



City of Tacoma
Hearing Examiner

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 May 17, 2018, at Tacoma, WA.

Louisa Legg

May 17, 2018

FIRST CLASS AND ELECTRONIC MAIL DELIVERY

Bruce Judson
2715 Webber Ct.
Steilacoom, WA 98388-2850

Jeff Oldright
601 Valley Avenue NE STE A
Puyallup, WA 98372-2530

John Harrington, Planner, Principal
City of Tacoma, PDSD
747 Market Street, Rm 345
Tacoma, WA 98402-3701
(Interoffice Mail Delivery)

Re: HEX 2018-002 (LU18-0059)

Applicant: Bruce Judson, acting as agent for "Daffodil Storage" and the current owners of record of the Subject Property, Roger and Janet Norbom.

Dear Parties,

In regard to the above-referenced matter please find enclosed a copy of the Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommendation entered on May 17, 2018.

Sincerely,

Louisa Legg
Office Administrator

Enclosure (1): Findings of Fact, Conclusions of Law, and Recommendation

Cc: State of Washington, Department of Ecology, Southwest Regional Office, Attn: Eva Barber, Toxics Cleanup Program; Eva Barber, Water Quality, P.O. Box 47775, Olympia, WA 98504-7775

Transmitted via Electronic Mail Delivery

City of Tacoma: Chris Seaman, Tacoma Fire; Larry Criswell; Environmental Services; Jennifer Kammerzell, Traffic Engineering; Nicole Emery, City Clerk's Office; Steve Victor, Office of the Tacoma City Attorney; Rudy Eckert, Tacoma Power; Jesse Angel, Tacoma Water; Sue Simpson, Tacoma Public Works; Lisa Spadoni, Jana Magoon, PDS; Lihuang Wung

ORIGINAL

OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

REPORT AND RECOMMENDATION

TO THE CITY COUNCIL

APPLICANT: Bruce E. Judson acting as agent for “Daffodil Storage”¹ and the current owners of record of the Subject Property (as defined below), Roger and Janet Norbom (all collectively hereinafter, the “Applicant” which term also includes any employees, agents, and/or contractors of the Applicant in regard to conditions and compliance).

HEARING EXAMINER FILE NO: HEX2018-002 (LU18-0059)

SUMMARY OF REQUEST:

The Applicant proposes to reclassify an approximately 1.07 acre site (the “Subject Property”) from “R-2” Single-Family Dwelling District to “C-2” General Community Commercial District. The Subject Property is intended for development as a four-story self-storage building containing 713 storage units in addition to associated parking, landscaping, and other site improvements. The intended facility will require a building permit, site development permit, and work order permit.² Environmental review under the State Environmental Policy Act (“SEPA”) was required based upon more than 500 cubic yards of cut and fill required on the site and the size (>12,000 square feet) of the new building proposed for construction.³

LOCATION:

The Subject Property consists of two parcels with frontage on South Orchard Street just north of Center Street— Pierce County Tax Parcel Nos: 6135000014 and 6135000052 (the “Subject Property” or the “Site”). The Subject Property has a street address of 2801 South Orchard Street. Residential real property lying to the west of the Subject Property across South Orchard Street is in the City of Fircrest.

¹ Both Bruce Judson and Jeff Oldright represented at the hearing that they are associated with “Daffodil Valley Storage, LLC” located at 601 Valley Ave NE in Puyallup, Washington, and that either this entity, or one to be created, intends to purchase the Subject Property contingent on the rezone and other pending entitlements. Both Judson and Oldright have been granted acting agency from the Norboms for purposes of this rezone under letters presented to the City.

² Variances to the Land Use Code requirements for off-street loading spaces and building design were also applied for, but are addressed under a separate Hearing Examiner Report and Decision.

³ The City of Tacoma (“City”) Planning and Development Services (“PDS”) Department issued a formal Determination of Environmental Nonsignificance (the “DNS”) for the proposed project with a final comment date of April 27, 2018. The DNS has not been appealed.

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

ORIGINAL

RECOMMENDATION:

The Hearing Examiner recommends approval of the rezone, subject to conditions.⁴

PUBLIC HEARING:

After reviewing the Staff Report from the City’s Planning and Development Services Department (*Ex. 1*) and all attendant information on file, the Hearing Examiner convened a public hearing on the rezone request on May 3, 2018. As alluded to in FN 2 above, pursuant to Tacoma Municipal Code (“TMC”) sections 1.23.120 and 13.05.040.E, the Applicant’s rezone request was consolidated with two (2) variance requests, and presentations regarding all three were heard together by the Hearing Examiner.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION:

FINDINGS OF FACT:

1. The Applicant submitted an application requesting a rezone of an approximately 1.07 acre site from R-2 Single-Family Dwelling District to C-2 General Community Commercial District (the “Subject Property” or the “Site”). *Ex. 1, Ex. 5; Harrington Testimony*. The Site consists of Pierce County Tax Parcel Nos: 6135000014 and 6135000052. *Ex. 1*.

2. The Site is located along South Orchard Street just north of Center Street, and south of the Tacoma Lowe’s Home Improvement Store at 2701 South Orchard Street. The rectangular-shaped Site consists of the two tax parcels referenced above, and occupies approximately 46,683 square feet (1.07 acres) of land. The Site has steep slopes rising thirty (30) feet from south to north and is currently covered with evergreen and deciduous trees, bushes, and miscellaneous groundcover. The proposed access to the Site is from South Orchard Street, just north of an existing driveway to a 28-stall parking area for a neighboring professional building situated due south of the building proposed for development by the Applicant. South Orchard Street is a four-lane principal arterial with a center turn lane. It is improved with concrete curb, gutter and sidewalk adjacent to the Subject Property. *Harrington Testimony, Oldright Testimony; Ex. 1, Ex. 3*.

The Applicant intends to develop the Subject Property with a four-story, 98,757 square foot, 713-unit self-storage facility that includes regular parking for four vehicles, five off-street loading spaces, landscaping, and other site improvements. *Oldright Testimony, Harrington Testimony; Ex. 1, Ex. 3, Ex. 11⁵*.

⁴ As will be explained further below, the majority of the “conditions” set forth herein are not conditions precedent to the granting of the rezone. Rather, they are informational, advisory conditions to the Applicant regarding its proposed development of the Subject Property.

⁵ Exhibit 11 was added to the record on May 10, 2018, after the record was initially closed. It was added at the request of the Examiner for the parties to clarify which parking spaces on the proposed site plan (Exhibit 3) were designated “loading spaces” and which were for general parking. The parties stipulated to the admissibility and inclusion of Exhibit 11.

3. The proposed use of the Subject Property, as a multi-storied self-service storage facility, is not allowed in the currently designated R-2 Single-Family Dwelling District; therefore, the Applicant is requesting the reclassification in order to facilitate the proposed use/project. *Ex. 5, Ex. 7, Ex. 8.*

4. The Subject Property and the majority of the surrounding area were classified within the “R-2 One-Family” Dwelling District in 1953, when the original version of the City’s zoning code was enacted. At present, surrounding properties are a mix of single-family (in Fircrest to the west), commercial, and light industrial uses. The zoning on the property immediately to the north was changed to C-2 in 1996 (Lowe’s). The property to the east of the Site was rezoned to C-2 in 1981 (Cole Graphic Solutions). The property south of the Site was rezoned to C-1 in 1959 (gas station mini-mart and professional office building). Over the years, South Orchard Street has been improved from a two-lane collector arterial into a four lane, principal arterial. *Harrington Testimony; Ex. 1, Ex. 5, Ex. 7, Ex. 8.*

5. The larger area in which the Subject Property is located was given the designation of General Commercial on December 1, 2015 with adoption of the new *One Tacoma* Comprehensive Land Use Plan (the “Comp Plan”). This action was not accompanied by an area-wide rezone, which would have made the zoning of the Subject Property consistent with the new comprehensive land use designation, but instead the essentially anomalous, old zoning has been left in place until now. *Harrington Testimony; Ex. 1, Ex. 5, Ex. 7, Ex. 8.*

6. The reclassification is not, however, being requested in order to implement a specific provision of the Comp Plan. *Harrington Testimony; Ex. 1.*

7. As part of the DNS process referenced at FN 3 above, the Applicant submitted a Traffic Impact Analysis (“TIA”) for its intended project prepared by Heath & Associates, Inc. dated February 12, 2018. *Ex. 89.* The traffic study concluded that the Applicant’s project “[w]ill be a mild generator of new trips in the area...” but determined that no specific mitigation measures were necessary. *Oldright Testimony; Ex. 9.*

8. The Applicant and the City used information from the TIA regarding traffic counts, average time of stay, and etc. to conclude that the intended project’s proposed parking will not be deficient for the proposed use even though it varies from TMC requirements. *Oldright Testimony, Harrington Testimony; Ex. 1, Ex. 9.*

9. The Applicant is relying on this information to justify its request for a variance from the TMC’s parking lot development standards. *See TMC 13.06.510.* Further justification for the reduction comes from the Site’s size and topography which make for a “very geographically constrained site.” *Oldright Testimony.*

10. The Site’s size and topography, particularly the Site’s slope, are also factors, at least in part, in the Applicant’s request for a design variance, in that elements of the design variance are intended to assist in directing and handling storm water runoff at the Site in a way that best suits the sloped topography and existing infrastructure. *Oldright Testimony.*

11. In accordance with the requirements of TMC 13.05.020 regarding notice of rezone applications, written notice of the application was mailed to all owners of property within 400 feet of the Site, the appropriate neighborhood council, and qualified neighborhood groups on March 28, 2018.

Ex. 1.

12. As part of the project review process, PDS provided notification of this rezone request to various City departments/divisions, and outside governmental and non-governmental agencies. Departmental comments and requirements regarding this proposal are included as attachments to the City's Staff Report. These agencies/departments/divisions recommended important conditions they believed would be properly attached to the rezone were it to be approved by the City Council. *Ex. 1, Ex. 2.* Some of the comments and/or conditions, however, are more appropriately addressed as part of the permit/entitlements process for the Applicant's intended project, as opposed to this rezone process.

13. Through Oldright's testimony, the Applicant agreed to the conditions of approval recommended by reviewing City departments and outside agencies, although during the hearing, Oldright requested that the Applicant should have the ability to engage the City in ongoing discussions regarding the applicability of certain conditions as the project develops, particularly the applicability of the City's Right-of-Way Restoration Policy. *Oldright Testimony.*

14. No members of the public appeared to testify in opposition to the requested rezone.

15. No area-wide rezone action affecting the Subject Property has been taken by the City Council in the two years preceding the present rezone application. *Harrington Testimony; Ex. 1.*

16. As referenced above, pursuant to the State's SEPA Rules (*WAC 197-11*) and the City of Tacoma's Environmental Code (*TMC 13.12*), the Director of PDS issued the DNS for the requested rezone which takes into account the proposed project. As mentioned at FN 3 above, the DNS has not been appealed. *Harrington Testimony; Ex. 1, Ex. 9.*

17. The Staff Report in this matter accurately describes the requested rezone and resulting proposed use, general and specific facts about the Site, applicable sections of the Comp Plan, and applicable regulatory codes. The Staff Report is marked as Exhibit 1, and by this reference, is incorporated herein as though fully set forth.

18. Any conclusion of law herein which may be more properly deemed a finding of fact is hereby adopted as such.

CONCLUSIONS OF LAW:

1. The Hearing Examiner has jurisdiction over the subject matter of this proceeding to conduct a hearing and make a recommendation to the City Council. The final rezone decision is made through an ordinance by the City Council. *See TMC 1.23.050.A.1 and TMC 13.05.*

2. The requirements of SEPA have been, by the City's issuance of the DNS, which was not appealed.

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

3. Under TMC 13.06.650.B, the applicant for a rezone is required to 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 Comp Plan

4. With the adoption of the new Comp Plan in 2015, land use intensities were replaced with land use designations. The General Commercial land use designation and applicable goals and policies for the area in and around the Subject Property is consistent with the requested rezone. Applicant's proposed development will be in keeping with the Comp Plan's goals and policies for this area.

Changed Conditions

5. As set forth above at FoF 4, the Subject Property has been zoned R-2 Single-Family Dwelling District since the inception of zoning designations/classifications in Tacoma in 1953. All of the surrounding real property was originally zoned R-2 as well, but has been rezoned over the years to C-1 General Neighborhood Commercial District and C-2 General Community Commercial District. The surrounding area has changed over the years as traffic has increased and development has intensified along South Orchard Street. The substantial changes affecting the use and development of property that

have occurred in this area indicate the requested change of zoning for the Subject Property is appropriate. Denying the rezone would leave the Subject Property as somewhat of an anomalous island in this generally commercial area.

The requested change in zoning is not sought for purposes of implementing any particular provision of the Comp Plan, but is in keeping with applicable Comp Plan policies and goals.

Consistency with District Establishment Statement

6. The District Establishment Statement for the C-2 district provides:

C-2 General Community Commercial District. This district is intended to allow a broad range of medium- to high-intensity uses of larger scale. Office, retail, and service uses that serve a large market area are appropriate. Residential uses are also appropriate. This classification is not appropriate inside Comprehensive Plan designated mixed-use centers or low-intensity areas.

TMC 13.06.200.B.3. The District Establishment Statement indicates that this district is intended to allow a broad range of medium- to high-intensity uses of larger scale. The Applicant's intended use of the Subject Property as a commercial storage facility fits within this range. The proposed rezone, if granted, will bring the Subject Property into conformity with the surrounding area designated as general commercial and having commercial zoning. The Site is not within a mixed-use center or a low intensity area. As such, the proposed rezone is consistent with the district establishment statement for the zoning classification being requested.

Recent Area-Wide Rezone

7. No area-wide zoning involving or affecting the Subject Property has been taken by the Tacoma City Council in the two years preceding the filing of the instant rezone application. As a result, the criterion set forth at TMC 13.06.650.B.4 is satisfied.

Relationship to the Public Welfare

8. The TMC and Comp Plan set forth policies and requirements aimed at regulating growth to ensure consistency with the public health, safety, morals and general welfare. The TMC and Comp Plan identify this area as a location which is intended for continued general commercial urban growth. The policies applicable to development in this area encourage commercial development of the type the Applicant intends. In order to ensure further that projects in these areas are compatible with the intended character of the district and do not have significant negative impacts on surrounding uses, the TMC also includes development regulations for projects in the C-2 District, including landscaping and parking standards. Requiring compliance with applicable development regulations and standards helps safeguard the public, and ensure visual compatibility with surroundings.

9. Findings entered herein, based on substantial evidence in the hearing record, support a conclusion that the proposed rezone is consistent with applicable criteria and standards for rezones, provided the conditions set forth herein are imposed and complied with by the Applicant when developing the Subject Property.

10. Accordingly, the requested rezone is recommended for approval subject to the following conditions:

A. RECOMMENDED CONDITIONS OF APPROVAL: “Conditions” set forth herein are derived primarily from the City’s Staff Report, other submissions in the record, and testimony from the hearing. Nearly all of the conditions below have more to do with compliance issues related to the Applicant’s intended development of the Subject Property after the granting of the desired rezone than they do with the granting of the rezone itself, i.e. they are not recommended herein as conditions precedent to the granting of the rezone. Compliance with later development conditions prior to granting the rezone is physically and temporally impossible. Conditions falling into this class will be designated “*Advisory*” because the role these “conditions” have relevant to the rezone is simply that—advisory. Conditions that are actually tied to the granting of the rezone will be designated “*Required*.”

As set forth at FoF 17 above, the City’s Staff Report is incorporated herein by reference. Some of the more general language from section K. of the Staff Report (“Recommended Conditions of Approval”) is not repeated here even though the majority is. That does not mean that, if this rezone is approved, the Applicant should not still reference helpful language from the Staff Report as guidance for its development process, and it also does not mean that some of these very general “conditions” *will not* apply to later development of the Subject Property.

To the extent that any express language in the Staff Report conflicts with the language in this Report and Recommendation, this Report and Recommendation shall control if adopted as part of the City Council’s approval of the rezone. Omission of language from the Staff Report in this Report and Recommendation does not constitute a conflict.

City Council approval of the requested rezone does not release the Applicant from state or other permitting requirements for subsequent development of the Subject Property, nor does anything in this Report and Recommendation take precedence over application of, and compliance with, the TMC. *See Usual Condition 2 below.*

1. LAND USE AND BUILDING/FIRE

- a. The subsequent development of the Site shall comply with applicable regulations in TMC 13.06.200 for the C-2 General Community Commercial District and associated sections of TMC Chapters 13.06 Zoning; 13.11 Critical Areas Preservation and 13.12 Environmental Code as such are in effect at the time of complete permit application. *Advisory.*

- b. A separate building permit is required for the proposed retaining walls for the project. *Advisory.*
- c. Construction shall comply with the version of the Building Code(s) in effect at the time of building permit application completion. *Advisory.*
- d. Future construction shall comply with the adopted Fire Code in effect at the time the building permit is deemed complete. *Advisory.*
- e. Construction documents submitted as part of this land use permit have not been reviewed for Fire Code compliance. *Advisory.*

2. STREETS, DRIVEWAYS, AND SIDEWALKS

- a. All broken, damaged, or hazardous curb and gutter along South Orchard Street abutting the Site shall be removed, and new cement concrete curb and gutter constructed in its place to the approval of the City Engineer. *Advisory.*
- b. All damaged or defective sidewalk abutting the Site shall be removed and new cement concrete sidewalk constructed meeting Public Right-of-Way Accessible Guidelines (PROWAG) and Americans with Disabilities Act (ADA) requirements, and be installed to the approval of the City Engineer. *Advisory.*
- c. South Orchard Street fronting the Subject Property shall be restored in accordance with the City of Tacoma Public Works Department Right-of-Way Restoration Policy (the “ROW Policy”). Nothing prevents the Applicant from engaging City staff regarding how, and to what extent the ROW Policy applies, although staff anticipates that restoration will require a full street 2” grind and 2” HMA overlay from property line to property line. *Advisory.*
- d. Applicant’s intended project appears to be proposing work within South Orchard Street which is currently under a construction moratorium per the ROW Policy. A waiver process exists to request work in moratorium locations. *Advisory.*
- e. The type, width, and location of all driveway approaches serving the Site must be approved by the City Engineer. *Advisory.*
- f. Work completed in the City right-of-way requires a permit. The City of Tacoma has implemented a new permitting system using ACCELA for new and all subsequent plan submittals. *Advisory.*

3. STORM AND SANITARY SEWERS

- a. All stormwater impacts shall be mitigated in accordance with the City's Stormwater Manual ("SWMM") in effect at the time of complete permit application. *Advisory.*
- b. Minimum Requirements that may be applicable to the Applicant's intended project are:
 - #1 Preparation of a Stormwater Site Plan
 - #2 Construction Stormwater Pollution Prevention
 - #3 Source Control of Pollution
 - #4 Preservation of Natural Drainage Systems and Outfalls
 - #5 Onsite Stormwater Management
 - #6 Water Quality
 - #7 Flow Control
 - #8 Wetlands Protection
 - #9 Operation and Maintenance
 - #10 Offsite Analysis and Mitigation. *Advisory.*
- c. A Construction Stormwater Pollution Prevention Plan ("SWPPP") will be required for development of the Subject Property. *Advisory.*
- d. To the extent that any project on the Subject Property disturbs one or more acres of land, or is part of a larger common plan of development or sale that has disturbed or ultimately will disturb one or more acres of land and discharge stormwater from the Site, coverage under a Washington State Department of Ecology ("Ecology") NPDES Stormwater Construction General Permit ("CSWGP") may be required. *Advisory.*
- e. Applicant's intended project may require coverage under an Ecology General Permit to Discharge Stormwater Associated with Industrial Activity. *Advisory.*
- f. Development of the Subject Property shall employ, where feasible and appropriate, Onsite Stormwater Management BMPs to infiltrate, disperse, and retain stormwater runoff onsite to the maximum extent feasible without causing flooding or erosion impacts. Design of onsite stormwater systems may require a soil analysis prepared by a qualified soils professional per the SWMM that is in effect at the time of complete permit application. *Advisory.*
- g. If development of the Subject Property triggers Minimum Requirements #1-5 and #10 (SWMM) the Applicant shall either manage stormwater in accordance with List #1 (Vol. 1, Section 3.4.5.5) or demonstrate compliance with the LID Performance Standard (Vol. 1, Section 3.4.5.4). *Advisory.*
- h. If development of the Subject Property triggers Minimum Requirements #1-10 the Applicant shall either manage stormwater in accordance with List #2 (Vol. 1, Section 3.4.5.6) or demonstrate compliance with the LID Performance Standard (Vol. 1, Section 3.4.5.4). *Advisory.*

- i. If development of the Subject Property meets the thresholds of Minimum Requirement #6, the Applicant may be required to construct water quality treatment facilities. On-site and offsite pollution generating hard surfaces (“PGHS”) must be included in determining the project PGHS total. *Advisory.*
- j. Separate water quality facilities shall be provided for on-site and off-site PGHS in the development of the Subject Property. *Advisory.*
- k. If the Site meets the water quality treatment threshold, and discharges to natural resources restoration sites or sensitive areas, the Applicant will be required to provide enhanced treatment per Volume 1 Section 2.5.11 of the SWMM. *Advisory.*
- l. If Applicant’s project triggers Minimum Requirement #7 (based on the combination of on-site and off-site improvements), flow control applies. Flow control requirements vary by watershed. The Applicant should refer to the Watershed Specific Requirements of Volume 1 Section 3.3.7 of the SWMM. *Advisory.*
- m. Per SWMM Minimum Requirement #10, all sites shall perform a qualitative offsite analysis as described in Volume 1 of the SWMM. *Advisory.*
- n. A quantitative offsite analysis of the City storm sewer system may be submitted to demonstrate the City storm system has adequate capacity to convey storm drainage for fully developed conditions. If the system does not have adequate capacity, onsite detention, infiltration or capacity improvements to the downstream City storm system shall be required. *Advisory.*
- o. Development of the Subject Property in the manner Applicant intends will add additional impervious area and runoff to the City existing stormwater management facilities. Prior to any short plat recording, preliminary plat, building permit or construction permit approval, an evaluation of the impacts of the proposed additional area to the existing system must be prepared and approved by Environmental Services. This evaluation shall be performed by a licensed Civil Engineer. *Advisory.*
- p. Bare galvanized metal shall not be used for materials that convey stormwater, such as roofs, canopies, siding, gutters, downspouts, roof drains, and pipes. Any galvanized materials shall have an inert, non-leachable finish, such as baked enamel, fluorocarbon paint (such as Kynar, or Hylar), factory applied epoxy, pure aluminum, or asphalt coating. Acrylic paint, polyester paint, field applied, and part zinc (such as Galvalume) coatings are not acceptable. *Advisory.*
- q. Each new building or townhouse developed on the Subject Property shall have a new, independent connection to the City sanitary sewer. *Advisory.*
- r. Multiple units and buildings that are under single ownership and located on a single parcel may use shared private side sewers that connect to the public sanitary sewer. In the event that development of the Subject Property is divided into more than one parcel in the future (whether from platting, boundary line

adjustments, lot segregations, or any other land use actions), each new parcel shall have an individual side sewer connection to the public sanitary sewer. This may require re-routing any side sewers constructed under this development, or constructing new side sewers in order to individually connect each parcel to the public sanitary sewer. A public sanitary sewer extension may also be required in order to individually connect each parcel. Notice of this requirement will be recorded on title of this parcel. *Advisory.*

- s. Any private storm drainage system will require a Covenant and Easement Agreement with the City for maintenance and access. *Advisory.*

4. TRAFFIC

Driveways incorporated in the development of the Subject Property shall comply with TMC 10.14 for separation. *Advisory.*

5. TACOMA POWER

- a. On the east side of South Orchard Street, 3 phase power is available from the pole in front of the Subject Property. *Advisory.*
- b. The Site shall contain a pad mounted transformer. To do this, Applicant must reserve an area of 8x8 ft. that will be a minimum of 4 ft. from a non-combustible wall or 8 ft. from a combustible wall. *Advisory.*
- c. Any utility construction, relocation or adjustment costs shall be at the Applicant's expense. *Advisory.*
- d. All new electrical services must be installed underground unless otherwise approved by Tacoma Power Engineering; additional utility easements may be required. *Advisory.*

6. TACOMA WATER

- a. Existing 12" DI main in South Orchard Street can provide service to the Subject Property. Calculated pressure is approximately 75 psi. *Advisory.*
- b. If new water services are required, they must be sized and installed by Tacoma Water. New water services will be installed after payment of the Service Construction Charge and the Water Main Charge. New meters will be installed by Tacoma Water after payment of the System Development Charge. *Advisory.*
- c. If new fire service is required, it will be sized by a fire consultant and installed by Tacoma Water after payment of the Service Construction Charge. *Advisory.*
- d. If a new fire hydrant is required at a location with an existing water main, the hydrant will be installed by Tacoma Water after payment of an installation charge. *Advisory.*

- e. If existing water facilities need to be relocated or adjusted due to street improvements, they must be relocated by Tacoma Water at the Applicant's expense. *Advisory.*
- f. Tacoma Water facilities must remain accessible at all times. Any damage to Tacoma Water facilities will be repaired by Tacoma Water crews at the expense of the Applicant. *Advisory.*
- g. Sanitary sewer mains and side sewers shall maintain a minimum horizontal separation of ten (10) feet from all water mains and water services. When extraordinary circumstances dictate the minimum horizontal separation is not achievable, the methods of protecting water facilities shall be in accordance with the most current State of Washington, Department of Ecology "Criteria For Sewage Works Design." *Advisory.*
- h. For utilities other than sanitary sewer, the proposed facilities shall have a minimum horizontal separation of five (5) feet and vertical separation of twelve (12) inches from Tacoma Water facilities. *Advisory.*

7. GRADING AND EROSION CONTROL

- a. Grading plans will be evaluated at the Building Permit stage. *Advisory.*
- b. The Applicant shall take reasonable precautions to avoid fugitive dust emissions during construction activities. By employing Best Management Practices ("BMP"s), such as watering or covering exposed areas during dry periods, the Applicant shall not allow fugitive dust to travel beyond the project boundaries. *Advisory.*
- c. All grading and filling of land shall utilize only clean fill, i.e., dirt or gravel. All other materials, including waste concrete and asphalt, are considered to be solid waste and permit approval must be obtained through the Tacoma-Pierce County Health Department prior to filling. *Advisory.*
- d. Provisions shall be made to minimize the tracking of sediment by construction vehicles onto paved public roads. If sediment is deposited, it shall be cleaned every day by shoveling or sweeping. Water cleaning shall only be done after the area has been shoveled out or swept. *Advisory.*
- e. Erosion control measures shall be in place prior to any clearing, grading, or construction. These control measures must be effective to prevent soil from being carried into surface water by stormwater runoff. Sand, silt, and soil will damage aquatic habitat and are considered pollutants. *Advisory.*
- f. During construction, all release of oils, hydraulic fluids, fuels, other petroleum products, paints, solvents, and other deleterious materials shall be contained and

removed in a manner that will prevent their discharge to waters and soils of the state. The cleanup of spills shall take precedence over other work on the site.
Advisory.

8. PROTECTION OF ADJACENT PROPERTIES

With the subsequent development of the Site, the Applicant shall be responsible for adverse impacts to other property abutting the Subject Property. Development shall be designed to mitigate impacts including, but not limited to, discontinuities in grade, abrupt meet lines, access to driveways and garages, and drainage problems. Slopes shall be constructed with cuts no steeper than 1-1/2:1, and fills no steeper than 2:1, except where more restrictive criteria is stipulated by the soils engineer. When encroaching on private property, the project engineer shall be responsible to obtain a construction permit from the neighboring property owner. The development design shall be such that adverse impacts are limited as much as possible. *Advisory.*

9. WASHINGTON STATE DEPARTMENT OF ECOLOGY

This property is within a quarter mile of one contaminated Site. The Site is Bjorn Olson Building, Facility Site ID (FSID) 9469109.

If contamination is suspected, discovered, or occurs during the proposed development of the Subject Property, testing of the potentially contaminated media shall be conducted. If contamination of soil or groundwater is readily apparent, or is revealed by testing, Ecology shall be notified in accordance with applicable laws.
Advisory.

10. MISCELLANEOUS

- a. All development of the Site shall substantially conform to the site development plan set and landscaping plan (*Advisory*; Ex. 3, Ex. 4) and shall meet all applicable regulations in the TMC for the C-2 General Community Commercial zone district (*Required*).
- b. Should development of the Subject Property result in the inadvertent discovery of archaeological materials, all work in the vicinity of the discovery shall halt and the City of Tacoma, Historic Preservation Officer and the appropriate representatives from the Puyallup Tribe of Indians shall be notified. *Advisory.*
- c. Non-compliance with the Report and Recommendation of the Hearing Examiner (to the extent adopted by the City Council) and or City Council approval, or the failure to follow any requirements of the TMC pertaining to the rezone change, variances and subsequent development of the site are subject to enforcement by the PDS Director per TMC 13.05.100 Enforcement. *Required.*

- d. Per TMC 13.05.020.H, variance permits expire after five (5) years, so development of the Subject Property utilizing any variances granted in conjunction with this rezone request will have to take place within five (5) years of final approval. *Advisory.*
- e. A tax parcel combination is required for the Subject Property to be developed as the Applicant intends since the proposed building will cover the existing boundary line between the two existing parcels. This will remove the requirement to have a firewall down the parcel boundary line in the new building. This requirement is done with a Pierce County Assessor application which is processed and signed off on by PDS staff through a no-fee land use application through the city permit system. *Advisory.*

B. USUAL CONDITIONS:

1. The recommendation set forth herein is based upon representations 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 additional hearings. *Required.*
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 shall promptly bring such development or activities into compliance. *Required.*

13. Any finding of fact herein which may be more properly deemed or considered a conclusion of law is hereby adopted as such.

RECOMMENDATION:

The Hearing Examiner recommends approval of the rezone, subject to the above listed conditions.

DATED this 17th day of May, 2018.



Jeff H. Capell, Hearing Examiner

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

ORIGINAL

NOTICE

RECONSIDERATION/APPEAL 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. (*TMC 1.23.140*).

APPEALS 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.

Appeals 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**