



City of Tacoma
Hearing Examiner

July 25, 2018

FIRST CLASS MAIL DELIVERY

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City of Tacoma, PDSO
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Tacoma, WA 98402-3701
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Beverly Maine
Episcopal Retirement Communities
703 Callahan Drive
Bremerton, WA 98310

Re: HEX2018-017a (LU18-0079)/Rezone Request **Applicant:** All Saint Episcopal Church

Dear Parties,

In regard to the above-referenced matter please find enclosed a copy of the Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommendation to the Tacoma City Council entered on July 25, 2018. A public hearing was held in the matter on July 12, 2018.

Sincerely,

Louisa Legg
Office Administrator

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

Transmitted First Class Mail Delivery

All Saints Episcopal Church, 205 East 96th Street, Tacoma, WA 98445-2003
Barbara Fox, The Diocese of Olympia, Inc., 1551 10th Ave. E, Seattle, WA 98102-4210
Harry and Sally Harnish, 9402 East B Street, Tacoma, WA 98445-2134
Larry Talbert, 3127 East K Street, Tacoma, WA 98404-3230
Charla Conner, 7311 25th Street W, Tacoma, WA 98466-4709
Dr. C. Dennis and Suzanne Wohlford, 13727 96th Avenue E, Puyallup, WA 98373-5805
Tom and JoAnn Stewart, 1121 East 61st Street, Tacoma, WA 98404-2406
Carol Mazzuca, 803 82nd Street Ct. E, Tacoma, WA 98404-5580
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Transmitted via Electronic Mail Delivery

Dennis R. Murphy (dmurphy55@att.net)

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City of Tacoma: Nicole Emery, City Clerk's Office; Steve Victor, Office of the Tacoma City Attorney; Chris Seaman, Tacoma Fire; Trevor Perkins, Planning and Development Services (PDS); Jennifer Kammerzell, Public Works (PW) Traffic Programs; Vicki Marsten, PW Traffic Safety & Review; Frank Marescalco, Environmental Services; Gloria Fletcher, CEDD; Rudy Eckert, Tacoma Power; Shelly Shaffer, Tacoma Water; Ronda Cornforth, PW/RPS; Jana Magoon, PDS; Lucas Shadduck, PDS; and Lihuang Wung, PDS.

CERTIFICATION

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

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

DATED July 25, 2018, at Tacoma, WA.

Louisa Heagy

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

APPLICANT: All Saints Episcopal Church, the current owner of record of the Subject Property (as defined below), is the applicant for the present rezone request (hereinafter the “Applicant” or “ASEC”). ASEC was represented at the hearing by Brett Bures, Valerie Thiel, and Beverly Maine¹ acting as agents for ASEC. For purposes of this Report and Recommendation, the defined terms “ASEC” and “Applicant” also include any employees, agents, and/or contractors of the Applicant in regard to conditions and compliance issues set forth below. These terms also include the Diocese of Olympia, Inc., a Washington public benefit corporation, which is ASEC’s parent organization.

HEARING EXAMINER FILE NO: HEX2018-017a (LU18-0079)

SUMMARY OF REQUEST:

The Applicant proposes to reclassify an approximately 2.12 acre church site from “R-2” Single-Family Dwelling District to “R-4-L” Low-Density Multiple-Family Dwelling District to enable the development of a 50-unit senior retirement apartment facility. The existing church would remain, and some of its parking area is proposed for relocation to the north side of the Subject Property closer to neighboring residential property. The relocation of parking from what was previously approved triggers the necessity for a major modification of ASEC’s existing Conditional Use Permit.² ASEC’s proposed redevelopment will require a building permit, site development permit, and work order permits. Environmental review under the State Environmental Policy Act (“SEPA”) was required based upon the proposed development including more than twenty (20) new residential units and a parking lot of over forty (40) stalls.

¹ Brett Bures works for SCJ Alliance, a consultant to ASEC. Valerie Thiel is with Sage Architectural Alliance also a consultant to ASEC. Beverly Maine is with Episcopal Retirement Communities (“ERC”), a Washington non-profit corporation that is affiliated with ASEC and may become the operator of the senior housing that ASEC intends to build on the Subject Property.

² Modification to ASEC’s existing Conditional Use Permit (“CUP”) for additional and reconfigured parking spaces was also applied for, and is addressed under a separate Hearing Examiner Report and Decision. City Planning and Development Services’ (“PDS”) staff addressed both the rezone request and the CUP major modification request in a combined Preliminary Report finally dated July 12, 2018 (the “PDS Report”), but submitted in final form on July 13, 2018, upon which the record closed. The Applicant and the City addressed both the requested rezone and the CUP major modification at the hearing.

LOCATION:

The rezone site consists of two parcels with frontage on East B Street and East 96th Street — Pierce County Tax Parcel Nos: 0320334031 and 0320334183 (the “Subject Property” or the “Site”). Unincorporated Pierce County is adjacent to the south across East 96th Street.

RECOMMENDATION:

The Hearing Examiner recommends approval of the rezone, subject to conditions set forth herein below.³

PUBLIC HEARING:

After reviewing the PDS Report (*Ex. 1*) and all attendant information on file, the Hearing Examiner convened a public hearing on the rezone request on July 12, 2018. As alluded to in FN 2 above, pursuant to Tacoma Municipal Code (“TMC”) sections 1.23.120 and 13.05.040.E, the Applicant’s rezone request was consolidated with its attendant request to modify its existing CUP, and the Hearing Examiner heard presentations regarding both applications. PDS staff submitted a handful of corrections and small additions to the PDS Report (*Exs. 17 and 18*) and its Exhibit 16 post hearing, but all these additions/corrections were referenced at the hearing, and upon receipt of those corrections/additions, the record closed.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION:

FINDINGS OF FACT:

1. ASEC submitted an application through its duly designated representatives requesting a rezone of the approximately 2.12 acre Subject Property from the existing “R-2” Single-Family Dwelling District classification to being designated “R-4-L” Low-Density Multiple-Family Dwelling District. *Harrington Testimony; Ex. 1, Exs. 5 through 7, Ex. 16*. As referenced above, the Subject Property consists of Pierce County Tax Parcel Nos: 0320334031 and 0320334183. *Ex. 1*. These two parcels will have to be combined as part of ASEC’s proposed development in order to not have improvements cross existing parcel lines. *Harrington Testimony; Ex. 1*.

2. The Subject Property has frontage on both East B Street and East 96th Street. The Subject Property is more or less square-shaped, and is approximately 92,230 square feet (2.12 acres) in area. The site gently slopes up to the NNE from the intersection of East B Street and East 96th Street and is currently improved with a main church structure on the eastern third of the Subject Property, a church community center in the SW quadrant, and three small multi-purpose buildings north of the 42-stall

³ As will be explained further below, the majority of the “conditions” set forth herein are not conditions precedent to the granting of the rezone. Rather, they are informational, advisory conditions to the Applicant regarding its proposed development of the Subject Property and will require compliance as the proposed development moves forward.



parking lot situated in the middle of the Subject Property. *Harrington Testimony; Ex. 1, Ex. 16.*

3. There is a mix of evergreen and deciduous street trees along East B Street and deciduous trees on the East 96th Street frontage, together with a few trees near the existing buildings. The northern third of the Subject Property is grass with scattered stands of evergreen and deciduous trees, mixed with some bushes/shrubs in the NE corner. *Id.*

4. The two (2) existing driveway access points to the Subject Property connect with East 96th Street on either side of the church community center. East 96th Street is a two-lane principal arterial with center turn lane, and developed with concrete curb, gutter and sidewalk adjacent to the Subject Property. East B Street is a local access street with a 24-foot wide paved surface without curb, gutter or sidewalk adjacent the Subject Property. *Harrington Testimony; Ex. 1, Ex. 16.*

5. If the rezone is approved, the Applicant intends to develop the Subject Property with a three-story 49,000 square foot senior housing facility with fifty (50) living units and a one story community building containing kitchen/dining activity parlor, offices and a multipurpose room. The multi-purpose room will be used for senior living activities, church social gatherings, and community events such as the Boy Scouts. The new building will also house new church office functions. *Harrington Testimony; Ex. 1, Ex. 3, Ex. 4, Ex. 11, Ex. 12, Ex. 16.*

6. Seventy-one (71) parking spaces will be shared between the church and the new senior housing facility, and a small garage will be added for the church van and workshop at the NE corner of the proposed parking area. TMC 13.06.510 Table 1 and Footnote 1 thereto require 55 parking stalls for the combined uses proposed (38 stalls for the church use, and 17 stalls for the 50 senior retirement apartments). *Ex. 10.* Fifty-two (52) of these parking spaces are proposed for relocation to the north of the existing parking lot closer to neighboring residential property with a new entrance to the relocated parking lot off of East B Street at the NW corner of the Subject Property. The existing westernmost driveway off East 96th Street would be closed under the proposed redevelopment, leaving the existing driveway to the east as the only curb cut from East 96th Street. The proposed reconfiguration and added parking spaces requires a major modification to the existing CUP in effect at the Subject Property. The proposal will incorporate new landscaping, including perimeter landscaping, landscape buffers, area landscaping, street trees and a courtyard on the east side of the new building. To make room for the new building and parking area, the existing church hall building west of the church and three small multi-purpose rooms north of the existing parking area would be demolished. *Harrington Testimony; Ex. 1, Ex. 2, Ex. 3, Ex. 16.*

7. The proposed senior retirement facility currently is not permitted in the R-2 Single-Family Dwelling District. *Harrington Testimony; Ex. 6, Ex. 7.* As a result, the Applicant is requesting reclassification. ASEC's requested "upzone" will require incorporation of affordable housing units in the project. TMC 1.39.080.B.2 requires that twenty-five percent (25%) of the increased number of dwelling units realized by the upzone be designated as affordable housing. Applying the TMC formula here results in seven (7) units being designated as affordable.⁴ Alternatively, an in-lieu-of payment of

⁴ See TMC 1.39.040~.080.

\$150,000 (\$5,000/unit times the increased number of dwelling units – 30) can be made to the City’s Housing Trust Fund instead of incorporating the seven affordable units in the development. *See TMC 1.39.080.C; Harrington Testimony; Ex. 1, Ex. 3.*

8. The Subject Property and the majority of the surrounding area was classified within the “R-2” One-Family Dwelling District in 1953, when the original version of the zoning code was enacted. The zoning on the property to the west was changed to R-4-L in 1997 (Senior Center and Retirement Housing). *Harrington Testimony; Ex. 1, Ex. 5, Ex. 6, Ex. 7.* In June of 2002, a Special Use Permit (SUP2001-00013—referred to herein below as “SUP”) was approved for the existing church use and two off-street parking areas. According to PDS records, All Saints Episcopal Church (ASEC) has been at this location since 1952 when the parish house was located on the Subject Property. In 1965, a permit was issued for the construction of the church. The construction of the church pre-dated the Zoning Code requirement for churches in residential area to obtain a SUP (now handled as a Conditional Use Permit). The SUP was obtained to allow the church to improve the parking lots to City standards and provide the church with the benefit of an existing SUP authorizing the continuation of the church use of the Subject Property outside of simply being an existing, legal non-conforming use. *Harrington Testimony; Ex. 1, Ex. 5, Ex. 7, Ex. 8.*

9. The larger area in which the Subject Property is located was given the designation of Single-Family Residential on December 1, 2015 with adoption of the new One Tacoma Comprehensive Land Use Plan (the “Comp Plan”). At the same time, the designation of the property to the west across East B Street changed from Single-Family Residential to Multi-Family (Low-Density) to conform with the 1998 zone change from R-2 to R-4-L for the Korean Women’s Association’s (“KWA”) community center and senior retirement facility. *Harrington Testimony; Ex. 1, Ex. 5, Ex. 7, Ex. 8.*

10. The reclassification is not expressly being requested in order to implement a specific provision of the Comp Plan. *Harrington Testimony; Ex. 1.*

11. Pursuant to the State’s *SEPA* Rules (WAC 197-11-340) and the City of Tacoma’s Environmental Code (TMC 13.12), the PDS Director issued a Determination of Environmental Nonsignificance (“DNS”) for the rezone and its proposed project on June 18, 2018. Environmental review was required because of the rezone action and the proposed construction that would follow of over twenty (20) housing units. The DNS was based on a review of the Applicant’s Environmental Checklist, traffic study, and other supporting information on file with the PDS. The *SEPA* appeal period ended July 3, 2018 with no appeal of the DNS having been filed. *Harrington Testimony; Ex. 1, Ex. 3.*

12. As part of the DNS process referenced above, the Applicant submitted a Traffic Study for its intended project prepared by SJC Alliance and dated September 20, 2017. *Ex. 3.* City traffic engineering staff reviewed the traffic study for both trip generation and parking sufficiency and had no objections to the rezone going forward based on the proposed project. *Harrington Testimony; Ex. 1, Ex. 3.*

13. 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 June 6, 2018. In

addition, a public notice sign was posted on the Site. Staff has received one written public comment on this proposal pre-hearing. That comment is shown in email correspondence in Exhibit 13.⁵ PDS Staff addressed concerns the concerns expressed in this written comment by reply correspondence.

Ex. 1; Ex. 13.

14. Seven members of the public provided verbal testimony at the hearing primarily addressing the Applicant's proposed project/redevelopment of the Subject Property as opposed to the rezone specifically in the abstract. It is understandable that the rezone itself is difficult to separate from the proposed project. The individuals who testified and a brief summary of their testimony as it relates to the rezone is as follows:

- a. Ms. Sally Harnish—a long-term neighboring resident. Ms. Harnish testified that she is not necessarily opposed to ASEC's proposed project, but wishes there had been (or will be) more communication from ASEC similar to what KWA did in conjunction with its earlier project, and she is concerned whether the retirement facility will only be open to ASEC congregants. She testified that there are no other three (3) story buildings in the neighborhood and that she believes three (3) stories is too tall. Lastly, she testified that there have been problems with on-street parking along East B Street and that widening East B Street might be a good idea.
- b. Mr. Harry Harnish—also a long-term neighboring resident. Mr. Harnish testified in opposition to ASEC's proposed project. He testified that he felt left out of the communication loop. Mr. Harnish further testified that he does not like ASEC's proposed project, he does not want his neighborhood to change, and he believes the proposed three (3) story building is too big.
- c. Mr. Larry Talbert—ASEC congregant. Mr. Talbert testified that he has been involved in ASEC's management and operations for some time. He testified that ASEC takes great efforts to keep its property looking nice and that it is KWA's patrons/residents parking in the street and not ASEC congregants. Lastly, he testified in support of the proposed redevelopment of the Subject Property.
- d. Dr. Dennis Wohlford—ASEC congregant. Dr. Wohlford testified that ASEC wants to be part of addressing the community-wide problem of lack of affordable housing and that the Diocese of Olympia, Inc. has an arm that is experienced in providing affordable housing. He testified generally in support of ASEC's proposed redevelopment of the Subject Property for affordable housing.
- e. Ms. Charla Conner—ASEC congregant and ERC board member. Ms. Conner is a retired hospital patient financial counselor with experience in finding out-patient senior housing and is very familiar with the need for the type of housing ASEC and ERC hope

⁵ An additional, e-mailed comment was received post-hearing and is included in the record as Exhibit 18.

to provide at the Subject Property. Ms. Conner has inspected ERC's other facilities in western Washington and believes ERC to be a "quality organization" that will operate a high level facility.

- f. Beverly Maine—CEO of ERC. Ms. Maine testified regarding statewide studies showing that the need for affordable housing, especially for seniors and disabled, is not being met at present. Ms. Maine testified that the Subject Property is well suited for the intended project. She further testified that it is ERC's mission to provide housing for those in need, that fifty (50) units are necessary to make the operation financially viable, and that any excess monies received at an ERC facility are put back into the operation.
- g. Ms. Suzanne Wohlford—ASEC congregant. Ms. Wohlford testified that ASEC had gone door to door contacting neighborhood residents regarding the proposed redevelopment of the Subject Property, and had sent out mailed material and held meetings as well. She further testified that ASEC cares very much about the neighborhood.

In partial response to some of the above testimony, Harrington testified that the height proposed for the three (3) story retirement facility of thirty-five feet (35) is the same as what is currently allowed for a single-family residential dwelling in the present zoning classification.

15. As part of the project review process, PDS provided notification of this rezone request to various City departments/divisions, and outside governmental and non-governmental agencies. Departmental comments and requirements regarding this proposal are included in the PDS Report. These agencies/departments/divisions recommended important conditions they believed would be properly attached to the rezone were it to be approved by the City Council, with most focusing on ASEC's intended development of the Subject Property as opposed to the rezone *per se*. *Ex. 1, Ex. 1a*. Some of the comments and/or conditions, however, are more appropriately addressed as part of the permit/entitlements process for the Applicant's intended project, as opposed to this rezone process.

16. Through Bures' testimony, the Applicant agreed to the conditions of approval recommended by reviewing City departments and outside agencies. *Bures Testimony*.

17. No area-wide rezone action affecting the Subject Property has been taken by the City Council in the two years preceding the present rezone application. *Harrington Testimony; Ex. 1*.

18. The PDS Report in this matter accurately describes the requested rezone and resulting proposed use, general and specific facts about the Site, applicable sections of the Comp Plan, and applicable regulatory codes. The PDS Report is marked as Exhibit 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 shall control.

19. Any conclusion of law herein which may be more properly 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 to conduct a hearing and make a recommendation to the City Council. The final rezone decision is made through an ordinance 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 the DNS,⁶ which has not been appealed.
3. Under TMC 13.06.650.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.

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.*

⁶ *See TMC 13.12.430.*

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

Consistency with the Comp Plan (TMC 13.06.650.B.1)

4. With the adoption of the new Comp Plan in 2015, land use intensities were replaced with land use designations. The Subject Property currently falls within an area designated Single Family Residential. On the surface, this current land use designation in the Comp Plan and the request to rezone the Subject Property to R-4-L Low-Density Multiple-Family Dwelling District appear to be at odds. That said, even if the City Council intended to keep all real property within this area designated Single Family Residential as that use alone (i.e. single family residences), that ship has already sailed for the Subject Property. It is a church; not a single family residence. Adding residential uses to the Site, even though in a multi-family format, brings the Subject Property more in line with the current Single Family **Residential** designation than the current religious use of the Subject Property under the existing CUP. In any event, TMC 13.06.650.B.1 does not require exact consistency with a land use intensity designation, but rather general consistency. Adding residential uses to the Subject Property, through the present rezone request, is generally consistent with the existing residential use designation.

TMC 13.06.650.B.1 further requires general consistency with the “[p]olicies, and other pertinent provisions of the Comprehensive Plan.” Both the Applicant’s Rezone Analysis (*Ex. 8*) and the PDS Report (*Ex. 1*) set forth numerous Comp Plan policies and goals that are advanced by the Applicant’s intended use of the Subject Property as a 50-unit senior retirement apartment facility with affordable units. Although comprehensive plans are chimeric creatures with, at times, seemingly irreconcilable competing interests, it would be extremely difficult to conclude that the proposed use of the Subject Property is not generally consistent with the multitude of Comp Plan goals and policies listed in the Rezone Analysis and the PDS Report. Comprehensive plans are mandated by the state Growth Management Act (“GMA”— *RCW 36.70A.040*). The GMA’s first two stated planning goals are to:

- (1) Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner; and
- (2) Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.

RCW 36.70A.020. Many of the Comp Plan goals and policies set forth in the Applicant’s Rezone Analysis (*Ex. 8*) and the PDS Report (*Ex. 1*) are directly related to these two primary GMA planning goals. Adding residential use to the Subject Property, even though not of a single family nature, brings the Subject Property closer to the overarching goals of the GMA and closer to the numerous goals and policies of the City’s Comp Plan. As a result, the Examiner finds that the standards set forth in TMC 13.06.650.B.1 are met.

Changed Conditions (TMC 13.06.650.B.2)

5. In regard to this criterion, PDS staff cited to “The ever increasing need for affordable senior housing [] [as being] a change to the social fabric of the City that necessitates use of large, underdeveloped properties with principal arterial access to be considered for this use [affordable housing].” KWA’s development across East B Street and its inclusion of multi-family housing, together

with the resulting change in land use designation referenced above, tend to confirm the truth of this PDS statement that more affordable housing is needed in the area. Applicant representatives referenced statewide studies at the hearing that show the need for affordable housing across the state is not being met. Providing more affordable housing has become one of the City Council's primary objectives over the last year or two as well. Approving the requested rezone acknowledges the importance of this Council goal as well as the changed condition that would satisfy this criterion.

In addition to the foregoing, TMC 13.06.650.B.2 states in part that, "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." It could easily be argued that this rezone is required to help in implementing the various provisions of the Comp Plan cited by the City and the Applicant related to the provision of affordable housing such as Policy H-2.7, GOAL H-4 and its related policies, and Policy H-5.11, to list just a few. As a result, the Examiner finds that the requirements of TMC 13.06.650.B.2 are met.

Consistency with District Establishment Statement (TMC 13.06.650.B.3)

6. The District Establishment Statement for the R-4-L Low-Density Multiple-Family Dwelling District provides 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.

TMC 13.06.100.B.7. PDS staff concluded that:

"As proposed, conditioned and located on a Principal Arterial, the proposed development is consistent with the district establishment statement for the zoning classification being requested."

Ex. 1. The Examiner agrees. Provided that the redevelopment of the Subject Property conforms to the Applicant's current proposal, and complies with all applicable development regulations, the rezone and the resulting use of the Subject Property will be in compliance with the District Establishment Statement for the R-4L Low-Density Multiple-Family Dwelling District.

Recent Area-Wide Rezone (TMC 13.06.650.B.4)

7. No area-wide zoning involving or affecting the Subject Property has been taken by the Tacoma City Council in the two years preceding the filing of the present rezone application. As a result, the criterion set forth at TMC 13.06.650.B.4 is satisfied.

Relationship to the Public Welfare (TMC 13.06.650.B.5)

8. The TMC and Comp Plan set forth policies and requirements aimed at regulating growth to ensure consistency with the public health, safety, morals and general welfare. As already referenced above, the Comp Plan sets forth numerous goals and policies related to the provision of affordable housing, and infill development. These goals and policies are directly designed to advance and protect public health, safety, morals and general welfare. The Applicant's proposed use of the Subject Property for affordable housing for seniors directly furthers achievement of these goals and policies.

In order to ensure further that this rezone request and the intended redevelopment 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 project, supplying numerous conditions for the redevelopment that will ensure compliance with applicable laws and development regulations. Requiring compliance with applicable development regulations and standards helps safeguard the public, and ensure compatibility with the surrounding community. The Examiner finds that the requirements of TMC 13.06.650.B.5 are met or will be met through compliance with the conditions set forth below as the redevelopment of the Subject Property progresses.

9. Findings entered herein, based on substantial evidence in the hearing record, support a conclusion that the proposed rezone is consistent with applicable criteria and standards for rezones, provided the conditions set forth herein are imposed and complied with by the Applicant when developing the Subject Property.

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

A. RECOMMENDED CONDITIONS OF APPROVAL: "Conditions" set forth herein are derived primarily from the PDS Report, other submissions in the record, and testimony from the hearing. Nearly all of the conditions below have more to do with compliance issues related to the Applicant's intended redevelopment of the Subject Property after the granting of the desired rezone than they do with the granting of the rezone itself, i.e. they are not recommended herein as conditions precedent to the granting of the rezone. Compliance with later development conditions prior to granting the rezone is physically and temporally impossible.

As set forth at FoF 18 above, the PDS Report is incorporated herein by reference. Some of the more general language from section L. of the PDS Report ("Recommended Conditions of Approval") is not repeated here even though the majority is. That does not mean that, if this rezone is approved, the Applicant should not still reference helpful language from the PDS Report as guidance for its

development process, and it also does not mean that some of these very general “conditions” *will not* apply to later redevelopment of the Subject Property.

To the extent that any express language in the PDS Report conflicts with the language in this Report and Recommendation, this Report and Recommendation shall control if adopted as part of the City Council’s approval of the rezone. Omission of language from the PDS Report in this Report and Recommendation does not constitute a conflict.

City Council approval of the requested rezone does not release the Applicant 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.*

At the hearing, City staff testified that its recommendation of approval for the requested rezone is directly tied to the intended use. As should be evident from the Conclusions of Law above, the determination that this rezone request meets the criteria of TMC 13.06.650 is completely interwoven with the Applicant’s intended use of the Subject Property. Given that, it is the Examiner’s recommendation that the City’s Council’s approval of the requested rezone be expressly conditioned on the Applicant redeveloping and using the Subject Property only as proposed within its application and as set forth herein. Minor changes to the development should not require additional hearings or rezone modification level approvals, provided that the resulting use of the Subject Property remains for senior affordable housing.

Therefore, should this request be approved, the Examiner recommends making the following conditions from the reviewing City and Tacoma Public Utility staff conditions of approval for the rezone as applicable to the redevelopment of the Subject Property.

1. LAND USE AND BUILDING/FIRE

- A. The development of the Site shall comply with applicable regulations in TMC 13.06.100 for the R-4-L Low-Density Multiple Family Dwelling District and associated sections of TMC Chapters 13.06 Zoning; and 13.12 Environmental Code.
- B. Development of the new residential facility shall comply with affordable housing regulations in TMC 13.06.650.H and TMC 1.39.080.
- C. Construction shall comply with the adopted Building Code(s) at the time a building permit application is deemed complete.
- D. Future construction shall comply with the adopted Fire Code at the time a building permit application is deemed complete.

2. STORM AND SANITARY SEWERS

- A. The development of the Site shall comply with all applicable requirements contained in the City of Tacoma Stormwater Management Manual, Side Sewer and Sanitary Sewer Availability Manual, Tacoma Municipal Code 12.08, Tacoma Municipal Code 2.19, Tacoma Municipal Code 10.14, Tacoma Municipal Code 10.22 and the Right-of-Way Design Manual

in effect at time of vesting land use actions, building or construction permitting.

B. Any utility construction, relocation, or adjustment costs shall be at the Applicant's expense.

The following conditions are applicable to building/development permits associated with the development proposed under this rezone request:

- C. All stormwater shall be managed in compliance with the City of Tacoma Stormwater Management Manual (“SWMM”).
- D. The Applicant shall review SWMM Minimum Requirements #1-10 and comply with all applicable requirements.
- E. Water quality shall be provided for all projects that meet or exceed the thresholds for Minimum Requirement #6 as outlined in the City of Tacoma Stormwater Management Manual. Pollution-generating hard surfaces created and/or replaced offsite as a result of Applicant’s project shall count toward the pollution-generating hard surface total.
- F. Flow control or other mitigation in accordance with the SWMM shall be provided for all projects that meet or exceed the thresholds for Minimum Requirement #7 as outlined in the SWMM. Hard surfaces created and/or replaced offsite as a result of this project shall count toward the hard surface total.
- G. All projects shall comply with Minimum Requirement #10: Off-Site Analysis and Mitigation.
- H. Public and private stormwater shall be managed in separate water quality and flow control facilities.
- I. All public stormwater facilities shall be located in right of way, a tract dedicated to the City, or easement per the SWMM and as approved in writing by Environmental Services.
- J. Coverage under the NPDES Construction General Permit is required for any clearing, grading, or excavating that will disturb one or more acres of land area and that may discharge stormwater from the Site into surface water(s), or into storm drainage systems that discharge to a surface water, per the Washington State Department of Ecology (“Ecology”). The Applicant may contact Ecology's Office of Regulatory Assistance at 1-800-917-0043 to determine if any additional requirements are necessary. Additional information is also available online at <http://www.ecy.wa.gov/programs/wq/stormwater/construction/>. City approval does not release the Applicant from state or other permitting requirements.
- K. Each lot/building shall be independently connected to the City sanitary sewer at the building construction stage. Permits for this work shall be obtained. Multiple units and buildings that are under single ownership and located on a single parcel may use shared private side sewers that connect to the public sanitary sewer. In the event that the Applicant’s development is divided into more than one parcel in the future (whether from platting, boundary line adjustments, lot segregations, or any other land use actions), each new parcel shall have an individual side sewer connection to the public sanitary sewer. This may require re-routing any existing shared side sewers, or constructing new side sewers in order to individually connect each parcel to the public sanitary sewer. Notice of this requirement will be recorded on title of this parcel.

- L. If the existing side sewer is to be re-used for a new building, it shall be television inspected and pressure tested per City standards. If the side sewer is found through television inspection to have any illegal connections or cannot pass the pressure test, all illegal connections shall be disconnected and the side sewer shall be repaired, replaced, or rehabilitated and retested until the side sewer passes the pressure test to ensure it is watertight. Any abandoned side sewer(s) shall be plugged or capped per Chapter 7, Section 722.0 of the Uniform Plumbing Code. Permits for this work shall be obtained. Environmental Services will make the final determination of side sewer reuse viability.
- M. Where a fixture is installed on a floor level that is lower than the next upstream manhole cover of the public or private sewer serving such drainage piping, said fixture shall be protected from back flow of sewage by installing an approved type of backwater valve. Fixtures on floor levels above such elevation shall not discharge through the backwater valve.
- N. It appears that a portion of the Site may be unassessed for sanitary sewer. Contact Jennifer Hines at (253) 591-5320 to determine if a sanitary assessment is owed for the Subject Property.

3. STREETS, DRIVEWAYS AND SIDEWALKS

The following conditions are applicable to building/development permits associated with this rezone request and the project proposed hereunder:

- A. East B Street fronting the Subject Property shall be improved to a width of 28 feet and shall include necessary drainage. The minimum roadway section shall meet City Design Standards at time of submittal. Any additional unsuitable foundation excavation material must be removed as directed by the City Engineer. East 96th Street fronting the Subject Property shall be restored in accordance with the City's Right-of-Way Restoration Policy.
- B. Cement concrete sidewalk shall be constructed along East B Street, abutting the Site, meeting Public Right Of Way Accessible Guidelines ("PROWAG") and Americans with Disabilities Act ("ADA") requirements, and be installed to the approval of the City Engineer.
- C. Cement concrete curb and gutter shall be constructed, abutting the Site, along the eastern edge of East B Street at an alignment to be determined by and to the approval of the City Engineer.
- D. All broken, damaged, or hazardous curb and gutter along East 96th Street abutting the Site shall be removed, and new cement concrete curb and gutter constructed in its place to the approval of the City Engineer.
- E. The type, width, and location of all driveway approaches serving the Site must be approved by the City Engineer.
- F. Curb ramps on the NE corner of East B Street and East 96th Street shall be removed and replaced to meet current City of Tacoma, ADA, and PROWAG standards. The NW and SE corner receiving ramps shall be upgraded to meet current standards. Reconstruction of

the NW and SE corner receiving ramps may require the SW corner receiving ramps to be replaced as well.

- G. The curb ramp crossing East 96th Street at the intersection of East 96th Street and East C Street shall be removed and replaced to meet current City of Tacoma, ADA, and PROWAG standards. The receiving ramp on the south side of East 96th Street shall be removed and replaced to current standards.
- H. A Work Order is required. A licensed professional civil engineer must submit the street plans for review and approval following the City's work order process. To initiate a work order, contact the Public Works Private Development at (253) 591-5760. A performance bond is required for all work orders per TMC 10.22.070.F.

4. TRAFFIC ENGINEERING

- A. Driveways to the Site shall comply with TMC 10.14.
- B. Construction will comply with the City of Tacoma Design Manual for street lighting along East B Street. Street lighting along East 96th Street shall remain the same or be replaced.

5. TACOMA POWER

- A. Any construction, relocation or adjustment costs shall be at the Applicant's expense.
- B. All new electrical services will be installed underground unless otherwise approved by Tacoma Power Engineering; additional utility easements may be required.
- C. There is an existing pole and overhead line that runs through the northern part of the Subject Property. A transformer on this pole feeds the existing church and portables. The pole may need to go away due to it conflicting with the new proposed parking lot. The pole is not surveyed into the plans so it is not certain if it actually conflicts or not. Just note that the service to the church may need to be rebuilt and fed from a different source, possibly a pole along East 96th Street and that existing pole line on the property may need to be wrecked out. New service will be required for the new living units. Most likely service will need to be installed underground from a pole along East 96th Street to a new padmount transformer on Site, depending on the service size.

Submittal Requirements

- D. Electric Service Application to Tacoma Power New Services Engineering Department. Review the Commercial Project Development Process online to determine additional submittal requirements.
- E. Application for Electrical Permit to Tacoma Power Electrical Inspection Department.
- F. For services over 400 amps, a set of electrical plans must be submitted to the Electrical Inspection Office for review.

Fees

- G. Fees for new electrical service or upgrading the existing electrical service will be determined when the power requirements are submitted to Tacoma Power New Services Engineering Department.
- H. Fees for the electrical permit are based on the electrical contractors bid amount and have not been determined.
- I. The Applicant must observe the appropriate clearances to Tacoma Power's facilities during construction.
- J. Appropriate clearances must be maintained between all structures and Tacoma Power's facilities. No building shall be constructed under a primary power line. Buildings in the vicinity of the overhead lines must meet WAC, NEC, NESC and Tacoma Power requirements for clearance. Alternatively, the Applicant shall incur all costs associated with relocating Tacoma Power's facilities in order to obtain the appropriate clearances. Costs of relocation include demolition of existing facilities, construction of new facilities, restoration of property as necessary, and relocation of other utilities as necessary.
- K. Tacoma Power requests to retain all existing easements and facilities in/on the Subject Property. Alternatively, the Applicant shall incur all costs associated with relocating Tacoma Power's facilities. Costs of relocation include demolition of existing facilities, construction of new facilities, restoration of property as necessary, and relocation of other utilities as necessary. The Applicant shall assist Tacoma Power and other affected utilities in obtaining all necessary easements for said relocated facilities.
- L. The Applicant shall provide Tacoma Power and other affected utilities with all necessary easements.

6. TACOMA WATER

- A. An existing 3/4" service with a 5/8" meter currently provides service to the Subject Property from a 12" DI water main in East 96th Street. An additional 8" DI water main in East B Street is available to provide service if needed. Calculated pressure is approximately 75 psi.
- B. The existing water service shall be utilized or retired by Tacoma Water at the Applicant's expense.
- C. Existing water meter(s) to the Subject Property may be utilized by the Applicant provided size requirements for intended use are adequate, as approved by Tacoma Water. Tacoma Water shall review proposed plans prior to final approval. Contact Jesse Angel at (253) 502-8280 with any questions.
- D. If new water services are required, they will be sized and installed by Tacoma Water. New water services will be installed 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. Contact Tacoma Water at (253) 396-3057.

- E. If a new fire hydrant is required at a location with an existing water main, the hydrant will be installed by Tacoma Water after payment of an installation charge.
- F. If existing water facilities need to be relocated or adjusted due to street improvements for this proposal they will be relocated by Tacoma Water at the Applicant's expense.
- G. Tacoma Water facilities must remain accessible at all times. Any damage to Tacoma Water facilities will be repaired by Tacoma Water crews at the expense of the Applicant.
- H. Sanitary sewer mains and side sewers shall maintain a minimum horizontal separation of ten (10) feet from all water mains and water services. When extraordinary circumstances dictate the minimum horizontal separation is not achievable, the methods of protecting water facilities shall be in accordance with the most current State of Washington, Department of Ecology "Criteria For Sewage Works Design".
- I. For utilities other than sanitary sewer, the proposed facilities shall have a minimum horizontal separation of five (5) feet and vertical separation of twelve (12) inches from Tacoma Water facilities.

7. GRADING AND EROSION CONTROL

- A. Grading plans will be evaluated at the Building Permit stage.
- B. The Applicant shall take reasonable precautions to avoid fugitive dust emissions during construction activities. By employing Best Management Practices ("BMP"s), such as watering or covering exposed areas during dry periods, the Applicant shall not allow fugitive dust to travel beyond the project boundaries.
- C. All grading and filling of land must utilize only clean fill, i.e., dirt or gravel. All other materials, including waste concrete and asphalt, are considered to be solid waste and permit approval must be obtained through the TPCHD prior to filling.
- D. Provisions should be made to minimize the tracking of sediment by construction vehicles onto paved public roads. If sediment is deposited, it should be cleaned every day by shoveling or sweeping. Water cleaning should only be done after the area has been shoveled out or swept.
- E. Erosion control measures must be in place prior to any clearing, grading, or construction. These control measures must be effective to prevent soil from being carried into surface water by stormwater runoff. Sand, silt, and soil will damage aquatic habitat and are considered pollutants.
- F. During construction, all release of oils, hydraulic fluids, fuels, other petroleum products, paints, solvents, and other deleterious materials must be contained and removed in a manner that will prevent their discharge to waters and soils of the state. The cleanup of spills should take precedence over other work on the site.

8. WASHINGTON STATE DEPARTMENT OF ECOLOGY

- A. SOLID WASTE MANAGEMENT: DEREK ROCKETT (360) 407-6287

All grading and filling of land must utilize only clean fill, (i.e., dirt or gravel). All other

materials, including waste concrete and asphalt, are considered to be solid waste and permit approval may be required from your local jurisdictional health department prior to filling (WAC 173-350-990).

All removed debris and dredged material resulting from this project must be disposed of at an approved site. Contact the local jurisdictional health department for proper management of these materials.

B. WATER QUALITY: CHRIS MONTAGUE-BREAKWELL (360) 407-6364

Erosion control measures must be in place prior to any clearing, grading, or construction. These control measures must be effective to prevent stormwater from carrying soil and other pollutants into surface water or storm drains that lead to waters of the state. Sand, silt, clay particles, and soil will damage aquatic habitat and are considered to be pollutants.

Any discharge of sediment-laden runoff or other pollutants to waters of the state is in violation of Chapter 90.48 RCW, Water Pollution Control, and WAC 173-201A, Water Quality Standards for Surface Waters of the State of Washington, and is subject to enforcement action.

The following construction activities require coverage under the Construction Stormwater General Permit:

1. Clearing, grading and/or excavation that results in the disturbance of one or more acres **and** discharges stormwater to surface waters of the State; and
 2. Clearing, grading and/or excavation on sites smaller than one acre that are part of a larger common plan of development or sale, if the common plan of development or sale will ultimately disturb one acre or more **and** discharge stormwater to surface waters of the State.
 - a) This includes forest practices (including, but not limited to, class IV conversions) that are part of a construction activity that will result in the disturbance of one or more acres, **and** discharge to surface waters of the State; and
 3. Any size construction activity discharging stormwater to waters of the State that Ecology:
 - a) Determines to be a significant contributor of pollutants to waters of the State of Washington.
 - b) Reasonably expects to cause a violation of any water quality standard.
- C. If there are known soil/ground water contaminants present on-site, additional information (including, but not limited to: temporary erosion and sediment control plans; stormwater pollution prevention plan; list of known contaminants with concentrations and depths found; a site map depicting the sample location(s); and additional studies/reports regarding contaminant[s]) will be required to be submitted.
- D. You may apply online or obtain an application from Ecology's website at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/-Application>. Construction

site operators must apply for a permit at least 60 days prior to discharging stormwater from construction activities and must submit it on or before the date of the first public notice.

9. PROTECTION OF ADJACENT PROPERTIES

With the development of the project, the Applicant shall be responsible for adverse impacts to other property abutting the Subject Property. Applicant's 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.

10. MISCELLANEOUS

- A. All development of the Site shall substantially conform to the site development plan set and landscaping plan included with the PDS Report (*Ex. 1, Ex. 2*) and will meet all applicable regulations in the TMC for the R-4-L Low-Density Multiple-Family Dwelling District.
- B. Should the project result in the inadvertent discovery of archaeological materials, all work in the vicinity of the discovery shall halt and the City of Tacoma, Historic Preservation Officer and the appropriate representatives from the Puyallup Tribe of Indians shall be notified.
- C. Prior to obtaining building or grading permits, the Applicant shall contact the appropriate City departments to make the necessary arrangements for all required improvements. The required departmental approvals shall be acquired from, but not necessarily limited to, Tacoma Power (253) 383-2471, Tacoma Water (253) 383-2471, and Public Works (253) 591-5525.
- D. Non-compliance with any decision/recommendation of the Hearing Examiner and/or decision of the City Council, any conditions of approval contained herein and/or the requirements of the TMC pertaining to the zoning change (if approved), CUP and subsequent development of the Site are subject to enforcement by the PDS Director per TMC 13.05.100, Enforcement.
- E. Per TMC 13.05.020.H, conditional use permits expire after 5 years, so development of the Site as proposed in this Report and Recommendation, together with the accompanying CUP major modification will have to take place within 5 years of final approval of the CUP major modification by the Hearing Examiner (if approved).

B. USUAL CONDITIONS:

- 1. The recommendation 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 **substantial** change(s) or deviations(s) in such

development plans, proposals, or conditions of approval imposed shall be subject to the approval of the Hearing Examiner and may require additional hearings.

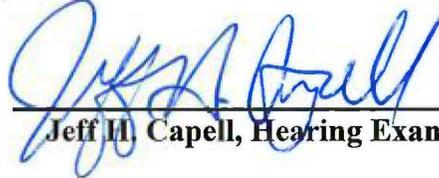
2. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such law, regulations, and ordinances are conditions precedent to the approval granted and are continuing requirement of such approvals. By accepting this approval, the Applicant represents that the development and activities allowed will comply with such laws, regulations, and ordinance. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, and ordinances, the Applicant shall promptly bring such development or activities into compliance.

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

RECOMMENDATION:

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

DATED this 25th day of July, 2018.



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.

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

ORIGINAL