

ORDINANCE 123129

AN ORDINANCE relating to land use and zoning; amending Chapter 23.32 of the Seattle Municipal Code at page 17 of the Official Land Use Map, to rezone property located at 12318 – 15th Ave NE from Single Family 7200 (SF 7200) to Neighborhood Commercial 3 with a 40 foot height limit (NC3-40), and accepting a Property Use and Development Agreement in connection therewith. (Project number 3008423, Clerk File 309623)

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. This Ordinance affects the following legally described property (“the Property”) commonly known as 12315 – 15th Ave NE:

TRACTS 184, 185 AND 186, PINEHURST ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 29 OF PLATS, PAGE 33, RECORDS OF KING COUNTY.

Section 2. The Official Land Use Map zone classification, established on page 17 of the Official Land Use Map, adopted by Ordinance 110381 and last modified by Ordinance 123020, is amended to rezone the Property from Single Family 7200 (SF 7200) to Neighborhood Commercial 3 with a 40 foot height limit (NC3-40), as shown in Exhibit A. The Official Land Use Map zone classification is conditioned upon performance and continued compliance with the conditions of the Property Use and Development Agreement referenced in Section 3 of this ordinance.

Section 3. The Property Use and Development Agreement, attached to this Ordinance as Exhibit B, executed by Safeway, Incorporated, owner (“Owner”) of the Property, by which Owner agrees to certain restrictions upon the use and development of the Property to ameliorate the adverse impacts of uses and developments that would otherwise be permitted in the NC3-40



1 zone, which restrictions are directly related to the impacts expected to result from the rezone, is
2 hereby approved and accepted.

3 Section 4. The rezone approval of the Property expires, pursuant to
4 Section 23.76.060.B of the Seattle Municipal Code, two years from the effective date of
5 approval, unless, within the two year period, an application is filed for a Master Use Permit,
6 which permit is subsequently issued. If the permit is subsequently issued, the rezone remains in
7 effect unless revoked pursuant to Section 23.34.004.
8

9 Section 5. The City Clerk is hereby authorized and directed to file the Property Use
10 and Development Agreement, attached to this ordinance as Exhibit B, with the King County
11 Records and Elections. Upon return of the recorded agreement from the King County Records
12 and Elections, the City Clerk shall file the original of the Property Use and Development
13 Agreement with this Ordinance at the City Clerk's Office and deliver copies of the same to the
14 Director of the Department of Planning and Development and to the King County Assessor's
15 Office.
16

17 Section 6. This Ordinance, effectuating a quasi-judicial decision of the City Council and
18 not subject to mayoral approval or disapproval, shall take effect and be in force thirty (30) days
19 from and after its passage and approval by the City Council.
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1 Passed by the City Council the 26th day of October, 2009, and
2 signed by me in open session in authentication of its passage this
3 26th day of October, 2009.

4
5 

6 President _____ of the City Council

7
8 Filed by me this 26th day of October, 2009.

9
10 
11 Acting City Clerk

12 (Seal)

13
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15 Exhibit A: Rezone Map

16 Exhibit B: Property Use and Development Agreement
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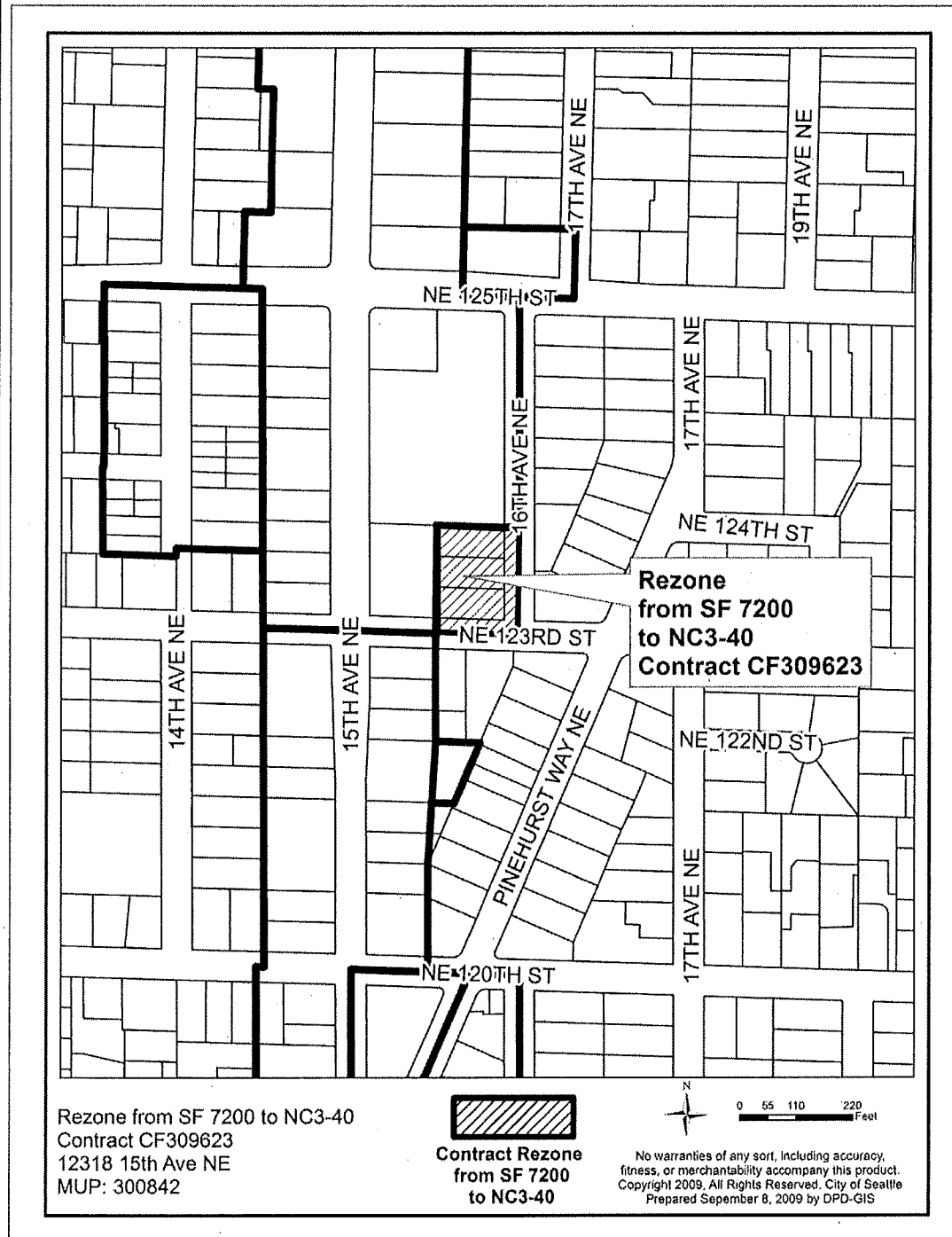


EXHIBIT A



When Recorded, Return to:

THE SEATTLE CITY CLERK
600 Fourth Avenue, Floor 3
PO Box 94728
Seattle, WA 98124-4728

RECEIVED

OCT 15 2009

SEATTLE CITY COUNCIL

@ 11:13 am

PROPERTY USE AND DEVELOPMENT AGREEMENT

Grantors: 1) Safeway Inc.

Grantee: 1) The City of Seattle

Legal Description (abbreviated):

TRACTS 184, 185 AND 186, PINEHURST ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED
IN VOLUME 29 OF PLATS, PAGE 33, RECORDS OF KING COUNTY.

Assessor's Tax Parcel ID #s: 6798100970; 6798100975; 6798100980

Reference Nos. of Documents Released or Assigned: _____

THIS PROPERTY USE AND DEVELOPMENT AGREEMENT (the "Agreement") is executed this 14th day of October, 2009, in favor of THE CITY OF SEATTLE (the "City"), a Washington municipal corporation, by SAFEWAY INC., a Delaware corporation (the "Owner").

RECITALS

A. Owner is the owner of that certain real property (the "Property") in the City of Seattle that is zoned Single-Family 7200 (SF-7200) that is the subject of a Contract Rezone allowed under Seattle Municipal Code Section 23.34 and described as:

TRACTS 184, 185 AND 186, PINEHURST ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 29 OF PLATS, PAGE 33, RECORDS OF KING COUNTY.

B. On November 21, 2008, Owner applied for a contract rezone of the Property from SF-7200 to either Neighborhood Commercial 2 or Neighborhood Commercial 3 with a 40-foot height limit (NC2-40 or NC3-40). Both the Department of Planning & Development and the Hearing Examiner recommended approval of a rezone to NC3-40.

C. Seattle Municipal Code ("SMC") 23.34.004 allows the City to approve a contract rezone subject to subject to the execution, delivery and recording of an agreement executed by the legal or beneficial owner of the property to be rezoned to self-imposed restrictions upon the use and development of the property in order to ameliorate adverse impacts that could occur from unrestricted use and development permitted by development regulations otherwise applicable after the rezone.

NOW, THEREFORE, in consideration of the mutual agreements contained herein, the parties agree as follows:

AGREEMENT

Section 1. Agreement. Pursuant to Seattle Municipal Code 23.34.004, Owner hereby covenants, bargains and agrees, on behalf of itself and its successors and assigns, that it will comply with the following limitations and conditions in consideration of the rezone of the Property from Single-Family 7200 (SF-7200) to Neighborhood Commercial 3 with a 40-foot height limit (NC3-40).

1. Owner will construct the proposed Safeway store substantially in compliance with the final approved Master Use Permit plans dated May 29, 2009, as amended June 12, 2009. This substantial compliance shall include but not be limited to the details of structure design, structure height, building materials, landscaping, street improvements, parking lot design and layout, signage and site lighting.

Section 2. Agreement Runs With the Land. This Property Use and Development Agreement (hereinafter "Agreement") shall be recorded in the records of King County by the City Clerk. The covenants hereof shall be deemed to attach to and run with the land and shall be binding upon the Owner, its heirs, successors and assigns, and shall apply to after-acquired title of the Owner of the Property.

Section 3. Termination. These covenants and the rezone shall expire two years from the effective date of approval, unless, within the two year period, an application is filed for a Master Use Permit for the Property, which permit is subsequently issued. The rezone remains in effect unless revoked pursuant to Section 23.34.004.

Section 4. Amendment. This Agreement may be amended or modified by agreement between Owners and the City; provided, such amendment agreement shall be approved by the legislative authority of the City by ordinance.

Section 5. Exercise of Police Power. Nothing in this Agreement shall prevent the City Council from making such further amendments to the Seattle Municipal Code or Land Use Code as it may deem necessary in the public interest.

Section 6. No Precedent. The conditions contained in this Agreement are based on the unique circumstances applicable to this Property and this Agreement is not intended to establish precedent for other rezones in the surrounding area.

Section 7. Benefited. This Agreement is made for the benefit of the City and for the benefit of the owners of property within 300 feet of the Property and either the City or any such property owners may institute and prosecute any proceeding at law or in equity to enforce this Agreement.

Section 8. Repeal as Additional Remedy. Owner acknowledges that compliance with the conditions of this Agreement is a condition of the subject rezone and that if Owner avails itself of the benefits of this rezone but then fails to comply with the conditions of this Agreement with the City, in addition to pursuing any other remedy, the City may revoke the rezone by ordinance and require the use of the Property to conform to the requirements of the SF-7200 zone.

SIGNED this 14th day of October, 2009.

SAFEWAY INC.

By: [Signature]
Its Assistant Vice-President

By: Linda McDonald
Its Assistant Secretary

FORM APPROVED SAB by dm

ACKNOWLEDGMENT

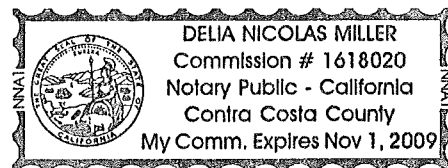
STATE OF CALIFORNIA)
)
County of Alameda) ss.

On **October 14, 2009** before me, **Delia Nicolas Miller**, Notary Public, personally appeared **Steven J. Gouig** and **Linda S. MacDonald** and who proved to me on the basis of satisfactory evidence to be the persons subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Delia Nicolas Miller*



Return Address:

Seattle City Clerk's Office

600 4th Avenue, Floor 3

P O Box 94728

Seattle, WA 98124 - 4728



WASHINGTON STATE RECORDER'S Cover Sheet (RCW 65.04)

Document Title(s) and corresponding number (or transaction contained therein)

1. Property Use and Development Agreement to Ordinance No. 123129
- 2.

Reference Number(s) of Documents assigned or released:

1.
Additional reference #'s on page ____ of document

Grantor(s)

- ☐ 1.City of Seattle
- ☐ Additional names on page ____ of document.

Grantee(s) Public (Last name first, then first name and initials)

- ☐ 1.
- ☐ 2. Additional names on page ____ of document

Legal description (abbreviated: i.e. lot, block, plat or section, township, range)

Additional reference #'s on page ____ of document

Assessor's Property Tax Parcel/Account Number

- ☐ Assessor Tax # not yet assigned.

The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.

Signature of Requesting Party

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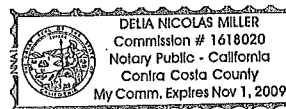
STATE OF CALIFORNIA)
)
County of Alameda) ss.

On October 14, 2009 before me, Delia Nicolas Miller, Notary Public, personally appeared Steven J. Gouig and Linda S. MacDonald and who proved to me on the basis of satisfactory evidence to be the persons subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Delia Nicolas Miller



State of Washington,
County of King

I, Emilia M. Sanchez certify that this is a true and correct
copy of AH. Bto Ord. 123129-PUDA, on file in the records
of the City of Seattle, Office of the City Clerk



Signed by: Emilia M. Sanchez
Signature
Title: City Clerk Seattle
Date: Oct. 27, 2009

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Legislative	Michael Jenkins, 615-1674	NA

Legislation Title:

AN ORDINANCE relating to land use and zoning; amending Chapter 23.32 of the Seattle Municipal Code at page 17 of the Official Land Use Map, to rezone property located at 12318 – 15th Ave NE from Single Family 7200 (SF 7200) to Neighborhood Commercial 3 with a 40 foot height limit (NC3-40), and accepting a Property Use and Development Agreement in connection therewith. (Project number 3008423, Clerk File 309623)

• **Summary of the Legislation:**

This legislation rezones property totaling 24,300 square feet located at 12318 – 15th Ave NE, and situated near the intersections of 16th Ave NE and NE 123rd Street, from Single Family 5000 (SF 5000) to Neighborhood Commercial 3 with a 40 foot height limit (NC3-40), and accepts a Property Use and Development Agreement (PUDA) in connection with the rezone. The rezone petitioner will develop a new grocery store on the site.

• **Background:**

This bill approves a petitioner-generated rezone subject to the Council's rules for quasi-judicial decisions. The original petition, Department of Planning and Development recommendation, Hearing Examiner's Findings and Recommendation, and record established by the Hearing Examiner are contained in related Clerk's File 309623.

• *Please check one of the following:*

 X **This legislation does not have any financial implications.** *(Stop here and delete the remainder of this document prior to saving and printing.)*



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PO Box 94728
Seattle, WA 98124-4728

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SIGNED this _____ day of October, 2009.

SAFEWAY INC.

By: _____
Its Assistant Vice-President

By: _____
Its Assistant Secretary



STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this day personally appeared before me _____, to me known to be the Assistant Vice-President of Safeway Inc., the corporation that executed the foregoing instrument and acknowledged such instrument to be the free and voluntary act and deed of such company, for the uses and purposes therein mentioned, and on oath stated that she/he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this ____ day of September, 2009.

Printed Name: _____
Notary Public in and for the State of Washington
Residing at: _____
My commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this day personally appeared before me _____, to me known to be the Assistant Secretary of Safeway Inc., the corporation that executed the foregoing instrument and acknowledged such instrument to be the free and voluntary act and deed of such company, for the uses and purposes therein mentioned, and on oath stated that she/he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this ____ day of September, 2009.

Printed Name: _____
Notary Public in and for the State of Washington
Residing at: _____
My commission expires: _____



STATE OF WASHINGTON – KING COUNTY

--SS.

246640
CITY OF SEATTLE, CLERKS OFFICE

No.

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

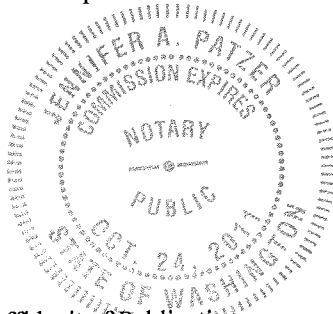
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:123129 ORDINANCE

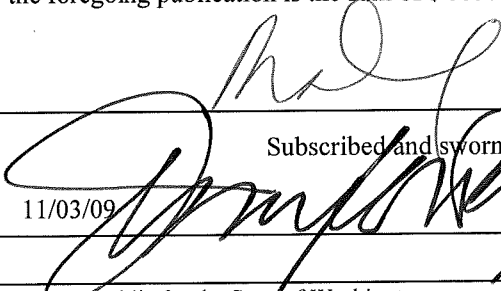
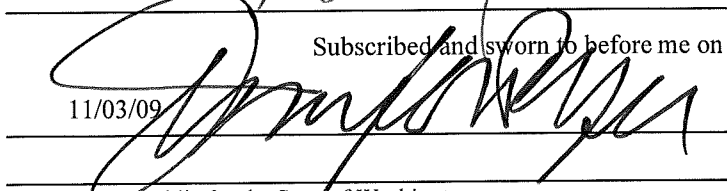
was published on

11/03/09

The amount of the fee charged for the foregoing publication is the sum of \$ 339.60, which amount has been paid in full.



Affidavit of Publication


Subscribed and sworn to before me on
11/03/09

Notary public for the State of Washington,
residing in Seattle

City of Seattle

ORDINANCE 123129

AN ORDINANCE relating to land use and zoning; amending Chapter 23.32 of the Seattle Municipal Code at page 17 of the Official Land Use Map, to rezone property located at 12318 - 15th Ave NE from Single Family 7200 (SF 7200) to Neighborhood Commercial 3 with a 40 foot height limit (NC3-40), and accepting a Property Use and Development Agreement in connection therewith. (Project number 3008423, Clerk File 309623)

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Section 4. The rezone approval of the Property expires, pursuant to

Section 23.76.060.B of the Seattle Municipal Code, two years from the effective date of approval, unless, within the two year period, an application is filed for a Master Use Permit, which permit is subsequently issued. If the permit is subsequently issued, the rezone remains in effect unless revoked pursuant to Section 23.34.004.

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Section 6. This Ordinance, effectuating a quasi-judicial decision of the City Council and not subject to mayoral approval or disapproval, shall take effect and be in force thirty (30) days from and after its passage and approval by the City Council.

Passed by the City Council the 26th day of October, 2009, and signed by me in open session in authentication of its passage this 26th day of October, 2009.

Richard Conlin

President of the City Council

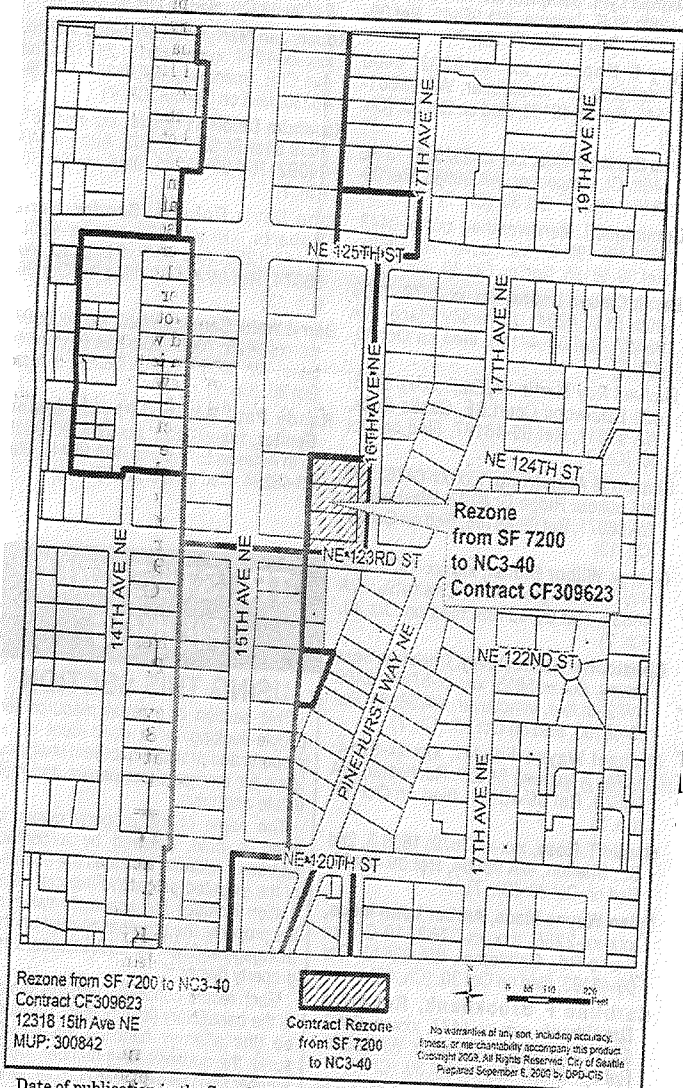
Filed by me this 26th day of October, 2009.

Publication ordered by the City Clerk

Exhibit A: Rezone Map

Exhibit B: Property Use and Development Agreement

EXHIBIT A



King County