July of 2007, the Appellant received an offer of $1.37 million from Sarah Louthan to purchase the Satterlee residence. Because the buyer intended to utilize an unconventional form of financing, the Appellant rescinded his acceptance of this offer.

23. In August of 2007, the Appellant and Trend Development were negotiating an agreement whereby Trend holds an option to purchase the three westerly lots on the property for $1 million. Trend and an investor, Landed Holding Company, were to be the purchasers, and the sale was to close once building permits are issued for the Appellant's proposal. (Exhibits 55 and 63) The Appellant anticipates that Trend Development will proceed with the purchase if the Appellant's development proposal for the lots is approved.

two-story, contemporary "boxes" placed along the north property line and extending across more than half the width of the front lawn. The houses were slightly larger than the Satterlee house, averaging approximately 3,500 square feet of living area including patios and decks that were shown along the south side extending into the lawn, and garages. (Exhibit 36)

30. The ARC members favored keeping the houses as far to the north as possible, and expressed concern about the impact of the houses' massing, size and scale on the integrity of the landmark features. The ARC advised the architects to show an alternative in which the new residences were subservient to the landmark in size, scale and placement, and suggested that through design and placement, the houses could be made smaller or be made to appear smaller and less intrusive.

31. According to Tom Veith, an architect, architectural historian, and experienced Board member, the Board was looking for a proposal that best maintained the historic relationship between the residence and the site while still allowing a reasonable economic use of the property. He explained that a landmark that is economically viable is more likely to survive, and that preservation of the landmark is the ultimate goal of the ordinance.

32. The Appellant refused the architects' inquiries about reducing the size and mass of the houses. That option does not meet his objectives as a real estate developer, which he stated as: recouping as an "expense" the value of the lots in today's market, which he believes is $400,000 each unfinished; and building approximately 3,000 square foot houses on the lots, with very high-end finishes and a floor plan that allows a couple to have everything they need to live on one floor, accommodates other family members on a different floor, and provides level access from all parts of the first floor to outdoor areas. The Appellant believes this is the only development scenario that would allow him to receive the $400,000 lot value when selling the homes. (Testimony of Conner) Mr. Chamberlain testified that the idea of a "lot/value ratio" is not supported in the marketplace for new construction.

33. The Appellant's architects returned to the ARC on July 27, 2007, with a more developed proposal, but house size and placement remained unchanged because the developed floor plans met the Appellant's requirements for marketability. The ARC responded with the same concerns expressed at the June 15 meeting - the size, footprint and organization of the houses on the site, and the fact that they were not designed to show deference to the landmark.

34. The architects' final meeting with the ARC occurred on September 14, 2007. The massing, size and scale of the houses were unchanged. The Appellant showed a peaked roof alternative for the houses, but it did not resolve the massing issues. The ARC members responded that they wanted to see an alternative that included houses that deferred to the Satterlee residence and thus, maintained its contrast of siting and scale. Mr. Veith, who was also a member of the ARC, later summarized the ARC's concerns for the full Board:

> The new buildings should be subservient to the landmark building, maintaining the idea that it was one site and not four; the new houses should be possibly smaller and as far north as possible on the site; any part of [the] structures that could be moved between buildings (garages) should be moved there so the houses aren't pushed forward; detailing should be less busy, the buildings should be simpler and they should be lower, and a suggestion was made about how this could be accomplished by building (part) into the site. He said the main concern was that the site is part of the landmark and the proposed buildings as they are proposed now do not respect the landmark site.

(Exhibit 15, Landmark Preservation Board Meeting Minutes for November 14, 2007, at 7) The Appellant presented no alternatives for the Board's consideration because he maintained there were none that would achieve his objectives.

35. The formal application for a certificate of approval for preliminary design was complete on November 7, 2007, and was scheduled for Board consideration on November 14, 2007. The Appellant submitted a letter that day summarizing his argument that his proposal was necessary in order for him to achieve even a modest economic return on the property. The letter also reserved his "right to submit additional information and analysis on the issue of reasonable economic use before the Hearing Examiner if he deems it necessary to do so." (Exhibit 15, 11/14/07 Letter from G. Richard Hill)

36. At the November 14 meeting, several Board members expressed concern about the height and scale of the proposed houses and their effect on the landmark. In response to a question about lowering the houses by half a story, the architects responded that they believed there were grading and groundwater issues on the site that would prohibit this, but that they could not comment on them to the Board. At the appeal hearing, the Appellant testified that he had no interest in building part of the house into the site because of a potential impact on level access to the yard from all parts of the first floor.

37. The Board deferred the application to their next meeting to allow time for review of the Appellant's letter, and they requested documentation for the Appellant's economic argument. Board staff sought the requested documentation, (Exhibit 15, 11/30/07 email from Chave to Hill), and the Appellant responded with a letter on November 30, 2007, attaching his handwritten ledgers of all his expenses related to the property, and a realtor's "comparative market analysis" for the property. (Exhibit 15)[2] The Appellant's counsel sent an additional response that summarized some information on the Appellant's economic argument but did not address many of the Board's questions and included no

[2] The "comparative market analysis" was prepared by the Appellant's listing agent, who is not a real estate appraiser. The "comparable" properties reviewed in the analysis were built between 1990 and 2005, the values stated were listing rather than actual sale prices, and no adjustments were made for the qualitative differences between the comparable properties and the Satterlee property, such as views, age and condition of systems, and structural condition of the buildings. Thus, the analysis is of questionable value

documentation. (Exhibit 15, 12/7/07 email from Hill to Chave) The Appellant reiterated his right to submit additional information on reasonable economic use to the Hearing Examiner. (Exhibit 15, 12/7/07 email from Hill to Chave)

38. At the Board's December 5, 2007 meeting, the architects presented the proposal, stating that the homes would provide a size, style and amenities that future owners will expect, including 3-4-bedroom homes with 3,700 square feet of interior space including the garage and patio. They explained that although the Board had wanted the homes to be reduced in scale and size, they were not able to accomplish this because of the Appellant's need to receive a "reasonable economic return". The Board had many questions about the information supplied on reasonable economic use, and ultimately voted unanimously to deny the certificate of approval. (Exhibit 15, Minutes of Landmarks Preservation Board Meeting of December 5, 2007)

39. The Board's written decision states that the proposal was denied because: 1) the massing and scale of the three houses would adversely affect the features and characteristics of the landmark; 2) the proposal was not reasonable in light of an alternative to build houses of a smaller scale and massing that could achieve the objectives of the owner; 3) the information presented to the Board was "not sufficient to determine if the proposal is necessary for the owner to receive a reasonable use for the property"; and 4) the proposal was not consistent with the Secretary's Standards, particularly Standard 9. (Exhibit 15)

Alternatives for Reasonable Economic Use

40. Although the Board did not suggest or impose any specific size restriction on the development that could be allowed on the subject property, the parties employed a hypothetical development scenario for illustrative purposes, to evaluate whether there was a potential alternative to the Appellant's proposal that could yield a reasonable economic use. (Exhibit 22) For convenience, this was referred to as "the Board's proposal," and involved development of three homes with a Craftsman-style appearance of approximately 1,600 to 1,800 square feet plus a garage of approximately 500 square feet. This house style and size is compatible with the surrounding neighborhood. (Testimony of Chamberlain and Lawless)

41. The Appellant's financial expert evaluated the appropriateness of the size of the Appellant's proposed houses "from the perspective of the reasonable, normal financial return to the builder of the proposed homes as compared to the return on alternative, smaller homes." (Exhibit 48 at 1-2) Because this approach evaluates only rate of return, rather reasonable economic use, and is tailored to a builder/developer, it does not address the issues presented by the appeal and is not considered further.

42. William Partin, the Board's financial expert, is a Certified Public Accountant and Forensic Economist. He evaluated various investment options that would provide the Appellant with reasonable economic use of the Satterlee property. (Exhibit 29) Although some of the scenarios examine investment options the Appellant could have

pursued between the time he purchased the property and the present, Scenarios 1, 4 and 7 present information on uses the Appellant could make of the property now, having held it for seven years and been denied a certificate of approval for his preferred proposal.

43. The Appellant retains ownership and use of the entire property for residential purposes, the use to which it has been put since the house was built. He can rent the property at market rates, or sell it as a residential estate. The appraised market rental value for the property currently is approximately $3,000 per month. (Chamberlain testimony; Exhibit 29, Attachment 21) The evidence shows that after subtracting all mortgage payments, property taxes and insurance costs, the compound annual return on the property has been approximately 6.6% per year, that its current appraised fair market value is $1,450,000 to $1,550,000, and that it is expected to continue to keep pace with the rate of real property appreciation in the neighborhood. (Exhibit 24; Chamberlain testimony; Exhibit 29) This scenario would result in a positive return on the Appellant's purchase price, i.e., gross profit, and on the amount he had actually invested in the property, i.e., profit on equity. (Exhibit 29, Scenario 1; testimony of Partin)

44. The market has confirmed that the residential estate option in Scenario 1 is a reasonable use of the property, in that the Appellant received a $1,780,000 offer for the entire property in November of 2007. The sale did not close because of buyer concerns about the foundation and potential drainage issues, but the record shows that the Appellant could resolve these issues at a cost that would still allow him to sell the property for its appraised value as a residential estate.

45. The appraised value of just the house and its lot is $800,000-$850,000 as is. It was valued at $600,000 in 2000 when it was purchased. The appraised value of the lower lots if ready for construction, with all approvals in place, is $375,000-$400,000 each, as opposed to $100,000 each in 2000. (Testimony of Chamberlain; Exhibit 24) Mr. Lawless estimated that the construction cost to finish out the lots would be $40,000 each. (Exhibit 29, Scenario 4; Testimony of Lawless)

46. The Appellant has received extensive feedback from the Board concerning the development that can be placed on the landmark property. He could sell the house and its lot, and finish and sell the three westerly lots for future development subject to development restrictions that would have a high likelihood of Board approval. (Exhibit 29, Scenario 4) Mr. Chamberlain and Mr. Partin agreed that development restrictions are commonplace in the market. The market for these lots with "owner/builders" is considerable because these purchasers hire their own contractors to build the houses and do not face the same, short-term needs that a developer must consider, i.e., holding costs, resale costs and profit. Consequently, they can normally construct the homes at a lower cost. (Testimony of Chamberlain)

47. In Scenario 4, the sales price of each lot would be $387,500 (Exhibit 29) and the gross profit on each would be $154,619 after deducting holding and all construction costs, including purchase price, interest, property taxes, insurance, interest on lot development costs, and selling costs. The gross profit on the house would be $18,303.

(Exhibit 29) This scenario would involve some risk, but the Appellant's gross profit and profit on equity would be greater than the residential estate scenario. (Exhibit 29; Testimony of Partin).

48. Mr. Chamberlain testified that a historic designation has no measurable market impact on the valuation of property, but that the uncertainty involved in the timing of an approval for construction could result in a nominal discount in valuation. In Scenario 4, the Appellant would also have the option of spending a small amount on additional architectural work and securing the Board's approval for homes with a reduced mass and scale. Removing the timing uncertainty could increase the selling price for the lots.

49. The Appellant could sell the house and its lot, secure a certificate of approval and construct and sell homes with a reduced mass and scale compared to those in the his preferred proposal. As noted, the parties assumed in the hypothetical scenarios that the houses would be Craftsman-style homes of approximately 1800 square feet plus a 500 square-foot garage. The record indicates that the construction cost for each home, together with sales tax, architectural costs, construction interest, and selling costs would be approximately $443,215. (Exhibit 29, Scenario 7; Exhibit 24; Testimony of Chamberlain, Partin, and Lawless) The sales price for the homes would be approximately $780,000 each, and the gross profit on each would be $216,433 after deducting construction and holding costs. The gross profit on the house would be approximately $18,000. (Exhibit 29; Exhibit 24)

50. Mr. Chamberlain testified that there is significant demand across the entire spectrum of the market for homes of the style and price range envisioned in Scenario 7, and that this type of development could create something unique and very desirable in the marketplace. Because the homes would be "spec houses," this scenario involves more risk than the previous two, but it would also result a higher gross profit, and a higher profit on equity. (Exhibit 29; Testimony of Partin)

Applicable Law

51. On appeal from the denial of a certificate of approval by the Board, the Hearing Examiner is to receive evidence and make findings on the factors specified in SMC 25.12.750. SMC 25.12.760. The applicable factors read as follows:

> A. The extent to which the proposed alteration or significant change would adversely affect the specific features or characteristics specified in ... the designating ordinance;
> B. The reasonableness or lack thereof of the proposed alteration or significant change in light of other alternatives available to achieve the objectives of the owner and the applicant;
> ....
> D. *Where the Hearing Examiner has made a decision on controls and economic incentives*, the extent to which the proposed alteration or significant change is necessary or appropriate to achieving for the owner

> or applicant a reasonable return on the site, improvement or object, taking into consideration the factors specified in Sections 25.12.570 through 25.12.600 and economic consequences of denial; provided that, in considering the factors specified in section 25.12.590 for purpose of this subsection, references to times before and after the imposition of controls shall be deemed to apply to times before or after the ... denial of a certificate of approval;

(Emphasis added.)

52. SMC 25.12.580 states that "in no event shall ... any proceedings under or application of this chapter deprive any owner of a site, improvement or object of a reasonable economic use of such site, improvement or object."

53. The Secretary's Standards pertain to historic buildings ... [and] also encompass related landscape features and the building's site and environment...." (Exhibit 40, "Standards" at page 1 of 3) Standard 9 states that "New additions, exterior alterations, *or related new construction* shall not destroy historic materials that characterize the property. *The new work* shall be differentiated from the old and *shall be compatible with the massing, size, scale and architectural features to protect the historic integrity of the property and its environment.*" (Exhibit 40, "Standards" at page 3 of 3, emphasis added)

54. The Secretary's Standards contain additional guidance on building sites. "Retaining the historic relationship between buildings and the landscape" is recommended, whereas "introducing new construction onto the building site which is visually incompatible in terms of size, scale, design, materials, color, and texture, which destroys historic relationships on the site" is not recommended. (Exhibit 40, "Building Site" at pages 2 through 8 of 8).

Conclusions

1. The Hearing Examiner has jurisdiction over this matter pursuant to SMC 25.12.740. The Examiner's review is de novo, and no deference is given to the Board's decision.

2. Chapter 25.12 SMC, the Landmarks Preservation Ordinance, does not establish a burden of proof on appeal. Hearing Examiner Rule 3.17(c) provides that in the absence of a code requirement on burden of proof, "the Department must make a prima facie showing that its decision or action complies with the law authorizing the decision or action." However, the burden of proof remains with the Appellant. The standard of proof is a preponderance of the evidence. Hearing Examiner Rule 3.17(d).

3. The issues before the Examiner in this case are as follows: 1) whether, and to what extent the Appellant's proposed alterations for the Satterlee property would adversely affect the features and characteristics specified in the designating ordinance; 2) whether there are other alternatives available to achieve the Appellant's objectives; 3) if other

alternatives are available, the reasonableness of the Appellant's proposal in light of those alternatives; and 4) whether denial of the Appellant's application for a certificate of approval deprives the Appellant of a "reasonable economic use" of the property. SMC 25.12.750 A and B; SMC 25.12.580.

Issue 1

4. The height, scale and massing of Appellant's proposal would adversely affect the features and characteristics specified for the property in the designating ordinance because it fails to retain the historic relationship of the Satterlee residence to the sweeping front lawn. The proposal would destroy the residence's "prominence of spatial location," and "contrasts of siting, age and scale" that make it an "easily identifiable visual feature of its neighborhood and contributes to the distinctive quality or identity of such neighborhood". (Exhibit 3)

5. Because the Appellant's proposal fails to retain the historic relationship of the Satterlee residence to the site, it was not shown to be "compatible with the massing, size, [and] scale" of the landmark, and it fails to "protect the historic integrity of the property and its environment." Consequently, the Appellant's proposal does not comply with the Secretary's Standard 9.

Issues 2, 3 and 4

6. The Appellant suggests that the Examiner analyze the appeal under SMC 25.12.750 D, which requires an examination of the extent to which a proposed alteration "is necessary or appropriate to achieving for the owner a reasonable rate of return" on the property, taking into account the factors listed in SMC 25.12.590. However on its face, SMC 25.12.750 D applies only if "the Hearing Examiner has made a decision on controls and economic incentives" for the property. There is no evidence in this record that the Hearing Examiner played a part in imposing controls on the Satterlee property; in fact, the evidence indicates that they were imposed through an agreement with the property owner at the time of designation. SMC 25.12.750 D does not apply here.

7. The Appellant correctly points out that the Examiner lacks jurisdiction over the constitutional aspects of "reasonable economic use" and again suggests that the Examiner substitute an analysis of "reasonable rate of return" under SMC 25.12.590 for the "reasonable economic use" standard required under SMC 25.12.580. This approach would ignore the clear distinction in the Code between applications to alter landmarks for which there are agreed controls, and those for which the controls were recommended by the Hearing Examiner. A legislative body is presumed not to use nonessential words. *State v. Lundquist,* 60 Wn.2d 397, 403, 374 P.2d 246 (1962). And when a legislative body uses different words within the same ordinance, a different meaning is intended. *State v. Beaver*, 148 Wn.2d 338, 343 (2002). In this case, the Examiner must follow the Code's guideline for applications brought under controls agreed to by the property owner and determine, from the economic implications of the various scenarios for using the

property, whether the Board's action deprives the Appellant of a reasonable economic use of the property.

8. Under the scheme of the Landmarks Ordinance, issues surrounding the economic impact of controls on landmark property are resolved during the negotiations leading up to an agreement between the owner and the Board on those controls. They are not revisited every time the owner or a subsequent purchaser applies for a certificate of approval to make alterations to the landmark.

9. Mr. Satterlee knew before, during, and after the designation process that a consequence of the designation would be the requirement for a certificate of approval from the Board before an owner could make alterations to the exterior of the house or the entire site. His testimony to the contrary reflects a failing memory and was contradicted by credible evidence in the record.

10. The landmark is clearly defined in the designating ordinance as the house and the entire site, not just the site on which the house is located. The Appellant was put on notice of this fact when he purchased the property, it is stated expressly in the view easement that he approved at the time of his purchase, and he conceded at hearing that he knew the landmark designation was potentially broader than the view easement.

11. The view easement simply protects public views of the Satterlee residence. It has no bearing on the Board's decision under SMC 25.12.750, on whether to approve the Appellant's proposal to make significant alterations to the Satterlee property.

12. The Appellant contends that he is entitled to develop the property with a specific proposal that will enable him to earn a gross profit that would be expected by a developer, i.e., at least 15% per year for each year that he has owned the property. This is not correct; the development potential of the property does not change with the status of the person who owns it.

13. When the Appellant purchased the property, he "stepped into the shoes" of Mr. Satterlee; he is entitled to use the property only as Mr. Satterlee would have been permitted to use it. A different conclusion would make a mockery of the landmark process. It would allow an owner to agree to landmark controls on a property which could later be set aside by a new owner who found them inconsistent with his subjective expectations of developing the property for a builder's profit.

14. SMC 25.12.580 does not define a reasonable economic use in terms of a specific rate of return on investment. A party who purchases property subject to agreed landmark controls cannot thwart those controls by defining his objectives under SMC 25.12.750 B entirely in terms of the return he desires to make on the property.

15. To the extent that the Appellant's objectives are to make a predetermined developer's return on the property, there may be no other alternative development schemes available, although that is not clear from the evidence. Development of a site that was landmarked

at the time of purchase undoubtedly requires a degree of flexibility and creativity that has not been shown on this record. In any event, the Board has demonstrated that there are other alternatives available to achieve the reasonable objectives of a person in the Appellant's position as a purchaser of landmarked property subject to agreed controls.

16. The alternative of retaining the property, as the Appellant has done, and selling it as a residential estate, involves very low risk. The evidence shows that this would provide a positive return on the Appellant's purchase price and on the amount he has invested in the property. Thus, it is a reasonable economic use of the property that continues to be available to the Appellant after the Board's denial of the certificate of approval.

17. Although the Appellant observes that the property has not sold after being on the market for approximately two years, the evidence in the record demonstrates that the property has not been marketed effectively, that the Appellant has not repaired defects in the house that affect its marketability, and that he has listed it for an amount that exceeds its fair market value by at least $650,000.

18. The alternative of selling the house in its existing condition, and finishing and selling the three westerly lots for future development that would be consistent with existing landmark controls would provide a positive return on the Appellant's purchase price and on the amount he has invested in the property. Therefore, this is a reasonable economic use of the property that continues to be available to the Appellant after that Board's denial of the certificate of approval.

19. The alternative of selling the house in its existing condition, and constructing and selling three homes that would be compatible with the landmark would provide a positive return on the Appellant's purchase price and on the amount he has invested in the property. Therefore, this is a reasonable economic use of the property that continues to be available to the Appellant after the Board's denial of the certificate of approval.

20. The Appellant's proposal is not reasonable in light of the alternatives available that would not adversely affect the landmark and would provide him with a reasonable economic use of the property.

Decision

The Landmarks Preservation Board's December 18, 2007 decision denying the Appellant's application for a certificate of approval for preliminary design for proposed construction of three new residences on the Satterlee property is **AFFIRMED.**

Entered this 28th day of April, 2008.

Sue A. Tanner
Hearing Examiner

Concerning Further Review

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources, to determine applicable rights and responsibilities.

The decision of the Hearing Examiner in this case is the final decision for the City of Seattle. A request for judicial review of the decision must be commenced within twenty-one (21) days of the date the decision is issued, as provided by RCW 36.70C.040.

The person seeking review must arrange for and initially bear the cost of preparing a verbatim transcript of the hearing. Instructions for preparation of the transcript are available from the Office of Hearing Examiner. Please direct all mail to: PO Box 94729, Seattle, Washington 98124-4729. Office address: 700 Fifth Avenue, Suite 4000. Telephone: (206) 684-0521.

Applicant:
Williams Conner
c/o G. Richard Hill
McCullough Hill, PS
701 Fifth Avenue, Suite 7220
Seattle, WA 98104

Landmarks Preservation Board:
Judith B. Barbour and Eleanore Baxendale
Assistant City Attorneys
Seattle City Attorney's Office
PO Box 94769
Seattle, WA 98124-4769