



City of Tacoma
Hearing Examiner

July 20, 2017

FIRST CLASS MAIL DELIVERY

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Contour Engineering, LLC
Attn: Larry Heires, Land Planner
P.O. Box 949
Gig Harbor, WA 98335-0949

ORIGINAL

Re: HEX 2017-011 (LU17-0294) Applicant: Match, LLC

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 July 20.

Sincerely,

Louisa Legg
Office Administrator

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

Cc: Richard and Carol Maddox, 722 East 55th Street, Tacoma, WA 98404-2044
(First Class Mail Delivery)

State of Washington, Department of Ecology, Southwest Regional Office, Attn: Eva Barber,
Toxic Cleanup and Chris Montague-Breakwell, Water Quality, P.O. Box 47775,
Olympia, WA 98504-7775 (First Class Mail Delivery)

Tacoma-Pierce County Health Department, Attn: Esther Beaumier, RS, 3629 South D Street,
Tacoma, WA 98418-6813 (First Class Mail Delivery)

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City of Tacoma, PDSD, Attn: Trevor Perkins, Site Development Group,
City of Tacoma, Traffic Engineering, Attn: Jennifer Kammerzell

Clerk's Office, City of Tacoma (Nicole Emery); Legal (Steve Victor); Tacoma Power (Dan Reed); Public Works, City of Tacoma (Sue Simpson); Environmental Services, Site Development, City of Tacoma (Karina Stone); Planning and Development Services Department, City of Tacoma (Craig Kuntz); Planning and Development Services Department, City of Tacoma (Lisa Spadoni & Jana Magoon & Lihuang Wung)

CERTIFICATION

On this day, I forwarded a true and accurate copy of the documents to which this certificate is affixed via United States Postal Service postage prepaid or via delivery through City of Tacoma Mail Services to the parties or attorneys of record herein. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.
DATED July 20, 2017, at Tacoma, WA.

Louisa Legg

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

APPLICANT: Match, LLC

HEARING EXAMINER FILE NO: HEX 2017-011 (LU16-0294)

SUMMARY OF REQUEST:

Rezone of two parcels totaling approximately 11,500 square feet from R-2 Single-Family Dwelling District to C-1 Neighborhood Commercial District to allow construction of a gas station, including site improvements and installation of underground storage tanks. The site is currently used as parking for the adjacent convenience store and restaurant.

LOCATION:

The Applicant's registered address is 5522 McKinley Ave. E., with the subject parcels located immediately adjacent at 715 and 719 East 56th Street, identified as tax Parcels 2625000040 and 2625000030.

RECOMMENDATION:

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

PUBLIC HEARING:

After reviewing the report of the City's Planning and Development Services Department and reviewing information on file, the Hearing Examiner convened a public hearing on the rezone request on June 29, 2017.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION:

FINDINGS OF FACT:

1. Match, LLC, through Daniel Yu and Contour Engineering, LLC, acting as agent for Match, LLC, submitted an application seeking a rezone of two parcels from the current designation of R-2 Single-Family Dwelling District to C-1 Neighborhood Commercial District. The parcels total area is approximately 11,500 square feet. *Ex. 1; Schultz Testimony.*

2. The site is comprised of two tax parcels, and is currently developed with a surface parking lot serving the adjacent convenience store and restaurant. The building containing the store and restaurant was constructed in 1954. *Ex. 1, Ex. 4; Schultz Testimony.*

The Applicant intends to redevelop the parking lot portion of the site with an eight-pump gas station with a canopy and a single underground fuel tank. Redevelopment plans also include enhanced landscaping and parking for 16 cars, which is a reduction to the existing parking. *Ex. 1, Ex. 3; Schultz Testimony.*

3. The site's current zoning map shows the site to be zoned R-2 Single-Family Dwelling District. Surrounding properties are a mix of commercial properties and single-family residential. All parcels at the intersection of East 56th Street and McKinley Ave. E. are zoned and developed with commercial uses. *Ex. 1, Ex. 4.*

4. The intersection of East 56th Street and McKinley Ave. E. has been zoned "Neighborhood Commercial" since the zoning code was adopted in 1953; commercial parcels to the south and east were rezoned in 1966, and 1991, respectively. Further, the site is identified as being within a "convenience corner" per *One Tacoma*, the City's Comprehensive Plan (the "Comp Plan" specifically the Urban Form chapter). *Ex. 1, Ex. 13; Schultz Testimony.* The Comp Plan describes "Convenience corners" as follows:

Convenience corners are small commercial nodes distributed throughout Tacoma's neighborhoods, often along historic streetcar routes. These nodes are generally developed at a neighborhood scale, up to 3 stories in height, but more typically 1–2 stories, and serviced by on-street parking and small off-street lots. Convenience corners provide access to daily services, including religious services and small businesses, in close proximity to residential neighborhoods, as well as gathering places for community interaction and mingling, and focal points of neighborhood identity. Due to their small size, convenience corners are more widely dispersed throughout the City. Convenience Corners are not typically zoned for significant growth, but rather to retain and enhance the existing services. *Comp Plan, Urban Form Chapter* at p. 2-43.

5. At the proposed rezone location, East 56th Street is classified as a Principal Arterial and McKinley Ave. E. is a Minor Arterial. Both streets are classified as "Mainstreet Corridors" in the Comp Plan. Both streets are also classified as bicycle priority streets. McKinley Ave. E. is classified as a transit priority street, whereas East 56th Street is prioritized for heavy haul traffic. *Ex. 1.*

6. The subject site has been zoned R-2 Single-Family Dwelling District since the zoning code was adopted in 1953. *Ex. 1, Ex. 4; Schultz Testimony*. The area was designated for Neighborhood Commercial uses when the Comp Plan was updated in 2015. *Ex. 1, Ex. 5; Schultz Testimony*.

7. Match, LLC submitted a Traffic Impact Analysis for the project prepared by Heath & Associates, Inc. dated March 22, 2107. *Ex. 12*. The traffic study concluded that the Applicant's "project will be a mild generator of new traffic in the area," but did not identify any necessary mitigation measures. *Ex. 12*.

8. City Traffic Engineering Division staff did, however, conclude that the proposal would impact intersection movements at East 56th Street and McKinley Ave. E., and that these impacts should be mitigated by requiring that the driveway on East 56th Street and the alley that exits onto McKinley Ave. E. be restricted to right-in and right-out only with appropriate traffic control devices, such as signage and/or median as approved by the City's Traffic Engineer. *Ex. 1, Ex. 6, Ex. 8*.

9. City Staff concluded further that, in order to address the increased traffic in the alley behind the subject site that will likely result from the rezone and the project, the alley should be developed to commercial standards (i.e., paved). *Ex. 1, Ex. 6*.

11. Applicant Match, LLC does not object to the driveway on East 56th Street and the alley that exits onto McKinley Ave. E. being restricted to right-in and right-out only with appropriate traffic control devices, or to the requirement that the alley behind the subject site be improved to commercial standards. *Match, LLC Testimony (through Larry Heires of Contour Engineering, LLC)*.

12. In accordance with the requirements of *Tacoma Municipal Code ("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 May 11, 2017. *Ex. 1; Schultz Testimony*.

13. The City received two public comment letters. The letters addressed concerns involving criminal activity and loitering at the site as well as lighting and noise impacts, trash, gravel, and other intrusions from the alley and the site. *Ex. 1, Ex. 9*.

14. At least partly in response to the public comment letters received, City Staff recommended that, as part of the project, the Applicant should consult with the City's Neighborhood and Community Services Department ("NCS D") about the existing development and undesirable activities at the site, and the intended project design, in order to implement Crime Prevention Through Environmental Design ("CPTED") principles in the project design to address, at a minimum:

- Lighting for security purposes, designed to discourage undesirable activity at the site while not impinging on neighboring residential; and
- Landscaping refinements to provide buffering from adjacent uses without providing unsafe areas that are not visible from surrounding areas. *Ex. 1; Schultz Testimony*.

The Applicant indicated its willingness to work with NCSD to optimize the development and incorporate CPTED principles. *Heires Testimony*.

15. As part of the project review process, Planning and Development Services provided notification of this rezone request to various City departments, and outside governmental, and non-governmental agencies. Departmental comments and requirements regarding this proposal are included as attachments to the City's Staff Report. *Ex. 7, Ex. 8*. If a rezone is approved, City departments and outside agencies have recommended important conditions related to the intended project that should be attached to any approval of the requested rezone. *Ex. 1, Ex. 7, Ex. 8, Ex. 10*.

16. The Applicant agreed to the conditions of approval recommended by reviewing City departments and outside agencies. *Heires Testimony*. No members of the public appeared to testify in opposition to the requested rezone.

17. Pursuant to the State's SEPA Rules (*WAC 197-11*) and the City of Tacoma's Environmental Code (*TMC 13.12*), the Director of Planning and Development Services issued a Mitigated Determination of Environmental Non-Significance ("MDNS") for requested rezone which takes into account the proposed project on June 2, 2017. The MDNS was not appealed. *Ex. 1, Ex. 6; Schultz Testimony*. The mitigation measures required under the MDNS are as stated at Findings of Fact 8 and 9 above. *Ex 6*.

18. No area-wide rezone action affecting this property has been taken by the City Council in the two years preceding the instant rezone application. *Ex. 1; Schultz Testimony*.

19. 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.

20. Any conclusion of law herein which may be 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. The Examiner's role is to make a recommendation to the City Council. The final rezone decision is made by the City Council. *See TMC 1.23.050.A.1 and TMC 13.05*.

2. The requirements of SEPA have been, or will be met, by the City's issuance of the MDNS, which was not appealed, and the Applicant's ultimate compliance with the mitigation measures required therein.

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 Comprehensive Plan

4. The Comprehensive Plan ("Comp Plan") includes the project site within the "Neighborhood Commercial" designation. Neighborhood Commercial areas are appropriate for zoning as C-1 General Neighborhood Commercial District or T Transitional District. In this case, the proposed rezone to C-1 would be consistent with the contemplated zoning in the applicable "Neighborhood Commercial" designation for the subject property in the Comp Plan. The proposed rezone to C-1 is also consistent with the site having been designated as within a convenience corner per the Urban Form chapter of the Comp Plan. Finally, the site's location being at the intersection of two major corridors makes the rezone and the intended gas station a convenience that will benefit the neighborhood.

Changed Conditions

5. The proposed rezone from R-2 to C-1 will implement the provisions of a 2015 Comprehensive Plan Amendment which assigned the Neighborhood Commercial designation for this site. The rezone from R-2 to C-1 makes the site more consistent with existing adjacent uses and would allow for the proposed use as a gas station which is a permitted use within the requested zoning designation.

Consistency with District Establishment Statement

6. The District Establishment Statement for the C-1 district provides:

C-1 General Neighborhood Commercial District. This district is intended to contain low intensity land uses of smaller scale, including office, retail, and service uses. It is characterized by less activity than a community commercial district. Building sizes are limited for compatibility with surrounding residential scale. Residential uses are appropriate. Land uses involving vehicle service or alcohol carry greater restriction. This classification is not appropriate inside a plan designated mixed-use center or single-family intensity area.

TMC 13.06.200.B.2. The targeted C-1 zoning designation and the intended use are consistent with the District Establishment Statement.

Recent Area-Wide Rezone

7. 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 two years preceding the filing of Match, LLC's, rezone application.

Relationship to the Public Welfare

8. The evidence showed that the proposed rezone will further the public health, safety, morals or general welfare of the area. The TMC's development regulations for projects in the C-1 District include requirements for landscaping, design, and parking standards designed to ensure that uses will be compatible with the public health, safety, morals or general welfare of the area. In addition, the Applicant has agreed to consult with NCS in order to appropriately implement CPTED principles in the redevelopment of the site further ensuring that the public health, safety, morals or general welfare of the area are maintained or even enhanced. Beyond that, the Applicant has provided information and plans showing that all applicable regulations can be met.

9. Traffic impacts have been addressed through the requirements that the driveway on East 56th Street and the alley that exits onto McKinley Ave. E. be restricted to right-in and right-out only with appropriate traffic control devices, and that the alley behind the subject site be improved to commercial standards.

10. 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.

12. Accordingly, the requested rezone should be approved subject to the following conditions:

A. RECOMMENDED CONDITIONS OF APPROVAL

1. TRAFFIC

- a. Because the proposal will impact intersection movements at East 56th Street and McKinley Ave. E., mitigation measures must include restricting the driveway on East 56th Street and the alley that exits onto McKinley Ave. E. to right-in and right-out only with appropriate traffic control devices, such as signage and/or median that must be approved by the Traffic Engineer.
- b. To address increased traffic in the alley that will likely result from the rezone and the intended project, the alley must be improved to commercial standards.

2. ZONING AND NEIGHBORHOOD COMPATIBILITY

- a. The final design of the development shall include an analysis of the valuation of the improvements to the site and building within a two-year period. The development shall comply with all applicable requirements of the TMC, including, without limitation, design, landscaping, and transit and pedestrian support facilities. The intent of this condition is to insure the development meets the TMC for pedestrian access, as well as to respond to Comp Plan policies and to support transit use.
- b. Prior to approval of required building permits, the Applicant must provide documentation to Planning and Development Services that it has consulted with Neighborhood and Community Services for crime prevention measures. At a minimum, the Applicant must address site lighting and landscaping. The intent of this condition is to address neighborhood compatibility and minimize impacts of the intensified use on adjacent properties.

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.
- 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.

13. Any finding of fact herein which may be deemed properly 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 20th day of July, 2017.



Jeff H. Capell, Hearing Examiner

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.