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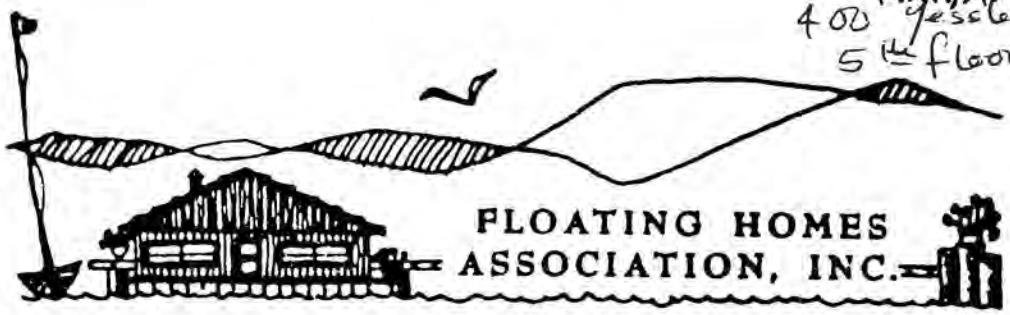

Floating Homes Moorages:
A Portrait Of A Monopoly

In this special supplement to the March-April, 1980, Newsletter the Association is publishing the full text of the memorandum of Attorney Lawrence Ransom, contesting the $30,000 annual moorage increase demanded by the Freeman-Gibson business partnership. The increases involve 51 floating home at 2017-2019-2025 Fairview Ave. E. The Association considers Mr. Ransom's "brief" as a document of unusual importance for the manner in which it presents the impact of monopoly on our community and in clarifying some of the basic issues involved in the need for an effective and equitable regulation.

I. Introduction

Petitioners are the owners and occupants of 51 floating homes moored at floating home moorage facilities at 2017, 2019 and 2025 Fairview Avenue East ("moorage" herein). Respondents Freeman, Gibson, and Jeffery are the owners of these moorage facilities. Because the operator of the moorage is Mark Freeman, respondents are referred to collectively herein as "Freeman."

On or about October 1, 1979, Freeman gave notice to all of the floating home owners of moorage fee increases ranging from $49.00 to $69.00 per month. Pursuant to Seattle City Ordinance 107012, the 51 floating home owners filed timely petitions for fact-finding to determine whether the demanded moorage fee increase is reasonable in amount.

On November 20, 1979, Eugene D. Zelensky was appointed as fact-finder. Counsel for the parties met with Mr. Zelensky on December 14, 1979. At that time the parties, with the fact-finder's approval, agreed as follows: (1) The reference to "60 days" in Section 7 of the Equity Ordinance would be changed to "90 days for the purpose of this proceeding." (2) The time period relevant to this proceeding would be 1970 to the present. The public hearing required by Section 6 of the Equity Ordinance would take place on January 30 and, if necessary on January 31, 1980. (4) In order to eliminate the need for a large number of witnesses at the hearing, material of a "hearsay" nature could be presented as evidence at the hearing "for what it is worth" as long as the opposing parties had been given notice of the nature of such evidence.

Pursuant to due and proper notice, the hearing commenced and was completed on January 30, 1980 at the Lincoln High School Auditorium in Seattle, Washington. At the hearing Freeman presented the testimony of Mark Freeman. The floating home owners presented the testimony of Mr. Terry Pettus, an expert on history and regulation of floating homes and shorelines in Seattle; Mr. Clay Eaton, one of the petitioning floating home owners; and Mr. David McGowan, an expert on rates of return on various investments.

Upon the conclusion of the hearing, the parties agreed that simultaneous post-hearing briefs would be submitted to the fact-finder on February 13, 1980, that the fact-finder would issue his preliminary decision on February 19, 1980, and that his final decision would be issued on February 22, 1980.

Fact Finder Rejects Freeman Moorage Hike

"I find that the proposed moorage increase in unreasonable."

This was the conclusion of Attorney Eugene D. Zelensky, fact-finder in the Equity Ordinance case involving $30,000 in demanded increases at the Freeman-Gibson-Jeffrey moorage, 2017-2019-2025 Fairview Ave. E. Owners of 51 floating homes protested the increase, and the hearing was held Jan. 30.

"I have no difficulty finding that there is no free market for moorage sites for existing floating homes," the decision said, "and that the Equity Ordinance is a means of controlling the price charged by moorage owners, as beneficiaries of a monopoly, on the floating home owners who are captive customers of the monopoly product."

Mark Freeman, manager, testified that the owners valued the moorage property at $1,586,000 and felt they were entitled to an annual net return of $225,948. The fact-finder rejected this, pointing out that "to arrive at that figure he [Freeman] includes approximately 54,000 feet of lease or permit land which makes up more than half of the total. That land is available to respondents under extremely favorable arrangements . . ."

Zelensky also disallowed $3,000 which Freeman paid as "dues" to the Lake Union Association in 1979 and included as a "maintenance cost." "I must agree with petitioners that the Lake Union Association dues were largely applied to an effort to promote legislation which would overturn the Equity Ordinance and its stated purpose. I find it unreasonable that that annual expenditure be considered in support of a rental increase."

II. Statement of undisputed facts

The following facts are not in dispute in this proceeding:

1. The moorage facilities involved in this proceeding are located totally on submerged land in Lake Union. A portion of this land is owned by the State of Washington and leased to Freeman; a portion is owned by the City of Seattle and "leased" by permit to Freeman; and a portion is owned by Freeman. The square footage of each such portion of the moorage facility is as follows:

State Lease Land	44,100 sq. ft.
City Permit Land	10,364 sq. ft.
Property of the Owners	47,775 sq. ft.
Total	**102,239 sq. ft.**

Roughly 53% of the submerged land which comprises the moorage facility is publicly owned. The remaining 47% is privately owned by Freeman.

2. The drawing which was presented at the hearing is an accurate portrayal of the relative locations of the floating homes at the moorage. The drawing reveals that 28 petitioners' floating homes at the moorage are in whole or substantial part moored over state lease or city permit land. [One of the floating homes on the state land is occupied by Freeman's maintenance man, who pays a $15/month utility assessment to Freemand and otherwise pays no rent and receives no salary.]

3. At the time the moorage fee increase which is the subject of this proceeding was announced, the residents of the moorage were paying the following moorage fees:

1 paid $120.00 per month	13 paid $160.00 per month
26 paid $140.00 per month	1 paid $167.50 per month
10 paid $150.00 per month	1 paid $ 15.00 per month
	[non-petitioner maintenance man]

These moorage fees produce a gross monthly return to Freeman of $7,522.50 per month and a gross annual return of $90,270.00. [Respondent's Exhibit 4 indicates a gross return for 1978 of $86,640.00. That figure is in error.]

4. The proposed moorage fee increases that are under scrutiny in this proceeding are as follows:

Current	Amount of Increase	Increased To
1 $120.00/Month	$69.00	$189.00/Month
26 $140.00/Month	$49.00	$189.00/Month
10 $150.00/Month	$52.00	$202.00/Month
13 $160.00/Month	$55.00	$215.00/Month
1 $167.50/Month	$57.50	$225.00/Month

The proposed increase averages $51.68 per moorage site, for an average percentage increase of slightly more than 35%.

The proposed increase would produce a gross monthly return to Freeman of $10,143.00 per month. The gross annual return would be $121,716.00 [including the undercharged $15/month from the maintenance man].

5. The consumer price index for residential rents in the Seattle-Everett area stood at 203.6 for November 1979, the month when the proposed moorage fee increase was to take effect. The CPI for residential rents in the Seattle-Everett area in November 1970 stood at 107.8.

The increase from November 1970 to November 1979 was 88.8%.

6. In 1970 the gross monthly return from the moorage was $4,067. The increase in gross monthly return to the current (pre-increase) amount is 85%. If the proposed moorage fee increase were to become effective it would provide to the owners a percentage increase in gross return since 1970 of 149%.

7. Freeman's profit in 1970 (gross income of $48,804 minus expenses of $13,166.71) was $35,637.29. If the demanded moorage fee increase goes into effect, and assuming without conceding the validity of both of Freeman's assertions of current annual expenses of $26,900.65 and increase for 1980 of 14%, Freeman's 1980 profit would be $91,049.26. This would represent an increase in profit since 1970 of 155%.

III. Historical perspective of shoreline and floating home regulation

In order to apply the requirements of Sections 6, 7 and 8 of the Equity Ordinance to make a proper determination of the reasonableness of the demanded moorage fee increase, it is essential that the fact-finder have a clear understanding of the history of shoreline and floating home regulation by both state and local legislative bodies. This history, which was provided at the hearing through the testimony of Terry Pettus (without contradiction by Freeman), reveals two points that are critical to the determination both of the reasonableness of moorage fees and the related determination of the fair market value of the moorage property in question:

(1) As a result of extensive governmental regulation, there is no legal place to put an existing floating home in Seattle, other than the moorage site which it presently occupies. A floating home which is removed from its present location is illegal and would have to be dismantled and sold for scrap.

(2) Because of the condition described in (1) above, there is no free market for moorage sites for existing floating homes. A floating home owner is, in essence, the captive of the moorage owner, is desperate need of what, by regulation, has become a monopoly product. Without control of moorage fee increases through procedures such as the present fact-finding process, a moorage owner could charge any amount as a moorage fee, and the floating home owners would either have to pay or scrap their homes.

Thus, the fact-finding process, and the requirements of Ordinance 107012 must be understood for what they are: a means of controlling the price charged by the primary beneficiaries of a state and city-created monopoly to the individuals who are the captive customers of the monopoly product, floating home moorage sites.

IV. Argument

In determining the reasonableness of the demanded moorage fee increase, the fact-finder's ultimate determination must be, after consideration of all relevant factors, what moorage fee will constitute a fair and reasonable return upon the current value of the property owned by the owner of the moorage. The applicable criteria must be interpreted and applied in light of the purpose of the Equity Ordinance.

Before the analysis begins, certain critical considerations must be identified:

1. The relevant "current value" under the Equity Ordinance is that of "the property of the owner." Section 6. Significantly, it is **not** the value of the property of the state or the city.

2. The Equity Ordinance **does not** operate on a presumption that current moorage fees are reasonable. The fact-finder must apply his analysis to the current fee and must not limit the analysis to increases and events since the last increase. Although the Equity Ordinance does not authorize the fact-finder to roll back the current moorage fee, the analysis must necessarily begin with a determination of whether the current (pre-increase) fees provide a reasonable return to the owners. If the return produced by the current fee is equal to or in excess of an amount determined by the fact-finder to provide a reasonable return, then the analysis must end because any increase would be per se unreasonable.

With these controlling considerations in mind, the discussion should proceed to analysis of the criteria set forth in Section 6 of the Equity Ordinance.

A. Consumer Price Index for Residential Rents in Seattle.

As noted above, there is no dispute as to the CPI from 1970 to November 1979, the date the proposed increase was to go into effect. Respondents' theory, as presented at the hearing, was that the relevant period of change in the CPI is the period since the last fee increase. This approach is particularly ill-founded where the last increase was imposed just prior to the effective date of the Equity Ordinance, and was inspired by efforts to defeat the Ordinance, as acknowledged by Mr. Freeman.

Furthermore, the Equity Ordinance sets no limitation on the period for which the CPI changes are relevant. The fact-finder has ruled and the parties have agreed that the period from 1970 to the present would provide the time frame for analysis. Consistent with that approach, the fact-finder must look at changes in the CPI for the entire period.

CPI analysis presents an interesting analytical problem. The reason for concern about changes in the CPI is to protect the moorage owner against inflating costs. There is general agreement among moorage owners and floating home owners that necessary operating expenses, utilities, taxes, and state lease payments should be passed on to the floating home owners. To the extent that inflation (as reflected in the CPI) affects these direct costs of operation, such inflation is reflected in the rises in those costs themselves, which are passed on at their inflated level to the floating home owners. The effect of inflation, which is what the CPI is all about, is calculated in the direct costs and does not create some abstrict ability to increase the moorage fee by the percentage of CPI increases in the CPI. If Freeman's costs don't go up, then changes in the CPI are irrelevant. If the costs do go up, they should be passed along as expenses rather than as corresponding percentage increases in the moorage fees.

As pointed out above in the statement of undisputed facts, the moorage fee increases from 1970 up to the current, the pre-increase fees track the increases in the CPI with surprising congruity. If the

Gets $47,040 For Public Land Costing $4140

Uncontested testimony was presented at the moorage increase hearing that the Freeman-Gibson-Jeffrey partnership pay an annual rent of $4,140 for the use of city and state land. This is then rented to 29 floating home moorage owners for annual moorage fees totalling $47,041. The demanded increase would increase this to $63,504. More than 150 persons attended the hearing held in the Lincoln High School auditorium Jan. 30th.

demanded increase is permitted by the fact-finder, the moorage fee increases since 1970 will outrun the CPI by **sixty percent!**

Because the CPI increases are but one of many factors to be considered by the fact-finder, and in light of the fact that inflation is reflected in increased costs which are passed directly to the petitioners, it is the contention of the petitioners that the extremely close correlation between increases in the CPI since 1970 and increases in the moorage fee **without the present demanded increase** since 1970 essentially neutralizes the meaning of the CPI criteria and obviates the need for further consideration of it.

B. **Expenses of Operation.**

For purposes of efficiency, discussion of criteria set forth in subsection 2, 3, and 4 of Section 6 of the Equity Ordinance will be consolidated. These are essentially the "expense" items.

Freeman set forth his expenses in Exhibit 7 entitled 1979 Yearly Resume. Petitioners do not take issue with the **amount** of any of the items set forth in Exhibit 7, but do contend that two of the significant entries must not be included in the fact-finder's analysis at all.

The first challenged item is that labeled "Management Services." As Mark Freeman testified, this amount ($3,600) represents $300 per month which he purportedly pays to himself for running the moorage. However, it was clear from the evidence before the fact-finder that Mark Freeman is one of the principal beneficiaries of the profits of the moorage. To permit him to share in the profits and at the same time draw a "salary" chargeable to the petitioners is unreasonable, and the amount of expenses should be reduced by the amount designated as "management services" — $3,600.

The second challenged entry on the expense resume is Lake Union Association Dues: $3,016.00. Examination of Exhibit 5 reveals that during 1976, 1977 and 1978 there were no Lake Union Association Dues at all. Mr. Freeman was unconvincingly evasive about his knowledge of the nature of the $3,016 dues assessment for 1979. However, it ultimately became clear that the purpose of the increased dues was to pay the cost of a major battle to eliminate the Equity Ordinance itself, primarily through efforts to promote preemptive legislation in the statehouse at Olympia. When asked how these efforts would benefit the floating home owners, Mr. Freeman emphatically and unequivocally stated that the destruction of the Equity Ordinance would be beneficial to the floating home owners.

It would be ironic indeed if the fact-finder were to recognize as a legitimate expense moneys spent for the stated purpose of destroying the very ordinance under which the fact-finder himself derives his authority. It cannot seriously be contended that the city council intended that expenses so blatantly directed at thwarting the purpose of the Equity Ordinance should be included in the analysis of a fact-finder whose duty it is to apply the Ordinance.

Freeman alleges a total expense of $26,900.65 for 1975. Elimination of the Lake Union Association Dues entry reduces this amount to $23,884.65. Elimination of the Management Services entry reduces the allowable expenses still further to $20,284.65.

Mr. Freeman stated that he expected his expenses to increase by roughly 14% for 1980 based on predictions of inflation. However, Mr. Freeman also admitted that the street rent payment and the state lease payment would not be increased during 1980. Assuming **arguendo** that all the other expenses will go up by 14% during 1980, one can calculate projected expenses for 1980 as follows:□

Allowable Expenses for 1979	$20,284.65
Minus Street Rent & State Lease ($4,131.44)	$16,153.21
Times 14% Inflation Adjustment	$18,414.66
Plus Street Rent & State Lease ($4,131.44)	$22,546.10

Thus the total, predicted, allowable expenses for 1980 should be $22,546.10. [Note that if the fact-finder allows the Management Services expense, the total 1980 projection would be $26,650.10; if both the Management Services and Lake Union Association Dues are allowed, the 1980 expense projection would be $30,088.34.]

C. **Capital Improvements.**

Freeman has presented no evidence of any capital improvements which are to be considered, and has not included in the expense calculation any depreciation for capital structures. It may thus be inferred that all capital improvements at the facility are old enough to have been fully depreciated. There is, therefore, nothing for the fact-finder to consider in this category.

D. **Increases or Decreases in Services; Deterioration of Premises**

Freeman presented no evidence as to increased services, and the floating home owners presented no evidence as to decreased services. Similarly, the floating home owners did not attempt to demonstrate any "substantial deterioration" of the facilities. It may therefore be assumed that the parties both concede that there is

nothing for the fact-finder to consider relative to the criteria of Section 6(5) and (6). There is unquestionably no evidence before the fact-finder to support an increased fee based on these criteria.

E. **Current Fair Market Value.**

A determination of the current fair market value of a floating home moorage facility appears difficult because there is a very small amount of turnover of such moorages. The fact-finder is forced to rely on only tangentially analogous "comparables" and on notions of "fairness" derived from the Equity Ordinance itself and from basic economic considerations.

1. **Only The Owned Property Is To Be Considered.**

As noted above, the Equity Ordinance mandates that the relevant property is the "property of the Owner." These words were obviously carefully chosen by the City Council which was well aware that most of the floating home moorage facilities on Lake Union are on state lease and city permit land as well as on land owned by private individuals.

Freeman asserts that the land which he leases from the state or uses by city permit should be included fully in the market value calculation. Freeman owns only 47,775 square feet of property at the moorage. However, he would ask the fact-finder to calculate fair market value as if he owned an additional 54,464 square feet which in fact is publicly owned.

As both the testimony presented at the hearing and simple common sense dictate, the charge by the state and city to Freeman for the use of state and city land is nominal. The total annual fee for 1979 of $4,131.44 amounts to less than $345 per month.

A review of the economic benefit which Freeman derives from the state and city lands is extremely revealing. Excluding for the purposes of this illustration the one floating home which is on state property and occupied by Freeman's "maintenance man," there are 28 floating homes in whole or substantial part on state or city property. Even assuming that the lowest of the current generally applicable fees would be charged to the owners of those 28 homes (an incorrect assumption because the floating homes on the extremities are on the prime sites), the following is revealed:

No. of Sites	Current Fee/Month	Proposed Fee/Month	Cost per Monthly State/City Fee
28	$3,920.00	$5,292.00	$345.00

Even if the full extent of Freeman's expenses is accepted, the monthly per-site expense is $37.20. Thus the monthly expense attributable to the 28 floating homes on state and city property is $1,041. (This figure would be reduced to $739.04 if the fact-finder excludes the Lake Union Association dues and Freeman's Management Service fee.) Adding the monthly expense figure to the state lease and city permit fees, and giving Freeman the benefit of every doubt as to validity of expenses, produces a total monthly cost to Freeman of $1,386.83. The result of these calculations is as follows:

Current Costs Attributable to State and City Leases	Profit (Mark-up) At Current Moorage Fee	Profit (Mark-up) At Proposed Moorage Fee
$1,386.83	182%	281%

[It must be remembered that the percentages would actually be significantly higher if the current prime site fee were used rather than the lowest possible fee.]

It is obvious from this illustration that Freeman already receives a tremendous economic benefit from the use of the city and state lands.

The critical question before this fact-finder must be who should reap the benefits of the government-created freeze on the use of the lease lands and the government's largesse extended in the form of a very low rental rate. If the existence of the state lease and city permit opportunity is permitted to have a substantial impact on the value of Freeman's property, then Freeman gets not only the benefit of low rent in relation to income produced, but also gets the benefit of enhanced market value. This leaves no benefit for the principal users of the land, the floating home owners who are Freeman's tenants, and in fact cretes a significant detriment to them.

It must be assumed that when government authorizes the use of its land by private parties, it intends a benefit to the public. When the government is aware of the manner in which the land is to be utilized, government must intend that the benefit of its favors is not to be limited to a few individual businesses. This is particularly true when the benefit extended enhances the already monopolistic characteristics of a business. If, in the present case, the state lease and city permit lands are considered to substantially increase the value of Freeman's land and to therefore permit Freeman to charge a higher rate to the floating home owners, then the state is effectively subsidizing Freeman's business at the very considerable expense of the other users of the property — the floating home owners. It cannot reasonably by asserted that the state intends to subsidize Freeman and to penalize the floating home owners. Yet this is precisely the effect of permitting the presence of the leasehold to increase the value of Freeman's property.

The only appropriate conclusion is for the fact-finder to permit the expense of the city permit and state lease to be included among allowable expenses and to limit concern about fair market value to the property owned by the owners. This conclusion is compelled by the explicit language of the Equity Ordinance and by sound considerations of public policy.

2. **Determination Of Market Value.**

The only thing known about the acquisition of the moorage property in question is that it took place well prior to 1970. It is certainly reasonable for the fact-finder to assume that the acquisition price was very small and that it has in any event been fully amortized over the intervening years.

The fact-finder is left with virtually no information related to the moorage property itself which is helpful in determining the current

SUPPLEMENT 4

Monopoly Is Obvious

FACT FINDER EUGENE D. ZELENSKY

"I have no difficulty in finding that there is no free market for moorage sites for existing floating homes and that the Equity Ordinance is a means of controlling the price charged by moorage owners, as beneficiaries of a monopoly, on the floating home owners who are the captive consumers of the monopoly product."

fair market value of the property of the moorage owners. Attention must therefore be directed to sales of submerged land in Lake Union in recent years, and the fact-finder must determine the extent to which such sales are "comparable" and therefore helpful in making the required determination. It should be noted that the only evidence of "comparability" presented by Freeman was Mark Freeman's decidedly unprofessional opinion.

There appear to be two approaches to making the determination of the fair market value of the property of a floating home moorage owner. One is to determine a fair value per square foot and to multiply that number by the number of square feet owned by the owner. The other is to determine a value per floating home moorage site and multiply that value by the number of sites at the moorage in question.

a. **Value Per Square Foot.**

Petitioners have presented for the fact-finder's consideration the Roanoke Reef Potential Use Study of April 9, 1979. Respondents were given ample advance notice that this report would be submitted. The study involved the appraisal of submerged and dry land on Lake Union for the purpose of determining both value and use, including use as a floating home moorage facility. As stated on page 8 of that report, "There is considerable belief in the local real estate community that an equitable distribution of land vs. water value in any given sale is in the ratio of 2:1."

(i) **900 Westlake**

In August 1979 the property at 900-906 Westlake [Avenue] in Seattle was sold for $290,000. This sale has been offered as a comparable by the respondents themselves so there can be little question about its usefulness in this proceeding.

The square footage of the 900-906 Westlake property is 22,679 square feet. Of this, by respondents' own estimate, approximately 8,000 square feet is under water. Respondents have calculated a value per square foot of the submerged portion of this land on the thoroughly erroneous principle that upland and submerged land have the same value, basing this assumption on the uninformed opinion of Mark Freeman. In fact, as indicated in the Roanoke Reef Study, the standard method of valuing upland and abutting submerged land is to apply a ratio of 2:1 in favor the upland portion of the property. Applying this ratio to the 1979 purchase of the 900-906 Westlake property gives a value of $15.53 per square foot for the upland portion of the property (14,679 square feet) and a value of $7.77 per square foot for the submerged portion (8,000 square feet). Applying the $7.77 per square foot value to the 47,775 square feet of privately-owned submerged land at the Freeman-Gibson-Jeffery moorage produces a total valuation of $371,211.75.

(ii) **Freeman-Knudson Dock On North Northlake Way**

This comparable was discussed in some detail at the hearing because it arises from a transaction in which Mark Freeman himself was involved as an apparent arm's-length negotiator. The details of the transactions are set forth on page 23 of the Roanoke Reef Study. Mark Freeman did not contest the accuracy of any part of the description of the transaction except the portion of the "analysis" which indicated that a 2:1 upland/submerge ratio was applied and the resulting determination that the submerged land was valued at $1.65 per square foot.

Mark Freeman's involvement in the Freeman-Knudsen transaction itself weakens the credibility of his objection to the analysis. However, even assuming for the purpose of argument that submerged and dry land should be valued equally, the overall value per square foot for the Freeman-Knudsen transaction is $3.46. And even if this amount were to be **tripled** to compensate for any conceivable rise in value since the 1976 date of the transaction, the value per square foot would be $10.38. Applying this figure to the 47,775 square feet of property owned by Freeman at the moorage in question here produces a total value of $495,904.50.

b. **Valuation Per Moorage Site.**

Only two examples of sales which were in any way related to floating home moorage facilities were presented at the hearing. The first was the sale of an entire moorage facility plus a couple of floating homes at 2349-51 Fairview Avenue East. The details of the transaction are contained in the materials included as Attachment 3 to this Memorandum and which were confirmed by Mark Freeman on cross-examination at the hearing. A copy of the documents in Attachment 3 was provided to Freeman's counsel several days in advance of the hearing.

The second moorage site "comparable" was presented by Freeman and involved the sale of two units of the Flo-Villa Co-op at 2207 Fairview Avenue East. For the reasons set forth below, the 2349-51 Fairview sale does provide a valid "comparable," while the sale of two units at 2207 Fairview is not comparable and provides no meaningful information to the fact-finder.

(ii) **2349-51 Fairview Avenue East**

The above-referenced property, used as a floating home moorage facility, was apparently purchased in 1977 for $70,000. A half-interest was sold in 1979 for $35,000. Therefore, as of one year ago, the moorage facility was still valued at $70,000. The purchase price included the seller's interest in State Lease Land and City Permit Land and also included two floating homes and certain options. Significantly, both the seller and the buyers operated and do operate the property as a floating home moorage.

For the purposes of this illustration, petitioners base their calculations below on the full $70,000 price. [Obviously, if the "extras" and their values were excluded from consideration, the purchase price of the moorage facility itself would be even less than $70,000. This factor can be used to compensate for any appreciation in value that may have occurred in the past year.]

There are ten floating home moorage sites at the 2349-51 Fairview Avenue East moorage facility. Thus, pursuant to the purchase described above and indicated in Attachment 3, each moorage site has an average value of $7,000. Applying this figure to the 52 moorage sites at the Freeman moorage which is the subject of this fact finding, a comparable value is established of $364,000.

(ii) **Flo-Villa (2027 Fairview Avenue East)**

Freeman attempts to convince the fact-finder that the sale of two units in the Flo-Villa Co-op at 2027 Fairview Avenue East are comparable and therefore provide some assistance to the fact-finder. In fact, the Flo-Villa sales are of no assistance whatsoever.

SUPPLEMENT 5

Return Now Is 200%

ATTORNEY RANSOM & CLAY EATON

"By standard methods of determining the return on income producing property, Freeman realizes a return of over 200% with no increase in moorage fees. If the demanded increase is approved his annual return will be over 300%."

First of all, there is Insufficient Evidence before the Fact-Finder to Establish Comparability. The evidence before the fact-finder reveals that the Flo-Villa sales provide a classic apples-and-oranges situation — and we don't even know what brand of oranges are involved. We do know that the Flo-Villa purchasers were not buying fee interests in their moorage sites. One of the "purchased" sites was located on the state lease lands which could not have been bought by anyone.

The evidence does indicate that Flo-Villa is set up as a co-operative. It is probably reasonable to assume that what was purchased was some kind of share in the co-operative. But there is no way to know what ownership of a share means. Does it provide for maintenance? For insurance? Does it give decision-making power over the entire moorage? Does it impose liability on the owners for the action of other co-operative members? Does it entitle the owner to an interest in common assets other than the moorage site itself? Does it provide for a parking space or a boat moorage? Does it eliminate the need to pay monthly moorage fees? All of these questions and more must be answered before the "price" which was paid by the Flo-Villa purchasers can be translated into a measure of comparability which has any meaning in the present proceeding.

Second, and even more significant, is the fact that the Flo-Villa Sales Do Not Establish a "Fair" Market Value Because the Purchasers were the Owners of the Floating Homes on the Sites Involved in the transaction. As factor number (7) of Section 6 of the Equity Ordinance explicitly states, it is the "fair" market value which is to be considered by the fact-finder. Deep imbued in our economic system is the concept that an unregulated price in a monopoly context is not a fair price. The Seattle City Council has determined that floating home moorage owners possess a monopoly, and the price that any moorage site owner charges to the owner of the floating home which occupies that site must be presumed to be a monopolistically determined and hence unfair price.

For every monopoly there is a monopoly product and a more or less identifiable group of consumers. In the present case, the monopoly product is individual floating home moorage sites in the City of Seattle. This product is controlled by moorage facility owners such as Freeman. The consumers of the monopoly product are the individual floating home owners. As the evidence at the hearing amply demonstrated, the monopoly has made them totally dependent upon the moorage sites that their floating homes presently occupy. If they lose the use of that moorage site, they lose the value of their floating homes, except as scrap. To a significant degree, therefore, the floating home owner is the hostage of the person who controls the moorage site, whether it be of the single site or of the entire moorage facility. A hostage must of necessity be willing to buy his or her freedom at a price that is greatly in excess of what he or she would pay in a free and open marketplace.

In the two examples of a moorage site purchase presented by Freeman, the purchaser was the owner of the floating home moored at the site. Those floating home owners were buying their way out of the monopoly. It is not clear under the Equity Ordinance whether a moorage tenant is protected from eviction or change of use of ownership of the moorage site changes. Thus, when the owner of the site indicates that the site will be sold, the owner of the tenant houseboat is placed in at best an ambiguous, and at worst a desperate position.

The fact-finder is asked to determine the fair market value of Freeman's property. To make such a determination on the basis of two sales to the victims of the floating home moorage monopoly is both inappropriate and inconsistent with the purpose of the Equity Ordinance. It is the petitioners' contention that the concept of "fair" market value simply cannot be based on the sale by the monopolist of the product of the monopoly to the consumer of the monopoly product.

If Freeman wants the benefit of sales at moorage sites to the captive owners of the floating homes occupying these sites, let him reap those benefits by selling the moorage to the floating home owners, not by claiming that other such sales represent comparable "fair" market values.

c. **Summary**

In summary then, proper analysis of comparable sales of Lake Union property provides the following:

(i) **900 Westlake** = $7.77/sq. ft. (submerged)
27,775 sq. ft. (Freeman moorage property) x 7.77 = **$372,211.75**

(ii) (Freeman-Knudsen Property (tripled(= $10.38 sq. ft.
27,775 sq. ft. (Freeman Moorage Property) x 10.38 = **$495,909.50**

(iii) **2349-51 Fairview Floating Home Moorage**
$7,000 per moorage site
52 sites (Freeman Moorage) x $7,000 = **$364,000.00**

(iv) **Flo-Villa (2027 Fairview Avenue East)**
Not comparable; Not fair market values; Not applicable.

F. **Fair and Reasonable Return**

The fair and reasonable rate of return for a floating house moorage should not exceed 10-11%. This point was clearly established by the petitioners' expert economics witness Mr. David McGowan. The only evidence to the contrary was Mark Freeman's totally non-expert opinion that 17% or so was a reasonable rate of return for a moorage facility because some bank which he called up was charging something around that rate for short-term commercial loans in excess of $50,000. It requires little economics analysis to determine the invalidity of Mr. Freeman's opinion to the floating home moorage business in Seattle, and attention should therefore be paid to the nature of Mr. McGowan's analysis.

As Mr. McGowan testified, the primary ingredient in determining the reasonable rate of return on an investment is the nature of the **risk** involved. The higher the risk, the higher the expected rate of return.

The floating home moorage business is virtually a "no-risk" business for several reasons. First, there is 100% occupancy. Second, there is no "bad-debt" risk because the floating home itself is always available to satisfy arrearages; the tenant cannot simply skip out, as an apartment tenant could. Third, the tenant cannot damage the premises as one might an apartment because he or she owns his or her own home. Fourth, the return to the owner of an increase is not short-term, but is guaranteed for an extended period of time. Fourth, the moorage owner is totally protected against downward fluctuations in real estate values, because the Equity Ordinance does not require a roll-back in fees if market value declines, and the captive audience floating home owners have no bargaining power to bring the price down.

On the basis of the above considerations, and by comparison with other investments, Mr. McGowan testified that 10 to 11 percent would be a reasonable rate of return. In fact, Mr. McGowan even testified that such a return, virtually guaranteed for an extended period of time, would present an extremely attractive investment.

One significant aspect of Mr. McGowan's testimony should be underlined for the fact-finder as he endeavors to determine the reasonable rate of return for the moorage property. Mr. McGowan stated that the standard method for determining return on investment is to compare income with capital outlay. The reason for this is simple: Any property has **two** values, a value as an income property or a value as an appreciating capital asset. The owner realizes an appreciation by selling the asset, something Freeman declines to do despite what he described as inquiries about purchase "every other day." Freeman has thus made the choice to use the property as an income property, and the standard method of determining the return on that approach to the property is to compare capital outlay to income.

In this case, with fully depreciated improvements and a long-ago purchase which has been amortized over many years. the only significant capital outlay is the annual expenses. Using only very rough figures for demonstrative purposes, the current (pre-increase) gross income is roughly $90,000 per year while the expenses are (very roughly) $30,000. By standard methods of determinging the return on income producing property, Freeman realizes a return of over 200% with no increase in the moorage fee. If the demanded increase is approved, his annual return will be **over 300%**

Considering the incredible return being received by Freeman already, and realizing that when Mr. McGovern refers to a 10-11% return he is comparing income to capital outlay rather than appreciated value, the return determined by the fact-finder to be reasonable in relation to current market value certainly should not exceed 10%. A determination that a higher rate of return is reasonable would create the inequitable, unintended, and economically inde-

fensible position of permitting Freeman to "realize" the value of appreciation of the property without selling the property. The Equity Ordinance is not intended to provide such benefits to the moorage owners who, at least in Freeman's case, are already receiving over 200% in return on their capital outlay.

G. **Comparability with Fees Charged At Other Moorages**

Included as Attachment 4 to this Memorandum is a two-page document summarizing the moorage fees charged at the other floating home moorages on Fairview Avenue on Lake Union. Analysis of these figures reveals that the average moorage fee currently charged at all the docks **except** those which are the subject of this fact-finding proceeding (**i.e.**, Nos. 1, 2, & 3 on Attachment 4) is $141.66 per month. The average fee **currently** charged at the Freeman Moorages in question here is $146,81 per month. If the demanded increase is permitted, the average will be $198.37.

On a percentage basis, the current average fee at the Freeman Moorages is 3.6% higher than the average fee for the non-Freeman moorages. If the demanded fee increase is put into effect, the average Freeman Moorage fee will be 38.6% higher than the average for the non-Freeman moorages.

Certainly there is nothing to suggest that the current Freeman moorage fees are low in relation to the other moorages, and in fact the contrary conclusion is called for. In addition, no evidence has been presented to suggest that the Freeman Moorage is a better moorage than the others on Lake Union. In the absence of such evidence, it must be assumed that it is an average moorage. [Petitioners do not, incidentally, make any contention that the Freeman Moorage is sub-average.]

The criteria of comparability with other moorage fees is at best a neutral factor and certainly does not support an increased moorage fee. Significant, however, is the fact that the demanded increase would place the Freeman moorage solidly above the average fee currently charged at other moorages.

H. **Computation of Fair Return**

Applying various rates of return that are not out-of-line with David McGowan's testimony to the possible market values set forth in Section E.2.c of this Memorandum produces the following results:

(1) **Value based on 900 Westlake:**		$371,211.75
10% return	= $37,121.18	
11% return	= $40,833.29	
12% return	= $44,545.41	
(2) **Value based on Freeman-Knudsen:**		$495.904.50
10% return	= $49,594.05	
11% return	= $54,549.50	
12% return	= $59,508.54	

(The fact-finder should keep in mind that for purposes of illustration, petitioners **tripled** this market value since 1976).

(3) **Value based on 2349-51 Fairview:**		$364,000
10% return	= $36,400	
11% return	= $40,040	
12% return	= $43,680	

By the most generous approach presented by petitioners, at the highest valuation (10.38/sq. ft.) and at the highest rate (12%), the allowable return should not exceed $59,508.54.

Taking the most charitable view of respondent's net income at the current, pre-increase moorage rate by accepting the full alleged amount of $26,900 (Exhibit 7) and increasing the full amount by 14% to cover inflation, the calculation is as follows:

$90,270.00	(Current gross annual income)
- 30,666.00	(Projected 1980 expenses)
$59,604.00	**Net Income (Return)**

This amount ($59,604.00) exceeds the most generous estimate of fair return on current market value by just under $100. Obviously, because the illustration used here included resolution of factual disputes generously in favor of the respondents, the reality is that the current fee already provides a return well in excess of a reasonable amount.

V. Conclusion

In summary, there are but three substantive determinations for the fact-finder to make in arriving at a decision as to the reasonableness of the moorage fee increase demanded by Jeffery:

(1) He must determine the current market value of the 47,775 square feet of property owned by Freeman and devoted to use as a floating home moorage;

(2) He must determine what a "fair and reasonable" rate of return would be, based on economic principles and understanding of the risks involved in the floating home moorage business on Lake Union in Seattle; and

(3) He must decide which of the expenses set forth on respondent Freeman's 1979 resume (Exhibit 7) are allowable under the expense criteria set forth in Section 6 of the Equity Ordinance.

When these determinations have been made, the remainder of the analysis is a matter of arithmetic.

In making the three necessary determinations, petitioners contend that the fact-finder should proceed on the following assump-

Wants $400 Moorage Fee

ATTORNEY HATTRUP & MARK FREEMAN

Freeman testified that the moorage property, including public land, is worth more than $1,500,000 and that the owners should realize a net profit of 17%. This would mean monthly moorage fees in excess of $400.

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Photos in this supplement are by Jonathan Ezekiel, Newsletter staff photographer.

tions:

(a) That there is no presumption of reasonableness of the current moorage fee, and the analysis must therefore be focused on whether that current fee provides at least a fair and reasonable return;

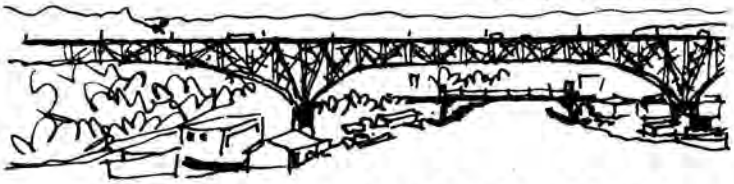
(b) Both the letter of the Equity Ordinance and considerations of public policy require that the only property to be valued in this analysis is that **owned** by Freeman;

(c) Any Consumer Price Index analysis conducted by the fact-finder should be based on the entire relevant time period (1970 to the present) and not simply on the period of time since the last moorage fee increase;

(d) A sale of the product of a monopoly (in this case a floating home moorage site) to the victim of the monopoly (the person owning the floating home occupying the moorage site) is not an arm's-length, fair market sale and cannot be considered here. A sale from one moorage owner/operator to anotehr should be presumed to be a free-market transaction, providing a basis for comparison.

Application of the above assumptions will, in the opinion of the petitioners, lead the fact-finder to the inescapable conclusion that the current moorage fee being charged by Freeman to the 51 petitioners already produces an income that is in excess of a fair and reasonable return on current market value. Any increase in the current fee would therefore be inherently and inescapably unreasonable.

Respectfully submitted,
Lawrence B. Ransom
Attorneys for Petitioning
Floating Home Owners



On December 11, 1962 The Floating Homes Association was chartered by the State of Washington as a non-profit mutual-benefit society to work for the following objectives:

TO protect the interests of Seattle's old and colorful houseboat colony.

TO establish and work for adequate standards of health, safety and attractiveness for all houseboats and their moorages.

TO cooperate with all like minded people and organizations to perpetuate floating home dwellings as an unique and pleasant way of life.

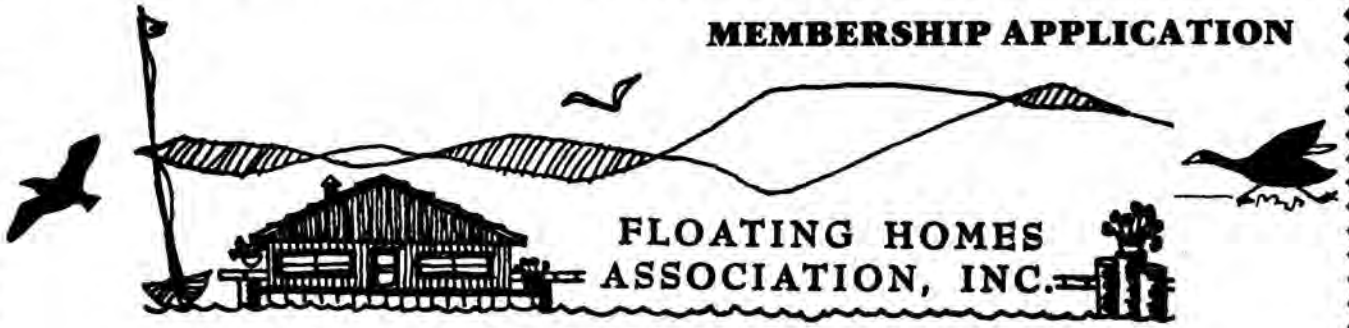
TO work with all governmental and civic agencies for the conservation, preservation, multiple use and beautification of Seattle's inland waters and shorelands.

"The greatest challenge this country faces is how to make our cities liveable places. No element in the effort is more important than the need to preserve and strengthen our neighborhoods." **Senator Edward Kennedy.**

* * *

"Neighborhoods and families are the living fibre that holds our society together. Until we place them at the very top of our national policy our hopes for the nation and our goals for our private lives will not be attained." **President Carter.**

MEMBERSHIP APPLICATION



2329 Fairview East Seattle, Washington 98102 325-1132 or 329-1517

- Make checks payable to the Floating Homes Association.
- Dues payment covers all adults in the household.
  If more than one membership card needed list names below
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"To protect Seattle's old and colorful Houseboat Colony."