



City of Tacoma  
Hearing Examiner

July 3, 2013

Paul McCormick  
Innova Architects  
950 Pacific Avenue STE 450  
Tacoma WA 98402

Shirley Schultz, Principal Planner  
Planning and Development Services Dept.  
747 Market Street Room #345  
Tacoma WA 98402

Re: File Nos. REZ2013-40000199731, SEP2013-40000199732

Dear Parties,

Enclosed please find the Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommendation to the Tacoma City Council regarding the above referenced matter.

Sincerely,

Louisa Legg  
Legal Assistant

Enclosure or Attachment (1)

Transmittal List:

City Clerk, City of Tacoma  
Legal Department, Civil Division, City of Tacoma  
Environmental Services Department, City of Tacoma (Env. Eng./M. Trohimovich-Pollard)  
Environmental Services Department, City of Tacoma (Solid Waste Mgmt./R. Coyne)  
Planning & Development Services Dept., City of Tacoma (BLUS/L. Spadoni)  
Planning & Development Services Dept., City of Tacoma (BLUS/J. Magoon)  
Planning & Development Services Dept., City of Tacoma (BLUS/K. Kluge)  
Public Works Department, City of Tacoma (Traffic Engineering/J. Kammerzell)  
Public Works Department, City of Tacoma (Construction/LID/S. Simpson)  
Tacoma Fire Department, City of Tacoma (Carl Anderson, P.E.)  
Tacoma Power, City of Tacoma (Transmission & Distribution/J. Martinson)  
Community and Economic Development, City of Tacoma (L. Wung)  
Pierce County Assessor-Treasurer  
WA State Dept. of Ecology, Southwest Regional Office, P.O. Box 47775,  
Olympia WA 98504-7775

**CERTIFICATION**

On this day, I forwarded a true and accurate copy of the documents to which this certificate is affixed via United States Postal Service postage prepaid or via delivery through City of Tacoma Mail Services to the parties or attorneys of record herein.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED July 3, 2013, at Tacoma, WA.

L. Legg

ORIGINAL

**OFFICE OF THE HEARING EXAMINER**  
**CITY OF TACOMA**  
**REPORT AND RECOMMENDATION**  
**TO THE CITY COUNCIL**

**APPLICANT:** Paul McCormick, Innova Architects on behalf of  
H&P Tacoma Acquisition, LLC

**FILE NO:** REZ2013-40000199731, SEP2013-40000199732

**SUMMARY OF REQUEST:**

The applicant proposes to rezone approximately 1.78 acres / 75,000 square feet of the southeast corner of a larger property from "R-2" Single-Family Dwelling District to "M-1" Light Industrial District. The area will be developed with a stormwater detention facility requiring approximately 15,000 cubic yards of grading, landscaping, and up to 100 passenger car parking spaces. The applicant also seeks to develop a driveway across the parcel for commercial and passenger vehicle access to South 48<sup>th</sup> Street. South 48<sup>th</sup> Street is currently a residential street and improvements to it would be required to accommodate use by heavy commercial vehicles.

**LOCATION:**

The site address is 4601 South Orchard Street in Tacoma (a portion of parcel 0220133049).

**RECOMMENDATION OF THE HEARING EXAMINER:**

The rezone request is hereby recommended for approval subject to conditions including a condition restricting use of the access roadway across the site to automobiles, rather than commercial trucks.

**PUBLIC HEARING:**

After reviewing the report of the Planning and Development Services Department (PDSD), examining available information on file with the application, and visiting the subject site and the surrounding area, the Hearing Examiner conducted a public hearing on the application on June 13, 2013.

**ORIGINAL**



## **FINDINGS, CONCLUSIONS AND RECOMMENDATION:**

### **FINDINGS:**

1. Paul McCormick of Innova Architects submitted an application on behalf of H&P Tacoma Acquisition, LLC (H&P) seeking to rezone approximately 1.78 acres at the southeast corner of H&P's larger property holding in the area of 4601 South Orchard Street, Tacoma, Washington. The proposed rezone would change the parcel's current designation as "R-2" Single-Family Dwelling District to "M-1" Light Industrial District.<sup>1</sup> H&P plans to use the property for a stormwater detention facility and up to 100 passenger car parking spaces in connection with a proposed distribution warehouse on its adjacent industrial property. The applicant also proposes to develop an access road across the rezoned site for commercial vehicle access to and from the distribution warehouse via South 48<sup>th</sup> Street. *Ex. 10.*

2. The proposed rezone site is currently an undeveloped, wooded area with a depressional feature at the southern perimeter of the site. The depressional area is proposed for the stormwater retention pond. A Geotechnical Report has been submitted which indicates that groundwater in the area is encountered at depths of 5 to 6 feet. *Ex. 15 at 3.* Public utility easements are located on portions of the subject property.

3. The applicant also owns property adjacent to the proposed rezone site which contains both "M-1" Light Industrial and "M-2" Heavy Industrial. The Generalized Land Use Element (GLUE) of the City's Comprehensive Plan locates the site within a "Medium Intensity" area and Tier II-Secondary Growth Area. The total ownership exceeds 34 acres. The larger ownership site is primarily developed with several large, light industrial buildings and asphalt-and concrete-paved access and parking areas. Gravel-surface storage yard areas are located along the perimeter of the site, and a stormwater detention pond is situated on the northwest corner of the site. The site was used for a number of years by Hansen Pipe, a concrete fabrication business. Hansen Pipe has ceased operations and the applicant is planning to demolish the existing buildings on the site in preparation for construction of a distribution warehouse. *Ex. 1; Ex. 10.*

4. As indicated above, the area to the north of the rezone site is zoned "M-1" Light Industrial and "M-2" Heavy Industrial. The area to the south of the proposed rezone site is zoned for and developed with single-family residential dwellings. South 48<sup>th</sup> Street runs east-west between the proposed rezone site and the residential neighborhood. The area to the west of the proposed rezone site is zoned "R-4-L" Low-Density Multiple-Family Dwelling District. This property was slated for development as a 78-unit nursing home, but it has not been constructed and the parcel is currently vacant. An existing retirement and assisted living facility is located at the intersection of South 48<sup>th</sup> Street and South Orchard Street adjacent to and west of the "R-4-L" parcel. The property to the east of the proposed rezone site is occupied by the City of Tacoma Landfill, which carries an "R-2" zoning designation. *Ex. 4.*

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<sup>1</sup> The zones in this area fall within the South Tacoma Groundwater Protection District (STGPD) and that is reflected on the zoning classifications for the sites involved. For the sake of brevity the applicable STGPD designation will not be included in each reference to the zoning districts within this document.



5. H&P's larger ownership of approximately 34.81 acres has been zoned in several separate actions over time. The central portion of the site, which constitutes the majority of the property (24 acres), was zoned from "R-2" Single-Family Dwelling District to "M-2" Heavy Industrial District by Ordinance No. 17784 in March of 1965. The portion of the site directly to the north of the 1.78 acres proposed for rezoning was zoned from "R-2" Single-Family Dwelling District to "M-1" Light Industrial District in the same Ordinance No. 17784 that established the "M-2" zoning in 1965.

*Ex. 17.* The entire site was granted an exception to development standards in 1978. The exception allowed an easement at South 46<sup>th</sup> Street to be an officially approved access to the site. The exception/easement was issued in connection with a short plat at the site that created two lots adjacent to and west of the "M-1", "M-2" area and two additional lots southeast of the Hanson Pipe site. Those two lots comprise the area currently proposed for rezoning. *Ex. 18.* The northernmost portion of the larger ownership site, as well as a portion of the property along its eastern boundary, were both rezoned from "R-2" Single-Family Dwelling District to "M-1" Light Industrial District by Ordinance No. 24393 in September of 1989. Five conditions were attached to that rezone including development of a water-quality plan, installation of a perimeter fence, removal of illegal fill, provision of a slope easement, and provision of fire protection. *Ex. 19 at Concomitant Agreement -2.* Those conditions would not be affected by the current rezoning proposal.

6. The rezone site is bounded on the south by South 48<sup>th</sup> Street, which is a residential street by design and classification. The pavement design might need modification if heavy trucks begin using South 48<sup>th</sup> Street for access between the planned distribution center and nearby South Orchard Street. South Orchard Street at this location is a north-south, five-lane major arterial lying a short distance to the west of the project site. *Ex. 14; Ex. 7.* The intersection of South 48<sup>th</sup> Street and South Orchard Street is controlled by a stop sign on South 48<sup>th</sup> Street. South Orchard Street contains a center turn lane in this area. The applicant proposes to improve an existing driveway on the rezone site to reach South 48<sup>th</sup> Street, which would be used for passenger vehicle and commercial truck access between the planned distribution center and South Orchard Street. An additional existing access from South Orchard Street to the proposed distribution center site is available at South 46<sup>th</sup> Street. *Ex. 14.* The traffic study submitted by the applicant indicates 960 vehicle trips per day would be generated by the proposed distribution center. *Id.* A significant number of these trips would be large commercial trucks driving to and from the warehouse. Unless restrictions are included on an "M-1" rezone of the proposed site, nothing would bar any or all trucks from using South 48<sup>th</sup> Street for access to the distribution center.

7. In the years since the nearby Hansen Pipe site was rezoned to "M-1" and "M-2" in 1965, conditions have changed to some degree. The Hansen Pipe property was developed and used for an industrial fabrication facility, but it is now closed. Property to the west of the Hansen Pipe business has been developed with light industrial enterprises. The property immediately to the west of the proposed rezone site has been rezoned from "R-2" to a more intense residential "R-4-L" designation that authorizes construction of a nursing home. *Ex. 16.* The subject site is the sole remaining parcel zoned for single-family residential on the north side of South 48<sup>th</sup> Street, other than the City's landfill.<sup>2</sup> The rezones along the north side of South 48<sup>th</sup> Street, abutting the residential neighborhood, have been limited to non-industrial uses. *Ex. 4.* The long standing single-family neighborhood on the south side of South 48<sup>th</sup> Street, however, does not appear to have changed in nature or configuration in

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<sup>2</sup> The landfill is zoned "R-2", but there is no anticipation that it will be developed with single-family residences.



the years since the light industrial zoning was established on the Hansen Pipe property to the north and its need for buffering from industrial uses has not changed.

8. The applicant's proposal to use the rezone site for automobile parking and stormwater detention would create a relatively low-impact industrial use on the property adjacent to the South 48<sup>th</sup> Street residential neighborhood. The landscaping and stormwater detention pond would tend to buffer the neighbors visually and physically from the parking and industrial uses to the north. By contrast, creating a driveway to facilitate large truck access to a distribution center on the former Hansen Pipe site would introduce significant industrial activity directly onto a residential neighborhood street where it has not existed before. Ongoing large commercial truck traffic would have substantial negative impacts on the single-family residences along South 48<sup>th</sup> Street and the adjacent neighborhood. While the applicant has indicated a willingness to provide a \$25,000 performance bond to implement traffic mitigating measures in response to neighborhood concerns after the warehouse/office is open, there was no evidence that traffic mitigating measures could address the inconsistency between industrial and residential use of South 48<sup>th</sup> Street and loss of the existing residential zoning buffer between industrial uses and this long standing residential neighborhood.<sup>3</sup>  
*Ex. 7.*

9. No area-wide zoning involving or affecting the rezone site has been taken by the Tacoma City Council, acting in its legislative capacity, in the past two years preceding the filing of H&P's rezone application. *Ex. 7.*

10. H&P's rezone request has been reviewed by a number of governmental agencies and utility providers. None of the reviewing agencies object to approval of the proposed rezone as long as conditions addressing certain issues are attached to the rezone approval. The agency comments and proposed conditions are contained in the City's Staff Report. The PDSP Report, entered into this record as Exhibit 1, accurately describes the proposed project, including general and specific facts about the proposal. The report is incorporated herein by reference as though fully set forth. The City's Public Works Department raised concerns over use of the proposed driveway and commercial use of South 48<sup>th</sup> Street and suggested conditions to address these impacts as part of the SEPA process. The State of Washington Department of Ecology raised the potential for toxic soils at the site and recommended conditions requiring safe soil handling and other protective practices. *Ex. 7.*

11. One citizen appeared at the hearing expressing opposition to the proposed rezone. He stated that he has concerns about impacts to the residential neighborhood, noting that the "R-2" zoning was intended to provide a buffer to the residences south of South 48<sup>th</sup> Street. He also expressed general concern over traffic that the warehouse project would generate on South Orchard Street, questioning whether the access streets could handle the number of trucks involved. An additional written submission was received into the record from a nearby property owner. *Ex. 21.* He raised a number of issues including anticipated loss of value in his property, unpleasant views if existing trees are removed, noise from the proposed warehouse north of the rezone site, traffic impacts on South 48<sup>th</sup>

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<sup>3</sup> The applicant provided a traffic study addressing traffic volumes and levels of service on South 48<sup>th</sup> Street, South 46<sup>th</sup> Street, and South Orchard Street. The study does not address or analyze the land use issue involving the incompatibility between proposed industrial and existing residential uses along South 48<sup>th</sup> Street. *Ex. 14.*

Street, safety issues for local children, and impacts on the peace and tranquility of the residential neighborhood.

12. Pursuant to the State's State Environmental Policy Act (SEPA) Rules (WAC 197-11) and the City of Tacoma's Environmental Code (*Tacoma Municipal Code* 13.12), the Director of the Planning and Development Services Department issued a Mitigated Determination of Nonsignificance (MDNS) on May 10, 2013. The determination was based upon a site survey, a review of the applicant's Environmental Checklist, and other supporting information on file with the PDSD. No appeal was filed challenging the Director of PDSP's environmental determination. *Ex. 1 at 4.*

13. The District Establishment Statement for the requested "M-1" District indicates that the Light Industrial District "is intended as a buffer between heavy industrial uses and less intensive commercial and/or residential uses. 'M-1' districts may be established in new areas of the City. However, this classification is only appropriate inside Comprehensive Plan areas designated for medium and high intensity uses." *Tacoma Municipal Code (TMC) 13.06.400.B.* The subject property is located in a medium intensity area.

14. The site was posted with the pending action and proper written notice of the public hearing was mailed to all owners of property within 400 feet of the site, the neighborhood council, and qualified neighborhood groups on April 16, 2013. *Ex. 1 at 3.*

15. Any conclusion hereinafter stated which may be deemed to be a finding herein is hereby adopted as such.

### **CONCLUSIONS:**

1. The Hearing Examiner has jurisdiction over the parties and subject matter in this proceeding. *See TMC 1.23.050.A.1 and TMC 13.05.*

2. Applications for rezones are reviewed for consistency with all of the following criteria:

**Criteria for rezone of property.** An applicant seeking a change in zoning classification must demonstrate consistency with all of the following criteria:

1. That the change of zoning classification is generally consistent with the applicable land use intensity designation of the property, policies, and other pertinent provisions of the Comprehensive Plan.
2. That substantial changes in conditions have occurred affecting the use and development of the property that would indicate the requested change of zoning is appropriate. If it is established that a rezone is required to directly implement an express provision or recommendation set forth in the Comprehensive Plan, it is unnecessary to demonstrate changed conditions supporting the requested rezone.



3. That the change of the zoning classification is consistent with the district establishment statement for the zoning classification being requested, as set forth in this chapter.
4. That the change of the zoning classification will not result in a substantial change to an area-wide rezone action taken by the City Council in the two years preceding the filing of the rezone application. Any application for rezone that was pending, and for which the Hearing Examiner's hearing was held prior to the adoption date of an area-wide rezone, is vested as of the date the application was filed and is exempt from meeting this criteria.
5. That the change of zoning classification bears a substantial relationship to the public health, safety, morals, or general welfare.

*TMC 13.06.650.B.*

The applicant bears the burden of establishing, by a preponderance of the evidence, that the requested rezone conforms to all of the foregoing criteria. *TMC 1.23.070.A.*

Consistency with the Comprehensive Plan

3. The Comprehensive Plan includes several provisions that are relevant to H&P's rezone proposal. The Generalized Land Use Element (GLUE) of the Comprehensive Plan designates property by intensity levels. This approach allows different types of land uses to be located in the same area while permitting greater flexibility in land use arrangements and encouraging innovative techniques of land development. The rezone property and the related project property to the north are categorized as a Medium Intensity area under the GLUE. Medium intensity designations typically have zoning classifications allowing a range of uses from "R-4-L" Low-Density Multiple-Family Dwelling District through "M-2" Heavy Industrial District. Medium intensity areas do not generally include "R-2" Single-Family Dwelling District zones. The Medium Intensity Concentrations provisions of the GLUE state that within medium intensity areas, office, light industrial and other medium intensity uses may be located adjacent to single-family residential uses so long as adverse impacts to residential uses are appropriately mitigated.

4. The Industrial Development section of the GLUE contains several policies relevant to the project site. Provisions encourage new industrial development to locate in existing industrial areas and express a preference for expansion of existing industrial development, provided adjacent properties and the surrounding area are not adversely affected. *LU-IDG-2; LU-IDG-4.* Sufficient levels of public facilities and services and convenient transportation access are also addressed. *LU-IDG-5, LU-IDG-6; LU-IDG-7.* In addition, the GLUE contains design standards for industrial development. The City expresses the intent "to promote industrial design that minimizes impact to adjacent less intensive uses, enhances the appearance of industrial development from the street and from other public viewpoints, minimizes impacts to the natural environment, and promotes bicycle and pedestrian access, where possible. Performance standards will be used by the City to help achieve these goals." *GLUE Industrial Design Intent Statement.*

The Industrial Design Policies specifically emphasize efforts to protect adjacent land uses from industrial impacts:

**LU-IDD-1 Industrial Performance Standards**

Protect adjacent less intensive land uses from the impacts of industrial uses through the use of performance standards.

**LU-IDD-2 Compatible Design**

Industrial development should be designed to be compatible with adjacent uses and minimize off-site impacts.

GLUE policies directed to industrial uses in medium intensity areas are quite direct in acknowledging the need to consider conflict with adjoining uses:

Medium intensity industrial manufacturing uses are generally not compatible with residential development. Strict performance standards may allow some type of industry to locate near residential neighborhoods with a minimum of influence on the surrounding environment. Methods to minimize impacts on adjacent, less intensive land uses and transportation levels of service are needed. This can be accomplished through the use of design standards, encouraging shared parking arrangements and encouraging public transit use.

These general observations have been formalized in Medium Intensity Industrial Policies:

**LU-IDMI-2 Utilize as Buffer Uses**

Medium intensity industrial developments may be utilized as buffers between high intensity industrial developments and other less intensive land uses.

**LU-IDMI-3 Use of Performance Standards**

Protect adjacent less intensive land uses from the impacts of medium intensity industrial development through the use of performance standards.

The South Tacoma Neighborhood Element of the GLUE also emphasizes buffering industrial activity:

**ST-3.1 Industrial Land Development**

Support the development and redevelopment of South Tacoma's industrial land including transportation improvements and environmental cleanup that enhance the area's marketability. Redevelopment activities should focus on using rail to transport goods or designating a truck route to State Route 16 so adjacent neighborhoods are not impacted by truck traffic.

**ST-3.2 Industrial Activity Buffering**

Discourage land uses that are incompatible with manufacturing and industrial activities. Ensure that industrial uses and activities provide appropriate buffers



including visual line of sight and light intrusion so as not to impact adjacent residential neighborhoods. Appropriate buffering should be in place and functioning concurrent with the occupancy of the industrial use.

5. In this case, the parking and stormwater detention uses proposed for the rezone site are consistent with the goals and policies of the Comprehensive Plan. These uses have minimal impacts on the adjacent residential neighbors and serve as the desired buffer between the planned warehouse/distribution center and the residences to the south. However, the proposed development of a roadway that would direct large commercial trucks across the rezone site for access from South 48<sup>th</sup> Street to and from the distribution center is inconsistent with the policies and provisions of the Comprehensive Plan. The Comprehensive Plan consistently emphasizes the need to provide buffers between industrial and residential uses. Rezoning the parcel from "R-2" to "M-1", without restriction, would introduce significant large commercial truck traffic onto an existing residential street filled with homes. Modifying the existing residential zoning, which provides a buffer to the adjacent neighborhood, to a zone that would actually initiate industrial use of South 48<sup>th</sup> Street would be inconsistent with the Comprehensive Plan policies requiring a buffer between industrial and residential uses. See, LU IDG-4, LU-IDD-1, LU-IDD-2, LU-IDMI-2, LU-IDMI-3, ST-3.1, ST-3.2. A rezone of this parcel to an "M-1" designation would only be consistent with the Comprehensive Plan policies if it is limited to parking, stormwater detention, and automobile access to South 48<sup>th</sup> Street. Commercial truck access across the rezone site would violate the buffer concept emphasized throughout the Comprehensive Plan.

6. The rezone site is designated as a Tier II-Secondary Growth Area by the GLUE. Tier II areas are characterized by urban growth where key public facilities and services are generally available but some required infrastructure may not be present. The proposed development conditions suggested by the Department of Public Works would require the applicant to improve South 48<sup>th</sup> Street if it is to be used for commercial truck access. Other traffic related conditions have been attached to the SEPA MDNS. To the extent the infrastructure in the area would be improved concomitantly with the development, the proposal is in compliance with the Tier II designation.

#### Changed Conditions

7. Case law and the TMC require that the applicant for a rezone show that conditions have changed since the original zoning or latest amendment and that the rezone bears a substantial relationship to the public health, safety, morals or general welfare. See *Bassani v. County Commissioners*, 70 Wn. App. 389, 394, 853 P.2d 945 (1993) citing *Parkridge v. Seattle*, 89 Wn.2d 454, 153, P.2d 359 (1978); *Woodcrest Invs. Corp v. Skagit Cy.*, 39 Wn. App. 622, 694, P.2d 705 (1985); TMC 13.06.650.B.2. No showing of compelling circumstances is required. Under Washington law, a "strong showing" of change is not required and the rule is intended to be flexible and allow consideration of each case on its own facts. See *Bassani* at 394

8. In this case, the changes that have occurred in the area relate primarily to the property to the north of the proposed rezone site. Rezones from "R-2" to "M-1" and "M-2", approved in 1965 and 1989, authorized development of light and heavy industrial uses on the larger parcels to the north. Multi-family residential rezones have been allowed adjacent and to the west of the rezone site.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION**

However, the residential neighborhood zoning and use south of South 48<sup>th</sup> Street has remained unchanged. These residential uses have the same need for buffering from industrial uses as they had in 1965 and 1989. The changes in the area support full use of the larger northern parcels for light manufacturing development. To the extent that use of the proposed rezone parcel can be fashioned so that it supports the proposed light manufacturing development to the north and at the same time provides the needed buffer for nearby residents, the rezone is supported by the changes that have occurred to the north. The changes on South 48<sup>th</sup> Street allowed only residential zoning and do not support an unrestricted rezone introducing industrial activity to the residential zoning buffer that currently exists along South 48<sup>th</sup> Street.

#### Consistency with District Establishment Statement

9. The District Establishment Statement for the requested "M-1" District indicates that the classification is intended as a buffer between heavy industrial uses and less intensive commercial and/or residential uses. Light industrial is only appropriate inside a medium intensity use area. While the rezone site is within a medium intensity use area, under the circumstances, the proposed rezone would be consistent with the District Establishment Statement only if it is conditioned on allowing solely automobile traffic to enter South 48<sup>th</sup> Street from the property. Without such a limitation, the "M-1" zone would be inconsistent with the Comprehensive Plan's buffering concept and would not protect nearby residential uses from heavy industrial activity.

#### Recent Area-Wide Rezone

10. The proposed rezone does not involve property that has been the subject of reclassification by the City Council within the last two years and that requirement for rezoning is met.

#### Relationship to the Public Welfare

11. The change of zoning classification must bear a substantial relationship to the public health, safety, morals, or general welfare. In many instances that determination is made by assessing whether the proposed rezone is consistent with the public interests set forth in the TMC and the Comprehensive Plan. Allowing a rezone of this site would support a nearby redevelopment of existing light industrial property, which would further City policies seeking to redevelop underutilized sites. Conditions on the rezone approval proposed by City and State agencies further the public's interest in safe handling of toxic material and safe navigation of streets in the area. Development standards will apply to any development of the property including design and landscaping requirements. If the rezone is conditioned on restricting the access road to automobile traffic, the public welfare will be benefitted by allowing uses that support a light industrial redevelopment of existing industrial property, while assuring that industrial activity will not be directed into a residential neighborhood. Without a condition limiting heavy truck traffic on South 48<sup>th</sup> Street, the rezone would not fully benefit the public because it would deviate from the policies contained in the Comprehensive Plan requiring buffering between inconsistent uses.



## Summary

12. The applicant for a rezone must show compliance with each of the five criteria set forth in TMC 13.06.650.B. In this case H&P cannot demonstrate consistency with the Comprehensive Plan's Policies (criterion 1), the change requirement (criterion 2), or the public welfare component (criterion 5) if the proposal for unlimited heavy commercial vehicle access via South 48<sup>th</sup> Street is allowed. If the proposal is conditioned on use of the rezoned property for stormwater detention, automobile parking and automobile access to South 48<sup>th</sup> Street, the rezone would be consistent with the Comprehensive Plan Policies governing buffering between inconsistent uses, the changes in industrial and residential zoning in the area and the public welfare. Accordingly, the rezone requested by H&P should be approved, but only subject to the following conditions, which include a condition making approval of the rezone contingent on restricting access across the site between South 48<sup>th</sup> Street and the industrial property to the north to automobiles and not commercial trucks.

### **A. RECOMMENDED CONDITIONS OF APPROVAL**

1. Prior to issuance of a development permit, the applicant shall demonstrate to the City of Tacoma, Development Services, that they will institute Best Management Practices for the safe handling and disposition of potentially contaminated soils; or that they have conducted soil samples and demonstrated that contaminant levels do not exceed Model Toxics Control Act cleanup levels.
2. The applicant shall comply with regulations regarding worker protection for contaminants. The applicant shall contact the Washington State Department of Labor and Industries for minimum standards and requirements.
3. Any access roadway from the rezone site to South 48<sup>th</sup> St. is to be used for automobile traffic only. Heavy commercial trucks will not be allowed to use South 48<sup>th</sup> Street for access across the proposed rezone site to and from the adjacent industrial property.
4. To minimize business-related travel through the neighborhood, the applicant shall, through signage and design, restrict the driveway on South 48th Street to right-out only with proper channelization.
5. To meet the City's "complete streets" policies for non-motorized transportation, the applicant shall provide pedestrian and off-site improvements along South 48th Street in conjunction with the construction of the driveway.
6. All other requirements for traffic, including specific details of access, circulation, parking configuration, and controls shall be reviewed and approved at the time of building permits.
7. All requirements for construction, solid waste disposal, landscaping, building design, utilities, surface water, stormwater and all other pertinent policies and regulations shall be met by the development at the site.
8. All future development at the site must meet all applicable policies and regulations including, but not limited to, Zoning, Land Use, Building, and Utilities.
9. A Concomitant Zoning Agreement incorporating the conditions of approval imposed

shall be executed and recorded with the Pierce County Auditor prior to final approval of the reclassification by the City.

If the City Council approves the rezone application without a restriction on commercial truck access across the rezone site onto South 48<sup>th</sup> Street (contrary to the Hearing Examiner's recommended condition 3) the following additional conditions should be attached to the approval:

- a. Prior to site redevelopment, the applicant shall conduct an analysis of the pavement design (PD-01 and PD-02 Standard Plans) to determine necessary pavement design requirements of South 48<sup>th</sup> Street to support the increased truck traffic, turning movements, and truck weight. South 48<sup>th</sup> Street is considered a residential street in design and classification. A permanent roadway section may include concrete or a thickened asphalt pavement section.
- b. If South 48<sup>th</sup> Street is to be used for truck traffic, in order to provide for safe traffic movements, the applicant shall revise channelization on South Orchard Street to include a dedicated left turn lane southbound.
- c. If South 48<sup>th</sup> Street is to be used for truck traffic, truck access shall be limited to comply with Noise Ordinance construction hours.
- d. The applicant shall provide a \$25,000 Performance Bond to implement traffic mitigating measures in response to neighborhood concerns after the warehouse/office is open and other mitigation measures have been put in place or reviewed. The improvements deemed necessary by the City will be identified within one (1) year after the opening of the warehouse/office and must be completed within one (1) year after the City's official recommendation. If no improvements are identified within one (1) year after opening of the warehouse/office for business, the assignment of funds will be released.

**B. USUAL CONDITIONS:**

1. The recommendation set forth herein is based upon representation made and exhibits, including development plans and proposals, submitted at the hearing conducted by the Hearing Examiner. Any substantial change(s) or deviations(s) in such development plans, proposals, or conditions of approval imposed shall be subject to the approval of the Hearing Examiner and may require further and additional hearings.
2. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such law, regulations, and ordinances are conditions precedent to the approval granted and are continuing requirement of such approvals. By accepting this approval, the applicant represents that the development and activities allowed will comply with such laws, regulations, and ordinance. If, during the term of the approval granted, the development and activities permitted do not comply with such laws,



regulations, and ordinances, the applicant agrees to promptly bring such development or activities into compliance.

7. Any finding hereinbefore stated which may be deemed to be a conclusion herein is hereby adopted as such.

**RECOMMENDATION:**

The Hearing Examiner recommends the requested rezone for approval subject to conditions set forth above which include a condition restricting commercial truck access to and from South 48<sup>th</sup> Street across the rezone site.

DATED this 3<sup>rd</sup> day of July, 2013.

  
**PHYLLIS K. MACLEOD, Hearing Examiner**

**NOTICE**

Pursuant to RCW 36.70B.130, you are hereby notified that affected property owner(s) receiving this notice of decision may request a change in valuation for property tax purposes consistent with Pierce County's procedure for administrative appeal. To request a change in value for property tax purposes you must file with the Pierce County Board of Equalization on or before July 1st of the assessment year or within 30 days of the date of notice of value from the Assessor-Treasurer's Office. To contact the board call 253-798-7415 or <[www.co.pierce.wa.us/boe](http://www.co.pierce.wa.us/boe)>.

## REZONE PROCEDURES

### NOTICE

#### RECONSIDERATION/APEAL OF EXAMINER'S RECOMMENDATION

##### RECONSIDERATION:

Any aggrieved person or entity having standing under the ordinance governing the matter, or as otherwise provided by law, may file a motion with the office of the Hearing Examiner requesting reconsideration of a decision or recommendation entered by the Examiner. A motion for reconsideration must be in writing and must set forth the alleged errors of procedure, fact, or law and must be filed in the Office of the Hearing Examiner within 14 calendar days of the issuance of the Examiner's decision/recommendation, not counting the day of issuance of the decision/recommendation. If the last day for filing the motion for reconsideration falls on a weekend day or a holiday, the last day for filing shall be the next working day. The requirements set forth herein regarding the time limits for filing of motions for reconsideration and contents of such motions are jurisdictional. Accordingly, motions for reconsideration that are not timely filed with the Office of the Hearing Examiner or do not set forth the alleged errors shall be dismissed by the Examiner. It shall be within the sole discretion of the Examiner to determine whether an opportunity shall be given to other parties for response to a motion for reconsideration. The Examiner, after a review of the matter, shall take such further action as he/she deems appropriate, which may include the issuance of a revised decision/recommendation. (*Tacoma Municipal Code 1.23.140*)

##### APEALS TO CITY COUNCIL OF EXAMINER'S RECOMMENDATION:

Within 14 days of the issuance of the Hearing Examiner's final recommendation, any aggrieved person or entity having standing under the ordinance governing such application and feeling that the recommendation of the Examiner is based on errors of procedure, fact or law shall have the right to appeal the recommendation of the Examiner by filing written notice of appeal with the City Clerk, stating the reasons the Examiner's recommendation was in error. **EACH APPEAL SHALL BE ACCOMPANIED BY A FEE AS SET FORTH IN TACOMA MUNICIPAL CODE (TMC) 2.09.500. THE FEE SHALL BE REFUNDED TO THE APPELLANT SHOULD APPELLANT PREVAIL.**

**APEALS SHALL BE REVIEWED AND ACTED UPON BY THE CITY COUNCIL IN ACCORDANCE WITH TMC 1.70.**

**GENERAL PROCEDURES FOR APPEAL:** The Official Code of the City of Tacoma contains certain procedures for appeal, and while not listing all of these procedures here, you should be aware of the following items which are essential to your appeal. Any answers to questions on the proper procedure for appeal may be found in the City Code sections heretofore cited:

1. The written request for review shall also state where the Examiner's findings or conclusions were in error.
2. Any person who desires a copy of the electronic recording must pay the cost of reproducing the tapes. If a person desires a written transcript, he or she shall arrange for transcription and pay the cost thereof.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION**

**ORIGINAL**