



City of Tacoma
Hearing Examiner

June 25, 2015

FIRST CLASS MAIL DELIVERY

Joseph Foundation
32225 22nd Ave SW
Federal Way WA 98023-2555

Re: HEX2015-012 (REZ2015-40000242599; SEP2015-40000242780)
Applicant: Philip Wamba on behalf of FUSION

Enclosed please find a copy of the Hearing Examiner's Report and Recommendation to the Tacoma City Council as a result of a public hearing held on June 4, 2015.

Sincerely,


LOUISA LEGG
Legal Assistant

Enclosure (1) – Hearing Examiner's Report and Recommendation

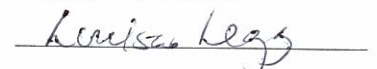
cc (cover letter only):
Phil Wamba for FUSION
Charla Kinlow, Associate Engineer

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 June 25, 2015, at Tacoma, WA.



Legg, Louisa

From: Hearing Examiner on behalf of Hearing Examiner (hearing.examiner@cityoftacoma.org)
Sent: Thursday, June 25, 2015 2:31 PM
To: 'philwamba@comcast.net'; Kinlow, Charla; Beauchamp, Jennifer; Kropelnicki, Tina (Legal); Stone, Karina; Magoon, Jana; Sully, Dan; Kammerzell, Jennifer; Angel, Jesse; Coyne, Richard; Simpson, Sue; Martinson, John; Reed, Daniel; Seaman, Chris; Wung, Lihuang
Subject: HEX2015-012 (REZ2014-40000242599; SEP2015-40000242780) Phil Wamba for FUSION, Applicant
Attachments: HEX2015-012 Phil Wamba for FUSION HEX Report & Recommendation 06.25.15.PDF

To All:

Attached is the Hearing Examiner's June 25, 2015, Report and Recommendation to the Tacoma City Council concerning the above referenced matter.

Sincerely,

Louisa Legg
Office Administrator
Office of the Hearing Examiner
City of Tacoma
P: 253-591-5195
[Hearing.examiner@cityoftacoma.org](mailto:hearing.examiner@cityoftacoma.org)



City of Tacoma
Hearing Examiner

June 25, 2015

FIRST CLASS & ELECTRONIC MAIL DELIVERY


Phil Wamba
FUSION Executive Board
P.O. Box 23934
Federal Way, WA 98093-0934
(philwamba@comcast.net)

Charla Kinlow, Associate Engineer
City of Tacoma, Planning & Development Services
747 Market Street, Room 345
Tacoma, WA 98402
(ckinlow@cityoftacoma.org)

Re: HEX2015-012 (REZ2015-40000242599; SEP2015-40000242780)
Applicant: Philip Wamba on behalf of FUSION

To the Parties:

Enclosed please find a copy of the Hearing Examiner's Report and Recommendation to the Tacoma City Council as a result of a public hearing held on June 4, 2015.

Sincerely,

LOUISA LEGG
Legal Assistant

Enclosure (1) – Hearing Examiner's Report and Recommendation

Cc: *See Attached Transmittal List*

CERTIFICATION

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

DATED June 25, 2015, at Tacoma, WA.



TRANSMITTAL LIST

HEX2015-012 (REZ2014-40000242599; SEP2015-40000242780)

First Class Mail Delivery:

Northeast Tacoma Neighborhood Council, 1000 Browns Point Town Center,
PMB 222, Tacoma, WA 98422

Carolyn Edmonds, 4714 Fairwood Blvd., NE, Tacoma, WA 98422

Pierce County Assessor-Treasurer, 2401 S. 35th Street, Room 142, Tacoma, WA 98409

Electronic Mail Delivery:

Jennifer Beauchamp, City Clerk's Office, City of Tacoma

Tina Kropelnicki, Legal Department, Civil Division, City of Tacoma

Karina Stone, P.E., City of Tacoma, Environmental Services Site Development

Jana Magoon, City of Tacoma Planning & Development Services Department

Dan Sulley, P.E. City of Tacoma, Planning & Development Services Department

Jennifer Kammerzell, Senior Engineer, City of Tacoma, Public Works 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 Engineering

Daniel Reed, Sr. Engineer, Tacoma Power T&D New Services Engineering

Chris Seaman, 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 ON REZONE

APPLICANT: Phil Wamba on behalf of FUSION
P.O. Box 23934
Federal Way, WA 98093

HEARING EXAMINER FILE NO: HEX 2015-012 (REZ2014-40000242599; SEP2015-40000242780)

SUMMARY OF REQUEST:

A request to rezone one parcel from “R-2” Single-Family Dwelling District to “R-3” Two-Family Dwelling District to allow for internal improvements to an existing dwelling that would result in the conversion of a single-family dwelling into a two-family dwelling.¹

LOCATION:

4722 35th Street NE (A & B), Parcel number 0321238028.

RECOMMENDATION:

Approval, 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 conducted a public hearing on June 4, 2015. Prior to the hearing held the Hearing Examiner conducted a site visit on June 3, 2015.

¹ Also referred to as a duplex throughout the application, the staff report and this Report and Recommendation.

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

ORIGINAL⁻¹⁻

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION:

FINDINGS OF FACT:

1. The Applicant FUSION submitted a request to rezone one parcel located at 4722 35th Street NE from “R-2” Single-Family Dwelling District to “R-3” Two-Family Dwelling District. The requested rezone would allow conversion of the single-family residence, currently used by two families as a group home, into a duplex with structurally separate units.

2. The property is owned by FUSION, a non-profit organization engaged in assisting very low-income citizens² in meeting their basic housing needs. In 2009, FUSION merged with the Joseph Foundation, the previous non-profit owner of the property in question. *Wamba Testimony*. The property contains a single-family dwelling, built in the 1960s, that was donated to the Joseph Foundation by a local family, the Noyes, for use in assisting families without housing. *La Porte Testimony*. The home has been used for the past 19 years as transitional housing for families who are in need. *Wamba Testimony*.

3. As part of FUSION’s operational plan, the families chosen to live in the units are selected and managed by Catholic Community Services, a professional case management agency. Each family is allowed to live in the residence for 18-24 months. Catholic Community Services provides oversight and program support to the residents. Over the past 19 years, twenty-five (25) families have been served in this facility comprising approximately thirty-five (35) adults and seventy-one (71) children. The program has been very successful in helping families achieve permanent housing in community. *Wamba Testimony*.

4. The Joseph Foundation received an award in 1993 from the Washington State Housing Assistance Program (HAP Award) in the amount of \$28,000 to undertake a local housing project which furthers the goals and objectives of the Washington State Housing Assistance Program (HAP). The length of commitment to serve the original target population (very low-income citizens) is a minimum of 50 years³. The award was used for the transitional housing project involved in this case. In the spring of 2011, FUSION also received an award for the subject property in the amount of \$31,278, to serve tenants with incomes that are at or below 50% of Pierce County’s annual median incomes for a period of 30 years. *Kinlow Testimony; Ex.1, Attachment A-7*. The terms of these agreements insure that the property will continue to provide important transitional housing for many years into the future.

5. The existing use of the structure is considered “group housing”⁴ under the current code, in

² Beneficiaries of the project shall have incomes that do not exceed 30% of the median income for the area in which the project is located. Income verifications are made in accordance with methods prescribed by the Washington State Housing Assistance Program.

³ Contractual obligation ends in 2043. Copy of documentation included as an attachment.

⁴ Per Tacoma Municipal Code (TMC) 13.06.700.G “group housing” is defined as “A residential facility designed to serve as the primary residence for individuals, which has shared living quarters without separate bathroom and/or kitchen facilities for each unit. This classification includes uses such as convents and monasteries but does not include uses that are otherwise classified as special needs housing or student housing.”

that it houses two-families with shared kitchen, dining and laundry facilities. The City affirmed that the use is allowed in an “R-2” zone in a 1991 letter from City of Tacoma Urban Planner III, William B. Bailey, Jr. *Ex. 1, Attachment A-10.*

6. In order to meet the “R-2” zoning requirements, the residence has been operated as a group home with two families sharing the kitchen, dining and laundry space. FUSION’s Board of Directors and Catholic Community Services’ case management staff believe that structurally separate living quarters would provide increased safety and an enhanced sense of security to families living in the home. Converting the building into a true duplex is requested as a way to provide a better living environment for both families. *Wamba Testimony.*

7. The project involves reconfiguring the kitchen/dining area and laundry room to accommodate a new interior wall totally separating the two living units. The new layout would include a kitchen and laundry facilities for each unit. The partition wall would extend from the crawl space of the structure through the attic. The modification to the existing dwelling will involve almost exclusively interior improvements. The exterior of the structure will remain essentially unchanged. *Ex. 1, Attachments A-1 and A-6.*

8. The site is rectangular in shape and is a corner lot. The dimensions of the lot are approximately 75 feet by 110 feet. The site abuts 35th Street NE on the north and 48th Avenue Court NE on the east. The property currently has a parking area to accommodate two cars. The lot contains 8,250 square feet which exceeds the minimum duplex lot size of 6,000 square feet. *Ex. 1; Kinlow Testimony.*

9. The immediately surrounding area is zoned “R-2” Single-Family Dwelling District. The properties to the south (parcels 0321238029 and 0321238030) are also owned by FUSION/The Joseph Foundation and are operated as single-family dwellings assisting families without housing. *Wamba Testimony.* The site is located one block from 49th Avenue NE, which is a major transportation corridor for Northeast Tacoma. The site shares a line of tall vegetation (mix of tree and bush, taller than the existing structure) with an adjacent church site to the west. *Kinlow Testimony; Ex. 1.*

10. The adjacent church site is comprised of 3.23 acres and is being used by Olympic View Friends Church. The use as a church has been established since 1968. The church also owns property on the same city block to the west, addressed as 251 Browns Point Boulevard (Parcel 0321234066). The properties on the opposite side of Browns Point Boulevard include a public library, a fire station, and 2 vacant parcels owned by Metro Parks.

11. Two rezone actions have been approved by the City in this general area since the home in question was constructed in the 1960s. Properties at the intersection of 49th Street NE and Norpoint Way NE (approximately 440 feet to the south of the property) were changed from “R-2” Single-Family Dwelling to “R-4L” Low-Density Multi-Family Zoning District. The site at the northwest corner of the intersection was approved in 1977 (Ordinance No. 21207, File Number 120.803) with subsequent amendments in 1982 (File Numbers 120.803A, 120.803B, and 130.2279). The site at the southeast corner was approved in 1982 (Ordinance No. 22831, File Number 120.981A). Both properties are

developed with apartment units. *Kinlow Testimony; Ex. 1.* There is one site in the neighborhood, at the intersection of 49th Street NE and Norpoint Way NE, that has historically been zoned “C-1” General Neighborhood Commercial District. *Ex. 1.*

12. The City’s *Generalized Land Use Element (GLUE)*, as referenced within the City’s *Comprehensive Plan*, designates the site as a “ Intensity Single-Family Detached Housing Area”. Further, the City’s *Comprehensive Plan* designates the site as a “Tier I Primary Growth Area”. *Ex. 1.* Tier 1 Areas are characterized by urban growth where key public facilities are available such as developed roads, public water, power, sewer, and stormwater facilities. The subject property is served by all necessary utilities.

13. The *Comprehensive Plan’s* Housing Element includes a section dedicated to Housing Affordability. This segment of the *Comprehensive Plan* enunciates an intent to be intentional in increasing affordable housing opportunities. Principles and Acknowledgments are stated recognizing affordable housing as vitally important to civic interests such as prosperity, economic development, growth of employment opportunities and many others. The goals and policies of the Housing Element, Affordable Housing and Housing Fairness sections encourage affordable housing in all areas of the City:⁵

H-HA-1 Affordable Housing Supply

Support both public and private sector development and preservation of affordable housing (e.g. Section, LIHTC) especially for lower income and special need households.

H-HA-3 Public Private Partnership

Work in partnership with for-profit and non-profit housing developers to facilitate the provision of new permanent affordable rental and owner housing.

H-HF-2 Area-wide Fair Share and Housing Dispersal

Disperse affordable housing opportunities, especially for lower income households and person with specials needs, throughout the city, the county and the region.

14. The Applicant has demonstrated that public involvement has been a part of this process and that the site has historically been managed in such a way as to avoid adverse effects to the community. The Northeast Tacoma Neighborhood Council supports the rezone request and has submitted a letter favoring its approval. *Ex. 1, Attachment A-8.*

15. 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 April 2, 2015. In addition, a public notice sign was posted on the property. To date, no public comments opposing the project have been received. The Northeast Tacoma Neighborhood Council submitted a letter of support for the rezone and applauded the services being provided by FUSION at the site. *Ex. 1, Attachment A-8. Supra.*

⁵ The Staff Report contains a complete list of *Comprehensive Plan* policies relating to affordable housing. *See Ex. 1.*

16. As part of the project review process, Planning and Development Services has provided notification of this project to various City, outside governmental, and non-governmental agencies⁶. Departmental comments and requirements regarding this proposal are included as attachments to the City's Staff Report and, where appropriate, incorporated as recommended conditions of approval. *Ex. 1, Attachments A-11 thru A-16.*

17. On April 30, 2015, the City issued a Determination of Environmental Non-Significance (DNS) for the proposed project under the State Environmental Policy Act (SEPA). The DNS was not appealed. *Ex. 2; Kinlow Testimony.*

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. *Kinlow Testimony.*

19. The Staff Report in this matter accurately describes the proposal, general and specific facts about the site, applicable sections of the *GLUE*, and applicable regulatory codes. The Report is marked as Exhibit 1, and by this reference, is incorporated herein as though fully set forth.

20. At the hearing, presentations were made by City Staff and by the Applicant FUSION. There was public testimony from attorney Dennis LaPorte in support of the proposal. Mr. LaPorte indicated that for many years he represented the Noyes family, who donated the home to the Joseph Foundation. He prepared the paperwork for the property donation and the estate plan for the family. In his opinion the proposed change to allow a duplex would help further the donors' intent to help families in need of housing. *LaPorte Testimony.*

21. 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 met by the City's issuance of a Determination of Environmental Non-Significance, which was not appealed. *Ex. 2.*

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.*

⁶ No comments were received from the outside governmental and non-governmental agencies (e.g. Pierce Transit, Puyallup Tribe of Indians, Tacoma-Pierce County Health Department, and Washington Department of Ecology) on this proposal.

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 proposed rezone will take place in a Tier 1 – Primary Growth Area. Urban growth is present in the area and infrastructure and public facilities are in place to support the duplex use. While a duplex is not commonly allowed in a Low-Intensity-Single-Family Detached Housing Area, such uses can be allowed on a limited number of small, individual sites with special characteristics. An allowed duplex use must be designed and scaled to be compatible with the surrounding area. The *GLUE* policies address new residential development in single-family areas:

LU-RDLISFD-7 Recognize Existing Character

New development within identified single-family detached housing areas should be designed and scaled to blend in with the existing or planned neighborhood character.

LU-RDLISFD-8 Unique Sites

Recognizing that there may be individual sites within identified single-family detached housing areas with unique characteristics, development with uses other than single-family detached housing may be considered, provided that the proposed development is properly located, designed, scaled and developed to be compatible with the surrounding area.

In this case, the rezone will be compatible with the surrounding neighborhood. The exterior features of the home will remain virtually unchanged. The only anticipated exterior modification is additional parking. The primary alterations will be interior rearrangement to create individual kitchens and installation of a wall separating the space into two separate living units. The structure has been used as a residence for two families without negative impacts on the neighborhood for over 19 years. The rezone will not change the existing level of neighborhood impact by simply allowing an interior division in a home that is already being occupied by two families. The only significant change will be the improved privacy for the residents provided by the interior separation.

Changed Conditions

5. 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, 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. *Bassani* at 394.

In the years since the subject home was built in the 1960s the conditions have changed to some extent in the vicinity. Two rezones have been approved at the nearby intersection of 49th Street NE and Norpoint Way NE. The rezones from “R-2” to “R4-L” have allowed the addition of apartment units along a major roadway that is near the site. Ongoing development has occurred in the general area, including the construction of other single family dwellings. The proposed rezone would be consistent with the limited changes to the residential development pattern in the area and would be in keeping with the design of the surrounding single family homes. Overall, the changes in the neighborhood, while few, support the rezone under consideration.

Consistency with District Establishment Statement

6. The District Establishment Statement for the “R-3” Zone states:

R-3 Two-Family Dwelling District. This district is intended primarily for two-family housing development. Uses such as single-family dwellings, three-family dwellings, and some lodging and boarding homes may also be appropriate. The district is characterized by low residential traffic volumes and generally abuts more intense residential and commercial districts.

TMC 13.06.100.B.5. The proposed duplex is the precise type of use anticipated for development in the “R-3” zone. In this particular situation, the amount of traffic associated with the site will not be increased by the rezone. The site is also located near a major transportation corridor as contemplated by the District Establishment Statement.

Recent Area-Wide Rezone

7. The proposed rezone will not modify an area-wide rezone action taken by the City Council in the past two years. The evidence indicated that the City has not undertaken an area-wide rezone action in this vicinity within the relevant time period.

Relationship to the Public Welfare

8. If the rezone is approved, the proposed duplex will be a permitted use. The project is intended to meet or exceed all of the development standards applicable in an “R-3” District.⁷ Because these standards are an expression of measures for the public health, safety, morals and general welfare, it follows that meeting them will be consistent with those values. Conditions to reinforce these considerations have been identified and are incorporated into this recommendation. Moreover, the intended use of the property to assist families with transitional housing needs will further the City’s housing goals and provide important geographic breadth to transitional housing opportunities within the City. These advantages can be achieved without any harmful impacts to the neighboring area. The rezone project will support a use that provides meaningful benefits to the citizens of Tacoma.

9. The findings substantiate a conclusion that the applicant has met its burden of establishing by a preponderance of evidence that the requested rezone, if properly conditioned, will conform to the applicable approval criteria.

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

11. In order to assure consistency with the City’s ordinances, goals, and policies, the following are recommended as conditions of approval for the rezone request:

RECOMMENDED CONDITIONS OF APPROVAL

A. SPECIAL CONDITIONS:

1. STORM AND SANITARY SEWERS

The proposal shall comply with all applicable requirements contained in the City of Tacoma Stormwater Management Manual, Side Sewer and Sanitary Sewer Availability Manual, TMC, and the Public Works Design Manual in effect at time of vesting land use actions, building or construction permitting.

⁷ The site, viewed in isolation, would exceed the applicable rate of 8 units per acre for the Single-Family Detached Housing Area, however, given the adjacent parcel of 3.23 acres owned by a church and other public ownership in the vicinity, the density rate would not exceed 8 units when viewed on an appropriate scale.

2. STREETS, DRIVEWAY AND SIDEWALKS

- a. The offsite improvement requirements shall be determined at the time of building permit submittal.
- b. The site is required to be brought into compliance with the standards of TMC 13.06.510, which requires 2 parking spaces per dwelling unit.

3. BUILDINGS

- a. All new building construction shall conform to the current adopted edition of the International Residential Code, other applicable codes, state amendments, and City of Tacoma ordinances.
- b. The wall between the units shall be 1-hour fire-resistive and extend through the attic per IRC 302.3.
- c. Drawings shall clearly show existing and new openings on west wall of the building. A lateral analysis and possible upgrade of this wall may be required.

4. PROTECTION OF 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. This parcel is currently served by a 3/4" service with a 5/8" meter that is not properly sized to support a duplex as planned. The Applicant shall contact Frank Singletary at (253) 396-3057 to have a cost estimate for replacing the existing 5/8" water meter with a new 3/4" water meter.
- b. If fire sprinklering, Tacoma Water Permit Counter shall be contacted at (253) 502-8247 for policies related to combination fire/domestic water service connections.
- c. If 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 will be installed by Tacoma Water after payment of the System Development Charge.

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, and TMC 13.06.512 – Pedestrian and bicycle support standards.
- b. Prior to obtaining building 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, Site Development (253) 591-5760 and Planning and Development Services (253) 591-5030.
- c. Planning and Development Services may require a Concomitant Zoning Agreement incorporating the conditions of approval imposed to be executed and recorded with the Pierce County Auditor prior to final approval of the reclassification by the City.

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 DEVIATION(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 LAWS, REGULATIONS, AND ORDINANCES ARE CONDITIONS PRECEDENT TO THE APPROVALS GRANTED AND ARE CONTINUING REQUIREMENTS OF SUCH APPROVALS. BY ACCEPTING THIS APPROVAL, THE APPLICANT REPRESENTS THAT THE DEVELOPMENT AND ACTIVITIES ALLOWED WILL COMPLY WITH SUCH LAWS, REGULATIONS, AND ORDINANCES. IF, DURING THE TERM OF THE APPROVAL GRANTED, THE DEVELOPMENT AND ACTIVITIES PERMITTED DO NOT COMPLY WITH SUCH LAWS, REGULATIONS, OR ORDINANCES, THE APPLICANT AGREES TO PROMPTLY BRING SUCH DEVELOPMENT OR ACTIVITIES INTO COMPLIANCE.

RECOMMENDATION:

The Hearing Examiner recommends that the rezone application be approved, subject to the conditions set forth above.

DATED this 25th day of June, 2015.



PHYLLIS K. MACLEOD, Hearing Examiner

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

-11-
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. (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) 2.09.170. 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**