



RCVD FOR HEARING

JUL 16 2013

EXAMINERS OFFICE *WJ*

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July 16, 2013

Tacoma City Council
City of Tacoma
747 Market Street
Tacoma, WA 98402

RECEIVED

JUL 16 2013

CITY CLERK'S OFFICE

Mayor Marilyn Strickland
Deputy Mayor & Council Member W. Marty Campbell
Council Member Anders Ibsen
Council Member Robert Thoms
Council Member Lauren Walker
Council Member Joe Lonergan
Council Member Victoria Woodards
Council Member Dave Boe
Council Member Ryan Mello

Re: Appeal of Hearing Examiner's Findings of Fact, Conclusions of Law and Reclamation to the City Council under File Nos. REZ2013-4000199731, SEP2013-4000199732 Applicant H&P Tacoma Acquisition, LLC

Dear Mayor, Deputy Mayor and Council Members:

This firm represents H&P Tacoma Acquisition, LLC, the "Applicant" in the above-referenced Decision of the Hearing Examiner. The Hearing Examiner's Decision was issued on June 3, 2013. A copy of that decision is attached hereto as Exhibit A ("the Hearing Examiner's Decision").

This appeal is filed pursuant to TMC 1.70.010 A. This appeal is filed with respect to TMC 1.70.010.C.(c), and is limited to appealing the Hearing Examiner's Decision found on page 10 of her Decision under A.3, "that any access road from the rezone site to South 48th Street be used for automobile traffic only and that heavy industrial trucks will not be allowed to use South 48th Street for access across the closed rezone site to and from the adjacent industrial property."

As the exhibits presented to the Hearing Examiner's will show, this recommendation is not supported by substantial evidence when viewed in light of the whole record before the Council. All of the documents referenced in and attached to this letter, are copies of exhibits from the Hearing Examiner's record.

I. The Project.

As described in the Hearing Examiner's Decision, 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 property in question has been used in the past as a concrete product company. As noted on page 1 of her Decision, this application also seeks to develop a driveway across the parcel for commercial and passenger vehicle access to South 48th Street. South 48th Street is currently a residential street and improvements to it would be required to accommodate use by industrial vehicles.

II. The Hearing Examiner's Decision.

The Applicant is willing to abide by all of the conditions set forth in the Hearing Examiner's Decision with the exception of recommended condition of approval A.3 found on page 10 of her Decision which states commercial truck traffic should not be allowed on South 48th Street. The Applicant notes that the Hearing Examiner also provided alternate approval criteria should the Council decide to allow commercial truck traffic on South 48th Street. Those alternate conditions are found on page 11 of her Decision.

The Applicant is ready and willing to abide by all of those decisions and appeals the Hearing Examiner's Decision to except the condition not allowing truck traffic on South 48th Street. The Applicant requests that the City Council impose the Hearing Examiner's alternate conditions for mitigating truck traffic as found on page 11.

The record before the Hearing Examiner shows that there is substantial evidence supporting the imposition of the alternate standards which would allow truck traffic on South 48th Street, subject to the conditions set forth on page 11.

On page 4 of the Hearing Examiner's Decision, in Finding No. 8, the Hearing Examiner erroneously finds that "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 is no evidence that the traffic mitigation measures could address the inconsistency between industrial and residential use of South 48th Street and loss of existing residential zoning buffer between the industrial uses and this longstanding neighborhood." The Hearing

Examiner cites the Applicant's traffic study in footnote 3, to support her position that the traffic study "does not address or analyze the land use issue involving the incompatibility between the proposed industrial and existing residential uses along South 48th Street."

This assertion is wrong on three major counts. First, the traffic study is just that – a traffic study. It is not a land use study. It is attached as Exhibit B.

Second, the traffic study did, in fact, evaluate the adjoining uses. The traffic report repeatedly refers to the fact that there are residential uses in the area which will share South 48th Street. It observed and counted trips involving residents. It comments on the very few pedestrians and bike commuters.

The traffic report concludes no mitigation measures are required to address the traffic generated by the proposed project. Just because the traffic study did not generate any specific mitigation does not mean, as the Hearing Examiner suggests, that the traffic study ignored the land uses. In fact, the study did consider the impacts of the adjoining uses.

Third, this property has been used as an industrial site for quite some time. It has been a concrete product plant. These uses (residential and industrial) have been co-existing for a long time.

In addition, the Hearing Examiner fails to refer to the memorandum from the City of Tacoma's Traffic Engineer, Jennifer Kammerzell, dated as of May 7, 2013, that does find that there are mitigating conditions that can be imposed to address any traffic concerns. Jennifer Kammerzell's memorandum is attached hereto as Exhibit C. The Traffic Engineer specifically reviewed the rezone application and the traffic study prepared and presented by the Applicant and set forth the conditions that would be required to address and mitigate truck access on South 48th Street. Those are the very conditions that have been incorporated as the alternative conditions in the Hearing Examiner's Decision.

In the City of Tacoma Planning and Services Department Report, dated as of June 13, 2013, a copy of which is attached hereto as Exhibit D, it was noted that the existing use of the property is development with several large, light industrial buildings. It noted that the property is a vacated concrete products company which is proposed to become a warehouse. See pages 1-2.

In its recommendations, the Planning and Services Department specifically called out and attached Jennifer Kammerzell's recommendations for mitigation requirements for truck traffic on South 48th Street, as noted on page 10 of that report.

On page 11, the Department noted that the project is consistent with TMC 13.06-.400-M1N". It specifically noted "the site in question is designated as "medium intensity" in the comprehensive plan. Further, the project as currently proposed will meet or exceed all of those development standards applicable to this project under the M-1" District requirements. The specific plans for this portion of the site "will act as a further buffer between the industrial uses and the residential neighborhood to the north." [*Emphasis added.*] See page 11.

On pages 12 through 13, the Department found and recommended as follows:

- a. The proposal is consistent with the GLUE tier designation and will not create a significant burden on the public services in the area.
- b. The area is designated a medium intensity area within the City's Comprehensive Plan.
- c. Given the parking and storm water detention proposed for the site, the property will add as a higher buffer between uses (higher intensity industrial and lower intensity residential and commercial uses).
- d. There were no other past requests for rezone or area rezones taken on the property in the past two years.
- e. "The Applicant proposes to develop uses in a site that meets all of the applicable project development standards."

In its recommended conditions of approval, the Department proposes mitigation efforts needed to address the truck traffic on South 48th Street and incorporates by attachment Jennifer Kammerzell's memorandum.

In addition, the MDNS analysis for the Project (Exhibit E to this letter), the lead agency proposed mitigation measures to address truck traffic on South 48th Street. (See pages 6-7.)

III. Matter for Appeal

The Hearing Examiner's statement – that there was no evidence that traffic mitigation measures could address the inconsistency between industrial and residential use of South 48th Street and "loss of the existing residential zoning buffer between industrial uses and this longstanding residential neighborhood." (See page 4, Section 8, of the Hearing Examiner's Decision.) – is in error. There is substantial

evidence on the record before you that show the two adjoining land uses were considered and specific mitigation efforts have been proposed.

As noted in the traffic study, the MDNS, in analysis presented by the City's own Traffic Engineer and the analysis presented by the Planning and Services Department, there is a clear and unequivocal statement that the proposed project meets all of the required conditions and, in fact, "acts as a further buffer between the industrial uses and the residential neighborhood to the south." See page 11 of the Planning Department Report and Finding No. 3 on page 13 of the Planning Department's Report.

In short, the record is full of evidence that truck traffic on South 48th Street was repeatedly evaluated with respect to and in the context of the adjoining residential zoning and uses, and that such traffic on South 48th Street can be appropriately mitigated.

IV. Request For Relief

The Applicant requests that the Council strike recommendation approval 3 found on page 10 of the Hearing Examiner's Decision and instead approve the rezone with conditions 1, 2, 4 through 9, as well as the alternate conditions addressing mitigation of truck traffic found on page 11 of the Hearing Examiner's Decision (subparagraphs a through d). The Applicant is anxious and ready to move forward with this project and will work with the City as required under the alternate conditions to be sure that mitigation measures are put into place and reviewed as appropriate and implemented.

Respectfully submitted,

JAMESON BABBITT STITES
& LOMBARD, P.L.L.C.



By: Anne DeVoe Lawler
Attorneys for Applicant

Enclosures



City of Tacoma
Legal Department - City Clerk's Office

August 14, 2013

To: Parties to the Appeal (See attached Transmittal List)

NOTICE OF APPEAL DATE

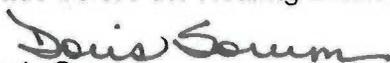
APPELLANTS: Jameson Babbitt Stites & Lombard, P.L.L.C., representing Appellant
H&P Tacoma Acquisition, LLC

SUBJECT: Paul McCormick, Innova Architects on behalf of H&P Tacoma
Acquisition, LLC File No. REZ2013-40000199731

Please be advised that the Tacoma City Council, at its meeting on Tuesday, August 13, 2013, set the hearing date for the appeal relative to the recommendation of the Hearing Examiner regarding the request to reclassify approximately 1.78 acres/75,000 square feet of the southeast corner of a larger property at 4601 South Orchard Street from a "R-2" Single-Family Dwelling District to a "M-1" Light Industrial District, to be developed with a stormwater detention facility requiring approximately 15,000 cubic yards of grading, landscaping, and up to 100 passenger car parking spaces; and to develop a driveway across the parcel for commercial and passenger vehicle access to South 48th Street. (Paul McCormick, Innova Architects on behalf of H&P Tacoma Acquisition, LLC; File No. REZ2013-40000199731)

The appeal hearing will be conducted at the City Council meeting on Tuesday, August 20, 2013, at approximately 5:30 p.m., in the Council Chambers on the first floor of the Municipal Building, located at 747 Market Street. At the time the appeal is heard by the City Council, each side shall be given a maximum of ten (10) minutes for oral argument. In the event there are multiple appellants or respondents, each side shall divide its ten (10) minute time limit between or among the appellants or respondents; or if agreement cannot be reached, as directed by the Mayor. A copy of the appeal filed with this office and Tacoma Municipal Code Chapter 1.70, which outlines the procedure for appeals before the City Council, have been attached for your reference.

Pursuant to Tacoma Municipal Code Section 1.70.030, parties to the appeal may submit written argument to the City Council in support of their positions with the City Clerk no later than seven calendar days prior to the date the matter is scheduled to be heard by the City Council. Written arguments shall not contain any evidence or statement of facts not contained in the hearing record made before the Hearing Examiner.


Doris Sorum
City Clerk

Attachment
Cc: Hearing Examiner
City Attorney's Office



City of Tacoma
Legal Department - City Clerk's Office

RECEIVED for
AUG 26 2013 Hearing Examiner
CITY CLERK'S OFFICE

August 23, 2013

To: Parties to the Appeal (See attached Transmittal List)

NOTICE OF CONTINUED APPEAL DATE

APPELLANTS: Jameson Babbitt Stites & Lombard, P.L.L.C., representing Appellant H&P Tacoma Acquisition, LLC

SUBJECT: Paul McCormick, Innova Architects on behalf of H&P Tacoma Acquisition, LLC; File No. REZ2013-40000199731

Please be advised that the Tacoma City Council, at its meeting on Tuesday, August 20, 2013, continued the appeal to the meeting of September 24, 2013, at the request of the appellant, relative to the recommendation of the Hearing Examiner regarding the request to reclassify approximately 1.78 acres/75,000 square feet of the southeast corner of a larger property at 4601 South Orchard Street from a "R-2" Single-Family Dwelling District to a "M-1" Light Industrial District, to be developed with a stormwater detention facility requiring approximately 15,000 cubic yards of grading, landscaping, and up to 100 passenger car parking spaces; and to develop a driveway across the parcel for commercial and passenger vehicle access to South 48th Street.

(Paul McCormick, Innova Architects on behalf of H&P Tacoma Acquisition, LLC;
File No. REZ2013-40000199731)

The appeal hearing will be conducted at the City Council meeting on Tuesday, September 24, 2013, at approximately 5:30 p.m., in the Council Chambers on the first floor of the Municipal Building, located at 747 Market Street. At the time the appeal is heard by the City Council, each side shall be given a maximum of ten (10) minutes for oral argument. In the event there are multiple appellants or respondents, each side shall divide its time limit between or among the appellants or respondents; or, if agreement cannot be reached, as directed by the Mayor.

If you have any questions, please contact me at 253-591-5361.

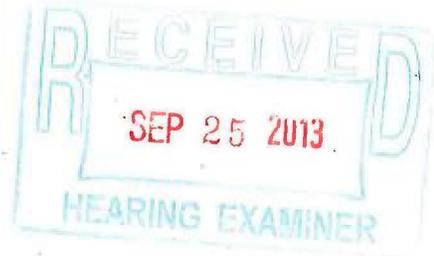

Doris Sorum
City Clerk

Cc: Hearing Examiner
City Attorney's Office

ORIGINAL



City of Tacoma
Legal Department - City Clerk's Office



September 25, 2013

To: Parties to the Appeal (See attached Transmittal List)

NOTICE OF CONTINUED APPEAL DATE

APPELLANTS: Jameson Babbitt Stites & Lombard, P.L.L.C., representing
Appellant H&P Tacoma Acquisition, LLC

SUBJECT: Paul McCormick, Innova Architects on behalf of H&P Tacoma
Acquisition, LLC; File No. REZ2013-40000199731

Please be advised that the Tacoma City Council, at its meeting on Tuesday, September 24, 2013, continued the appeal of the recommendation of the Hearing Examiner regarding the request to reclassify approximately 1.78 acres/75,000 square feet of the southeast corner of a larger property at 4601 South Orchard Street from a "R-2" Single-Family Dwelling District to a "M-1" Light Industrial District, to be developed with a stormwater detention facility requiring approximately 15,000 cubic yards of grading, landscaping, and up to 100 passenger car parking spaces; and to develop a driveway across the parcel for commercial and passenger vehicle access to South 48th Street. (Paul McCormick, Innova Architects on behalf of H&P Tacoma Acquisition, LLC; File No. REZ2013-40000199731)

The appeal will be conducted at the City Council meeting on Tuesday, October 1, 2013, at approximately 5:30 p.m., in the Council Chambers on the first floor of the Tacoma Municipal Building, located at 747 Market Street. At the time the appeal is heard by the City Council, each side shall be given a maximum of ten (10) minutes for oral argument. In the event there are multiple appellants or respondents, each side shall divide its time limit between or among the appellants or respondents; or, if agreement cannot be reached, as directed by the Mayor.

If you have any questions, please contact me at 253-591-5361.

Doris Sorum
City Clerk

Cc: Hearing Examiner
City Attorney's Office

ORIGINAL



City of Tacoma
Legal Department - City Clerk's Office

Parties to the Appeal – Transmittal List

Appellant: Jameson Babbitt Stites & Lombard, P.L.L.C., representing H&P Tacoma Acquisition, LLC

Subject: Paul McCormick, Innova Architects on behalf of
H&P Tacoma Acquisition, LLC File No. REZ2013-40000199731

Anne DeVoe Lawler
Jameson Babbitt Stites & Lombard P.L.L.C.
999 Third Avenue, Suite 1900
Seattle, WA 98104

H&P Tacoma Acquisition, LLC
3131 S Vaughn Way STE 301
Aurora, CO 80014

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



City of Tacoma City Council Minutes

747 Market Street, First Floor, Tacoma, WA 98402

City Council Chambers

October 01, 2013

5:00 PM

CALL TO ORDER

Mayor Strickland called the meeting to order at 5:07 p.m.

ROLL CALL

Present: 9 - Boe, Campbell, Ibsen, Lonergan, Mello, Thoms, Walker, Woodards and Mayor Strickland

FLAG SALUTE

The flag salute was led by Council Member Lonergan.

MOMENT OF SILENCE

ITEMS FILED IN THE OFFICE OF THE CITY CLERK

1. [13-0139](#) Minutes of the Economic Development Committee, September 10, 2013.
2. [13-0142](#) Minutes of the Human Rights Commission, August 15, 2013.
3. [13-0150](#) Minutes of the Infrastructure, Planning, and Sustainability Committee, August 28, 2013.

CONSENT AGENDA

4. [13-0127](#) Minutes of the City Council meeting of August 13, 2013.
5. [13-0128](#) Minutes of the City Council meeting of August 20, 2013.
6. [13-0129](#) Minutes of the Committee of the Whole meeting of August 6, 2013.

APPOINTMENTS

14. [RES38746](#) A resolution reappointing Lillian Hunter to the Tacoma Public Library Board of Trustees for a five-year term beginning October 5, 2013 through October 5, 2018.
[Doris Sorum, City Clerk; Elizabeth Pauli, City Attorney]

MOTION: Deputy Mayor Campbell moved to adopt Resolution No. 38746.

SECONDED BY: Council Member Woodards.

ACTION: Voice vote was taken and carried. The Resolution was declared adopted.

Ayes: 9 - Boe, Campbell, Ibsen, Lonergan, Mello, Thoms, Walker, Woodards and Mayor Strickland

PUBLIC HEARINGS AND APPEALS

19. [13-0027](#) Jameson Babbitt Stites & Lombard, P.L.L.C., representing the appellant H&P Tacoma Acquisition, LLC, by appealing the recommendation of the Hearing Examiner regarding the request to reclassify approximately 1.78 acres/75,000 square feet of the southeast corner of a larger property located at 4601 South Orchard Street from a "R-2" Single-Family Dwelling District to a "M-1" Light Industrial District, to be developed with a stormwater detention facility requiring approximately 15,000 cubic yards of grading, landscaping, and up to 100 passenger car parking spaces; and to develop a driveway across the parcel for commercial and passenger vehicle access to South 48th Street. (Paul McCormick, Innova Architects on behalf of H&P Tacoma Acquisition, LLC; File No. REZ2013-40000199731)
(Continued from the meeting of September 24, 2013)
The appeal began at 5:33 p.m.

MOTION: Deputy Mayor Campbell moved to convene to a Closed Session pursuant to RCW 42.30.140(2) to discuss the quasi-judicial matter, the session not to exceed ten minutes.

SECONDED BY: Council Member Lonergan.

ACTION: Voice vote was taken and carried. The motion was declared adopted.

Ayes: 9 - Boe, Campbell, Ibsen, Lonergan, Mello, Thoms, Walker, Woodards and Mayor Strickland

The Council convened to Closed Session at 6:30 p.m.

The Closed Session was extended by five minutes at 6:40 p.m.

The appeal hearing reconvened at 6:45 p.m.

MOTION: Deputy Mayor Campbell moved to concur in the Findings, Conclusions, and Recommendation of the Hearing Examiner and deny the appeal.

SECONDED BY: Council Member Woodards.

ACTION: Roll call vote was taken and carried. The appeal was denied by the following vote:

Ayes: 6 - Ibsen, Mello, Thoms, Walker, Woodards and Mayor Strickland

Nays: 3 - Boe, Campbell and Lonergan

The appeal ended at approximately 7:00 p.m.

PURCHASE RESOLUTIONS

15. [RES38747](#) A resolution awarding a contract to Fehr & Peers, in the amount of \$500,000, sales tax not applicable, budgeted from the General Fund, for consultant services for the preparation of the City's Transportation Master Plan - Specification No. PW13-0377F.
[Chris Larson, P.E., Engineering Division Manager; Kurtis Kingsolver, P.E., Interim Director, Public Works]

MOTION: Deputy Mayor Campbell moved to adopt Resolution No. 38747.

SECONDED BY: Council Member Lonergan.

ACTION: Voice vote was taken and carried. The Resolution was declared adopted.

Ayes: 9 - Boe, Campbell, Ibsen, Lonergan, Mello, Thoms, Walker, Woodards and Mayor Strickland