



City of Tacoma  
Hearing Examiner

September 23, 2015

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**Re: HEX2015-030 (REZ2015-40000247673; SEP2015-40000247674)**

**Applicant: Benjamin Ryan Communities, LLC**

Dear Parties,

Enclosed please find a copy of the Hearing Examiner's Report and Recommendation to the Tacoma City Council issued on September 23, 2015, as a result of a public hearing held on September 17, 2015.

Sincerely,

LOUISA LEGG  
Office Administrator

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

cc: *See Attached Transmittal List*

**CERTIFICATION**

On this day, I forwarded a true and accurate copy of the documents to which this certificate is affixed via United States Postal Service postage prepaid or via delivery through City of Tacoma Mail Services to the parties or attorneys of record herein.

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

DATED September 23, 2015 at Tacoma, WA.

Louisa Legg

**TRANSMITTAL LIST**

**FILE NO.: HEX2015-030 (REZ2015-40000247673; SEP2015-40000247674)**

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Frank Marescalco, Engineer, Environmental Services, Science & Engineering

Richard Coyne, Solid Waste Supervisor, Environmental Services, Solid Waste Management

Sue Simpson, City of Tacoma, Public Works Department, Construction/LID

John Martinson, Supervisor, Tacoma Power T&D New Services Engineering

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Dan Sully, P.E., Planning & Development Services Department

Lihuang Wung, Sr. Planner, Planning & Development Services Department

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

**APPLICANT:** John Bays on behalf of Benjamin Ryan Communities, LLC  
10011 Bridgeport Way SW #1500-212  
Lakewood, WA 98499

**HEARING EXAMINER FILE NO:** HEX2015-030 (REZ2015-40000247673; SEP2015-40000247674)

**SUMMARY OF REQUEST:**

A request to rezone approximately 1.85 acres from a combination of C-2 General Community Commercial District and T Transitional District to entirely C-2 for the purposes of constructing up to 120 apartment units with associated site improvements.

**LOCATION:**

8439 Pacific Avenue (Parcel No. 032033-2012); 8445 Pacific Avenue (Parcel No. 032033-2037), 8601 Pacific Avenue (Parcel No. 032033-2174), and 8603 Pacific Avenue (Parcel No. 032033-2175).

**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 September 17, 2015. The Hearing Examiner also conducted a site visit on September 21, 2015, after the conclusion of the hearing.

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

**ORIGINAL**

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

### **FINDINGS OF FACT:**

1. John Bays on behalf of the Applicant Benjamin Ryan Communities, LLC (Benjamin Ryan) submitted a request to rezone approximately 1.85 acres of property at 8439 Pacific Avenue<sup>1</sup> from the existing combination of C-2 General Community Commercial District (C-2) and T Transitional District (T) to entirely C-2. *Ex. 1; Ex. 18.* The reclassification would allow for the planned construction of up to 120 apartments units and associated site improvements on the property. The apartments will serve moderate income families and are being developed in conjunction with programs administered by the City of Tacoma Community and Economic Development Department. *Bays Testimony.*
2. The proposed rezone encompasses four adjacent parcels forming an area approximately 1.85 acres in size. The site is generally flat and has been heavily disturbed. Two billboards are currently located on the property and they will be removed as part of the planned redevelopment. Otherwise, the property is undeveloped. *Ex. 1; Schultz Testimony.*
3. The current zoning on the subject property is C-2 on the first approximately 175 feet east from Pacific Avenue and T on the remainder. The adjacent properties to the north and across Pacific Avenue to the west are zoned primarily C-2. The properties immediately to the south of the site and across Pacific Avenue to the south are zoned R-4-L Low-Density Multiple-Family Dwelling District (R-4-L). The area behind the site to the east is zoned R-2 One-Family Dwelling District. *Ex. 4.*
4. Many of the properties in the area have been rezoned over the years to add commercial zoning along Pacific Avenue. Some of the commercial zoning requests have included the full depth of the property and some have involved commercial zoning on the front half of the property abutting Pacific Avenue with multi-family or transitional zoning on the rear portions of the parcels. The resulting pattern of development is a neighborhood mix of commercial and medium density residential. The current land uses in the vicinity include commercial uses across Pacific Avenue from the site and to the north. A 24-unit apartment complex built in 1966 is adjacent to the south. A single-family neighborhood is located to the east with access off a nearby street, rather than Pacific Avenue. A vegetative buffer would separate the proposed apartments from the adjacent single-family dwellings. *Ex. 1; Ex. 4; Schultz Testimony.*
5. The Generalized Land Use Element (GLUE) of the Comprehensive Plan classifies the site as a Tier I Primary Growth Area and designates the property as a Medium Intensity area. Tier I Primary Growth areas are locations where new growth is encouraged due to the availability of necessary infrastructure and services to support urban levels of development. The Medium Intensity designation allows residential development up to 45 units per acre. If the proposed project were

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<sup>1</sup> Additional parcels included in the project have addresses of 8445 Pacific Avenue, 8601 Pacific Avenue, and 8603 Pacific Avenue.

built with 120 units the residential density in the vicinity would increase from 26 units per acre to approximately 38 units per acre.<sup>2</sup> This level of density is still well below the maximum rate contemplated for Medium Intensity areas. *Ex. 1.*

6. The site in question and the surrounding area along and near Pacific Avenue were zoned in a mix of C-2 and R-2 when zoning was first enacted in 1953. The project property has been the subject of a number of rezones in the ensuing years in conjunction with various development proposals. In 1966 two of the northerly parcels on the site were reclassified from R-2 to R-4-L to allow for the development of multi-family dwellings. In 1992, the easterly portion of parcel 0320332037 was rezoned to C-1 to allow for two retail/office buildings. That rezone was subsequently modified in 2006 to facilitate development of a grocery store. The subject property was rezoned to its current mix of C-2 and T in 2010 in connection with a proposal for commercial development fronting Pacific Avenue with multi-family residential units behind (to the east). That development was never finalized. Aerial photos indicate that the site has been vacant since 1990. *Ex. 1; Schultz Testimony.*

7. The project is located on Pacific Avenue at the intersection of Pacific Avenue and South 86<sup>th</sup> Street. Primary access to the site will be provided by one entrance onto Pacific Avenue across from South 86<sup>th</sup> Street. Pacific Avenue at this location is a north-south, multi-lane state route. The speed limit is 35 mph and the street has curbs, gutters, and sidewalks. Left turn lanes are provided at major intersections. Benjamin Ryan submitted a Traffic Impact Analysis prepared by traffic consultant Heath & Associates, Inc. The study analyzed additional vehicle trips that would be generated by the residents occupying the apartments. The analysis concluded that the sight distance at access driveways meets governing standards. The volume of traffic generated by residents of the project would only increase the level of service delays in the area negligibly. *Ex. 9, p.13.*

8. 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 August 6, 2015. In addition, a public notice sign was posted on the property. To date, no public comments opposing the project have been received. *Ex. 1; Schultz Testimony.*

9. 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 agencies.<sup>3</sup> 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. *Exs. 1, 13 through 16; Schultz Testimony.*

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<sup>2</sup> Mr. Bays testified that the current plan calls for less than the 120 units used for evaluating the project. Given site requirements for design and parking, the figure will be closer to 92 units. *Bays Testimony.*

<sup>3</sup> 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 the rezone application.

10. On August 28, 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. 7; Schultz Testimony.*

11. 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.*

12. 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.

13. At the hearing, presentations were made by City Staff and by the Applicant. No members of the general public testified at the hearing.

14. Any Conclusion of Law herein deemed to be properly 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. 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 DNS, which was not appealed. *Ex. 7.*

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 proposed rezone will take place in a Tier I Primary Growth Area. Urban growth is present in the area and infrastructure and public facilities are in place to support the multi-family residential use. The proposed rezone will be consistent with the terms of the Tacoma Comprehensive Plan. The GLUE of the Comprehensive Plan identifies this location as a Tier I Primary Growth Area. Tier I lands are areas already characterized by urban growth and with the key public facilities and services available. *Comprehensive Plan LU-9.* The subject property is fully serviced by utilities and streets adequate for the intended uses. In addition, the proposed rezone from T to C-2 will actually bring the subject parcel into greater consistency with the Medium Intensity designation given this area under the Comprehensive Plan than the existing T zoning. The proposed rezone will be compatible with the surrounding neighborhood which includes a mix of commercial and multi-family residential development along the Pacific Avenue corridor.

#### 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 this case, the area along Pacific Avenue has changed substantially since the zoning was placed on the property in 1953. A large number of rezones changing property from residential zoning to commercial zoning have been approved over the years along the Pacific Avenue corridor. The subject site has been rezoned to C-2, in part, and the adjacent properties along Pacific Avenue have primarily C-2 or R-4-L zoning. The proposed apartments are consistent with these changes in

the neighborhood and will advance the general public welfare. The City has a need for affordable rental housing which this project will support. The development will also inject new vitality into the immediate area and potentially spur additional neighborhood enhancements.

Consistency with District Establishment Statement

6. The District Establishment Statement for the C-2 zone states:

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

*TMC 13.06.200.B.3.* The proposed apartment complex is the type of residential development specifically contemplated for the C-2 zone. The site is located on a major transportation corridor with transit service available. The nearby commercial development will also serve the residents of any apartment community.

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 proposed rezone is approved, the multi-family housing project will be a permitted use in the C-2 zone. *TMC 13.06.200.C.3.* Utilizing the undeveloped site for needed housing will establish a useful purpose for the vacant property. The buildings will be accompanied by vegetative buffering and will be consistent with construction standards designed to protect the single-family residential uses to the east. Conditioning the change in zoning classification upon the policies and development requirements of the TMC further insures that the public health, safety, morals, and general welfare will be preserved. If the rezone to C-2 is approved, the proposed multi-family residential use will be a permitted use. The project is intended to meet or exceed all of the development standards applicable in a C-2 zone. 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 covering topics such as the residents' access to open spaces and safe pedestrian passage to the public sidewalk on Pacific Avenue. Moreover, the intended use of the property will assist families with housing needs and will further the City's housing goals.



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. 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. The site shall be developed in substantially the same manner as the proposal: uses shall be limited to residential. The intent of this condition is to maintain the integrity of the associated environmental (SEPA) review and findings thereof.
2. The final design of the multi-family development shall include private and public usable open space for the development. This can include a mix of private balconies or patios, as well as shared porches, courtyards, and green spaces. Each unit shall have direct access to at least one such space. Outdoor covered spaces (e.g., picnic pavilion or play area) can be counted toward this space. The intent of this condition is to fulfill the goals and policies of the Comprehensive Plan, which point out that usable open space is critical to the livability of residential uses.
3. The final design of the development shall include accessible pedestrian access from each building, through the development, to the public sidewalk on Pacific Avenue. The intent of this condition is to insure the development meets the TMC requirements for pedestrian access, as well as to respond to Comprehensive Plan policies and to support transit use.
4. In the final design of the buildings, the Applicant shall ensure that the buildings closest to Pacific Avenue are oriented toward the street; that is, the façade closest to the street is not a side or rear of the building. The intent of this condition is to comply with the Comprehensive Plan goals for residential design.
5. The final design of the development shall comply with all landscaping and parking standards, as well as all applicable building and site development Code requirements.

**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.

11. Any finding of fact hereinbefore stated which may be deemed to be properly considered a conclusion herein is hereby adopted as such.

**RECOMMENDATION:**

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

DATED this 23<sup>rd</sup> day of September, 2015.



**PHYLLIS K. MACLEOD, Hearing Examiner**

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

**ORIGINAL**

## NOTICE

### RECONSIDERATION/APPEAL OF EXAMINER'S RECOMMENDATION

#### RECONSIDERATION:

Any aggrieved person or entity having standing under the ordinance governing the matter, or as otherwise provided by law, may file a motion with the office of the Hearing Examiner requesting reconsideration of a decision or recommendation entered by the Examiner. A motion for reconsideration must be in writing and must set forth the alleged errors of procedure, fact, or law and must be filed in the Office of the Hearing Examiner within 14 calendar days of the issuance of the Examiner's decision/recommendation, not counting the day of issuance of the decision/recommendation. If the last day for filing the motion for reconsideration falls on a weekend day or a holiday, the last day for filing shall be the next working day. The requirements set forth herein regarding the time limits for filing of motions for reconsideration and contents of such motions are jurisdictional. Accordingly, motions for reconsideration that are not timely filed with the Office of the Hearing Examiner or do not set forth the alleged errors shall be dismissed by the Examiner. It shall be within the sole discretion of the Examiner to determine whether an opportunity shall be given to other parties for response to a motion for reconsideration. The Examiner, after a review of the matter, shall take such further action as he/she deems appropriate, which may include the issuance of a revised decision/recommendation. (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**