

OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

REPORT AND RECOMMENDATION

TO THE CITY COUNCIL

APPLICANT: Bruce and Dixie Arneklev (hereinafter collectively referred to as the “Arneklevs” or “Applicants”), are the current record owners of the real property subject to this requested rezone. The Arneklevs were represented at the hearing by John Gibson.¹

HEARING EXAMINER FILE NO: HEX2021-014

SUMMARY OF REQUEST:

This Report and Recommendation addresses a request to rezone approximately three acres of real property from R-3 Two-Family Dwelling District to R-4L Low Density Multiple Family Dwelling District,² under the auspices of developing that same property with up to 68 dwelling units and associated site improvements (the “Project”). The rezone application required review under the State Environmental Policy Act (“SEPA”). The Planning and Development Services (“PDS”) Director issued a final Mitigated Determination of Non-Significance (“MDNS”) on July 1, 2021. The MDNS was not appealed.

LOCATION:

The Subject Property is located in North Tacoma at 5517 North 33rd Street, and it consists of Pierce County tax parcels numbered 0221264036, 0221264017, 0221264041, 0221264060 (the “Subject Property” or the “Site”).

RECOMMENDATION:

The Hearing Examiner recommends approval of the requested rezone, subject to any conditions set forth herein below. Under the authority set forth in Tacoma Municipal Code (“TMC”) sections 1.23.050.A.1, 1.23.130, and 13.05.110, the Examiner heard testimony and reviewed the presented record regarding the requested rezone. The Examiner’s recommendation of approval is based on the hearing and the hearing record and how that record aligns with the TMC requirements set forth and analyzed below.

¹ See *Ex. C-4 Property Owner Free Consent Form*. Gibson has the Subject Property under contract to purchase from the Arneklevs, and to that extent he is more or less an equitable owner and considered a co-Applicant for purposes of that capitalized term herein.

² These classifications are sometimes referred to herein as simply “R-3” and “R4-L.”

PUBLIC HEARING:

After reviewing the Preliminary Report submitted by PDS (herein the “PDS Report”—*Ex. C-1*) and all attendant information on file, the Hearing Examiner convened a public hearing on the rezone request on July 29, 2021.³

Testimony at the hearing was taken from all of the following:

City of Tacoma

Shirley Schultz, Principal Planner
Dan Hansen, Traffic Engineer

Applicants

John Gibson, Applicant’s authorized agent and contract purchaser of the Subject Property.

Non-Party Members of the Public

Kim Beckner, neighborhood resident
Barry Beckner, neighborhood resident
Mike Elliot, neighborhood resident.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION:

FINDINGS OF FACT:⁴

1. The Applicants submitted a request through John Gibson requesting the rezone of approximately three acres of real property located at 5517 North 33rd Street (again, the “Subject Property” or the “Site”) from R-3 Two-Family Dwelling District to R-4L Low Density Multiple Family Dwelling District. Gibson has an equitable ownership interest in the Subject Property via a contract to purchase it from the Arneklevs. The Applicants propose subsequent development of the Site with up to 68 dwelling units and associated site improvements (again the “Project”). The Project is intended to include up to five 4-plex units along the east side of the Site and two buildings of up to 24 units per building on the western portion of the Site. The Project also includes parking for as many as 140 vehicles (the proposed site plan shows 133 spaces), bicycle parking, pedestrian circulation, open space, and solid waste areas. The Applicants indicated that, pending rezone approval and successful completion of site development permits, the Site may be subdivided so that the buildings may be sold separately. Somewhat contradictorily, Gibson testified that he and his partner intend to retain ownership of the Subject Property into the foreseeable future, and that this intended long term ownership will guarantee high levels of maintenance and upkeep for the Subject Property. *Schultz Testimony, Gibson Testimony; Ex. C-1~Ex. C-5.*

³ Due to National, State of Washington and City of Tacoma (“City”) Proclamations of Emergency caused by the COVID-19 virus, the City closed the Tacoma Municipal Building to the public until further notice on or around March 17, 2020. As a result, the public hearing in this matter was conducted virtually using Zoom teleconferencing with both internet visual and audio access, as well as separate telephonic (only) access via call in number on Zoom.

⁴ Hereafter, “Finding of Fact” may be abbreviated as “FoF.”

2. The Subject Property is currently undeveloped, although testimony at the hearing indicated that the Arneklevs have done a fair amount of landscaping type work on the Subject Property over the years to keep it in an almost park-like state. Based on aerial photos used in PDS's review, it appears that approximately one-third of the Site is covered by a tree canopy of mostly conifers with lawn beneath. Per the submitted Geotechnical Evaluation: "The four parcels have a gentle grade to the north and northwest. The Site is somewhat 'L' shaped; the east property line extends north from North 33rd Street approximately 402 feet, then west 147 feet, then south 162 feet, then west again 299 feet, then south along the west property line 237 feet to North 33rd Street. The south property line extends along the north side of North 33rd Street approximately 452 feet. The eastern parcel extends north-south while the three western parcels extend east-west." *Id.*

3. The Applicants submitted a Critical Areas Report that confirms there are no wetlands, steep slopes, or critical habitat on the Site that would be regulated by the City, or other government agency. *Schultz Testimony; Ex. C-1, Ex. C-11, Ex. C-12.*

4. The Subject Property is located in an area of mixed residential uses that have been developed over the last half of the 20th century. The area abutting the Site to the north and east is a neighborhood of single-family homes built in the 1950s and 1960s. To the south is a condominium complex built in the late 1980s, and to the west (between the Subject Property and North Pearl Street) there are low-density multifamily dwellings in garden-style apartments. Attachment A to this Report and Recommendation shows more precisely the nearby multi-family developments and their number of units, which total approximately 741. Multi-family housing is not anomalous to the surroundings of the Subject Property. The Subject Property is abutted on the west and north by institutional uses: the Bates Technical College antenna/transmitter station (about five acres), and a church (about 1.5 acres). The Site is accessed by North 33rd Street, along which the Site has about 450 feet of frontage. North Pearl Street (State Route 163) is located approximately 630 feet to the west of the Site. *Schultz Testimony, Gibson Testimony; Ex. C-1~Ex. C-3.*

5. The current Land Use Intensity (land use designation from *One Tacoma Comprehensive Plan*, hereafter the "Comp Plan") for the Site is "Multi-Family (Low Density)." This designation has applied to the Subject Property since before 2016. *Schultz Testimony; Ex. C-1.*

6. The Site has never been occupied in the traditional sense of being developed with any kind of permanent residence, nor have the parcels ever been platted. The Site was originally zoned R-2 Single-Family Dwelling District when the zoning code was adopted in 1953. The R-2 zoning classification remained in place until 2016, when the City's Planning Commission proposed, and the City Council approved, a change in the zoning for the area, classifying the Site as R-3 Two-Family Dwelling District, stating the intention to better align with the underlying land use intensity of "Multi-Family (Low Density)." PDS included in its report pertinent excerpts of the minutes the Planning Commission's deliberations on the way to making its recommendation to the City Council in 2016. These excerpts were included presumably to show both the Examiner and the City Council that there was discussion about reclassifying the Subject Property and nearby parcels to R-4L in 2016 even though R-3 was the classification ultimately recommended, and that the decision was not arrived at easily. The excerpt of the Planning Commission's minutes can be found at pages 3 and 4 of the PDS

Report. *Schultz Testimony; Ex. C-1.*⁵

7. There have been no changes to the Subject Property’s zoning since the R-3 classification in 2016. Under this current classification, 44 units could be built on the Subject Property up to a height of 35 feet. The target density for the area is 14-36 dwelling units per acre, which is a greater density at the high end than allowed presently. *Schultz Testimony; Ex. C-1, Ex. C-18.*

8. The present application was submitted on March 16, 2021, but remained incomplete pending submittal of traffic and critical area information until April 20, 2021. The application was placed on hold pending clarification of the permitting process, and public notice was sent out on June 3, 2021. The notice included a preliminary SEPA determination that made comments due by June 24, 2021.

9. City of Tacoma staff have reviewed the rezone proposal and have provided comments relating to conditions staff has determined should apply to the rezone and the Project it proposes, as well as advisory comments relevant to development permits. These comments are in the record as Section K to Exhibit C-1, and can also be found in Exhibits C-10, C-13, and C-17. All conditions appropriate for inclusion here are included at Section A. “Conditions of Approval” below. Of note, several City departments commented on vehicle circulation, fire access, and solid waste access in terms of preferred layout, connectivity of vehicle routes, and location of equipment, and where these comments have become recommended conditions of approval, they are referenced and incorporated herein as appropriate.

10. The Applicants have completed an Affordable Housing Agreement with the City’s Community and Economic Development Department agreeing to participation in the City’s affordable housing provision program, if the rezone is approved (*in the record as Exhibit C-6*). The agreement may be modified when the final site/building plans are completed and a final unit count is available. The Applicants will have the option of either paying a fee in lieu for each new dwelling unit in excess of the base allowance of 44 units allowed under the current R-3 zoning, or providing 25% of the additional units as permanent affordable housing. *Schultz Testimony; Ex. C-1, Ex. C-6.*

11. Multiple written public comments were received prior to and directly after the hearing. Comments received through July 20, 2021, are in the record as Exhibit C-16 and PDS staff summarized, and responded to these in Section F. of the PDS Report. Public testimony at the hearing has followed the same general themes as the written comments. These comments/concerns can be summarized as follows, together with relevant findings immediately thereafter:

A. Comment - The City just enacted an area-wide rezone in 2016 which classified the Subject Property as R-3. This zoning should be maintained. Another change is too soon. The City should just wait until the “Home in Tacoma” process concludes.

Responsive Finding - The 2016 change was part of an extensive process designed to align

⁵ The 2016 reclassification process was also referenced by most written comments and the testimony at the hearing as will be addressed further below.

zoning with the underlying land use designation of any given site. The land use designation for the Subject Property was low-intensity multifamily. That designation allowed for R-3 and R-4L zoning. The Planning Commission and the City Council settled on R-3 at that time, but the two year repose period of TMC 13.05.030.C.b.(4) has now passed and nothing prevents the change to R-4L, provided that other applicable criteria are met. The City Council could certainly wait until the “Home in Tacoma” process has concluded, but rezoning the Subject Property under the applicable TMC provisions currently in effect allows the City more latitude in making the approval subject to mitigating conditions, which it appears the Applicants are willing to meet. *Schultz Testimony, Ex. C-1 Ex. C-16.*

B. Comment - Approving the rezone will result in additional traffic, speeding, overcrowding, and make the neighborhood less safe.

Responsive Finding – The foregoing concerns are very typical when potential new development comes to an established neighborhood. Commenters provided examples from their own experience about traffic and intersection wait times in the immediate vicinity of the Subject Property. The neighborhood population and traffic will, no doubt, increase if the Project is completed after a rezone approval. That said, the Applicant provided a Traffic Impact Analysis (Exhibit C-9) that was reviewed by the City’s Traffic Engineering Division (“TED”) for adequacy of analysis, and TED proposed conditions for the Project to mitigate (but not obviate entirely) any negative impacts. TED estimated a 13% increase in traffic expected to go through the neighborhood during peak hours if the Project is built. That notwithstanding, analysis does not show that the intersection of North 33rd Street and North Pearl Street has the traffic volume to warrant a signal. Based on accepted methods of analysis, the intersection is expected to operate within the City’s adopted level of service for at least the next five years.

To address the potential impacts from cut-through traffic and speeding, the Applicant will be required to work with the City to install a speed hump on North Shirley Street to discourage speeding.

To address the additional needs of pedestrians in the area, the Applicant will be required to extend the sidewalk from the Site to connect with existing sidewalk toward North Pearl Street. *Id.*; see also *Exhibit C-10* for Traffic memoranda.

C. Comment - The Project will lead to the destruction of green space and mature trees on the Subject Property thereby impacting the quality of life in the neighborhood.

Responsive Finding – It is certainly possible that there may be a net loss of some trees on the privately owned Subject Property if the Project goes forward. That said, the TMC has requirements for open space (20% of the Site), tree canopy coverage (30% of the Site), and building coverage (no more than 50% of the Site). This is the minimum standard that must be met in the Project. In addition, in order to respond to neighborhood concerns as well as adopted Comp Plan policy, City staff is proposing conditions be placed on the rezone/Project for tree retention and open space consolidation.

D. Comment - The parking areas are insufficient; there’s not enough parking provided and circulation doesn’t work for solid waste or emergency services.

Responsive Finding – The minimum parking requirement for the Site is 1.5 stalls per unit.

The Applicant currently proposes more than 2 stalls per unit. This may be changed as the Site is redesigned to accommodate tree retention and open space. The City has adopted multiple policies to reduce the dominance of parking and impervious surfaces on a development site, while balancing parking needs to avoid neighborhood impacts. Internal circulation issues for solid waste and emergency services are for the City to sort out in permitting the Project. Neighbors—unless planning to move to the apartments built by the Project—do not have readily apparent standing on this issue.

E. Comment - Crime will increase.

Responsive Finding – The Applicant will be encouraged to participate in the City’s Crime Prevention Through Environmental Design (CPTED) program. Aside from the general concern being expressed, there was no actual evidence offered regarding an increase in crime tied to the rezone. City witnesses testified that more “eyes on” in previously undeveloped areas generally tends to reduce, rather than increase crime.

F. Comment - Contamination from soils cleanup.

Responsive Finding – State Department of Ecology (“Ecology”) regulations will require that the Applicant remediate any soil contamination in full compliance, ensuring that soil does not travel to neighboring properties during removal.

G. Comment - Loss of privacy from more tenants in bigger buildings.

Responsive Finding – Currently the Site only allows for structures that contain up to three units. The Applicant proposes a mix of 4-plexes and multifamily (24 units) buildings, with the smaller buildings on the eastern portion of the Site to act as a transitional buffer and afford more privacy to directly adjacent, existing homes. The height limit for all buildings is 35 feet currently and that will not change with the requested reclassification. Buildings will be required to meet setbacks and provide a 5-7 foot landscaped buffer (dense trees, shrubs, and groundcover) along the property line. This buffer will not only enhance privacy, but it will also protect vegetation (e.g. large trees) on the adjacent properties.

H. Comment - Multifamily is not compatible with the neighborhood.

Responsive Finding – Given the number of existing multi-family units in this neighborhood already, the Examiner finds little merit to this contention. The objection is simply to *more* multi-family housing in the neighborhood.

12. Testimony was taken at the hearing from the three neighbors listed at page 2 above. Barry and Kim Beckner both testified in opposition to the rezone request and presented their concerns that are largely reflected in Finding of Fact (“FoF”) 11 above, but devoted time more specifically to the accuracy of the Traffic Impact Analysis submitted by the Applicants (Exhibit C-9). Ms. Beckner described her current traffic difficulties with turning onto Pearl Street. Mike Elliott also voiced his opposition to the requested rezone stating there was no outreach to neighboring residents by the Applicants. He lives in the surrounding neighborhood and has privacy concerns (three-story buildings overlooking single-story homes) and wants more time for further public input. *Barry Beckner Testimony, Kim Beckner Testimony, Elliott Testimony.*

13. In rebuttal testimony, the City and the Applicant addressed concerns from the public testimony portion of the hearing. Specifically, the City and the Applicant explained how the COVID-19 pandemic did not artificially influence the Traffic Impact Analysis, and elaborated on the accuracy thereof. *Hansen Testimony, Schultz Testimony, Gibson Testimony.*

14. Review under SEPA was required and was conducted by PDS prior to the hearing in this matter. Rezone applications are not exempted from SEPA review. Pursuant to the State's SEPA Rules (WAC 197-11) and the City of Tacoma's Environmental Code (TMC 13.12), the PDS Director issued a Mitigated Determination of Environmental Non-Significance (again, the "MDNS") for the requested rezone based on the intended Project on July 1, 2021. This determination was based on a review of the Applicants' Environmental Checklist and other supporting information on file with PDS. No appeals of the MDNS have been filed. The MDNS is in the hearing record as Exhibit C-7. *Schultz Testimony; Ex. C-1, Ex. C-7, Ex. C-8.*

15. As part of the review process for the rezone/Project, PDS provided notification of the rezone request to various City departments/divisions, and outside governmental and non-governmental agencies. Departmental comments and requirements regarding the proposal are included in the PDS Report primarily at Section K. These agencies/departments/divisions recommended important conditions they believed would be properly attached to the Project if the rezone is approved by the City Council. *Schultz Testimony; Ex. C-10, Ex. C-12, Ex. C-15, Ex. C-17.*

16. The Applicant did not express any objection to the City's recommended conditions of approval, as set forth in the hearing record. *Gibson Testimony; Ex. C-1.*

17. The PDS Report (Exhibit C-1) accurately describes the requested rezone and the Project, general and specific facts about the Site, applicable sections of the Comp Plan, and applicable regulatory codes. Again, the PDS Report is included in the record as Exhibit C-1, and by this reference, is incorporated herein as though fully set forth. To the extent that anything in the PDS Report conflicts with the contents of this Report and Recommendation, this Report and Recommendation controls.

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

CONCLUSIONS OF LAW:

1. The Hearing Examiner has jurisdiction over the subject matter of this proceeding to conduct a hearing and make this written recommendation to the City Council in regard to a reclassification (rezone) request. The final decision on any requested reclassification is made through ordinance by the City Council. *TMC 1.23.050.A.1 and TMC 13.05.110.*

2. The requirements of SEPA have been met by the City's issuance of the MDNS,⁶ which has not been appealed.

⁶ See TMC 13.12.440.

3. Under TMC 13.05.030.C.b, the applicant for a rezone is required to demonstrate consistency with all of the following criteria:⁷

- (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.

The Applicants bear the burden of establishing by a preponderance of the evidence that the requested rezone conforms to all of the foregoing criteria, which are addressed below in turn. The Applicants may rely on any evidence in the hearing record. *TMC 1.23.070.A*

4. Consistency with the Comp Plan—TMC 13.05.030.C.b.(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.”*

The Site is located within a “Multi-Family (Low Density)” designated area of the City per the Comp Plan. Both the existing R-3 zoning classification and the requested R4-L classification are consistent with this land use intensity designation. The requested R4-L classification would allow for roughly twice the density of the existing R-3 classification, however, while still being considered “Multi-Family (Low Density).”

The PDS staff analysis of this criterion is found beginning on pages 8 and 9 of the PDS Report. PDS determined that “the proposal” is generally consistent “in concept” with the Comp Plan, but that

⁷ Numbering of the criteria is kept the same as in the TMC for consistency.

more would have to be done to bring the Project fully in line with the “the site design policies of the [Comp] Plan...” While the Examiner acknowledges that it is difficult to divorce the rezone itself from what the property owner intends to do with the property if the rezone is approved (the Project), the correct analysis is whether the “*change of zoning classification* is generally consistent” with the Comp Plan. Here, there is no question that the requested change would remain consistent with the applicable land use intensity designation of the Subject Property.

TMC 13.05.030.C.b.(1) further requires general consistency with the “[p]olicies, and other pertinent provisions of the Comprehensive Plan.” Both the Applicant’s submissions (Exhibit C-3) and the PDS Report (Exhibit C-1 at Section H, p. 12) set forth numerous Comp Plan policies and goals that are advanced by the rezone and the Applicants’ intended use of the Subject Property. A review of those policies and goals leads to the conclusion that the rezone and the proposed use of the Subject Property is generally consistent with the policies and pertinent provisions of the Comp Plan. Through the permitting process, City staff will ensure that the Project continues to comply with the TMC and the Comp Plan generally.

Approving the requested rezone keeps the Subject Property in conformance with its current Comp Plan designation and promotes the various Comp Plan goals and policies just referenced above. As a result, the Examiner concludes that the standards set forth in TMC 13.05.030.C.b.(1) are met.

5. Substantial Changes—TMC 13.05.030.C.b.(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.”*

In regard to the rezone criteria found in TMC 13.05.030.C.b.(2) that deals with substantial change, the City made the following analysis:

The area surrounding the subject site has not changed substantially since the late 1980s, with the development of the condominiums to the south of the [S]ite. Local conditions have not changed; however, housing has become more scarce [sic] and more expensive, and the City has adopted many measures within the last several years to increase housing construction and housing choice within the city. *Ex. C-1.*

While surrounding physical conditions may have not changed much, as the City points out, the five years that have intervened since the zoning of the Subject Property was last addressed have seen a dramatic increase in housing affordability in the City. The need for additional housing in the Tacoma market is virtually irrefutable. This need is reflected in express provisions and recommendations of the Comp Plan such as the following:

Policy UF–13.2 Promote infill development within the residential pattern areas that respects the context of the area and contributes to the overall quality of design.

Policy DD–4.2 Encourage more housing choices to accommodate a wider diversity of family sizes, incomes, and ages. Allow adaptive reuse of existing buildings and the creation of accessory dwelling units to serve the changing needs of a household over time.

As the PDS Report notes, “Encouraging more housing choices in a variety of housing types is a key component of the City’s development policy.” Given that, the second prong of TMC 13.05.030.C.b.(2) is met because adding additional housing choices to this area and the Tacoma market in general helps to directly implement these two (and certainly other) express provisions or recommendations of the Comp Plan.

6. District Establishment Statement—TMC 13.05.030.C.b.(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.”*

The R4-L district establishment statement reads as follows.

R-4-L Low-Density Multiple-Family Dwelling District. This district is intended primarily 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.

Here again, it is difficult to separate entirely the rezone from the Project in determining compliance with this criterion. The rezone is intended to facilitate “a low-density multiple-family housing development...” The “more restrictive [than R-4 Multiple-Family Dwelling District] site development standards” will be implemented through the conditions contained herein, and more specifically through the City review and permitting process. The Site’s proximity to the major transportation corridor of North Pearl Street and the mix of higher and lower intensity uses in and around the Subject Property make the rezone compliant with those provisions of the district establishment statement as well. Given the foregoing, the Examiner concludes that the requirements of TMC 13.05.030.C.b.(3) are met.

7. Recent Area-Wide Rezone—TMC 13.05.030.C.b.(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.”*

The Subject Property was last rezoned in 2016, and therefore it is outside the two year repose window of TMC 13.05.030.C.b.(4). The City Council could certainly take into account the on-going “Home in Tacoma” process and choose to put this request on hold until “Home in Tacoma” is sorted, but moving ahead with the present rezone could also be seen as advancing some of the goals of “Home in Tacoma” sooner with the added bonus of having more input on how the Subject Property gets developed through the conditions set forth herein, and through the insurance that a recorded concomitant agreement could provide. In any event, the time limitation

of TMC 13.05.030.C.b.(4) is not violated, and therefore it does not prevent approval of the present rezone request.

8. Relationship to the Public Welfare—TMC 13.05.030.C.b.(5) *“That the change of zoning classification bears a substantial relationship to the public health, safety, morals, or general welfare.”*

On this criterion, PDS staff provided, in part, the following analysis:

The [S]ite is planned to accommodate low-density multi-family housing through its Comprehensive Plan designation. Multiple goals and policies within the Comprehensive Plan (see below) speak to the need for additional housing and a variety of housing choices. In addition the [Comp] Plan, along with implementing regulations, sets forth multiple standards for site layout, building design, and landscaping that ensure new development is an asset to the neighborhood. If conditioned appropriately, the change of zoning will allow infill development (responding to housing need) with a good site plan (responding to neighborhood concerns).

In complement to what is noted in the PDS Report, the TMC and Comp Plan set forth policies and requirements, including design and development standards, aimed at regulating growth and development to ensure consistency with the public health, safety, morals and general welfare.

In order to ensure further that this rezone request and the intended development of the Subject Property are consistent with the public health, safety, morals and general welfare of the community, the City and related agencies reviewed and commented on the proposed development (the Project), supplying various conditions that will ensure compliance with applicable laws and development regulations, and that address the stated neighborhood concerns. Requiring compliance with applicable development regulations and standards, together with the conditions set forth herein, helps safeguard the public, and ensures compatibility with the surrounding community.

In addition to the foregoing, the city of Tacoma, as well as western Washington in general, has been experiencing a shortage in available housing, and more particularly in available affordable housing. Increasing the available housing supply in the City helps address this public health, safety and welfare concern by increasing the available supply of housing, and by increasing the supply, hopefully helping to stabilize or even reduce costs. As noted at FoF 10, the Applicants have entered into an agreement with the City in conformance with TMC 1.39 that will directly address affordability in the Project in addition to adding to the City’s stressed housing supply.

Given the foregoing, the Examiner concludes that the requirements of TMC 13.05.030.C.b.(5) are met or will be met through the development of the Project as conditioned herein. Recording relevant conditions as development covenants against the Subject Property will help ensure that development proceeds as the City has intended through its recommended conditions.

9. Findings entered herein, based on substantial evidence in the hearing record, support a conclusion that the proposed rezone is consistent with the applicable criteria and standards for rezones set forth in TMC 13.05.030.C.b.

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

A. CONDITIONS OF APPROVAL: “Conditions” set forth herein are derived primarily from the PDS Report and the City staff review generally. As is typical with a rezone recommendation, the conditions below have more to do with the code compliance of the Applicant’s intended development of the Subject Property (the Project) after approval of the requested rezone than they do with the rezone request in isolation, i.e., they are not recommended herein as conditions precedent to approving the rezone that must be satisfied before approval issues. Compliance with later development conditions prior to approving the rezone is, in most cases, physically and temporally impossible.

As set forth at FoF 17 above, the PDS Report is incorporated herein by reference. The Applicant should also continue to pay close attention to the City’s Exhibit C-17 and the useful guidance and notice of development requirements that are enumerated therein, even though those requirements may not be set forth in the body of this Report and Recommendation.

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

Therefore, should the City Council approve this rezone request, the Examiner recommends making the following conditions from the hearing record on-going conditions of the rezone, and subsequent permits applicable to the Project should reflect the same:

1. SITE DESIGN

- a. As site plans are refined, the east side of the Site, where the Subject Property abuts R-2 zoning, shall be reserved for the development of structures containing four or fewer units per structure.
- b. To address the need for functional open space and support active living, as well as to support the required design elements of open space per the TMC, the required open space for the two multifamily buildings shall be consolidated into a common open space area with amenities. Parking shall not be located between the buildings. Development permits shall show how the open space includes the amenities listed in TMC 13.06.020, including space for active recreation (e.g., a play structure, sport court, walking path) and passive recreation (e.g., benches, picnic tables, barbecue grills).
- c. To help achieve compliance with the tree canopy coverage requirement of the TMC, to respond to Comp Plan policy to design with nature and incorporate significant natural features into site design, and to respond to neighborhood concerns, the Applicants shall prepare a tree inventory, preservation, and protection plan for review and approval by the

City. This plan shall include preservation of 50% of the trees on Site, except where trees can be shown to be hazardous, or except where removal is the only method of achieving soil cleanup. Priority should be given to trees located between the building footprints and North 33rd Street, to screen and shade the new buildings – responding to additional Comprehensive Plan policies for site design. Trees that are located in the right-of-way shall be maintained unless they conflict with utilities, vehicle access, or the required sidewalk.

2. TRAFFIC⁸

- a. To mitigate the potential for increased conflicts between vehicles and pedestrians, who would otherwise be required to walk in the roadway, sidewalk must be extended beyond the Site frontage, approximately 470' to the west, to tie-in to existing sidewalk on the north side of North 33rd Street. This sidewalk extension will require the construction of new driveway approaches for two existing driveways serving 5715 North 33rd Street.
- b. To reduce the potential negative impacts of increased traffic traveling through the residential neighborhood to the west, a speed hump, with associated signage and pavement markings, must be constructed on North Shirley Street between North 33rd Street and North 35th Street. The City Traffic Engineer will determine the location of the speed hump. This speed hump is intended to decrease the speed of traffic on the route to North Orchard Street and may reduce traffic volumes by discouraging some drivers from using that route.
- c. To ensure that all parcels have efficient access, an access easement shall be provided for the private accessway serving the five townhome buildings on separate parcels on the eastern portion of the Site if or when the Site is subdivided. The easement must include the parking aisle, parking stalls, and pedestrian walkway.
- d. Each separate parking lot must include an on-site turnaround capable of servicing solid waste vehicles and fire apparatuses. A turnaround shall be provided by creating an accessway linking multiple parking lots at the north end of the Site. Vehicles must not be forced/required to back-out of the Site or across the sidewalk on North 33rd Street.
- e. During construction, workers shall park on the Site and shall not park their vehicles on the streets in the surrounding neighborhood.
- f. Parking lots shall be consolidated, with some of the parking provided to the north of the buildings, and removal of one of the driveways onto North 33rd Street. In reconfiguring the parking, the Site must maintain the minimum parking requirement of 1.5 stalls per unit (more is permissible).

3. ENVIRONMENTAL HEALTH

The purpose of this condition is to ensure that any potential contaminants on the Site resulting from Asarco, or otherwise, are identified and remediated prior to residential occupation of the Site.

⁸ Note: Conditions 2.a-e are carried forward from the SEPA MDNS. To the extent that there are other conditions in the MDNS that are not repeated here, that exclusion does not supersede those other MDNS conditions or make them not effective in any way.

- a. According to the Ecology facility/Site Atlas, the Site is located within the Tacoma Smelter Plume with an area that exceeds 20.0 ppm for arsenic levels. Prior to issuance of a development permit, the Applicant⁹ shall demonstrate to the City of Tacoma (PDS) that the Applicant has successfully entered into the Model Toxic Control Act (MTCA) provided Voluntary Cleanup Program with the Ecology. Proof of entering into the Voluntary Cleanup Program shall include a written opinion letter from Ecology identifying that in the opinion of the agency, the proposed cleanup action will be sufficient to meet the requirements of MTCA. The plans for the development permit shall be consistent and integrated with the plans reviewed and deemed consistent with MTCA by Ecology.
- b. Prior to any development permit(s) being issued by the City of Tacoma, the Applicant shall attend a pre-construction meeting with representatives of the City. The pre-construction meeting shall also include a representative from Ecology’s MTCA staff, if they elect to attend. The scope of the pre-construction meeting shall be to discuss the conditions of the permit being issued and integration of the development activities with Ecology’s approved cleanup plan.
- c. Upon completion of the activities covered by the approved cleanup action and development permit the Applicant shall provide to PDS a “No Further Action Determination” from Ecology indicating that the cleanup meets the requirements of MTCA for characterizing and remediating the contamination on the portions of the Site to be developed, and that no further remedial actions are required. No further development permits shall be issued for the Site until the “No Further Action Determination” from Ecology has been provided to the City (PDS).
- d. The Applicant shall comply with regulations regarding worker protection for contaminants. The Applicant shall contact the Washington State Department of Labor and Industries for minimum standards and requirements.

4. AFFORDABLE HOUSING

Prior to approval of the required building permits, the Applicant shall provide documentation to PDS that the requirements of Tacoma Municipal Code 1.39 - Affordable Housing Incentives and Bonuses Administrative Code – have been met through one of the following two methods:

- 1) Incorporation of 25% of the units resulting from increased density (with a base density of 44) into the City’s affordable housing inventory per the requirements of TMC 1.39; or
- 2) Payment of a fee-in-lieu at the rate of \$5,645 per unit resulting from increased density (again, with a base density of 44) into the City of Tacoma Housing Trust Fund. This is predicated on payment prior to Certificate of Occupancy, and prior to price adjustment in July of 2022. Payment at a later date or at a later stage of development will result in a different amount.

B. ADVISORY CONSIDERATIONS: Exhibit C-17 contains a battery of City and utility regulations that will be applicable to development of the Subject Property, and the Applicants are advised to pay special

⁹ Singular usage here indicates that the Arneklevs will likely be out of the picture at the time the Subject Property is being developed.

attention thereto on the way to permitting and developing the Site. Given that these regulations and other advisory provisions are generally applicable to any similarly situated development, and not necessarily specific to the Applicants' Project, they are not repeated here, but they are incorporated herein by this reference as code provisions with which the Project will need to comply.

The Applicants are also expressly put on notice that PDS will be reviewing for compliance all changes to the proposed site plan for the Project to ensure inclusion of all of the following:

- Tree Canopy Coverage (30% of Site) and Open Space (20% of Site) standards of TMC 13.06.020;
- Site perimeter landscaping per the standards of TMC 13.06.090.B – either 5 or 7 feet depending on parcel depth;
- Parking location to the side or rear of the Site per the standards of TMC 13.06.090.C;
- Parking access limitation per the standards of TMC 13.06.090.C (*see also Traffic Review in Exhibit C-10*);
- Minimum parking provision of 1.5 stalls per dwelling unit;
- Refuse and utility location standards of TMC 13.06.090.L (*see also staff comments in Exhibit C-17*); and
- Building design standards of TMC 13.06.100.C, including street-facing façade transparency.

C. **CONCOMITANT AGREEMENT:** The Examiner recommends that the above conditions 1 through 4 and their respective subsections, together with at least a reference to the advisory conditions, also above, be memorialized in a Concomitant Agreement to be executed by the City and the Applicant and recorded against the Subject Property in order to better ensure that the Subject Property is developed in the manner set forth herein, and to put any subsequent owner on notice of these requirements.

D. **USUAL CONDITIONS:**

1. The recommendation and decision set forth herein is based upon representations made and exhibits, including development plans and proposals and intended use, submitted at the hearing conducted by the Hearing Examiner. Any **material** 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 additional review/hearings.
2. If the recommendation made herein leads to approval of the requested rezone, such approval shall be subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such law, regulations, and ordinances are on-going conditions to any approval granted and are a continuing requirement of such approvals. By accepting any resulting approval, the Applicants represent that the development (the Project) and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development (the Project) and activities permitted do not comply with such laws, regulations, and ordinances, the Applicants shall promptly bring such development or activities into compliance.

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

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

RECOMMENDATION:

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

DATED this 16th day of August, 2021.



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.

Once the permit decisions are finalized, any appeal thereof should be taken pursuant to the provisions of the Land Use Petition Act (LUPA, RCW 36.70C).

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

**ATTACHMENT A—MULTI-FAMILY DEVELOPMENTS NEAR
THE SUBJECT PROPERTY**

- Northpoint Apartments at 5601 N. 37th St., Tacoma, WA 98407, @ 392 units
- Village at the Pointe at 5702 N. 33rd St., Tacoma, WA 98407, @ 70 rental units
- Tacoma Gardens at 5810 N. 33rd St., Tacoma, WA 98407, @ 45 units
- Olympic View Condos at 5716 N. 33rd St., Tacoma, WA 98407, @ 38 units
- Redwood Park Apts. at 3015 N. Pearl St., Tacoma, WA 98407, @ 132 units
- Juniper Gardens Apts. at 3018 N .Highland St., Tacoma, WA 98407, @ 64 units