



City of Tacoma  
Hearing Examiner

August 18, 2014

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Unitarian Association of Tacoma  
c/o Tahoma Unitarian Universalist Congregation  
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Tacoma WA 98408-3405

**Re: HEX 2014-014 (REZ2014-40000223041 and SEP2014-40000223043)**

**Applicant: John Wise**

**Property Owner: Unitarian Association of Tacoma**

To the Parties,

Enclosed please find a copy of the Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommendation to the Tacoma City Council as a result of a public hearing held on July 17, 2014.

Sincerely,

LOUISA LEGG

Legal Assistant

Enclosure (1) – HEX Report and Recommendation

Cc: *See Attached Transmittal List*

**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 August 18, 2014, at Tacoma, WA.

L Legg

## TRANSMITTAL LIST

### HEX 2014-014 (REZ2014-40000223041 and SEP2014-40000223043)

Christine George, 3754 N Frace Ave., Tacoma WA 98407-1112  
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Elaine Kinton-Blahm, 1248 Huson Dr., Tacoma WA 98405-1152  
Cheryl Osborne, 1614 S Mullen St., Tacoma WA 98405-1122  
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Pierce County Assessor-Treasurer, 2401 S. 35<sup>th</sup> Street, Room 142, Tacoma, WA 98409  
Brad D. Harp, Tacoma-Pierce County Health Department, Environmental Health Division  
City Clerk, City of Tacoma  
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Jana Magoon, City of Tacoma Planning & Development Services Department  
Dan Sulley, P.E. City of Tacoma, Planning & Development Services Department  
Jason Miller, City of Tacoma, Public Works Department, Environmental Services Engineering  
Jennifer Kammerzell, Sr. Engineer, City of Tacoma, Public Works Dept.,  
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Corey Newton, Associate Engineer, City of Tacoma, Public Works Dept., Traffic Engineering  
Brennan Kidd, P.E., City of Tacoma, Public Works Dept., Traffic Engineering  
Jesse Angel, Utility Services Specialist, Tacoma Water  
Rick Coyne, City of Tacoma Public Works Department, Solid Waste Management  
Sue Simpson, City of Tacoma, Public Works Department, Construction/LID  
J. Martinson, Supervisor, Tacoma Power T&D New Services  
Ryan Erickson, P.E., Tacoma Fire Department, Prevention Division  
Lihuang Wung, City of Tacoma, Planning & Development Services Department

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

**APPLICANT:** John Wise

**FILE NOS:** HEX 2014-014 (REZ2014-40000223041; SEP2014-40000223043)

**SUMMARY OF REQUEST:**

The City of Tacoma Planning and Development Services Department received an application to rezone a 5.4 acre parcel from “R-2” Single-Family Dwelling District to “R-4-L” Low-Density Multiple-Family Dwelling District to allow for the future construction of a 121-unit apartment complex.

**LOCATION:**

The project site is located at 1502 South Orchard Street and includes parcel numbers 4475000390, 4475000380, and 4475000733.

**RECOMMENDATION OF THE HEARING EXAMINER:**

The rezone request is hereby recommended for approval, subject to conditions.

**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 July 17, 2014.

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

### **FINDINGS:**

1. John Wise (Wise) submitted an application seeking a rezone from “R-2” Single-Family Dwelling District to “R-4-L” Low-Density Multiple-Family Dwelling District to allow for the future construction of a 121-unit apartment complex. The project would contain 12 buildings, each containing 10 units and one manager’s office, containing one unit. The overall density of the project will be 22 units per acre. The proposal will include associated parking for 202 cars. Water, sewer, and electrical service to the site will be provided by the City of Tacoma. *Ex. 1.*

2. The proposed rezone site is currently undeveloped and contains a mix of trees, shrubs, and grass. *Ex.1.* The property is located within a mapped Wildlife Corridor area. At this time the Tacoma Municipal Code (TMC) does not contain specific provisions protecting such areas from otherwise allowed development. *Lawrence Testimony.* The site is also adjacent to a segment of the Scott Pierson Trail. *Id.*

3. Along the eastern boundary, the property adjoins South Orchard Street for approximately 170 feet. The remainder of the eastern boundary abuts a parcel owned by a third party, which has been used in the recent past by the City of Tacoma as a temporary spoil site for utility trenching work. *Ex. 3, Environmental Checklist, p. 8.* The SR-16 eastbound on-ramp and SR-16 roadway abut the site to the south and west and the Baltimore Street right-of-way (unimproved) abuts to the west. The area to the immediate north is developed with a church and associated parking. *Ex. 1, Attachment A-9.* A single-family residential neighborhood is located to the east, across South Orchard Street and up gradient from site. The homes in this area face away from South Orchard Street. *Johnson Testimony.* All of the adjacent areas are zoned “R-2” Single-Family Dwelling District (“R-2”). The “R-2” zoning was placed on property in the vicinity when the City zoning code was adopted in 1953. *Lawrence Testimony.*

4. In the years since the “R-2” zone was established in 1953, conditions in the area have changed to a significant degree. Construction of the SR-16 highway in this vicinity has altered the nature of the immediate area. Development has increased along South Orchard Street to the north and south of the site. The larger area has steadily developed since 1953, including major expansions of Tacoma Community College (to the southwest), development of multiple apartment complexes along South 12<sup>th</sup> Street (to the north of the site), and construction of multiple shopping centers along 6<sup>th</sup> Avenue (to the north of the site). *Ex. 1; Lawrence Testimony.*

5. The Applicant submitted a Traffic Impact Analysis in connection with the rezone request prepared by consultant Heath & Associates, Inc.<sup>1</sup> *Ex. 4.* South Orchard Street is a north-south, two-to-multilane arterial that borders the east side of the site and will be the access point to the site for project residents. The South Orchard Street lane widths are approximately 12 feet and paving is asphalt concrete. The shoulders are a mix of curb, gutter, and sidewalks sections with paved/gravel in

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<sup>1</sup> One commenting party (*Ex. 10*) suggested that the traffic study was based on insufficient data and should be enhanced. The study was prepared by a traffic engineer and accepted by the City’s reviewing traffic engineer. In the absence of expert testimony regarding the alleged flaws in the document, it will be accepted as persuasive evidence.

other areas. *Id.*, p.6. The traffic study concluded that the traffic volumes generated by the project would not cause a change in level of service (LOS) at any of the key intersections impacted by traffic from the proposed project. *Ex. 4, p. 13.* The study recommended that the project provide a left turn lane on South Orchard Street for traffic entering the site from the south. This addition would prevent delays to through traffic by providing storage for vehicles attempting to turn left into the project. *Ex. 4, p. 14.* The study investigated the project's impacts on traffic queues at the South Orchard Street and SR-16 ramp intersection during peak hours and determined that traffic from the project would not impede other traffic or be impeded by vehicles at nearby intersections. *Id.*, p. 14.

6. The City and the Applicant Wise had discussions regarding the type of improvements the developer would be required to install along South Orchard Street from the project north toward South 12<sup>th</sup> Street. The consultations involved the issues of nexus and proportionality and the expectation that the area might be subject to roadway improvements in the relatively near future. *Ex. 1, Attachment A-7; Sweeney Testimony.* South Orchard Street is included in a 6-year transportation plan that would encompass the immediate vicinity of the project. Any improvement the developer installs on South Orchard Street could be subject to removal as part of the larger transportation project. *Lawrence Testimony.* Accordingly, the City has provided the Applicant with three options for providing safe pedestrian access to and from the site. *Exs. 1 and 3.* Citizens testifying at the hearing indicated they did not want any "temporary" fix. *Osborne Testimony.* The City has concluded that any of the offered options would meet the requirement to provide safe pedestrian access to South 12<sup>th</sup> Street and safe walking routes for school students. *Lawrence Testimony.* The options are set forth as project conditions in the Mitigated Determination of NonSignificance (MDNS) issued under the State Environmental Policy Act (SEPA). *Ex. 3.*

7. The project site is located within the Tacoma Asarco Smelter Plume as mapped by the State of Washington, Department of Ecology (Ecology). As a result, the Applicant obtained an Arsenic and Lead Soil Investigation for the project from consultant EcoCon, Inc. (ECI), Environmental Consulting. *Ex. 5.* ECI prepared an initial report dated March 6, 2014, which found evidence of arsenic and lead in the soils on the site. Additional testing to confirm the extent of any impacted soil was recommended. Further testing was completed and a Supplemental Investigation Report was issued on April 22, 2014. The Report concluded that remediation pursuant to Ecology guidance would be appropriate. *Ex. 5, Supplemental Report p.3.* The SEPA mitigation conditions for the project include a requirement for Applicant Wise to enter into a voluntary cleanup plan with Ecology and obtain a "No Further Action" letter from the agency prior to the issuance of site development permits for the proposal. *Ex. 3; Sweeney Testimony.*

8. Applicant Wise submitted a Wetland Analysis Report in support of the rezone application authored by consultant, GeoEngineers, Inc. in 2005. *Ex. 6.* The Wetland Analysis concluded that the vegetation on the site was "not indicative of vegetation associated with wetland features." *Ex. 6, p.3.* The soils on-site were not characterized as hydric soils and the field reconnaissance revealed "no indicators of wetland hydrology along any of the transects, including the lowest elevations..." *Ex. 6 p. 3.* Neighbors who testified at the hearing questioned the validity of using a report that was prepared in 2005 for a project in 2014. *Toellner Testimony; Toellner Comment (Ex. 10).* The Applicant suggested that hydrological features develop over a very long period of time and are not likely to change during the interval in question. *Sweeney Testimony.* The City did not require further analysis

of the wetland issue from the Applicant. The weight of the evidence demonstrated that the site did not contain wetlands.

9. A number of citizens testified at the hearing or submitted written comments expressing concerns about the proposed rezone and apartment development. Several neighbors raised the impact of noise and light from construction and occupancy of the premises as a concern, indicating that they had experienced a great deal of noise during construction projects on SR-16. *Toellner, Osborne, Johnson Testimony; Lanouette Comment (Ex. 8); Toellner Comment (Ex. 10)*. The Applicant indicated that all applicable noise controls governing construction would be observed. *Sweeney Testimony*. Neighbors were concerned that clearing for the apartments would remove the remaining noise buffer from SR-16. *Johnson Testimony*. The Applicant suggested that the structures might actually provide a better sound barrier than the existing vegetation. *Ex. 9*.

10. Neighbors also suggested that property values would be reduced if the apartments are constructed and that crime would rise in the area. *Toellner, Neilan, Osborne Testimony; Lanouette Comment (Ex. 8)*. No specific evidence supporting these assertions was presented. The Applicant presented testimony that he makes a long-term commitment to maintain quality complexes and property values have increased in areas near some of the apartments he has developed in Tacoma. *Wise Testimony*.

11. The soil contamination on the site was raised by neighbors concerned that contaminated particulate might enter the air when the soil was disturbed during site preparation and construction. *Toellner, Johnson Testimony; Toellner Comment (Ex. 10)*. The project would be required to use approved practices in remediating the site under Ecology's clean-up program. *Ex. 3 Attachment B*. In addition, the developer would use water on disturbed areas to minimize any dust emanating from the site. *Ex. 3*.

12. Two witnesses brought up harm to wildlife habitat as an issue. Animals in the area are losing habitat to development and this may be displacing animals such as coyotes, which have been sighted in the area recently. *Neilan, Toellner Testimony*. Additionally, one witness indicated an eagle's nest is located in the area, within approximately 800 feet of the site. *Toellner Testimony; Toellner Comment (Ex. 10)*. The City had an environmental specialist review the site and no conditions triggering the City's critical areas regulations were identified. PDSO relied upon the environmental specialist's review of the project in processing the rezone request. *Lawrence Testimony*. The project does include a vegetative buffer on the south side and a buffer along the Scott Pierson trail that will provide some habitat connections. *Ex. 3, p.7*.

13. Some witnesses simply thought there was too much growth in the neighborhood and that a less intensive use such as mini-storage or a senior complex would be more compatible with the area. *Neilan, Johnson Testimony; Spetsas Comment (Ex. 11)*.

14. All of the citizens testifying at the hearing were concerned about traffic impacts and/or safe pedestrian walking routes. Many of the neighbors specifically opposed the required left turn lane leading into the project from South Orchard Street. Witnesses reported traffic congestion in the area at peak hours and backups at nearby intersections. They contended that the left turn lane would aggravate an already bad situation. *Toellner, Neilan, Kinton-Blahm, Osborne, Johnson Testimony; Lanouette, Toellner, Spetsas Comments (Exs. 8, 10, 11)*. The traffic study and the governing

transportation regulations both advise a left turn lane. The dedicated left turn area is designed to avoid delays in the through traffic lanes. *Ex. 4, p. 14.* The evidence does not substantiate the claim that the left turn lane would negatively affect traffic flow in the area.

15. 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 Wise's rezone application. *Ex. 1; Lawrence Testimony.*

16. The Applicant'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 such as utilities, contaminated soils, streets, driveways, sidewalks, sewers, stormwater, and traffic are attached to the project approval. *Ex. 1, Attachments 1 through 8; Lawrence Testimony.* The Applicant has agreed to the conditions proposed by the City. *Sweeney Testimony.*

17. The District Establishment Statement for the requested "R-4-L" Low-Density Multiple-Family Dwelling District indicates that the district is "intended for low density multiple-family housing, mobile home parks, retirement homes and group living facilities." The Statement indicates that the "R-4-L" District is similar to the "R-4" Multiple-Family Dwelling District, but more restrictive site development standards are intended to minimize adverse impacts of permitted and conditional uses on adjoining land. The district is characterized by amenities and services associated with single- and two-family residential districts, and it is located generally along major transportation corridors and between higher and lower intensity uses. *TMC 13.06.100.B.6.*

18. Pursuant to the State's SEPA Rules (WAC 197-11) and the City of Tacoma's Environmental Code (TMC 13.12), the Director of the PDSD issued a Mitigated Determination of Nonsignificance (MDNS) on July 1, 2014. *Ex. 3.* The determination was based upon a review of the Applicant's Environmental Checklist and other supporting information on file with PDSD. The SEPA appeal period ended on July 15, 2014, and no appeal was filed with PDSD. *Ex. 1; Lawrence Testimony.* The MDNS identified Mitigation Measures necessary to address issues regarding aesthetics, environmental health, and traffic. *Ex. 3.* The Applicant has agreed to implement the Mitigation Measures identified in the MDNS. *Sweeney Testimony.*

19. The site was posted with notice of 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 May 8, 2014. *Ex. 1; Lawrence Testimony.* At the hearing, some neighbors expressed concern that inadequate notice of the project was provided, however, there was no evidence that the required notices were not given.

20. 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; TMC 1.23.120; and TMC 13.05.*

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

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.*

3. 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 Comprehensive Plan**

4. The City of Tacoma Comprehensive Plan (Comprehensive Plan) includes a number of provisions relevant to the proposed rezone. 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, as well as the surrounding properties to the north, west, and south are within a "Medium Intensity" area. The Comprehensive Plan indicates that medium intensity development generates moderate activity patterns and traffic generation. Medium density residential development is specifically used as an example of



medium intensity development. *Comprehensive Plan, Section IV, Development Intensities*. The Comprehensive Plan provisions addressing residential development identify medium intensity residential developments as an alternative to single-family homes for large segments of the population. Such developments are to be located along major transportation corridors and can be located between areas of high and low intensity as a buffer use. The identified density for a medium intensity residential area is 15-45 dwelling units per net acre. *Comprehensive Plan, Section III Residential, Medium Intensity*.

The “R-4-L” zoning proposed for the project site would be consistent with its designation as “Medium Intensity” under the Comprehensive Plan. In fact, it is more consistent with the medium intensity designation than the current “R-2” Single-Family residential zoning. The rezone allows multi-family residential units, but at a density significantly below the maximum for medium intensity sites, which will minimize impacts on the neighborhood. The proposal is also consistent with the Comprehensive Plan’s expectation that medium intensity residential developments be located along a major arterial.

5. The rezone site is designated as a Tier II - Secondary Growth Area by the GLUE. The GLUE provides the following guidance regarding development in Tier II areas (*see GLUE, page LU-10*):

#### Tier II – Secondary Growth Area

Lands within this designation are areas already characterized by urban growth and where key public facilities and services are generally available. One or more of the key facilities may not be available or do not meet the adopted level of service standard. In addition, no capital investments are planned which will make one or more of the key facilities available or adequate. Generally adequate public facilities and services will be provided in Tier II areas after the initial six years, generally 7-13. Both public and private purveyors may provide services.

#### LU-GUGT-1 Encourage Development

Provide incentives to encourage development and redevelopment of lands consistent with the time frames of designated growth tiers.

#### LU-GUGT-4 Development Approval

Development proposals within Tier II and Tier III shall be approved only if the proposed development is consistent with the Comprehensive Plan and key public facilities and services are available and adequate. The cost of providing adequate key public facilities and services to serve the proposed development shall be the sole responsibility of the applicant.

The project site will be served by public utilities and is located with access from a major arterial. The proposed conditions on the rezone suggested by public utility departments will assure that the project complies with the Tier II designation.

## Changed Conditions

6. 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, 573 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.

7. In this case, significant changes have occurred since the “R-2” zoning was placed on the property in 1953. The development of commercial, educational, and multi-family projects in the area and the construction of SR-16 have altered the larger neighborhood. The Comprehensive Plan has acknowledged this transformation by attaching the “Medium Intensity” designation to the property. The requested rezone is consistent with the requirement that conditions have changed since the original zoning was instituted.

## Consistency with District Establishment Statement

8. The District Establishment Statement for the “R-4-L” District provides:

R-4-L Low-Density Multiple-Family Dwelling District. This district is intended for low density multiple-family housing, mobile home parks, retirement homes, and group living facilities. It is similar to the R-4 Multiple-Family Dwelling District, but more restrictive site development standards are intended to minimize adverse impacts of permitted and conditional uses on adjoining land. The district is characterized by amenities and services associated with single- and two-family residential districts, and it is located generally along major transportation corridors and between higher and lower intensity uses.

*TMC 13.06.100.B.6.* The District Establishment Statement for the “R-4-L” District indicates that the zone is intended for low density multiple-family housing. The zone emphasizes developing according to standards designed to minimize adverse impacts on adjoining land and suggests that the “R-4-L” zone be applied to sites along major transportation corridors. The proposal in question is consistent with the District Establishment Statement because it is a low density multi-family housing project. The design details will minimize adverse impacts on adjoining land. The property is located between a major arterial (South Orchard Street) and a state highway and will serve as a form of buffer between those uses and the single-family residential neighborhood to the east. The unique site location and the design elements of the project demonstrate consistency with the “R-4-L” District Establishment Statement.

## Recent Area-Wide Rezone

9. 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

10. 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. In this case, the proposed rezone from "R-2" to "R-4-L" furthers many of the interests set forth in adopted City Code and City policies. The long term vision for this property includes multi-family development as evidenced by the Comprehensive Plan classification of "Medium Intensity." The existing "R-2" zoning is less compatible with the Comprehensive Plan intensity designation than the proposed "R-4-L". The proposed "R-4-L" zone contains development standards designed to minimize impacts to neighboring properties.

Both the City's traffic policies and residential policies are furthered by locating a multi-family zone on a site with direct access to a major arterial and nearby access to a state highway. "R-4-L" level development at this site can be accomplished without reducing the level of service at nearby intersections and a left turn lane will be added to the entrance area to avoid any disruption of through traffic on South Orchard Street.

Low density multi-family development will enhance housing options for citizens of the city and will provide a transition between SR-16 and the single-family neighborhood uphill and to the east. Concerns over increased crime, noise, and reduced property values were not substantiated and provide no basis for finding harm to the public health, safety, morals, or welfare.

The soil contamination found on the site is consistent with such problems encountered elsewhere in the City. City policies support the type of environmental clean-up that will occur on the site in connection with this project. One commenting party argues that further study of the contamination and possible impacts on human health should be conducted. *Toellner Comment (Ex. 10)*. The public health during the clean-up will be protected by the procedures required under Ecology's program. The rezone conditions assure that building construction will not begin until Ecology is satisfied the clean-up has been undertaken. The evidence demonstrates that the public health and safety will be protected, and ultimately enhanced, by the anticipated clean-up project.

While the project would change the habitat available for wildlife on the property, development under an "R-2" zone would result in a similar removal of existing trees and shrubs. A vegetated buffer is being incorporated into the project to provide linkage with nearby wildlife habitat. The Hearing Examiner was not presented with any existing City Code provisions requiring other specific actions regarding the wildlife corridor. Overall, the evidence shows that the change in zoning would further existing City policies and support the public health, safety, morals and general welfare.

## Summary

11. The applicant for a rezone must show compliance with each of the criteria set forth in TMC 13.06.650.B. In this case the proposal made by Applicant Wise, as conditioned by the City, has demonstrated consistency with the Comprehensive Plan policies, compliance with the requirement for changed circumstances, consistency with the “R-4-L” District Establishment Statement, and furtherance of the public welfare. Accordingly, the proposed rezone should be approved subject to the following conditions:

### **A. RECOMMENDED CONDITIONS OF APPROVAL (SEPA MITIGATION)**

#### 1. AESTHETICS:

- a. In order to promote pedestrian friendly design and add visual interest to the development, each first story main entry door for each unit shall be oriented towards the sidewalk/internal walkway within the complex. Additionally, each first story main entry door for each first story unit shall have a covered entryway that extends a minimum of 24 inches from the front façade at the first floor level.
- b. All internal walkways within the development that cross over drive aisles and/or internal roads shall be comprised of a different surface than the road surface, such as cobblestone, concrete, brick, or other material made to replicate the look of such. Such material shall be designed to meet Traffic Engineering standards. Painting of crosswalks within the complex will not satisfy this requirement.

#### 2. ENVIRONMENTAL HEALTH:

- a. Entry into the Voluntary Cleanup Program with Ecology shall be completed prior to issuance of any site development permits for this proposal and/or the initiation of any grading, filling, or clearing activities.
- b. An opinion letter shall be obtained from Ecology stating that the proposed soil remediation will likely result in no further action under Model Toxics Control Act (MTCA) prior to the issuance of any site development permit and/or the initiation of any grading, filling, or clearing activities. The issued site development permit plans shall be consistent with the plans reviewed and deemed consistent with MTCA by Ecology. The Applicant shall provide to the City of Tacoma the opinion letter from Ecology.
- c. Prior to finalizing the building permits (excluding the grade & fill permits and work order permits), the City of Tacoma shall be provided a “No Further Action” determination from Ecology indicating that the remediation plans were successfully implemented under MTCA.
- d. A 15-foot wide vegetated buffer shall be provided along the southerly portion of the development, along the Scott Pierson Trail, containing a dense mix of

native vegetation. The vegetated buffer shall be developed in accordance with Landscaping Type “A”, as specified in TMC 13.06.502.G. Such landscaping shall be comprised of species native to the Puget Sound lowland region of the Pacific Northwest or non-invasive naturalized that have adapted to the climactic conditions of the region.

3. TRAFFIC

- a. A left turn lane on South Orchard Street serving the project shall be constructed to City of Tacoma standards, as proposed in the Traffic Impact Analysis mitigation section, Exhibit “B” of SEP2014-40000223043. The left turn may require widening of the roadway or relocation of the sidewalk. No proposed design was provided. In addition, based on an email provided by Dale Severson from Washington State Department of Transportation (WSDOT) on February 27, 2014, any street or sidewalk work (e.g. striping, sidewalk relocation/reconstruction, street widening, etc.) that extends into WSDOT right-of-way will need to be reviewed and approved by WSDOT Olympic Region.
- b. An accessible pathway to Baltimore Street or to the Scott Pierson Trail shall be 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.
- c. The Applicant shall complete either **Option “A”, “B”, or “C”**, as noted below:

**Option “A”** - Because the closest transit facilities are on South 12th and South 19th Streets and an elementary school and public park are located on South 12th Street just east of South Orchard Street, paved sidewalk shall be constructed fronting the property and connecting to the existing sidewalk to the north on South Orchard Street, meeting Public Right Of Way Accessible Guide-lines (PROWAG) and Americans with Disabilities Act (ADA) requirements, and be installed to the approval of the City Engineer.

**Option “B”** - The proposed walkway and bike lane upgrades, as proposed by the applicant and depicted in Attachment “E” of SEP2014-40000223043, shall be completed, in accordance with the following standards. Such standards may require modifications to the proposal outlined in Attachment “E” of SEP2014-40000223043:

- Sidewalk Connection (Temporary) –
  - When the back of walk recover area/bench is less than 2 feet wide (with an acceptable recovery area/bench having a cross slope of 2% or less), then a barrier would be needed for pedestrian safety. Additional barriers may be required at the discretion of Public Works.

- Although this improvement would be “temporary”, the design still has to meet minimum design standards. A 7-foot minimum combination sidewalk with thickened edge (curb/barrier) would be acceptable.
- Curb/Roadway –
  - Installation of curbing/conveyance system will require the runoff to be managed in accordance with the SWMM.
  - Asphalt restoration shall meet the ROW restoration policy.
- Bike Lane –
  - Install a 6’ bike lane with 6” white bike lane line and channelization per COT and MUTCD standards.
- General –
  - Final design of this option will be done under the work order process and additional changes may be required to meet applicable design standards, regulatory, and code requirements.

### Option “C”

- Sidewalk Connection (Temporary) –
  - When the back of walk recover area/bench is less than 2 feet wide (with an acceptable recovery area/bench having a cross slope of 2% or less), then a barrier would be needed for pedestrian safety. Additional barriers may be required at the discretion of Public Works.
  - Although this improvement would be “temporary”, the design still has to meet minimum design standards. A 5-foot minimum sidewalk with accompanying planter strip (see below for width considerations) would be acceptable.
- Curb/Roadway –
  - If the front of sidewalk is set more than 10’ from edge of travel lane (4-inch wide edge stripe will mark edge of travel lane), no curbing would be required. If the front of sidewalk is set less than 10’, but no closer than 2-feet, from the edge of travel lane, then installation of curbing/conveyance system will be required and the runoff shall be managed in accordance with the SWMM.
  - Asphalt restoration shall meet the ROW restoration policy.
- Paved Shoulder –
  - Absent curbing, a 6-foot paved shoulder shall be delineated with a 4-inch white edge line. If curbing is present, then a 6-foot bike lane shall be installed with 6-inch white bike lane line and channelization per City and MUTCD standards.
- General –
  - Final design of this option will be done under the work order process and additional changes may be required to meet applicable design standards, regulatory, and code requirements.

## **B. RECOMMENDED CONDITIONS OF APPROVAL (REZONE APPLICATION)**

### **1. STORM AND SANITARY SEWERS**

- a. Full review of storm and sewer design shall be completed under the construction permits, additional mitigation may be required. This development's stormwater design shall be in compliance with the 2012 City of Tacoma Stormwater Management Manual, and all applicable Tacoma Municipal Codes. This development's sanitary sewer design shall meet the City of Tacoma Side Sewer and Sanitary Sewer availability manual, the Department of Ecology Sewage Works Design Criteria, and all applicable Tacoma Municipal Codes.
- b. Any utility construction, relocation, or adjustment costs shall be at the applicant's expense.

### **2. STREET, DRIVEWAY AND SIDEWALKS**

- a. Driveways constructed shall be to current standards and to the approval of the City Engineer.
- b. A Work Order is required. A licensed professional civil engineer shall submit the street plans for review and approval following the City's work order process. A performance bond is required for all work orders per TMC 10.22.070.F.

### **3. BUILDINGS**

- a. All new construction shall conform to the current adopted edition of the International Building Code, other applicable codes, state amendments, and City of Tacoma ordinances.
- b. Property lines shall not pass through buildings and shall be removed.
- c. Portions of the lots are within areas mapped on GIS as "Slope (Steep) 25-40%". A geotechnical investigation and report that addresses site issues and provides recommendations for foundations and retaining structures may be required prior to issuance of building permits.

### **4. PROTECTING ADJACENT PROPERTIES**

With the development of the project, the proponent shall be responsible for adverse impacts to other property abutting the project. The project 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 property owner. The design shall be such

that adverse impacts are limited as much as possible. When they do occur, the project engineer shall address them.

5. TACOMA WATER

- a. City Ordinance 12.10.045 requires a separate water service and meter for each parcel.
- b. Extension of a permanent water main may be constructed by private contract. The developer of the privately financed project shall be responsible for all costs and expenses incurred by Tacoma Water for preparation of plans and specifications, construction inspection, testing, flushing, sampling of the mains, and other related work necessary to complete the new water main construction to Tacoma Water standards and specifications. The engineering charge for the preparation of plans and specifications shall be estimated by Tacoma Water. The developer shall be required to pay a deposit in the amount of the estimated cost. The actual costs for the work shall be billed against the developer's deposit. The new mains shall be installed by and at the expense of the developer. The developer shall be required to provide a 20-foot wide easement over the entire length of the water main, fire hydrant, service laterals and meters. The developer's Professional Land Surveyor shall prepare and submit the legal description of the easement to Tacoma Water for review and processing. Prior to construction, a second deposit in the estimated amount for construction inspection, testing, and sampling shall be due to Tacoma Water. Upon completion of the project, the developer shall either be refunded the unused amount of the deposit or billed the cost overrun.
- c. If fire sprinklering, Tacoma Water Permit Counter shall be contacted for policies related to combination fire/domestic water service connections.
- d. New water services are required. They shall be sized and installed by Tacoma Water after payment of the Service Construction Charge and the Water Main Charge. New meters shall be installed by Tacoma Water after payment of the System Development Charge.
- e. If a new fire hydrant is required at a location with an existing water main, the hydrant shall be installed by Tacoma Water after payment of an installation charge.
- f. If existing water facilities need to be relocated or adjusted due to street improvements for this proposal, they shall be relocated by Tacoma Water at the owners' expense.
- g. Sanitary sewer mains and side-sewers shall maintain a minimum horizontal separation of ten 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".



6. MISCELLANEOUS

- a. The Applicant shall ensure that proposed project meets all required standards under *TMC* 13.06.501 – Building design standards, *TMC* 13.06.502 – Landscaping and/or buffering standards, *TMC* 13.06.503 – Residential compatibility standards, *TMC* 13.06.510 – Off-street parking and storage areas, *TMC* 13.06.511 – Transit support facilities, *TMC* 13.06.512 – Pedestrian and bicycle support standards, and *TMC* 13.06.520 – Signs.
- b. Prior to obtaining building or grading permits, the proponent shall contact the appropriate City departments to make the necessary arrangements for all required improvements. The required departmental approvals shall be acquired from, but not necessarily limited to, Tacoma Power (253-383-2471), Tacoma Water (253-383-2471), and Public Works (253-591-5525).
- c. The project shall be developed substantially in conformance with the representations made by the applicant through the submitted site plans, elevation drawings, and the environmental checklist.
- d. Should the proposal require access through parcel 4475000370 or a portion thereof, located directly to the north and east of the site and fronting South Orchard Street, the applicant shall obtain or provide a copy of an access easement demonstrating that the proposed accessway/driveway can be developed on a portion of said property.
- e. A Concomitant Zoning Agreement (CZA) 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.

C. 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.

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

**RECOMMENDATION:**

The rezone request is hereby recommended for approval, subject to conditions set forth above.

DATED this 18<sup>th</sup> day of August, 2014.

  
**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/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. (*Tacoma Municipal Code 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. **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.**

**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**