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Sent: Monday, December 30, 2019 8:42 AM
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Subject: HEX2019-028 (LU19-163) 4501 6th Ave, LLC
Attachments: HEX2019-028_45016thAvenue,LLC_HEXFindingsConcsRecommendation.12.30.19.pdf

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Tracking:

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Darci Brandvold (dbrandv@co.pierce.wa.us)

Dear Parties,

Please find attached the Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommendation to the Tacoma City Council.

Sincerely,

Louisa Legg

Office Administrator

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OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

REPORT AND RECOMMENDATION

TO THE CITY COUNCIL

APPLICANT: 4501 6TH AVENUE, LLC

HEARING EXAMINER FILE NO: HEX2019-028 (LU19-0163)

SUMMARY OF REQUEST:

The applicant proposes to rezone a single parcel of real property from R-3 Two-Family Dwelling District to R-4-L Low-Density Multiple-Family Dwelling District (“R-4-L”) for the eventual construction of four 4-plexes (total of 16 units) on the 24,300 square-foot site. The intended development will include demolition of the existing buildings and redevelopment of the overall site. All parking is intended to be accessed off the alley. The rezone application also required review under the State Environmental Policy Act (“SEPA”). The Planning and Development Services (“PDS”) Director issued a final mitigated determination of nonsignificance (“MDNS”) on October 21, 2019. The MDNS was not appealed; conditions of the determination were set forth in section K of the PDS staff report and are incorporated herein as appropriate.

LOCATION:

The rezone site is located in North Tacoma at the northwest corner of 6th Avenue and North Verde Street at the address of 4501 6th Avenue (the “Site” or “Subject Property”). The Site is designated Pierce County Tax Parcel No. 3900000921, and is located within Section 01, Township 20, Range 02, Quarter 21, Tacoma, Washington.

RECOMMENDATION:

The Hearing Examiner recommends approval of the rezone, subject to conditions set forth herein below.¹

¹ 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.

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

ORIGINAL

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 November 21, 2019. The following individuals testified at the hearing:

Shirley Schultz, Principal Planner, for the City of Tacoma.
John Gibson, authorized representative of the Applicant.

Members of the Public

Megan Ricks of 4514 North 7th Street,
Kristina Donahue of 701 North Cheyenne Street.
Tamara Lang of 702 North Cheyenne Street.
Donald W. Whisner of 4502 North 7th Street.

The record closed at the conclusion of the hearing.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION:

FINDINGS OF FACT:

1. The Applicant and record owner of the Subject Property is 4501 6TH AVENUE, LLC, a Washington limited liability company (the "Applicant"). John Gibson² is a listed governor of the Applicant and appeared at the hearing as the Applicant's authorized representative.

2. The Subject Property is a single, relatively flat parcel measuring 202.5 feet along 6th Avenue and 120 feet in depth from north to south, bounded by North Verde Street on the east. The total Site area is 24,300 square feet. The Site was originally 8 small lots from the original platting, each 25 feet wide (except the easternmost lot, at 27.5 feet). *Schultz Testimony; Ex. C-1.*

3. The Site is currently occupied by an approximately 8,500 square-foot church, which was constructed in 1950 and has been in use since that time. The church pre-existed the adoption of the City's first zoning regulations in May of 1953, and is considered an existing conditional use. Variances were granted to the church in 1955 and 1982 for a sign and for a rear setback encroachment, respectively, neither of which should have any bearing on the redevelopment of the Subject Property. The remainder of the Site is informally used for parking but has never been improved formally as a parking lot. *Id.*

4. As mentioned above, the Site is bounded by 6th Avenue on the south, North Verde Street on the east, and a 20-foot alley on the north. 6th Avenue is a 65-foot wide principal arterial. It is also designated as a pedestrian street by the City's Comprehensive Plan (the "Comp Plan") and the Land Use Code (Tacoma Municipal Code ["TMC"] Title 13). *See Page 2-48 and Figure 7 of the Urban Form*

² The City's Preliminary Report (the "PDS Report") listed John Gibson as the applicant and John Gibson/4501 6TH AVENUE, LLC as the property owner. While Gibson is a principal in 4501 6TH AVENUE, LLC, 4501 6TH AVENUE, LLC is the actual owner or record of the Subject Property and therefore the applicant with standing as well.

Element and TMC 13.06.100.C.3. North Verde Street is a 60-foot-wide residential street. Both streets are fully built-out with curb, gutter, and sidewalk. The alley to the north is currently unpaved and the alley approach is substandard. Pierce Transit bus stops are located on 6th Avenue between 400 and 600 feet from the Site. Pierce Transit Route 1 serves 6th Avenue with 15-minute peak-hour service. *Schultz Testimony; Ex. C-1.*

5. The majority of the Site was originally zoned R-2 One-Family Dwelling District in 1953 when the City's zoning code was first established. In 1960 the Subject Property and the adjacent parcel (west) were rezoned to R-3 Two-Family Dwelling District ("R-3") under Ordinance No. 16533 (as amended by Ordinance No. 16541). The ordinance did not place any special conditions on the rezone or on future development/use of the Subject Property other than the usual requirements that attached to the R-3 District. *Schultz Testimony; Ex. C-1, Ex. C-11.*

6. There have been other rezones in the vicinity of the Subject Property, along 6th Avenue. The properties on both sides of 6th Avenue on the east side of North Verde Street were rezoned to C-1 Neighborhood Commercial in 1954, which is consistent with the original C-1 zoning in the area around 6th Avenue and Stevens and Mason Streets. Otherwise, the remainder of the neighborhood retains its original R-2 Single-Family Dwelling District zoning. *Schultz Testimony; Ex. C-1.*

7. The Comp Plan's Future Land Use Map designates the Subject Property as being located within the "Multi-Family (Low Density)" land use category. This designation would support zoning of R-3 (current) or R-4-L, as proposed. The target density is 14-36 dwelling units per net acre. In this area the land use designations follow the current zoning designations. *Id.*

8. The Applicant's development proposal includes the demolition of the existing church and associated structures on the Site, segregating the Subject Property into four (4) distinct parcels of around 6,000 square feet each, and construction of four 4-plex structures that would provide a total of 16 dwelling units on the Subject Property. A minimum of 18 parking stalls will be provided for the proposed 16 units. Access to parking would be had off the alley on the north of the Site. The Applicant proposes to build the units in phases, completing the 4-plex on the westerly end of the Subject Property prior to demolishing the church and building the remaining three structures thereafter. The Applicant has provided preliminary plans and PDS determined that all development will meet the requirements of the R-4-L zoning district. *Schultz Testimony, Gibson Testimony; Ex. C-1.*

9. The proposed development is seeking greater density than what the current R-3 classification allows. The primary difference between the R-3 and R-4-L districts is that the R-4-L allows for approximately twice the density based on minimum lot size per dwelling unit (3,000 square feet versus 1,500 square feet). In addition, while the R-3 classification allows for townhouse-style development, it does not allow for the level of multifamily development as the Applicant proposes here. The current R-3 classification requires approximately 9 units, while the minimum density under R-4-L is approximately 13 units. *Schultz Testimony; Ex. C-1.*

10. The area surrounding the Subject Property is a diverse neighborhood with commercial-retail, single-family and multifamily residential uses. There is a duplex to the west of the Subject

Property. To the north and south are single-family dwellings, and to the east is an area of small-scale commercial uses. Jefferson Park is located approximately 1,000 feet (2.5 blocks) to the northeast of the Subject Property. *Id.*

11. Pursuant to the State's *SEPA*³ Rules (WAC 197-11-340) and the City of Tacoma's Environmental Code (TMC 13.12), the PDS Director issued a Mitigated Determination of Environmental Nonsignificance ("MDNS") for the rezone and its proposed project on October 21, 2019. The MDNS was based on a review of the Applicant's Environmental Checklist, the project plans, written comments received from neighbors and other interested parties, and comments received from outside agencies. The SEPA appeal period ended November 4, 2019 with no appeal of the MDNS having been filed. One written comment was submitted regarding the proposal during the SEPA comment period by Megan Ricks who also offered testimony at the hearing. Her SEPA comment was included with the MDNS documents and responded to by City staff. *Ex. C-1, Ex. C-2, Ex. C-8.*

12. 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 September 24, 2019. In addition, a public notice sign was posted on the Site, and the Public Hearing Notice was posted on the City's website along with the application documents. *Schultz Testimony; Ex. C-1.*

13. Four members of the public provided verbal testimony at the hearing primarily addressing the Applicant's proposed project/redevelopment of the Subject Property, but at least in conjunction with the rezone. The individuals who testified, and a brief summary of their testimony as it relates to the rezone/proposed redevelopment is as follows:

- a. **Megan Ricks:** Testified that she fears the rezone/redevelopment will lead to increased congestion and crime, and a reduction in neighborhood privacy. She believes there is not enough parking for the rezone/redevelopment, and that there have not been adequate steps taken for safety, cleanliness or mitigation for disturbances.
- b. **Kristina Donahue:** Testified that she understands the need for additional housing in Tacoma. She indicated that there are already duplexes in the neighborhood, and that duplexes under the current zoning can work fine to add housing at the Site. She is concerned about parking if units are not occupied by families, but unrelated adults instead. She is also concerned about not being able to park in front of her house on the street, and about traffic on North 7th Street overflowing from 6th Avenue.
- c. **Tamara Lang:** Testified that there are already issues related to parking because of the church, and that there is lots of on-street parking on 6th Avenue. She testified that the alleyway has drug use, transients, garbage and crime, and believes the proposed project will exacerbate these. She also was mistakenly concerned about impacts of the requested rezone thinking it went beyond the Subject Property.

³ "SEPA" is the State Environmental Policy Act found at the Revised Code of Washington ("RCW") 43.21C.

- d. **Donald W. Whisner:** Whisner too mistakenly thought the zoning change would go beyond the Subject Property, and was concerned about how that might affect property values. He was also concerned about construction disturbances during redevelopment.

14. Gibson responded to the above listed concerns by stating generally that the on-site parking to be provided in the redevelopment should be sufficient for the new homes without too much spillage onto nearby streets. He also indicated that having a well-planned development on the Subject Property, that he will retain (at least part) ownership over will help to reduce undesirable activity in and around the Subject Property by having more activity and more eyes on.

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 the Applicant's intended development of the Subject Property as opposed to the rezone *per se*. *Schultz Testimony; Ex. C-1, Ex. C-5, Ex. C-6.*

16. Through Gibson's testimony, the Applicant agreed to the conditions of approval recommended by reviewing City departments and outside agencies. *Gibson 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. *Schultz Testimony; Ex. C-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 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 shall control.

19. 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 a recommendation to the City Council. The final rezone decision is made through 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 MDNS,⁴ which has not been appealed.

⁴ *See TMC 13.12.440.*

3. Under TMC 13.06.650.B, the applicant for a rezone is required to demonstrate consistency with all of the following criteria:⁵

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 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 "Multi-Family (Low Density)." The two most compatible zoning classes for the current Comp Plan designation are R-3 and R-4-L, making either compatible with the Comp Plan.

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 "responses to rezone" (*Ex. C-4*, the "Applicant's Responses") and the PDS Report (*Ex. C-1*) set forth numerous Comp Plan policies and goals that are advanced by the Applicant's intended use of the Subject Property. It is not difficult to conclude that the proposed use of the Subject Property is generally consistent with the multitude of Comp Plan goals and policies favoring density, infill and adaptive reuse/redevelopment of existing land

⁵ Numbering is kept the same as in the TMC for consistency.

stock. 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 Responses (*Ex. C-4*) and the PDS Report (*Ex. C-1*) are directly related to these two primary GMA planning goals. Adding slightly higher residential use of the Subject Property than is currently allowed, 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 that address the need for more housing. 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 stated that “The City’s Comprehensive Plan contains multiple policies related to providing increased residential densities along transit corridors; the proposed rezone would allow development which would support those policies.” It is well-documented that more housing, both market-rate and more affordable is needed in the area. Housing needs in Tacoma and across the state are not being met and the need is increasing rather than decreasing. 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 (greater housing need) 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 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 stated that:

“As noted in the discussion of the Comprehensive Plan goals and policies, above, the site proposed for rezone to R4-L is a transition area between land use intensities, with the proposed development meeting the development standards to ensure compatibility with neighboring uses.” *Ex. C-1.*

The Examiner concludes that, 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-4-L 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 by facilitating the provision of housing for all. The Applicant’s proposed use of the Subject Property as low density multifamily housing 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 help guarantee 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 assuming approval of the requested rezone than they do with the approval of the rezone itself, i.e. they are not recommended herein as conditions precedent to the approval 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 K of the PDS Report (“Recommendation and 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, informative “conditions” *will not* be helpful to or 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 Conditions* below.

The recommendation of approval herein for the requested rezone is 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 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 low-density multifamily 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

- a. Any future development of the Site shall be consistent with the R-4-L Low-Density Multiple-Family Dwelling District development standards (TMC 13.06.100), the Landscaping Code (TMC 13.06.502), Parking Code (TMC 13.06.510), Transit Support Facilities (TMC 13.06.511), Bicycle and Pedestrian Support Standards (TMC 13.06.512), all other applicable sections of the TMC, and the conditions of this rezone decision.
- b. A Lot Segregation may be pursued prior to issuance of the building and development permits. The TIP Sheet at <http://tacomapermits.org/tip-sheet-index/lot-segregations-and-combinations> may be used to start the application process. Construction shall comply with the adopted Building Code(s) at the time a building permit application is deemed complete.
- c. The Applicant shall demonstrate, at the time of permitting, how the design of the buildings is used to create high-quality development that fits in with the surrounding neighborhood. In addition to compliance with the design standards for the R-4-L Low-Density Multiple-Family Dwelling District and 6th Avenue pedestrian standards, this could include façade variety among the four structures, enhanced site design for landscaping and paved areas, building detailing, and/or architectural lighting.
- d. The required Landscape Plan shall provide the type, size and location of trees, shrubs, and groundcover plan for the Site, to include open yard space, site perimeter, and tree canopy coverage.

2. ENVIRONMENTAL HEALTH

- a. A permit for the handling, use, storage or disposal of hazardous wastes is required. Please contact David Bosch of the Tacoma-Pierce County Health Department at 253-798-6574.
- b. 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 any development permit(s), the Applicant shall demonstrate to the City of Tacoma, Planning and Development Services (PDS) Department that the following steps have been taken:
 - Sample the soil and analyze for arsenic and lead following the 2012 Tacoma Smelter Plume Guidance. The soil sampling results shall be sent to Ecology for review.
 - If lead or arsenic are found at concentrations above the Model Toxics Control Act (MTCA) cleanup levels (Chapter 173-340 WAC); the owners, potential buyers, construction workers, and others shall be notified of their occurrence. The MTCA cleanup level for arsenic is 20 parts per million (ppm) and lead is 250 ppm.
 - If lead, arsenic and/or other contaminants are found at concentrations above MTCA cleanup levels, the Applicant shall:
 - 1) Develop a soil remediation plan and enter into the Voluntary Cleanup Program with Ecology.
 - 2) Obtain an opinion letter from Ecology stating that the proposed soil remediation plan will likely result in no further action under MTCA. The Applicant shall provide to the local land use permitting agency the opinion letter from Ecology.

3) Prior to finalizing site development permits, provide to the local land use permitting agency (the City) a “No Further Action” determination from Ecology indicating that the remediation plans were successfully implemented under MTCA.

- If soils are found to be contaminated with arsenic, lead, or other contaminants, extra precautions shall be taken to avoid escaping dust, soil erosion, and water pollution during grading and site construction. Site design shall include protective measures to isolate or remove contaminated soils from public spaces, yards, and children’s play areas. Contaminated soils generated during site construction shall be managed and disposed of in accordance with state and local regulations, including the Solid Waste Handling Standards regulation (Chapter 173-350 WAC). For information about soil disposal contact the local health department in the jurisdiction where soils will be placed.
- Prior to a development permit being issued by the City of Tacoma, the Applicant shall attend a pre-construction meeting with representatives of the City. The pre-construction meeting may also include a representative from Ecology’s MTCA staff. 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.
- 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.

3. **GENERAL**

Prior to obtaining building or grading permits, the Applicant shall contact the appropriate City departments and outside agencies to make the necessary arrangements for all required improvements. The required departmental approvals shall be acquired from, but not necessarily limited to, Planning and Development Services (253-591-5030), Tacoma Power (253-383-2471), Tacoma Water (253-383-2471), and Public Works Department (253-591-5525) the Tacoma-Pierce County Health Department and Washington Department of Ecology.

ADVISORY COMMENTS

The following comments are advisory and will be applicable to required building and development permits associated with the Applicant’s proposed development:

1. **Stormwater Management**

- a. The proposal shall comply with all applicable requirements contained in the City of Tacoma Stormwater Management Manual (the “SWMM”), Side Sewer and Sanitary Sewer Availability Manual, TMC 12.08, TMC 2.19, TMC 10.14, TMC 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.

- c. A site development permit is required. This project must comply with the SWMM in effect at time of vesting. Regulatory Citation: TMC 2.19.030, TMC 12.08.007
 - d. Based on the information provided Minimum Requirements that may be applicable to this project include: MRs #1-10. This project appears to be a Redevelopment Project. Regulatory Citation: SWMM Volume 1, Chapter 3, Flowchart Figures: 1-5 through 1-9
 - e. This project appears to trigger Minimum Requirements #1-10 which would require on-site stormwater to be managed in accordance with Onsite Management BMPs List #2 or demonstrate compliance with the LID Performance Standard to achieve MR#5 compliance. Design of onsite stormwater systems may require a soil analysis prepared by a qualified soils professional per the SWMM, Volume 3. Regulatory Citation: SWMM Volume 1 Sections 3.4.5; Volume 3
 - f. Minimum Requirement #6 will likely need to be evaluated for this project. On-site and off-site pollution generating hard surface (PGHS) areas shall be all be added together to determine the project PGHS total. If any thresholds of Minimum Requirement #6 are met, the project shall construct water quality treatment facilities. Separate water quality facilities shall be provided for on-site and off-site PGHS. Regulatory Citation: SWMM Volume 1 Chapter 3, Sections 3.3 & 3.4.6
 - g. If the project site meets the MR #6 (water quality treatment) threshold and discharges to natural resources restoration sites or sensitive areas, enhanced treatment per Volume 1, Section 2.5.11 of the SWMM shall be required. Regulatory Citation: SWMM Volume 1, Section 2.5 & Sections 3.3 & 3.4.6
 - h. Minimum Requirement #7 will likely need to be evaluated for this project. On-site and off-site improvements shall be considered to determine whether any thresholds of MR #7 are met. If so, flow control requirements vary by watershed and can be reviewed in Volume 1, Section 3.3.7 of the SWMM. This project is in the Leach Creek watershed. Regulatory Citation: SWMM Volume 1 Chapter 3, Sections 3.3.7 & 3.4.7
 - i. Per SWMM Minimum Requirement #10, all projects shall include a qualitative offsite analysis as described in Volume 1 of the SWMM. Regulatory Citation: SWMM Volume 1 Section 3.4.10
 - j. Any private storm drainage system will require a Covenant and Easement Agreement for maintenance and access. Regulatory Citation: SWMM Volume 1 Section 3.4.9
2. Utilities (Sanitary Sewer, Power, Water)
- a. Tacoma Power has overhead facilities on the South side of the alley and on the West side of North Verde Street. New services to cottages can be overhead or underground depending on service size. Be aware of WAC rule regarding clearances from power lines. Tacoma Power recommends a 14' clearance from TPU power lines to the nearest roof/building. Questions can be directed to Tony Daniels at (253) 502-8076. Any modifications, relocations, or additions to Tacoma Power facilities will be at the Applicant/developer's expense.
 - b. Each new Multi-unit Building shall have a new, independent connection to the City sanitary sewer. Regulatory Citation: Side Sewer & Sanitary Sewer Availability Manual, Sec 3.6

- c. Each abandoned side sewer, or part thereof, that will not be reused in accordance with WAC 246-272 shall be plugged or capped at the public sanitary sewer main to eliminate the potential for infiltration of groundwater and dirt into the public sanitary sewer system via the abandoned side sewer. The side sewer shall be abandoned in the presence of the site inspector. Regulatory Citation: Side Sewer & Sanitary Sewer Availability Manual, Sec 3.2.M
- d. If the existing side sewer is to be re-used for a proposed 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. Permits for this work shall be obtained. Regulatory Citation: Side Sewer & Sanitary Sewer Availability Manual, Sec 3.5
- e. Dumpsters that will be used for wet or moist trash and all garbage compactors shall be located on a stand-alone pad that drains to the sanitary sewer system. Cardboard compactors are not required to drain to the sanitary sewer. Regulatory Citation: SWMM Volume 4, Section 4.5

3. Streets, Driveways, and Sidewalks

- a. Consistent with Transportation Master Plan policies for active transportation, accessibility for all users, and neighborhood livability, Traffic will be recommending that sidewalks along 6th Avenue meet current Design Manual standards, curb ramps adjacent to the Site at North Verde Street and 6th Avenue are upgraded to meet current ADA standards, bulbouts are installed on 6th Avenue, and vehicular access will be from the alley.
- b. There is an old streetlighting series circuit and can have voltages up to 5000v - extra care shall be taken if working along 6th Avenue. Coordination with City crews will be required.
- c. This project appears to be subject to off-site improvements, which will be issued at time of building permit. The following are improvements likely to be required (Regulatory Citation: TMC 2.19):
 - i. Street Trees are required per TMC 13.06.502 Landscaping and buffering standards.
Approved list of trees -
<http://cms.cityoftacoma.org/surfacewater/UrbanForestManual/APPENDIX%207.pdf>
Regulatory Citation: TMC 13.06.502.
 - ii. Any broken, damaged, or hazardous curb and gutter abutting the site on North Verde Street and 6th Avenue shall be removed and replaced. Regulatory Citation: TMC 2.19replaced to the approval of the City Engineer.
 - iii. Any damaged and/or defective sidewalk abutting the site on North Verde Street and 6th Avenue shall be removed and replaced to the approval of the City Engineer. New sidewalk shall meet Public Right-of-Way Accessibility Guidelines and requirements set forth by the Americans with Disabilities Act. Regulatory Citation: TMC 2.19, ROW Design Manual Chapter 4 Section 1.2 & Section 7.

- iv. The type, width, and location of all driveway approaches serving the Site shall be approved by the City Engineer. Regulatory Citation: ROW Design Manual Chapter 4 Section 6.5.
- v. Directional cement concrete curb ramps shall be constructed at the intersection of North Verde Street and 6th Avenue. Ramps shall be installed on the NW corner with receiving ramps on the NE and SW corners of the intersection and align with current Tacoma and ADA standards. \Regulatory Citation: ROW Design Manual Chapter 4 Section 1.2 & Chapter 8.
- vi. North Verde Street fronting the Subject Property shall be restored in accordance with the Right-of-Way Restoration Policy. The City's records indicate that this Block of North Verde Street is Asphalt Concrete Pavement. Restoration shall be in accordance with Tacoma standard plan SU-15A. Regulatory Citation: Right-of-Way Restoration Policy.
- vii. 6th Avenue fronting the Subject Property shall be restored in accordance with the Right-of-Way Restoration Policy. The City's records indicate that this Block of 6th Avenue is Portland Cement Concrete. Restoration shall be in accordance with Tacoma standard plan SU-14C which includes replacement of full panels. Regulatory Citation: Right-of-Way Restoration Policy.
- viii. The alley approach shall be upgraded to current Public Works Standards. It appears that a Type 2, per SU-08 is appropriate for this alley. Regulatory Citation: TMC 2.19, ROW Design Manual Chapter 4 Section 6.8.
- ix. The alleyway access shall be improved to Public Works Standards to a minimum width of 16 feet. The minimum roadway section shall meet City Design Standards at time of submittal. It shall include necessary drainage. Regulatory Citation: TMC 2.19.
- x. 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 Site Development Group at (253) 591-5760. A performance bond is required for all work orders. Regulatory Citation: TMC 10.22.070.F.

4. City Noise Code

Per the City Noise Code, noise levels during construction shall not exceed the maximum limits under the City's Noise Code, TMC 8.122.060 and TMC 8.122.070, or as amended:

- a. No more than 5 dBA(outdoors) above ambient at night (10:00 p.m. – 7:00 a.m.) and 10 dBA (outdoors) above ambient during the day (7:00 a.m. to 10:00 p.m.) – *See TMC 8.122.060*;
- b. All construction devices used in construction and demolition activity shall be operated with a muffler if a muffler is commonly available for such construction device. – *See TMC 8.122.070*; and
- c. Construction and demolition activity, excluding emergency work, shall not be performed between the hours of 9:00 p.m. and 7:00 a.m. on weekdays or between the hours of 9:00 p.m. and 9:00 a.m. on weekends and federal holidays, except as otherwise provided in this code. – *See TMC 8.122.070*.

5. Protection of Adjacent Properties

With the development of the project, the Applicant/developer shall be responsible for adverse impacts to other property abutting the project. The project shall be designed to mitigate impacts including, but not limited to, discontinuities in grade, abrupt meet lines, access to driveways and garages, and drainage problems. Slopes shall be constructed with cuts no steeper than 1-1/2:1, and fills no steeper than 2:1, except where more restrictive criteria is stipulated by the soils engineer. When encroaching on private property, the project engineer shall be responsible to obtain a construction permit from the property owner. The design shall be such that adverse impacts are limited as much as possible. When they do occur, the project engineer shall address them.

6. Building Code

Construction shall comply with the adopted Building Code(s) at the time a building permit application is deemed complete.

7. Tacoma Fire Department

Construction shall comply with the adopted Fire Code at the time a building permit submittal is deemed complete. The Applicant is advised that all structures will require fire sprinklers.

8. Environmental Health – Washington Department of Ecology

The Department of Ecology provided the following advisory comments for the building and development permit construction phase:

- a. All grading and filling of land must utilize only clean fill. All other materials may be considered solid waste and permit approval may be required from the local jurisdictional health department prior to filling. All removed debris 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. Erosion control measures must be in place prior to any clearing, grading, or construction. These control measures must be effective to prevent stormwater runoff from carrying soil and other pollutants into surface water or stormdrains that lead to waters of the state. Sand, silt, clay particles, and soil will damage aquatic habitat and are considered to be pollutants.
- c. 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.
- d. Construction Stormwater General Permit: The Applicant/developer's proposed construction activities related to the Rezone/Demolition/Site Improvements may require coverage under the Construction Stormwater General Permit (CSGP). 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. The Applicant may apply online or obtain an application from Ecology's website at:
<http://www.ecy.wa.gov/programs/wq/stormwater/construction/> - Application.

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 **material** 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 is a condition precedent to any approval granted and is a 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.

11. 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 30th day of December, 2019.



Handwritten signature of Jeff H. Capell in blue ink, positioned above a horizontal line.

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**