Legislative Department
Seattle City Council
Memorandum

Date: November 10, 2010

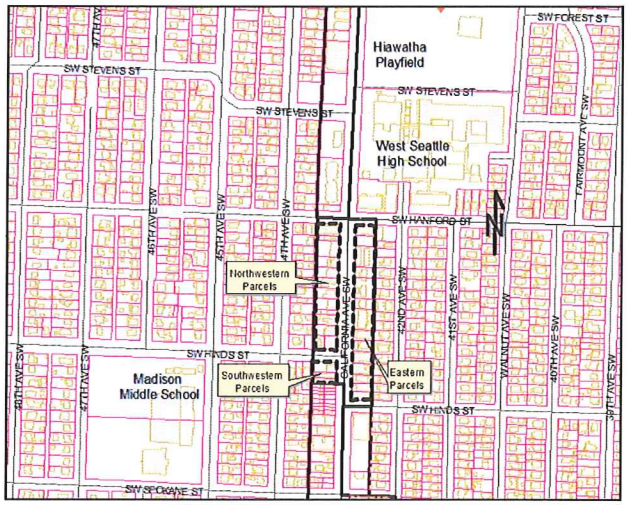
To: Sally Clark, Chair
Tim Burgess, Vice Chair
Sally Bagshaw, Member
Committee on the Built Environment (COBE)

From: Michael Jenkins, Council Central Staff

Subject: **Clerk File (CF) 308944:** Petition of Josh Stepherson to rezone 152,755 square feet of land at 3210 California Av SW from NC1-30 to NC2-40 (Project No. 3007538, Type IV).

Overview

Josh Stepherson ("Applicant"), proposes to rezone 152,755 square feet of land addressed at 3210 California Ave SW. Almost all of the rezone is located in the Admiral Residential Urban Village, along California Ave SW.



As reflected in this map, the north rezone boundary is SW Hanford Street. The west rezone boundary is an alley between California Ave SW and 44th Ave SW, while the east rezone boundary is a shared property line with single-family residences that face 42nd Ave SW.

The south rezone boundary is staggered due to a change in the platting pattern. The southwest corner includes three lots at the corner of California Ave SW and SW Hinds Street, abutting a Lowrise 3 residential zone that includes a residential/commercial overlay (L3-RC[1]). RC overlay zones allow for commercial uses in residential zones of up to 4,000 square feet if they are included within a residential structure. The southeast corner terminates along SW Hinds Street and along the shared property line approximately 100 feet east of California Ave SW.

[1] These lots will be remapped to the proposed Lowrise 3 (LR3) zone if the update to the Lowrise Code (Council Bill 117014) is adopted. This legislation would not change development standards related to the residential/commercial overlay.

All of the lots in the rezone area are zoned Neighborhood Commercial 1 with a 30 foot height limit (NC1-30). NC1-30 is a zone that allows for both residential and commercial development. While the height limit in the zone is 30 feet, buildings that combine commercial at the ground level with residential above have a 34 foot height limit.

If approved, the rezone would change the zoning to Neighborhood Commercial 2 with a 40 foot height limit (NC2-40). The NC2-40 zone allows for buildings that are 40 feet in height. Similar to the NC1-30 zone, if buildings in this zone provide commercial uses at the base and residential units above, an additional 4 feet of height (totaling 44 feet) is permitted.

In both zones, up to 16 feet in height is allowed above the height limit for rooftop features such as stair and elevator penthouses. Mechanical equipment can extend up to 15 feet above the height limit. These features can cover 20% of a rooftop or 25% if the mechanical equipment is screened.

Facts related to the rezone

- This is a general rezone petition. General rezones are not accompanied by a specific development proposal, but apply to all property in the proposed zone;
- Under both the current and proposed zoning, properties could be built with structures housing either single purpose residential or commercial, or a combination of both in a mixed use structure;
- The rezone is primarily located within the Admiral Residential Urban Village, with the exception of the three lots at the southwest corner of California Ave. SW and SW Hinds Street;
- The lots in the rezone area are located in the Admiral neighborhood of West Seattle and were included in a larger planning effort in the late 1990's. These planning efforts resulted in the Council's adoption the Admiral neighborhood plan (Attachment D, Hearing Examiner Exhibit 9)[2];
- The Department of Planning and Development (DPD) recommended approval of the rezone with no conditions (Attachment B, Hearing Examiner's Exhibit 5). DPD also determined that the environmental impacts (SEPA) of the rezone were not significant, issuing a determination of non-significance (DNS) with the recommendation. The SEPA determination was appealed to the Hearing Examiner by the Admiral Community Council and neighbors to the rezone;
- The Hearing Examiner conducted a consolidated hearing on the rezone request and the SEPA appeal on August 18, 2010. The record was held open for receipt of remaining documents from the Council file for the rezone application. The record closed on August 23, 2010; and
- The Hearing Examiner issued a determination affirming the DNS concurrent with the recommendation to approve the rezone.

[2] The appellants sought to have the 1998 Admiral Residential Urban Village Plan (Hearing Examiner's Exhibit 55) included in the record. The Council when reviewing a rezone proposal can consider only the Comprehensive Plan, and its adopted Admiral Neighborhood Plan. Therefore, the exhibit was denied and the 1998 Admiral plan cannot be considered.

Type of Action – Standard of Review - No Appeal or Request to Supplement the Record

This rezone is a Type IV quasi-judicial rezone under Seattle Municipal Code (SMC) 23.76.036. Quasi-judicial rezones are subject to the Appearance of Fairness Doctrine prohibiting ex-parte communication and the Council's rules on quasi-judicial proceedings (Resolution 31001). The Hearing Examiner establishes the record for the Council at an open-record hearing. After the hearing, the record may be supplemented through a timely request to Council.

Six appeals were filed within the 14-day time period allowed for filing following the publication of the Hearing Examiner's recommendation. The six appeals, and the related responses and replies, will be discussed below.

The entire Hearing Examiner's record is kept in my office and is available for your review.

Materials from the Record Reproduced in COBE Notebooks

I have attached the following portions of the Hearing Examiner's record:

1. The Hearing Examiner's Recommendation (including the findings of fact and conclusions supporting the recommendation) (Attachment A);
2. DPD's recommendation on the rezone request, Hearing Examiner's Exhibit 5 (Attachment B);
3. Master Use Permit detailing location of structures on lots in the rezone area, Hearing Examiner's Exhibit 6 (Attachment C);
4. Admiral neighborhood plan element of the Seattle Comprehensive Plan, Hearing Examiner's Exhibit 9 (Attachment D);
5. Photographs of the buildings within the rezone area, Hearing Examiner's Exhibit 54 (Attachment E);
6. Height study along 42nd Ave SW, Hearing Examiner's Exhibit 14 (Attachment F);
7. Photo excerpts from Exhibit 1, written comments by Dino and Janet Annest (Attachment G)
8. Staff summary of key appeal points (Attachment H);
9. Copies of appeals (Attachment I);
10. Copies of responses to appeals (Attachment J); and
11. Replies to responses to appeals (Attachment K).

Summary of the record

The Hearing Examiner recommended that Council **APPROVE** the rezone request, with no conditions.

The following is a brief summary of the zoning history, the proposed development and the Hearing Examiner's conclusions.

A. Zoning history

The rezone area has been zoned for commercial uses since 1923, variously named 'Business District' and 'Neighborhood Business District'. The current 30-foot height limit was adopted in 1991. Prior to that, the height limit was 40 feet from 1986-1990, 35 feet from 1957 through 1986 and 40 feet from 1923 to 1957.

Most of the rezone area is located within the Admiral Residential Urban Village, approximately ½ mile south of the intersection of California Ave SW and SW Admiral Way. The three parcels located at the southwest corner of the rezone, at SW Hinds Street and California Ave SW, are not located within the Admiral Urban Village. (Attachment D, Hearing Examiner Exhibit #9)

B. Surrounding area

The area to the north of the rezone fronting California Ave SW includes two zones. On the west side of California Ave SW, property is zoned NC2-40, with commercial and mixed use structures, while its east side is zoned SF 5000 and is made up of predominately institutional and recreation uses, including West Seattle High School, Hiawatha Playfield and St John's Episcopal Church.

The area to the south fronting California Ave SW includes an L3-RC zone along its west side, with this area primarily devoted to multifamily uses and some small scale commercial buildings. The east side of California Ave SW south of the rezone area is zoned NC2-40 for one block, with the L3-RC zone continuing on lots further south. To the west and the east of the rezone area are SF 5000 zones with single family homes. Madison Middle School is located approximately two blocks west of the rezone area.

C. Public comment

The record contains extensive public comment provided during DPD's review, prior to the Hearing Examiner's hearing, and in both written and oral testimony at the hearing. Section 16 of the Hearing Examiner's recommendation (Attachment A, Page 4) includes an overview of the public comment process that include:

Exhibit 1 – Four-page comment letter from Dino and Janet Annest, with photos
Exhibit 2 – A five-page petition calling for the denial of the rezone, signed by 70 individuals
Exhibit 3 – An 11 page letter against the petition, with photographs page
Exhibit 48 – written comments both for and against the proposal, accepted by DPD throughout their review

All six appellants provided comment throughout the review of the proposal.

D. Summary of the Hearing Examiner's conclusions

Rezone criteria require an analysis of the effect of a rezone on zoned capacity.

The Hearing Examiner noted that the proposed rezone affects property that is already zoned for commercial use. According to the Hearing Examiner, the rezone would satisfy criteria concerning zoned capacity, as the change in allowed building height (from 30 feet to 40 feet) would provide additional opportunity for residential uses and, therefore, help meet density goals within the urban village. The Hearing Examiner also noted that the rezone would not alter or affect the configuration of the commercial zone nor result in encroachment into a residential zone. The Hearing Examiner did not provide any specific comment on the additional density that could result from rezoning the three parcels at the southwest corner that are outside of the urban village.

Rezone criteria also require an analysis of two factors – whether the requested rezone meets the functional criteria for the proposed zone, and the locational criteria that address the characteristics of the surrounding area. Both sets of criteria must be satisfied in order to approve a rezone.

The Hearing Examiner concluded that the rezone meets some of the functional and locational criteria for the current NC1 zone, noting that the rezone area has:

- small scale businesses serving the adjacent residential neighborhood;
- storefronts are built to the front lot line;
- pedestrian-oriented businesses;
- close proximity to single family zones with limited buffers or transitions;
- limited to moderate transit service; and
- a mix of small and medium sized parcels (2,700 to 10,000 square feet).

The Hearing Examiner then concluded that the rezone site best matches functional and locational criteria for the NC 2 zone. In making this conclusion that Hearing Examiner noted that the rezone area:

- provides for small and medium scale businesses that serve the neighborhood;
- includes storefronts are built to the front lot line; and
- is part of a larger pedestrian oriented shopping area extending along California Ave SW, up to and beyond the intersection of California Ave SW and SW Admiral Way, offering a range of household and personal goods and services.

Pages 26-30 of the DPD Director's report include background on the type and intensity of uses permitted in the NC 1 and NC 2 zones. While both zones typically permit the same range of businesses, NC1 zoned uses are generally limited to 10,000 square feet while similar uses zoned NC 2 are limited to 25,000 square feet. The uses that fall into this category include:

- Drinking establishments
- Restaurants
- Food processing and craft work
- Medical Services
- Offices
- Retail sales and service, general
- Retail sales and service, nonhousehold

In most cases, when a use is prohibited in the NC1 zone, it is also prohibited in the NC2 zone. However, there are a few cases when a use is prohibited in NC1 but allowed in the NC2, up to 25,000 square feet, including:

- Theaters
- Sales and rental of motorized vehicles
- Sales and rental of large boats
- Light manufacturing
- Principal use parking

Following the Hearing Examiner's conclusion that the NC2-40 is the most appropriate zone for the rezone area, the Hearing Examiner then addressed the issue of existing and proposed height related to the zone.

The rezone proposal includes a request to increase the height limit from 30 feet to 40 feet. The Hearing Examiner also supported this request, noting in her conclusions that:

- A 40 foot height limit is consistent with the type and scale of development intended for an NC-2 zone;
- Making provisions for additional height to accommodate residential uses within an urban village is consistent with pedestrian character along California Ave SW;
- The heights along the California Ave SW corridor do not promote a gradual transition between the intensity of development allowed in the NC zone and to those structures permitted in the adjacent SF zone to the east;
- The lack of transitions between zones along the California Ave SW corridor is a common feature, as there are no multifamily residential zones between the commercial and single family zones; and
- Most of the views of properties to the east would be blocked if the (rezone) site was "fully built out" at the current NC1-30 zoning.

The issue of potential view loss resulting from the proposed height increase, and the related increase in intensity of development, is of particular concern to property owners to the east of the rezone. These neighbors are concerned that the height increase would cause significant impacts and, accordingly, argue that the increase in height should not be approved.

There are significant grade changes along the east rezone area, with grade rising to the east from California Ave SW to 42nd Ave SW. The record includes several exhibits addressing the issue of height and view blockage, and its potential impact to the SF 5000 zoned properties to the east of the rezone area including:

- Exhibit 14 (Attachment F), a height study developed by DPD of properties along 42nd Ave SW;
- Exhibit 54 (Attachment E) photographs of buildings within the rezone area that document the grade changes along the north rezone boundary at SW Hanford Street; and
- Exhibit 1, written comment by Appellants Dino and Janet Annest, to refute DPD's assertion that views would not be blocked from the rezone. Photos from Exhibit 1 are included with this report.

Hearing Examiner's Exhibit 14 (Attachment F) documents grades at three points along 42nd Ave SW. This information is used to compare permitted building heights in the Single-family 5000 (SF 5000) zone to the east of the rezone area with permitted heights allowed under both the current and proposed zone. The data used for the analysis was provided from DPD's Geographic Information System (GIS) database. DPD's conclusion, supported by the Hearing Examiner, is that most views from properties to the east would be blocked if development in the rezone area was built to the existing a 30 foot height limit, when viewed from the third floor of a 30 foot tall residential structure allowed in the SF zone to the east. Appellant's Dino and Janet Annest challenge the data in their appeal.

As this general rezone covers all uses permitted in the zone, the specific impact of any new development on adjacent properties is unknown. However, the Hearing Examiner does conclude that existing development standards, SEPA, and design review requirements would provide the opportunity to address site specific impacts that could occur on the adjacent single family zones when new development is proposed.

The Hearing Examiner recommended approval of the request to rezone the properties from NC1-30 to NC2-40.

E. Appeals of the Hearing Examiner's recommendation

1. Appeals

Six appeals of the Hearing Examiner's recommendation were filed on the Hearing Examiner's recommendation:

The Appellants are:

- Dennis Ross
- Olivia Peck
- Dino and Janet Annest
- Cole Peck, Phil Wingard and Lisa Muller, on behalf of 53 individuals living at or near the rezone

- Lynn McIntosh, Chris Caster and Lisa Muller (three adjacent property owners)
- Phil Wingard

The appellants are also considered **parties of record** for the appeal.

In addition, the other **parties of record** are for this appeal are:

- Josh Stepherson, Stepherson Associates on behalf of property owners
- Shelley Bolser, on behalf of the City of Seattle Department of Planning and Development

To assist committee members in their review of the appeals, I have created a summary (Attachment H) of the main points raised by five of the six appellants concerning certain Hearing Examiner rezone conclusions. The appeal brought by Olivia Peck does not raise issue with the Hearing Examiner's findings or conclusions but on how her written comments were reflected in the record and considered by the Hearing Examiner.

Copies of the appeals are included as Attachment I. Please note that the appeals of Lynn McIntosh, Chris Caster and Lisa Muller; Dino and Janet Annest; and Dennis Ross, have two versions with separate dates. In these cases, each submitted an update following my request to clarify the scope of their respective appeals. The amended version has a later date stamp.

Council rules require that a copy of each appeal be sent to everyone who received a copy of the Hearing Examiner's recommendation. Accordingly, 149 copies of the appeal were sent.

2. Standard of Review and Burden of Proof

In making its decision on a quasi-judicial rezone petition the Council applies the ***substantial evidence standard of review***.[3] This means that the Council's decision to approve, deny or remand a recommendation must be based on substantial evidence in the record. The ***Appellants bear the burden of proof*** of demonstrating the Hearing Examiner's recommendation is in error.[4]

3. Requests to Supplement the Record

The Council has not received any formal motions to supplement the record. Similar to appeals, a motion to supplement the record allows a party of record to submit a response or reply to support or refute the request.

"The Council may supplement the record with new evidence or information if the Council determines that ***the new evidence or information was not available or could not reasonably have been produced at the time of the open record hearing*** before the Hearing Examiner."[5] Additionally, "[t]he Council may allow ***oral and written arguments based on the record***."[6]

[3] S.M.C. § 23.76.056.A and Council Quasi-judicial Rule (CQR) § VI.C.5.a.
[4] S.M.C. § 23.76.056.A.
[5] S.M.C. § 23.76.054.E.
[6] S.M.C. §23.76.054.F.

The Annest's written comments to the Hearing Examiner (Hearing Examiner Exhibit 1) included Global Positioning System (GPS) data and photographs to support their claim that the existing NC1-30 zone does not block height to the extent claimed by DPD. As part of their initial appeal filing, Dino and Janet Annest included amended GPS data to update the original data they provided and that was considered by the Hearing Examiner. As part of my initial review of the appeals, I sent a request to the Annest's, asking them to state if they were seeking to formally supplement the record with this information. The Annest's did not submit a formal motion to supplement the record.

In their appeal documents, the Annest's claim that the Hearing Examiner would not allow the amended data in the record at the time of the hearing, as their opportunity to make that request during the hearing had passed and that no additional opportunity to amend the record was provided. This amended data is what they now seek to include in their appeal.

After reviewing these documents, I am recommending that the Annest's additional data not be allowed in the record. The Annest's had opportunities during the hearing to submit the materials in writing through the named appellant. There is no evidence that the Annest's asked the appellant to raise the issue of correcting the written record on their behalf. There is also no evidence of claims that they attempted to contact parties after the hearing was over but while the record was still open. The hearing was concluded on August 18, 2010 but was allowed to stay open, as indicated in the Hearing Examiner's recommendation, for "receipt of the remaining documents from the Council file for the rezone application". This would have been the opportunity to submit written materials directly to the Hearing Examiner, with notice to parties of record, and make a claim why their inclusion was critical to the claims of the appellants.

The record was closed six days later on August 23, 2010. While these appellants are before the Council *Pro Se* and are not represented by an attorney or advocate, there does not seem to be any record of what would be a reasonable request, that being a request to correct the record prior to the Hearing Examiner's review and recommendation.

4. Responses to appeals

DPD and the applicant submitted separate responses to each of the appeals filed in this matter. DPD's responses are in more of a summary form than what was provided by the applicant. The applicant's responses are somewhat detailed but also include examples from the record embedded in their document. The applicant's responses include a table that references each of the appellant's claims. Both DPD and the applicant's responses underscore how the record refutes each of the appellant's claims. These are included as Attachment J.

5. Reply to responses

Three of the appellants – Annest's, McIntosh/Caster/Muller, and Peck/Wingard/Muller – developed replies to specific points raised by DPD, and the applicant to refute their claims. These are included as Attachment K. Another appellant, Phil Wingard, also submitted a reply. As Mr. Wingard's reply was not filed in a timely manner, as required by Council rules, the reply was not accepted.

Next Steps

Council must take action on appealed rezone recommendations within 120 days of the Hearing Examiner's recommendation.[7] Consequently, Council must act on this rezone petition and appeal no later than December 30, 2010. At least one additional meeting will be required for committee members to deliberate and render a decision on the appeals, as well as to make a recommendation to Council on the rezone request. The next available COBE meetings are November 30 and December 8, 2010. The last available Council meeting is December 13, 2010.

[7] S.M.C. § 23.76.005.C.3.b(3).

FINDINGS AND RECOMMENDATION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Application of

JOSH STEPHERSON

for approval of a rezone for property located at 3210 California Avenue SW

CF 3007538

DPD Reference:
308944

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Introduction

Josh Stepherson applied for a rezone of property located at 3210 California Avenue Southwest from Neighborhood Commercial 1 zoning with a 30-foot height limit to Neighborhood Commercial 2 zoning with a 40-foot height limit. The Director of the Department of Planning and Development (Director or Department) submitted a report recommending that the rezone be approved. The Director's report included a SEPA Determination of Non-significance, which was appealed.

A consolidated hearing on the rezone application and SEPA appeal was held before the Hearing Examiner (Examiner) on August 18, 2010. The Applicant represented himself; the Appellants were represented by Dennis Ross; and the Director was represented by Shelley Bolser, Senior Land Use Planner. The record was held open for the Examiner's site visit and was briefly re-opened for receipt of the remaining documents from the Council file for the rezone application. The record closed on August 23, 2010.

The SEPA appeal is addressed in the Hearing Examiner's decision in MUP-10-014(W). For purposes of this recommendation on the rezone application, all section numbers refer to the Seattle Municipal Code (SMC or Code) unless otherwise indicated. Having considered the evidence in the record, the Examiner enters the following findings of fact, conclusions and recommendation on the application.

Findings of Fact

Site and Vicinity

1. The site consists of 30 parcels and is addressed as 3210 California Avenue SW. It is located at the southern end of the Admiral Residential Urban Village (Urban Village) in West Seattle.

2. The site includes three groups of parcels along California Avenue SW (*see* map at page 2 of Exhibit 5):

The east parcels are included within the Urban Village and are bounded by SW Hanford Street to the north, California Avenue SW to the west, SW Hinds Street to the south, and single-family residential lots to the east.

The northwest parcels are also included within the Urban Village and are bounded by SW Hanford Street to the north, California Avenue SW to the east, SW Hinds Street to the south, and an alley to the west. Across the alley are single-family residential lots.

The southwest parcels are not included within the Urban Village and are bounded by SW Hinds Street to the north, California Avenue SW to the east, L3-RC-zoned lots to the south, and an alley to the west. Across the alley are single-family residential lots.

3. The subject property is developed with one- to four-story structures housing residential, mixed use and commercial uses including apartment buildings; medical, dental, real estate law and insurance offices; restaurants; hair and nail salons; a frame shop; a fitness facility; a martial arts facility and others.

4. North of the site along the west side of California Avenue SW is NC2-40 zoning that is developed with one-to four-story structures housing commercial, mixed-use and residential uses, and Lafayette Elementary School, a designated historic landmark. Along the east side of California is a religious institution, West Seattle High School and Hiawatha Playfield, (both designated historic landmarks), and the Admiral Safeway store, which is zoned NC3-40. South of the site along California Avenue SW is NC2-40 zoning on the east side of the street with similar development to that on the north, and L3-RC zoning on the west side that is generally developed with three- and four-story residential and smaller commercial structures. To the east and west of California Avenue SW is single-family residential zoning that is predominantly developed with one- to three-story single-family residential structures. Madison Middle School, a designated historic landmark, is located approximately two blocks to the southwest of the site. Other nearby uses include a public library, theater, health care facility, pharmacy, churches, banks, restaurants, grocery stores, etc.

5. The site is located near the ridge of the West Seattle peninsula and slopes down to the west. There is approximately eight feet of slope across the northwestern and southwestern parcels. The slope across the eastern parcels averages approximately 18 feet, but varies along the block, with some of the adjacent single-family residences that front on 42nd Street SW sitting higher above the subject property than others. The higher properties have views to the west that include the Olympic Mountains and Puget Sound.

6. The site is located within the Seattle Fault Zone, a broad seismic hazard area that encompasses most of West Seattle. It may also contain a steep slope critical area.

7. The site is not located within an overlay district.

8. California Avenue SW is classified as a minor arterial, as well as a mixed use street and a major transit street. It is lined with numerous mature trees. East of California Avenue SW, SW Hanford Street is classified as a local connector, collector arterial, and minor transit street, and has an on-street urban trail bicycle classification. SW Hinds Street, 42nd, 44th and 45th Avenue s SW, and SW Hanford Street west of California Avenue SW, are all classified as non-arterial streets. All streets are fully improved, and most allow parking on both sides. Parking on 42nd Street SW is restricted to one side because the street serves as a fire lane for West Seattle High School. Parking in the area is also available in surface parking lots, and in structured and below-grade garages.

9. The site is served by Metro transit. Five bus routes have stops within three blocks of the site, although some run infrequently and one is effectively unavailable to residents at the end of the school day for the High School.

Zoning History and Potential Zoning Changes

10. The zoning history of the site is as follows:

1923 to 1957 - "Business District" or "Business District C" with a 40-foot height limit;
1957 to 1986 - "Neighborhood Business" with a 35-foot height limit;
1986 to 1990 - "Neighborhood Commercial 1" with a 40-foot height limit
1991 to present - "Neighborhood Commercial 1" with a 30-foot height limit

11. In the mid-1990s, all but the southwestern parcels on the subject site were included within the Urban Village.

12. The Director has proposed text amendments to the City's lowrise multifamily zones that, if approved by the City Council, would consolidate the Lowrise 3 and Lowrise 4 zones and allow building heights up to 40 feet within them.

Neighborhood Plan

13. In evaluating a rezone proposal, consideration is to be given to those parts of a neighborhood plan that have been adopted by the City Council, with particular attention given to any adopted policies that guide future rezones. SMC 23.34.008.D.

14. The rezone policies in the adopted Admiral Neighborhood Plan address only rezones away from single-family zoning outside the Urban Village and rezones to L3 and L4 zoning inside the Urban Village. The adopted Neighborhood Plan does include policies that would apply to development under either NC1-30 or NC2-40 zoning, including a policy that encourages development in conformance with the neighborhood's existing character and scale and promotes a pedestrian-friendly environment (A-P1), and numerous policies that address parking, and traffic and pedestrian safety (A-P5, A-P6A, A-P7, A-P8, A-P9, A-P10 and A-P11).

Proposal

15. The Applicant seeks a rezone of the subject property from Neighborhood Commercial 1 zoning with a 30-foot height limit (NC1-30) to Neighborhood Commercial 2 zoning with a 40-foot height limit (NC2-40). No height limits greater than 40 feet are proposed, and no development project is associated with the rezone.

Public Comment

16. The Director held a public meeting on the proposal on November 8, 2007, and the public comment period was extended to December 5, 2007. During the comment period, the Department received 55 written comments. Thirty-one supported the rezone, and 24 opposed it. Additional comment letters were received after the comment period and were forwarded for the Hearing Examiner's consideration. The Examiner heard testimony from 15 members of the public and received additional written comments, some of which were from those who testified at the hearing. In total, public testimony and comments submitted to the Examiner ran approximately two to one in opposition to the proposed rezone.

17. Comments opposing the rezone raised concerns about height bulk and scale, shadow, privacy and view impacts and potential loss of property value, particularly for properties located east of the site along 42nd Avenue SW; failure to consider differences in elevation along California Street SW and resulting differences in the topographic break between 42nd Avenue SW and California Street SW; the lack of a specific development plan that would allow development impacts for the entire site to be addressed at the rezone stage; potential for subsequent development to escape design review and SEPA review; potential for undesirable businesses; an increase in traffic and resultant congestion and impacts on pedestrian safety; lack of compliance with the unadopted portions of the Admiral Neighborhood Plan; an increase in parking demand and potential loss of on-street parking; lack of adequate transit service; increase in noise resulting from additional people moving to and working in the area as well as additional rooftop mechanical and electronic equipment; an increased number of garbage and delivery trucks in the alley and in the two-way left turn lane of California Street SW; and concerns with the process followed for the rezone.

18. Comments supporting the rezone cited its consistency with surrounding zoning and development and the fact that the area was historically zoned for 40-foot heights; the potential for creation of housing in the Urban Village near schools, libraries and retail services; the potential for reviving this part of the California corridor and encouraging investment in the area, which would bring more density, pedestrian amenities and diverse retail; a preference for these local developers over potential out-of-town developers; parking relief that would result from construction of underground parking when the property is developed; and the idea that NC1-30 zones work for townhouses, but that 40-foot heights are needed for successful mixed use buildings, with the extra floor of housing offsetting the cost of underground parking.

Director's Review

19. The Director reviewed the proposal and public comments, and issued a Determination of Non-significance pursuant to SEPA. In a report dated June 28, 2010, the Director recommended approval of the rezone. (Exhibit 5)

Applicable Law

20. SMC 23.34.008.A requires that the zoned capacity for urban villages be no less than 125% of the growth targets adopted in the Comprehensive Plan for the village. For residential urban villages taken as a whole, the zoned capacity must be within the density ranges established in the Land Use Element of the Comprehensive Plan.

21. SMC 23.34.072 addresses designation of commercial zones. It discourages encroachment of commercial development into residential areas and encourages compact, concentrated commercial areas or nodes over diffuse, sprawling commercial areas.

22. SMC 23.34.074.A provides that the NC1 zone functions to "support or encourage a small shopping area that provides primarily convenience retail sales and services to the adjoining residential neighborhood, where it is possible to achieve "[a] variety of small neighborhood-serving businesses," "[c]ontinuous storefronts built to the front lot lines," "[a]n atmosphere attractive to pedestrians," and "[s]hoppers walk from store to store."

23. SMC 23.34.074.B provides locational criteria for the NC1 zone: "Outside of ... urban villages, or within ... urban villages where isolated or peripheral to the primary business district and adjacent to low-density residential areas," "[l]ocated on streets with good capacity, such as collector arterials," "[n]o physical edges to buffer the residential areas," "[s]mall parcel sizes," and "[l]imited transit service.

24. SMC 23.34.076.A provides that the NC2 zone functions to "support or encourage a pedestrian-oriented shopping area that provides a full range of household and personal goods and services, including convenience and specialty goods, to the surrounding neighborhoods" and "accommodates other uses that are compatible with the retail character of the area such as housing or offices," where it is possible to achieve "[a] variety of small to medium-sized neighborhood-serving businesses," "[c]ontinuous storefronts built to the front lot line," an "atmosphere attractive to pedestrians," and "[s]hoppers can drive to the area, but walk from store to store."

25. SMC 23.34.076.B provides locational criteria for the NC2 zone: "Primary business districts in residential urban villages ... that extend for more than approximately two blocks;" "[l]ocated on streets with good capacity, such as principal and minor arterials, but generally not on major transportation corridors;" "[l]ack of strong edges to buffer the residential areas;" a "mix of small and medium-sized parcels;" and "[l]imited or moderate transit service."

26. SMC 23.34.009 prescribes criteria for a rezone that includes consideration of height limits in commercial zones. Height limits are to be "consistent with the type and scale of development intended for the zone," considering the "demand for permitted goods and services and the potential for displacement of preferred uses." They are also to "reinforce the natural topography of the area and its surroundings," considering the likelihood of view blockage. Height limits established by current zoning are to be considered, and permitted height limits are to be "compatible with the predominant height and scale of existing development, particularly where existing development is a good measure of the area's overall development potential." They are to be "compatible with actual and zoned heights in surrounding areas," and are to provide a "gradual transition in height and scale and level of activity between zones" unless major physical buffers are present.

27. Under SMC 23.34.007.C, compliance with the requirements of Chapter 23.34 SMC constitutes consistency with the Comprehensive Plan for purposes of reviewing proposed rezones. Thus, Plan goals and policies are not separately reviewed.

Conclusions

1. The Hearing Examiner has jurisdiction over this matter pursuant to SMC 23.76.052.

2. SMC 23.34.007 provides that the applicable sections of Chapter 23.34 SMC on rezones are to be weighed and balanced together to determine the most appropriate zone and height designation. In addition, the zone function statements are to be used "to assess the likelihood that the area proposed to be rezoned would function as intended." SMC 23.34.007.A. "No single criterion ... shall be applied as an absolute requirement or test of the appropriateness of a zone designation ... unless a provision indicates the intent to constitute a requirement...." SMC 23.34.007.B. The general rezone criteria, including "zoning principles," are set forth in SMC 23.34.008.

3. The most appropriate zone designation is the one "for which the provisions for designation of the zone type and the locational criteria for the specific zone match the characteristics of the area to be rezoned better than any other zone designation." SMC 23.34.008.B.

4. The proposed rezone satisfies SMC 23.34.008.A, as it would increase the zoned capacity of the urban village, and the capacity would be consistent with the density established in the Urban Village Appendix to the Comprehensive Plan.

5. The site is already zoned and used for commercial development, and the rezone would not affect the compact, concentrated configuration of the commercial area or the preferred configuration and edge protection of adjacent residential zones. Nor would it result in any encroachment of commercial development into residential areas. Therefore, it is consistent with the criteria of SMC 23.34.072 for the designation of commercial zones.

6. The site meets some of the functional and locational criteria for the NC1 zone. It includes a variety of small businesses, some of which serve primarily the adjoining residential neighborhood; many storefronts are built to the front lot line; it has an atmosphere attractive to pedestrians; and shoppers can walk from store to store. The site is adjacent to single family residential areas that are without physical edges to serve as buffers. Transit service could be characterized as limited to moderate. However, with the exception of the southwestern parcels, the site is located inside an urban village and is not isolated from the primary business district. Although located outside the Urban Village, the southwestern parcels are zoned NC1-30 and developed with a restaurant and commercial uses. As a minor arterial, California Avenue SW has better than limited capacity. And with parcels that range from 2,700 square feet to 10,000 square feet in area, the site has a mix of small and medium-sized parcels.

7. The site best matches the functional and locational criteria for the NC2 zone. It provides both small and medium-sized businesses that serve the adjacent and surrounding neighborhoods. Many storefronts are built to the front lot line. The site provides an atmosphere attractive to pedestrians, and an area to which shoppers can drive, park and then walk from store to store along California Avenue SW. The area is really part of the pedestrian-oriented shopping area that extends for several blocks and functions as the primary business district within the Urban Village, offering a full range of household and personal goods and services to surrounding neighborhoods. As noted, there is a mix of small and medium-sized parcels, a lack of strong edges to buffer adjacent residential areas, and transit service that is between limited and moderate.

8. A height limit of 40 feet is consistent with the type and scale of development intended for the NC2 zone. Making provision for additional residential units above a retail base allows for an increase in density within the Urban Village that is consistent with the pedestrian character of the neighborhood and would further support the pedestrian-oriented shopping area along California Avenue SW. There is no evidence of a potential for displacement of preferred uses as a result of increased height at this site.

9. Heights throughout the California Avenue SW corridor generally do not reinforce the natural topography of the area, and development does not provide a gradual transition in height, scale and level of activity between zones. Although the slope across the site provides some topographic break between the site and adjacent single-family development to the east, most views from those residences would be blocked if the site were fully built out at NC1-30 zoning, and any remaining views would be blocked by build-out at NC2-40. This would be an issue to be addressed in design review of projects proposed for the site.

10. The predominant height and scale of existing development on the site is not a good measure of the area's overall development potential. A better measure is the height and scale of development to the north and south on California Avenue SW. During the last 20 years, many parcels within surrounding areas that are zoned for 40-foot heights have been redeveloped, which indicates the area's likely development potential.

11. It is unlikely that the proposed rezone would have a precedential effect in the area since the zoning to the north and south on one side of California Avenue SW is already NC2-40, the adjacent L-3 parcels to the south have been recently developed, and there is an established boundary between commercial development along California Avenue SW and adjacent residential development.

12. Although the adopted Neighborhood Plan does not include policies relevant to the proposed rezone, future development under NC2-40 zoning would meet policy A-P1, because it would conform to the existing character and scale of development along much of the nearby California Avenue SW commercial area, which includes a number of four-story structures.

13. The zoning principles listed in SMC 23.34.008.E are generally aimed at buffering less intensive zones from more intensive zones, if possible. However, as noted above, these principles have not been implemented along most of the California Avenue SW commercial corridor in this area. At the site, the only transition or buffer separating the existing NC1-30 zone on the site from the adjacent SF5000 zoning to the east is the topographic break between the zones. On the west side, an alley provides the only buffer between the two zones. The same conditions exist with respect to the NC2-40 and SF5000 zones to the north and south, with the exception of the buffer provided by West Seattle High School and Hiawatha Playfield to the northwest. Only near the junction of SW Admiral Way and California Avenue SW is there an area of lowrise zoning between neighborhood commercial and single-family residential zones.

14. The slope on the east side of California Avenue SW at the site provides a topographic break of varying proportions between the two zones that would reduce the perceived height of development under either the existing NC1-30 zoning or the requested NC2-40 zoning. In addition, zone boundaries will follow platted lot lines, and commercial uses would face each other across California Avenue SW and face away from adjacent residential areas. Additional transitions to respond to the neighboring single-family development would likely be provided through design review of future development on the site.

15. The proposed rezone would have a positive impact on housing, as it would provide the opportunity for an additional floor of new dwelling units over and above the number that could be provided under the existing NC1-30 zoning. The additional floor could offset some of the cost of underground parking and thereby increase the likelihood that development would occur in this underdeveloped block of California Avenue SW

16. Development of the site to either the existing NC1-30 zoning or the proposed NC2-40 zoning would require additional public services. The Director reviewed a detailed sewer capacity analysis from Seattle Public Utilities based on a full build-out scenario for the site at NC2-40 zoning. The analysis determined that there is sufficient sewer capacity for the maximum development under the proposed rezone. The Director also evaluated the probable impacts of future site development on public services and service capacities,

as well as other environmental impacts, pursuant to SEPA. No unmitigated impacts have been identified.

17. Full build-out of the site under either the existing NC1-30 zoning or the proposed NC2-40 zoning would result in shadows to the north, east and west, depending on the season and time of day, and would impact private views from adjacent properties to the east. The Director determined that review of future site development pursuant to SEPA, design review and other City Code requirements would be sufficient to address these future development impacts.

18. The rezone could create additional employment opportunities in the area by revitalizing the block and increasing the variety of allowed commercial uses.

19. There is no indication in the record that future development under the proposed zoning would have a negative impact on pedestrian safety. It is likely that pedestrian safety would be improved by the new sidewalks, lighting and potential reduction in curbcuts that would accompany new development.

20. There is no indication in the record that future development under the proposed zoning would negatively impact nearby historic landmarks.

21. Changed circumstances are not required before a rezone may be approved, and they are to be considered only as they relate to elements or conditions included in the criteria for the relevant zone. Changed circumstances are not cited in support of the proposed rezone.

22. Weighing and balancing the applicable sections of Chapter 23.34 SMC together, the most appropriate zone and height designation for the site is NC2-40.

Recommendation

The Hearing Examiner recommends that the City Council **APPROVE** the requested rezone.

Entered this 2nd day of September, 2010.

Sue A. Tanner
Hearing Examiner

CONCERNING FURTHER REVIEW

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner's recommendation to consult appropriate Code sections to determine applicable rights and responsibilities.

Pursuant to SMC 23.76.054, any person substantially affected by a recommendation of the Hearing Examiner may submit an appeal of the recommendation in writing to the City Council. The appeal must be submitted within fourteen (14) calendar days following the date of the issuance of the recommendation of the Hearing Examiner, and be addressed to:

Seattle City Council
Built Environment Committee
c/o Seattle City Clerk
600 Fourth Avenue, Floor 3 (physical address)
P.O. 94728 (mailing address)
Seattle, WA 98124-4728

The appeal shall clearly identify specific objections to the Hearing Examiner's recommendation and specify the relief sought. Consult the City Council committee named above for further information on the Council review process.

B

City of Seattle
Michael McGinn, Mayor

Department of Planning and Development
D. M. Sugimura, Director

CITY OF SEATTLE
ANALYSIS AND RECOMMENDATION OF THE DIRECTOR OF THE DEPARTMENT OF PLANNING AND DEVELOPMENT

Application Number:	3007538
Applicant Name:	Josh Stepherson for Roger Casey and Mike Gain
Address of Proposal:	3210 California Avenue SW
Council File:	3007538

SUMMARY OF PROPOSED ACTION

Council Land Use Action to rezone 152,755 square feet of land from NC1-30 to NC2-40. The property includes the east and west block front along California Avenue SW between SW Hanford Street and SW Hinds Street. The block front located on the west side of California Avenue SW, extending south 100 feet from SW Hinds Street is included in the rezone request.

The following approvals are required:

Rezone - To rezone from NC1-30 to NC2-40 (Seattle Municipal Code 23.34).

SEPA - Environmental Determination - Seattle Municipal Code Chapter 25.05.

SEPA DETERMINATION: [ ] Exempt [X] DNS [ ] MDNS [ ] EIS

[ ] DNS with conditions

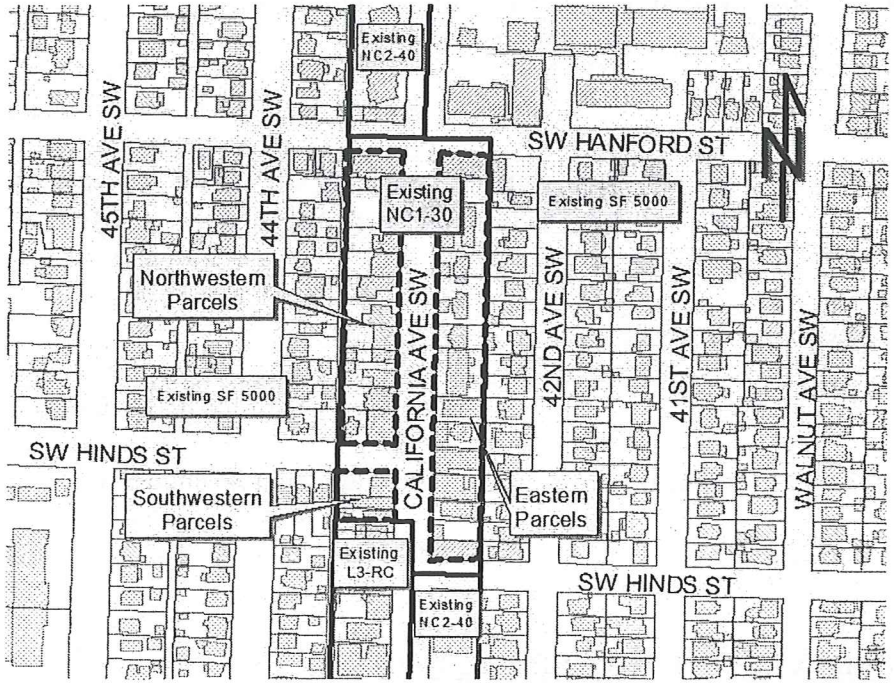
[ ] DNS involving non-exempt grading, or demolition, or another agency with jurisdiction.

City of Seattle Hearing Examiner
EXHIBIT
Appellant ___
Respondent ___ ADMITTED ✓
Department ✓ DENIED ___
5
FILE # CF 308944, MUP-10-014(W)

BACKGROUND DATA

Site and Vicinity Description

The area proposed to be rezoned is located at the southern end of the Admiral Residential Urban Village (ARUV) in West Seattle, along a section of California Avenue SW.



For illustrative purposes only

The site consists of three groups of parcels, for a total of 30 parcels.

The eastern parcels are bordered by SW Hanford Street to the north, California Ave SW to the west, and SW Hinds St to the south, and abut single family residential lots to the east. The eastern parcels are located within the Admiral Residential Urban Village.

The northwestern parcels are bordered by SW Hanford Street to the north, California Ave SW to the east, SW Hinds St to the south, and single family residential lots to the west. An alley separates the northwestern parcels from the single family residential lots to the west. The northwestern parcels are located within the Admiral Residential Urban Village.

The southwestern parcels are bordered by SW Hinds Street to the north, California Ave SW to the east, single family residential lots to the west, and L3-RC zoned lots to the south. An alley separates the northwestern parcels from the single family residential lots to the west. The southwestern parcels are <u>not</u> located within the Admiral Residential Urban Village.

Nearby zoning includes a mix of commercial, multi-family residential, and single family residential. To the north of the site facing California Ave SW, parcels are zoned NC2-40 (Neighborhood Commercial 2 with a 40-foot height limit). To the south of the site facing California Ave SW, parcels on the east side are zoned NC2-40, and parcels on the west side are zoned L3-RC (Lowrise Multi-family Residential with Residential Commercial). Single Family Residential (SF 5000) zoning is located to the east and west of the site.

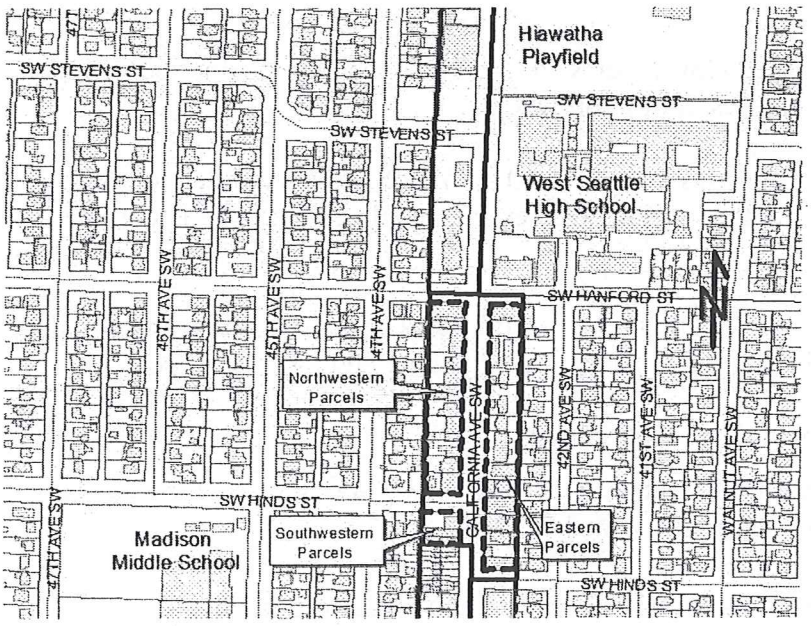
Uses in the area include commercial, residential, and mixed-use along California Ave SW. Areas to the west and east are predominantly single family residential.

Uses along California Ave SW north of the site include a 48-unit apartment building, fast food, grocery, church institution, school, and park. Uses along California Ave SW south of the site include a hospital institution in the commercially zoned area and newer townhouse residential development in the multi-family zoned area. Uses to the east and west include single family structures in the single family zoned areas. Other nearby uses include a public library, a theater, a health care facility, a pharmacy, churches, banks, restaurants, grocery stores etc.

Building heights range from one to four stories along California Ave SW, and one to three stories in the nearby single family residential zones. Existing development represents a wide range of ages and styles of construction.

The area is located near the ridge of the West Seattle peninsula, and slopes down to the west. There is approximately 18 feet of slope across the eastern parcels and approximately 8 feet of slope across the northwestern and southwestern parcels. The site is not mapped with any environmentally critical areas in the City of Seattle mapping system.

Open space in the area includes Hiawatha Playfield, which is a City of Seattle historic landmark located immediately north of West Seattle High School. Other nearby parks include Fairmount Park approximately ¼ mile to the northeast, and Schmitz Park approximately ½ mile to the west.



For illustrative purposes only

Three schools are located nearby. Madison Middle School is located approximately two blocks away, near SW Hinds St and 45th Ave SW, and is a City of Seattle historic landmark. West Seattle High School is located immediately to the northeast at SW Hanford St and California Ave SW, and is also a City of Seattle historic landmark. Lafayette Elementary is located two blocks to the north, near SW Lander St and California Ave SW.

California Avenue SW is classified as a Minor Arterial , a Mixed-Use Street, and a Major Transit Street. SW Hanford St east of California Ave SW is classified as a Local Connector, Collector Arterial, a Minor Transit Street, and an On-Street Urban Trail bicycle classification. SW Hinds St, 42nd Ave SW, 45th Ave SW, and SW Hanford St west of California Ave SW are all non-arterial streets. All streets include on-street parking, sidewalks, and street trees. This section of California Avenue SW has a number of mature trees that line both sides of the street.

Parking in the area is located on-street, in surface parking lots, and in structured and below grade parking.

The site slopes from east to west affording some views to the west. The Olympic Mountains and Puget Sound can be seen from many areas across the site, especially the higher properties east of the proposed rezone area.

Proposal Description

The Land Use Code, Section SMC 23.34, "Amendments to Official Land Use Map (Rezones)," allows the City Council to approve a map amendment (rezone) according to procedures as provided in Chapter 23.76, Procedures for Master Use Permits and Council Land Use Decisions. The owner/applicant has made application, with supporting documentation, per SMC 23.76.040 D, for an amendment to the Official Land Use Map.

The proposal includes a rezone of the parcels from Neighborhood Commercial 1 with a 30' height limit (NC1-30) to Neighborhood Commercial 2 with a 40' height limit (NC2-40). The applicants and their agent have the formal support of the owners of 23 properties within the rezone area.

Public Comments

Notice of the rezone proposal was issued November 8, 2007. The official public notice period was extended to December 5, 2007 as a result of public request.

On November 29, 2007 a public meeting was held by DPD at West Seattle High School. Sixty-two citizens signed the sign-up sheet at the meeting and several people offered public comment on the proposal.

During the official public comment period, DPD received fifty-five comment letters and emails Thirty-one letters and emails were in support of the proposed rezone and 24 were opposed.

Comments opposed to the rezone included the following:

- The existing zoning in the Admiral Residential Urban Village already provides adequate development potential in areas currently zoned NC2-40
- There is no specific development plan
- The proposed rezone does not comply with the Admiral Neighborhood Plan
- The proposed rezone area functions more like an NC1 zone than an NC2 zone
- There is no buffer between the proposed rezone area and the single family zoned areas to the east and west
- Traffic congestion will increase
- New construction in the rezone area will cause construction impacts like noise and dust
- The rezone will result in a decline in property values for properties in the single family zone
- Pedestrian safety could be impacted due to increased traffic
- Undesirable businesses may locate in the new buildings

- An increase in parking demand could result in less available on-street parking
- A long-term increase in noise could occur as a result of more people living and working within the rezone area
- There could be more traffic along the alley on the west side of the rezone area
- Views could be impacted
- New buildings could change the character of the neighborhood
- Neighbors want to preserve the small town feel of the Admiral neighborhood
- Some neighbors think the area is developing just fine
- Growth should be focused in other areas of West Seattle and the City of Seattle
- Development would have a negative impact on affordable housing
- No benefit would be provided to the surrounding neighborhood
- The new structures could result in empty storefronts and eliminate businesses due to lack of on-street parking

Comments of support for the proposal included the following:

- The rezone would help revive the California corridor and the local business area and encourage higher quality, better designed buildings
- Improved storefronts would encourage more business and retail to locate in the area
- Forty foot high buildings would be more consistent with the surrounding area and encourage the creation of more housing in a residential urban village, and reduce the pressure to develop in single family zones
- The current zoning does not encourage investment in the area
- The rezone would locate more housing, services and employment near transit and locate housing near infrastructure and service investments like schools, parks, libraries, and retail
- A 40 foot height limit would make development more likely to occur in the rezone area by allowing an additional floor of housing to offset the cost of underground parking
- Underground parking would reduce the demand for on-street parking
- Historically the area was zoned up to 40 feet so it makes sense to rezone it back to 40 feet.
- The area functions more like NC2 than NC1 zones
- New development would shorten the commutes by co-locating live and work opportunities
- NC1-30 zones work well for townhouses, which the neighbors indicated they do not want to see on this block

ANALYSIS - REZONE

The applicable requirements for this rezone proposal are stated in SMC Sections 23.34.007 (rezone evaluation), 23.34.008 (general rezone criteria), 23.34.009 (height limits), 23.34.072 (designation of commercial zones), and 23.34.074 (NC1 zone, function and locational criteria) and 23.34.076 (NC2 zone, function and locational criteria).

Applicable portions of the rezone criteria are shown in italics, followed by analysis in regular typeface.

SMC 23.34.004 Contract rezones.

*A. **Property Use and Development Agreement (PUDA). The Council may approve a map amendment 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. All restrictions shall be directly related to the impacts that may be expected to result from the amendment. A rezone shall be conditioned on performance or compliance with the terms and conditions of the property use and development agreement. Council may revoke a contract rezone or take other appropriate action allowed by law for failure to comply with a PUDA. The agreement shall be approved as to form by the City Attorney, and shall not be construed as a relinquishment by the City of its discretionary powers.***

The proposed rezone is not a contract rezone and the applicants have not submitted a proposed project for this rezone.

*B. **Waiver of Certain Requirements. The ordinance accepting the agreement may waive specific bulk or off-street parking and loading requirements if the Council determines that the waivers are necessary under the agreement to achieve a better development than would otherwise result from the application of regulations of the zone. No waiver of requirements shall be granted which would be materially detrimental to the public welfare or injurious to property in the zone or vicinity in which the property is located.***

No waivers are being requested as part of the proposed rezone.

SMC 23.34.007 Rezone Evaluation.

*A. **The provisions of this chapter shall apply to all rezones, except correction of mapping errors. In evaluating proposed rezones, the provisions of this chapter shall be weighed and balanced together to determine which zone or height designation best meets these provisions. In addition, the zone function statements, which describe the intended function of each zone designation, shall be used to assess the likelihood that the area proposed to be rezoned would function as intended.***

This rezone is not proposed to correct a mapping error, and therefore the provisions of this chapter apply. In evaluating the proposed rezone the provisions of this chapter have been weighed and balanced together to determine which zone and height designation best meets the provisions of the chapter. Additionally, the zone function statements have been used to assess the likelihood that the proposed rezone will function as intended.

B. No single criterion or group of criteria shall be applied as an absolute requirement or test of the appropriateness of a zone designation, nor is there a hierarchy or priority of rezone considerations, unless a provision indicates the intent to constitute a requirement or sole criterion.

This analysis evaluated the full range of criteria called for and outlined in Chapter 23.34 Amendments to Official Land Use Map (Rezones) as they apply to the subject rezone (listed at the beginning of this "Analysis" section).

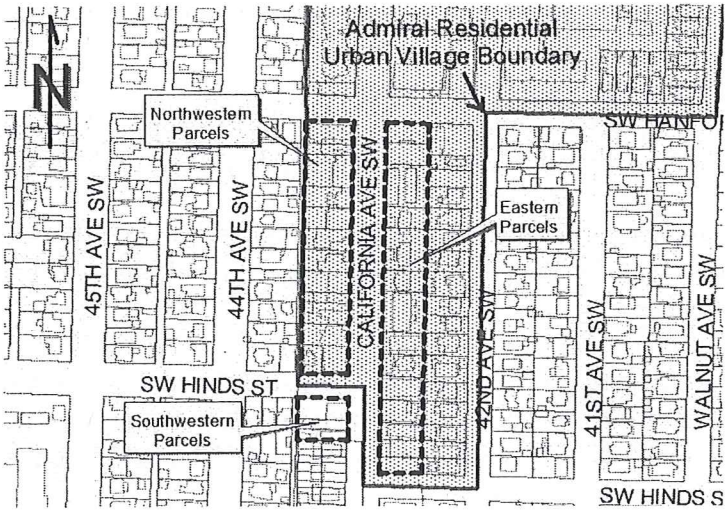
C. Compliance with the provisions of this chapter shall constitute consistency with the Comprehensive Plan for the purpose of reviewing proposed rezones, except that Comprehensive Plan Shoreline Area Objectives shall be used in shoreline environment redesignations as provided in SMC Subsection 23.60.060 B3.

The proposed rezone is not a shoreline environment redesignation and so the Comprehensive Plan Shoreline Area Objectives were not used in this analysis.

D. Provisions of this chapter that pertain to areas inside of urban centers or villages shall be effective only when a boundary for the subject center or village has been established in the Comprehensive Plan. Provisions of this chapter that pertain to areas outside of urban villages or outside of urban centers shall apply to all areas that are not within an adopted urban village or urban center boundary.

The northwestern and eastern parcels of the subject rezone area are within the Admiral Residential Urban Village. Those parcels fall within the boundary established in the Comprehensive Plan.

The southwestern parcels of the proposed rezone area are not within any urban center or urban village. These parcels have been evaluated according to provisions of this chapter that apply to areas that are outside of urban villages and urban centers.



For illustrative purposes only

E. The procedures and locational criteria for shoreline environment redesignations are located in Sections 23.60.060 and 23.60.220, respectively. The subject rezone area is

within the Admiral Residential Urban Village and falls within the boundary established in the Comprehensive Plan.

The subject rezone is not a redesignation of a shoreline environment and so is not subject to Shoreline Area Objectives.

F. Mapping errors due to cartographic or clerical mistakes may be corrected through process required for Type V Council land use decisions in SMC Chapter 23.76 and do not require the evaluation contemplated by the provisions of this chapter.

The subject rezone is not a correction of a mapping error and so should not be evaluated as a Type V Council land use decision.

SMC 23.34.007 Conclusion: The proposed rezone meets the requirements of SMC 23.34.007, per the analysis above.

SMC 23.34.008 General rezone criteria.

A. To be approved a rezone shall meet the following standards:

1. *In urban centers and urban villages, the zoned capacity for the center or village taken as a whole shall be no less than 125% of the growth targets adopted in the Comprehensive Plan for that center or village.*
2. *For the area within the urban village boundary of hub urban villages and for residential urban villages taken as a whole the zoned capacity shall not be less than the densities established in the Urban Village Element of the Comprehensive Plan.*

Northwestern and Eastern Parcels
The northwestern and eastern parcels of the proposed rezone site are located within the Admiral Residential Urban Village Overlay, as described in the response to SMC 23.34.007.D.

The growth target listed for this Residential Urban Village in Urban Village Appendix A of the Comprehensive Plan is for 200 additional dwelling units between the year 2004 and the year 2024.

The established density target for this Residential Urban Village in Urban Village Appendix A of the Comprehensive Plan is a density of 12 dwelling units per acre by the year 2024. In 2004, the density in this Urban Village was listed at 10 dwelling units per acre.

From 2004 through the third quarter of 2009, twenty one (21) new units were built in the Admiral Residential Urban Village (an average of 4.2 units per year). To meet the 20-year goal of 200 new units, the Admiral district will need to average more than 11 new units per year.

The proposed rezone will not reduce the zoned capacity for the Admiral Residential Urban Village. In fact, the proposed rezone will increase zoned capacity and zoned density by allowing for additional building height, gross floor area, and residential units on the northwestern and eastern parcels. This increases the opportunity for additional housing opportunities and commercial uses.

The proposed rezone is consistent with SMC 23.34.008.A.1 because the increase in zoned capacity does not reduce capacity below 125 percent of the Comprehensive Plan growth target.

This rezone is also consistent with SMC 23.34.008A.2 because the proposed change would not result in less density for this zone than the density established in the Urban Village Element of the Comprehensive Plan.

Southwestern Parcels
The southwestern parcels of the proposed rezone area are not located within any urban village or urban center, and therefore these criteria do not apply to that portion of the proposed rezone.

B. Match between Established Locational Criteria and Area Characteristics. The most appropriate zone designation shall be that for which the provisions for designation of the zone type and the locational criteria for the specific zone match the characteristics of the area to be rezoned better than any other zone designation.

Analyses comparing the characteristics of the area to the locational criteria for both NC1-30 and the NC2-40 zoning can be found in the responses to SMC 23.34.072 and 23.34.074 below. The parcels proposed for rezone seem to generally better match the NC2-40 zoning, for the reasons stated in the analysis in SMC 23.34.072 and SMC 23.34.074.

C. Zoning History and Precedential Effect. Previous and potential zoning changes both in and around the area proposed for rezone shall be examined.

The following is a chronological list of the historical zoning for the subject properties:

- 1923 to 1947 - Business District with a 40 foot height limit
- 1947 to 1957 - Business Area District C (BC) with a 40foot height limit
- 1957 to 1986 - Neighborhood Business (BN) with a 35 foot height limit
- 1986 to 1990 - Neighborhood Commercial 1 with a 40 foot height limit (NC1-40)
- 1991 to Present - Neighborhood Commercial 1 with a 30 foot height limit (NC1-30)

CAP Initiative and Remapping - In 1989 Seattle voters passed Initiative 31, Citizen's Alternative Plan (CAP), which set density and height limits on new construction in downtown Seattle. In response to this, and in recognition of citizen concerns about the pace and scale of development, loss of open space, and increasing traffic in areas outside of the commercial core, maximum height limits were reduced in many areas.

Since 1990 the economy in Seattle and the region experienced growth. As part of the Growth Management Act, the city developed the Seattle Comprehensive Growth Plan, which was

adopted in updated in 2004, and made a goal of creating 47,000 additional households by 2024 to accommodate expected growth.

Previous Zoning Change: In the mid-1990's the subject area was included as part of the Admiral Residential Urban Village. NC1 designation is intended for locations outside of urban villages, as described in the locational analysis for SMC 23.34.074 below. NC2 zones are located within urban villages, as described in the locational analysis for SMC 23.34.076 below.

The northwestern and eastern parcels of the subject site were located within the Admiral Residential Urban Village, and the southwestern parcels were located outside the Admiral Residential Urban Village. However, the zoning for all of the subject properties remained NC1-30.

Proposed City-initiated zoning changes currently under review: The 2009 Multi-family code revisions include recommendations to consolidate the Lowrise 3 and Lowrise 4 zones, and allow three to four story building types with building heights of 40 or more feet in these zones. If approved, 40' tall buildings will be permitted in the L3-RC zone on the west side of California Avenue SW immediately south of the subject area.

This change would mean that all properties north and south of the subject properties for this rezone request would be zoned at 40' height. All of the non-public land on California Avenue SW within the Admiral Residential Urban Village, as well as two blocks to the south, would have allowable building heights of 40'or higher, with the exception of the proposed rezone area.

D. Neighborhood Plans

1. *For the purposes of this title, the effect of a neighborhood plan, adopted or amended by the City Council after January 1, 1995, shall be as expressly established by the City Council for each such neighborhood plan.*

Portions of the Admiral Neighborhood Plan were adopted by City Council October 25, 1999. The adopted portions can be found in the City of Seattle Comprehensive Plan Adopted Neighborhood Plans section.

2. *Council adopted neighborhood plans that apply to the area proposed for rezone shall be taken into consideration.*

The subject property falls within the Admiral Neighborhood Planning area and is covered by the adopted portions of the Admiral Neighborhood Plan.

The proposed rezone is consistent with previous and current recommended zoning changes in and around the neighborhood and Urban Village core, and will facilitate future development that will best accomplish the City's planning objectives.

3. *Where a neighborhood plan adopted or amended by the City Council after January 1, 1995, establishes policies expressly adopted for the purpose of guiding future rezones,*

but does not provide for rezones of particular sites or areas, rezones shall be in conformance with the rezone policies of such neighborhood plan.

The adopted portions of the Admiral Neighborhood Plan include the following land use policies to guide future rezones:

A-P2 Maintain the character and integrity of the existing single-family zoned areas by maintaining current single-family zoning outside the urban village on properties meeting the locational criteria for single-family zones.

A-P4 The special L3 and L4 locational criteria for the evaluation of rezones to the L3 and L4 designations inside of urban villages, shall not apply in the Admiral Residential Urban Village.

The proposed rezone subject properties are not located in a single family zone, and L3 zone, or an L4 zone. It doesn't appear the adopted portions of the Admiral Neighborhood Plan include any rezone policies that would apply to the proposed rezone.

E. Zoning Principles. The following zoning principles shall be considered:

1. The impact of more intensive zones on less intensive zones or industrial and commercial zones on other zones shall be minimized by the use of transitions or buffers, if possible. A gradual transition between zoning categories, including height limits, is preferred.

This rezone will lead to a more contiguous and consistent zoning along California Avenue SW. Existing zoning in the Admiral Neighborhood includes commercial zones in close proximity to less intensive zones, and a lack of buffer or transition between zones. For example, the areas north and south of the proposed rezone include Neighborhood Commercial 2 zoning with a 40 foot height adjacent to Single Family Residential 5000 zones.

The proposed rezone will not affect or change any physical buffers. The northwestern and eastern parcels of the proposed rezone fall within already established boundaries (the Admiral Residential Urban Village) and respects platted lot lines. No changes are proposed in the established boundaries between commercial and residential areas. Even though the property is within an urban village, the height limit being requested is not higher than 40 feet.

Future development that exceeds the minimum threshold for design review will be required to go through design review. Thresholds are listed in SMC 23.41; currently the threshold is 4 dwelling units or 4,000 square feet of commercial use. Design review for the subject properties would be reviewed under the existing Design Review Guidelines for Multifamily and Commercial Buildings ("City-wide guidelines") as well as the Admiral Residential Urban Village Design Guidelines ("Admiral guidelines"). The City-wide guidelines include specific guidelines for new development design to respond to adjacent uses (ex. Guidelines A-5 and B-1). The Admiral guidelines include supplemental guidance for design to respond to less intensive adjacent uses. Admiral guideline examples include:

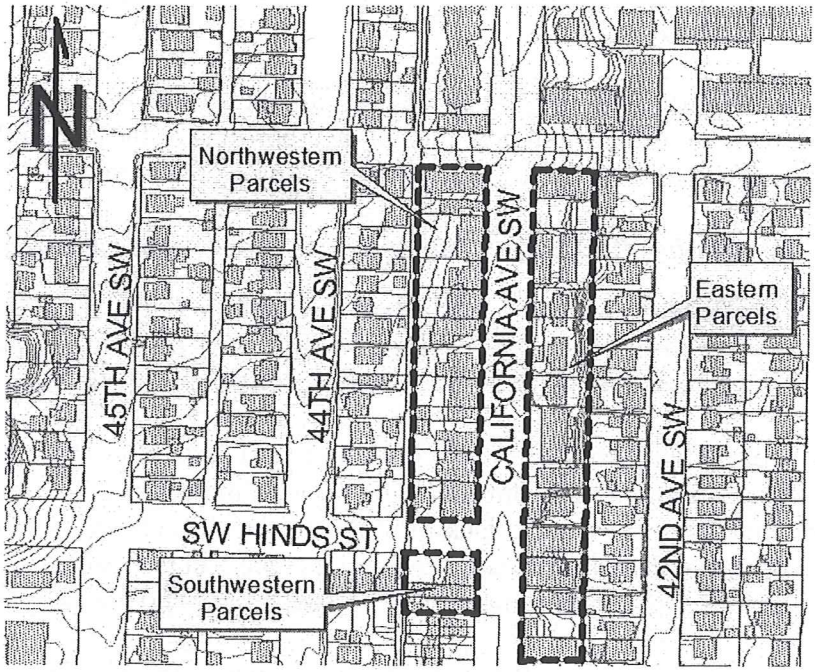
- Guideline A-1, considering solar access to adjacent single family residences
- Guideline A-5, considering privacy impacts to adjacent single family residences

- Guideline B-1, considering height bulk and scale impacts to less intensive adjacent development

2. *Physical buffers may provide an effective separation between different uses and intensities of development. The following elements may be considered as buffers:*
   a. *Natural features such as topographic breaks, lakes, rivers, streams, ravines and shorelines;*
   b. *Freeways, expressways, other major traffic arterials, and railroad tracks;*
   c. *Distinct change in street layout and block orientation;*
   d. *Open space and greenspaces;*

Commercial uses in the area generally front on California Avenue SW. Single family residences generally face the street fronts on 42nd Ave SW and 44th Ave SW.

The single family residences at 44th Ave SW are separated from the commercial uses on California Ave SW by an alley. The grade between California Ave SW and 44th Ave SW is relatively flat. The map to the right includes two-foot topography lines. The property lines at 42nd Ave SW are approximately 8 feet higher than the property lines at California Ave SW.



For illustrative purposes only

The single family residences at 42nd Ave SW share a property line with the commercial uses on California Ave SW. There is a fairly large drop in topography at the shared property line between 42nd Ave SW and California Ave SW. The property lines at 42nd Ave SW are approximately 14 feet higher than the property lines at California Ave SW.

In Seattle neighborhoods, it is common for Neighborhood Commercial development to create a clear edge by extending one lot deep along an arterial, and then transitioning to Single Family zones on either side of the strip of commercial zoning. The neighborhood plan and the rezone criteria encourage the location of neighborhood serving uses in commercial zones along arterials which provide the primary vehicle access to the residential neighborhoods. The zoning pattern in some Seattle neighborhoods provides a multifamily transition zone between the Neighborhood Commercial zone and the Single Family zone. However, that is not the case for many edge conditions along arterials in residential neighborhoods. In this proposed rezone area in the Admiral Neighborhood, the existing edge condition is clearly delineated and emphasized further by topographic breaks between the commercial and residential uses to the east and west of the

arterial, the orientation of the residential and commercial uses facing away from each other, and an alley buffering the residential uses on 44th Avenue SW from the commercial uses on California Avenue SW.

3. *Zone Boundaries*
   a. *In establishing boundaries the following elements shall be considered:*
      (1) Physical buffers as described in subsection E2 above;
      (2) Platted lot lines.

The proposed zoning would replace the existing zoning within the existing platted lot lines, and includes some topographic buffer as described in response to E2 above.

   b. *Boundaries between commercial and residential areas shall generally be established so that commercial uses face each other across the street on which they are located, and face away from adjacent residential areas. An exception may be made when physical buffers can provide a more effective separation between uses.*

Both sides of California Avenue SW are currently zoned NC1-30. The proposed rezone to NC2-40 would maintain the established orientation of commercial uses facing each other across California Avenue SW, and facing away from the single-family residential areas to the east and west of the proposed rezone area.

4. *In general, height limits greater than forty (40) feet should be limited to urban villages. Height limits greater than forty (40) feet may be considered outside of urban villages where higher height limits would be consistent with an adopted neighborhood plan, a major institution's adopted master plan, or where the designation would be consistent with the existing built character of the area.*

As described in response to SMC 23.34.007.D above, the northwestern and eastern parcels of the proposed rezone are located within the Admiral Residential Urban Village. The southwestern parcels are located outside the Admiral Residential Urban Village.

Northwestern and eastern parcels

The proposed forty (40) foot height limit is consistent with the site's location within the Admiral Residential Urban Village. A thirty (30) foot height limit is often used as a buffer between single-family zoned areas on both sides of a commercially zoned arterial and the commercial uses. However, the proposed rezone area is located on a portion of California Avenue SW that includes a slope between the subject property and the adjoining single-family zoned lots to the east, includes an alley between the subject property and the adjoining single-family lots to the west. The commercial height limits along other portions of California Avenue SW to the north and south of the subject property are 40 feet or greater, with the same edge conditions as the proposed rezone area. The height, bulk, and scale impacts of one additional story are not expected to block air and light or adversely impact the residential uses on either side of this portion of California Avenue SW. In terms of massing, the proposed 40 foot height limit would be a continuation of the height limits allowed along other portions of California Avenue SW.

Overall, the proposal would appear to satisfy these criteria for the northwestern and eastern parcels.

Southwestern parcels
The southwestern parcels of the proposed rezone area are outside of the Admiral Residential Urban Village. The adopted Neighborhood Plan polices (described in response to SMC 23.34.008.D.3 above) do not include specific support for higher commercial heights outside of the Residential Urban Village. The subject properties aren't subject to a major institution master plan. Existing development on the southwest parcels is single story commercial.

Overall, the proposal for the southwestern parcels does not appear to satisfy these criteria.

F. Impact Evaluation. The evaluation of a proposed rezone shall consider the possible negative and positive impacts on the area proposed for rezone and its surroundings.

1. Factors to be examined include, but are not limited to, the following:

a. Housing, particularly low-income housing;

The future project will have a positive impact on the supply of housing on the site and its surroundings by providing an additional floor of new dwelling units where none now exist. The rezone will add needed housing capacity to the neighborhood, locate additional housing in the Residential Urban Village, and take pressure off adding housing to the single family neighborhood. Although some of the existing residences on the subject properties may include units that are at the lower end of market rate housing, none of the properties are designated "low-income" as defined by the Land Use Code or Seattle Office of Housing.

b. Public services;

Though demand for public services may increase with an increased population of residents, the added population will strengthen the community by contributing to the critical mass necessary to support neighborhood services. The increased security provided by a developed site with security lighting and the surveillance of eyes on the street provided by multiple residents is seen as having a positive impact, and may be seen as mitigating the increased demand.

c. Environmental factors, such as noise, air and water quality, terrestrial and aquatic flora and fauna, glare, odor, shadows, and energy conservation;

Noise – No significant impacts are anticipated from the change in zone. With development in the future, noise will be limited to that typically generated by neighborhood commercial and residential activities.

Air quality – No noticeable change in impacts will result from a change in zoning to allow one additional story of residences. Future Air Quality measures will comply with applicable Federal, State, and City emission control requirements. Future development could potentially be registered with the "Leadership in Energy and Environmental Design" (LEED) Rating system. Strategies to achieve a rating will reduce the impact on air quality, including CFC reduction in HVAC equipment, Ozone Depletion prevention, and Indoor Environmental Quality measures.

Water quality – No noticeable change in impacts will result from change in zoning. Storm water runoff from future development will be conveyed to a city drainage system. Pervious concrete paving will potentially be proposed to collect and treat portions of parking area sheet flow before infiltration on site. Storm water collection and management would be in conformance with City of Seattle standards. The proposed rezone would not create the potential for any more impervious surface than would be possible under existing zoning.

Flora and fauna – No noticeable change in impacts will result from a change in zoning, with or without the rezone. Existing landscaping and trees will potentially be removed for future construction, but additional vegetation would be required per SMC 23.47A. The change in zoning would not reduce the vegetation requirements for future development.

Glare – No noticeable change in impacts will result from a change in zoning.

Odor – No noticeable change in impacts will result from a change in zoning.

Shadows – Potential development will create additional shadows on its north, east and west sides, depending on season and time of day. As described in the response to SMC 23.34.008.E above, future development would likely be subject to design review, which would include consideration of shadow impacts.

Energy – No noticeable change in impacts will result from a change in zoning. Future development in any case will comply with the City of Seattle Build Smart energy conservation program, incorporating increased thermal insulation, improved glazing, and efficient lighting.

Views – The Olympic Mountains and Puget Sound are visible from many parts of the site, including public rights of way and private properties. DPD has considered the potential impacts of the proposed rezone on adjacent views. It appears full build-out under existing NC1-30 zoning would block most, if not all private views from adjacent properties to the east. There would be no appreciable difference to private views between NC1-30 zoning and NC2-40 zoning.

d. Pedestrian safety

No noticeable change in impacts will result from change in zoning. Future development will provide new sidewalks and supply all boundaries with appropriate lighting for pedestrians. As described in the response to SMC 23.34.008.E above, future development would likely be subject to design review, which would include review of the pedestrian environment.

e. Manufacturing activity;

Not applicable.

f. Employment activity;

Future developments may create greater employment opportunities by increasing the variety of allowed commercial uses in the rezone area.

g. Character of areas recognized for architectural or historic value;

The nearest historic landmarks are Madison Middle School two blocks to the west, West Seattle High School approximately ½ block to the north, and Hiawatha playfield approximately 1 block to the north (described and shown in the Site and Vicinity description above). No noticeable change in impacts will result from the proposed change in zoning. Future development character should be appropriate to its Admiral Residential Urban Village context. As described in the response to SMC 23.34.008.E above, future development would likely be subject to design review, which would include review of the proposed design in context with surrounding development.

h. Shoreline view, public access and recreation.

No noticeable change in impacts will result from a change in zoning. With redevelopment of the rezone area made more likely with the rezone, greater opportunities may exist for future development of public amenities. No adverse impacts to nearby parks are anticipated. Views of the shoreline would not be impacted by the proposed rezone.

2. *Service Capacities. Development which can reasonably be anticipated based on the proposed development potential shall not exceed the service capacities which can reasonably be anticipated in the area, including:*
   a. *Street access to the area;*
   b. *Street capacity in the area;*
   c. *Transit service;*
   d. *Parking capacity;*

California Avenue SW is an arterial that provides north-south access through West Seattle. The segment of SW Hanford Street from California Avenue SW to 37th Avenue SW also is an arterial.

In response to criteria (a) through (d), the street access, street capacity, transit service and parking are discussed in the SEPA analysis below.

e. Utility and sewer capacity;

Seattle Public Utilities (SPU) completed an analysis of the flow capacity of the pipes in the existing system. The analysis was based on the assumption that the residential units will be split between one and two bedroom units with an average gross floor area of 800 square feet per unit. The analysis was done for the maximum likely potential development that would be allowed in the proposed NC2-40 zone. The uses that would be likely at this site that would create the highest demand for sewer capacity are restaurant and residential.

The calculations indicated that the proposed rezone would result in a likely build out of 386 residential units and 172 employees for the commercial area. This would be approximately 96 more units and the same number of employees that would result from full build out under

existing NC1-30 zoning. These calculations were used by SPU to determine sewer demand and compare the proposal to existing sewer capacity.

Calculations:

Residential assumptions:

1. NC1-30 zoning could include 3 stories of residential use
2. NC2-40 zoning could include 4 stories of residential use
3. 60% parcel lot area for residential units
4. 20% common space/amenity (stairs, elevators, hallways etc.)
5. Average 800 square foot units
6. Four floors of residential use

Commercial use assumptions:

7. 40% parcel lot area for commercial development
8. 20% common space/amenity (stairs, elevators, hallways, mechanical etc.)
9. 300 square foot per employee
10. Commercial located on ground floor; no change to ground floor commercial development possible under proposed rezone (only maximum size of business, and some uses)

Residential use calculations:

- Total land area: 161,028 square feet
  - 60% could be developed in residential use for each story (161,028 x 0.60 = 96,617 square feet)
    - Of that area, 20% would be required for common residential amenity space (96,617 x 0.20 = 19,323)
    - Remaining residential area per floor is 77,294 square feet (96,617 – 19,323 = 77,294)
  - Existing zoning (NC1-30)
    - 77,294 square feet per story x 3 stories of residential = 231,882 square feet of residential
    - 309,176 square feet of residential / 800 square feet per unit = **290 unit capacity likely under existing zoning**
  - Existing zoning:
    - 77,294 square feet per story x 4 stories of residential = 309,176 square feet of residential
    - 309,176 square feet of residential / 800 square feet per unit = **386 unit capacity likely under proposed rezone**
  - There would be a net increase of approximately 96 units that could be built on the subject properties as a result of the proposed rezone

Commercial use calculations:

- Total land area: 161,028 square feet
  - 40% could be developed in commercial use at the ground floor (161,028 x 0.40 = 64,411 square feet)

- Of that area, 20% would be required for common area and mechanical area (64,411 x 0.20 = 12,882 square feet)
- The remaining commercial use would be 51,529 square feet (64,411-12,882 = 51,529)
- The employment density is 1 person per 300 square feet of commercial use (51,529 / 300 = 172)
- The amount of employees likely for commercial area under the proposed rezone is **172 people**
- There would be no net increase in the commercial area that could likely be built on the subject properties as a result of the proposed rezone

Conclusion: SPU indicated that as a result of the analysis, there is sufficient sewer capacity in the area for maximum development likely under the proposed rezone. Any future development will go through city review and be required to meet/conform to city of Seattle standards, codes and/or ordinances.

f. Shoreline navigation

The area of the rezone is not located within a shoreline environment so shoreline navigation is not applicable to this rezone.

No significant impacts are anticipated as a result of this rezone.

G. Changed circumstances. Evidence of changed circumstances shall be taken into consideration in reviewing proposed rezones, but is not required to demonstrate the appropriateness of a proposed rezone. Consideration of changed circumstances shall be limited to elements or conditions included in the criteria for the relevant zone and/or overlay designation in this chapter.

A Growing Population and Economy: In 1990 the Puget Sound Council of Governments projected the need for 34,000 new households over the next 30 years (2020). Since that time the economy in Seattle and the region experienced robust growth as Seattle established itself as one of the most desirable places to live and work. As a result, in 2004 Seattle projected the need for 47,000 additional households by 2024 to accommodate expected growth.

Growth Management Act (GMA): In 1990 the Legislature found that "uncoordinated and unplanned growth, together with a lack of common goals… pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of this state. It is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning." (RCW 36.70A.010) This is the foundation for the Growth Management Act (GMA).

As a result, the State directed 29 counties and the 218 cities within the state to establish plans for growth based on certain requirements. These jurisdictions included Seattle and some of the other fastest-growing counties and the cities.

Several goals of the GMA were to focus urban growth in urban areas, reduce sprawl, provide efficient transportation, encourage affordable housing, and encourage sustainable economic development.

Seattle Comprehensive Growth Plan: In 1994, in response to the State Growth Management Act of 1990, the City of Seattle adopted a Comprehensive Growth Plan. The Comprehensive Plan established 20-year housing unit growth targets for Urban Centers, Center Villages, Hub Urban Villages, and Residential Urban Villages.

Investing in Seattle's Urban Villages: By the year 2000, Seattle's urban village areas housed 32% of the city's population. As part of the Comprehensive Growth Plan they are expected to accommodate most of Seattle's new housing units. As a result, the city is making infrastructure investments in and around urban villages to improve transit access, to create more walkable communities and to provide attractive residential and commercial environments.

In the mid-90's, Admiral was identified as a Residential Urban Village (RUV). In the 2004 Comprehensive Plan update the Admiral RUV was given a 2024 growth target of 200 additional households. From 2004 through the third quarter of 2009, twenty one (21) new units were built in the Admiral Residential Urban Village (an average of 4.2 units per year), as described in response to SMC 23.34.008.A above.

The adoption of the Comprehensive Plan (1994), the designation of the Admiral Residential Urban Village (mid-1990's), and the adoption of the 2024 growth target for the Admiral Residential Urban Village (2004) are all circumstances that have changed since the most recent zoning change for this area in 1991 (described in response to 23.34.008.C above).

Transportation: Since 1990, the city of Seattle and its transit partners have made significant street and transit investments to keep people, goods and services moving. As part of the Complete Streets initiative investments are being made to provide people with options to single occupancy vehicles.

At the time of the 1990 "remapping" the West Seattle/Delridge peninsula had 14 Metro bus routes serving the area. Bus frequency of service was generally every thirty minutes on weekdays and Saturdays and every 60 minutes during evening hours and on Sundays. Limited investments were being made to the right-of-way due to limited funding.

Since that time, transit service in the area has improved substantially, leading to a decrease in the percentage of single occupancy vehicle trips. Today, West Seattle is served by more than 20 routes and the frequency has been reduced to generally 10-15 minutes during peak hours and 15-45 minutes during off peak hours.

Seattle Department of Transportation (SDOT), as part of *Bridging the Gap*, is making a number of improvements to the city transportation network. Some of these improvements are targeted to

increase transit speed & reliability in West Seattle. Metro is continuing to add service hours and will be introducing Bus Rapid Transit to West Seattle by 2012 as part of *Transit Now*.

Metro has also established a seasonal water taxi that provides service from Alki to Downtown Seattle. There are efforts underway to secure funding establish a year round ferry taxi service.

These transit service increases are circumstances that have changed since the most recent zoning change for this area in 1991 (described in response to 23.34.008.C above).

H. Overlay Districts. If the area is located in an overlay district, the purpose and boundaries of the overlay district shall be considered.

This site is located in the Admiral Residential Urban Village overlay, directly south of and adjacent to the commercial center. A strategy of the neighborhood plan is to add high density residential in the single block zones around the commercial core for this area. This rezone would support this goal.

I. Critical Areas. If the area is located in or adjacent to a critical area (SMC Chapter 25.09), the effect of the rezone on the critical area shall be considered.

No critical areas are located in or adjacent to the site.

SMC 23.34.008 Conclusion: The proposed rezone meets almost all the requirements of SMC 23.34.008, per the analysis above. The only exception is that the southwestern parcels do not meet SMC 23.34.008.E.4 because these parcels are located outside the Admiral Residential Urban Village.

23.34.009 Height limits of the proposed rezone. Where a decision to designate height limits in Neighborhood Commercial or Industrial zones is independent of the designation of a specific zone, in addition to the general rezone criteria of Section 23.34.008, the following shall apply:

A. Function of the zone. Height limits shall be consistent with the type and scale of development intended for each zone classification. The demand for permitted goods and services and the potential for displacement of preferred uses shall be considered.

As Seattle's Comprehensive Plan states, "The preferred development character is to be achieved by directing future growth to mixed use neighborhoods, designated as "urban villages", where conditions can best support increased density". These villages should "function primarily as compact neighborhoods providing opportunities for a wide range of housing types and a mix of activities that support the residential population". The proposed rezone lies within the boundaries of the Admiral Residential Urban Village.

Responding to the demand for more, and more affordable, housing in West Seattle, an increase of ten (10) feet in the height limit for this block of California Avenue SW would enable property owners to build an additional floor of housing in new developments. This will result in increased

housing capacity for the village and more choices and opportunities for those seeking housing. Increasing the building capacity on these properties will provide the needed incentive for builders to create more housing by bringing down the per-unit costs of these new developments.

This rezone will encourage the creation of more pedestrian-oriented shopping that will provide a broader range of goods and services for the surrounding neighborhood and greater West Seattle area. This will allow local residents to stay in the neighborhood to shop rather than make an additional car trip to an outlying shopping area.

If approved, the proposed rezone will likely lead to increased building activity in the area due to improved financial returns. The most likely development will be ground floor commercial with three to four floors of residential above. This is the preferred type of usage in the residential urban village.

The northwestern and eastern parcels of the subject area are within a Residential Urban Village where height limits of greater than forty (40) feet may be considered, per the analysis in SMC 23.34.008.E.4 above. The southwestern parcels are not within the Residential Urban Village.

The requested height limit for this rezone is forty (40) feet. The zone allows for the same multifamily residential uses that are allowed in the zone, so there is no potential to displace preferred uses.

B. Topography of the Area and its Surroundings. Height limits shall reinforce the natural topography of the area and its surroundings, and the likelihood of view blockage shall be considered.

California Avenue SW, which runs north and south, has a slight east to west slope running along its length. This provides a buffer between the commercial and single-family residential areas as well as some views for this street and for the residential streets to the east. The single-family properties on the adjacent residential streets (42nd and 44th Avenues SW) were not built with an orientation toward local views. Homes of their era were consistently oriented toward their sidewalks, streets, and neighboring homes. Most of the housing and surrounding structures in the area were constructed when the building height limit for this section of California Avenue SW had a height limit of forty (40) feet (between 1923 and 1957), 35 feet (between 1957 and 1985) and 40 feet (between 1986 and 1990). This may have contributed toward homes not being oriented toward the west.

Taking into account existing topography, any existing views would be blocked by the currently permitted thirty (30) foot building height limits in the subject area, as described in the response to SMC 23.34.008.E.4 above.

C. Height and Scale of the Area.

1. *The height limits established by current zoning in the area shall be given consideration.*
2. *In general, permitted height limits shall be compatible with the predominant height and scale of existing development, particularly where existing development is a good measure of the area's overall development potential.*

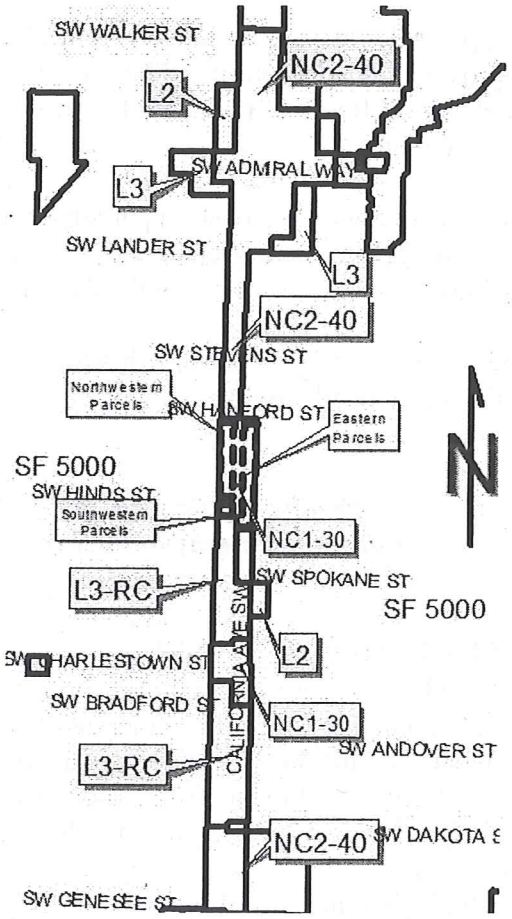
The current height limit is thirty (30) feet, although some buildings exceed this due to higher limits in the past. The current height limit on commercial properties to the north and south is forty (40) feet, as described in the "Site and Vicinity" section above. In the surrounding forty (40) foot zoned areas many parcels have been redeveloped in the last 20 years. This indicates that the area's overall development potential is high and there is sufficient residential and commercial demand for new development in the rezoned area.

D. Compatibility with Surrounding Area.

1. *Height limits for an area shall be compatible with actual and zoned heights in surrounding areas excluding buildings developed under Major Institution height limits; height limits permitted by the underlying zone, rather than heights permitted by the Major Institution designation, shall be used for the rezone analysis.*
2. *A gradual transition in height and scale and level of activity between zones shall be provided unless major physical buffers, as described in Subsection 23.34.008.D.2 are present.*

The subject properties are not in or near a Major Institution.

A forty (40)-foot tall single use residential building is located in the rezone area (southeast corner of SW Hanford St and California Ave SW), as well as several 40-foot tall residential use and mixed-use buildings on the commercial blocks to the north and south. Changing the height for the subject properties to forty (40) feet would result in a contiguous line of building heights for several blocks of California Avenue SW.



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The corridor along California Ave SW is zoned for Neighborhood Commercial or Lowrise 3 or 4. This area of West Seattle typically exhibits a lack of transition from Neighborhood Commercial to the adjacent Single Family residential zones. The zoning near the Admiral Junction (SW Admiral Way & California Ave SW) is the only area that provides Lowrise zoning between Neighborhood Commercial and Single Family residential zones.

As described in the "Site and Vicinity" section above, the topography of this area slopes down from east to west, with a larger drop in topography immediately east of California Ave SW. This drop is more pronounced at the eastern parcels of the subject properties than in properties to the north and south. This means that the existing topography of the site provides a better transition

in height to the single family development to the east than currently exists in other nearby zone edges.

As described earlier, the proposed changes to the Multi-family code sections of the Land Use Code include recommendations to increase the height of Lowrise 3 and Lowrise 4 (L3 and L4) zones to 40' height, which would be consistent with the 40' height of many Neighborhood Commercial zones nearby.

The proposed rezone would be consistent with the transition of commercial zoned heights and proposed multi-family zoned heights to nearby single family zoned heights in the area.

E. Neighborhood Plans

1. *Particular attention shall be given to height recommendations in business district plans or neighborhood plans adopted by the City Council subsequent to the adoption of the 1985 Land Use Map.*
2. *Neighborhood plans adopted or amended by the City Council after January 1, 1995 may require height limits different than those that would otherwise be established pursuant to the provisions of this section and Section 23.34.008.*

As described in response to SMC 23.34.008.D above, portions of the Admiral Neighborhood Plan were adopted by City Council and are included in the Seattle Comprehensive Plan. Adopted goals and policies that address height in the Admiral Neighborhood include:

A-G1: Land use within the residential urban village that conforms to Admiral's vision of a neighborhood with a pedestrian oriented small town atmosphere.

A-P1: Encourage development that conforms with the neighborhood's existing character and scale, and further promotes a pedestrian-friendly environment.

A-P2: Maintain the character and integrity of the existing single-family zoned areas by maintaining current single-family zoning outside the urban village on properties meeting the locational criteria for single-family zones.

A-G10: A Residential Urban Village with a vibrant and attractive character

There are no adopted goals or policies that specifically address height in the Admiral Neighborhood.

SMC 23.34.009 Conclusion: The proposed increase in height from 30 feet to 40 feet would meet the criteria of SMC Section 23.34.009, as described above.

SMC 23.34.072 Designation of Commercial Zones:

A. The encroachment of commercial development into residential areas shall be discouraged.

Commercial development is already allowed in the existing NC1-30 zone. The proposed NC2-40 rezone would allow a wider variety of commercial uses, and larger individual business sizes for many uses. There will be no additional encroachment of commercial development into residential areas.

B. Areas meeting locational criteria for single-family designation may be designated NC130'/L1, NC2 30'/L1 or NC3 30'/L1 only as provided in Section 23.34.010.

The area does not meet the locational criteria for a single-family designation.

C. Preferred configuration of commercial zones shall not conflict with the preferred configuration and edge protection of residential zones as established in Sections 23.34.010 and 23.34.011 of the Seattle Municipal Code.

The site is currently configured as a commercial zone. The change in designation from NC1-30 to NC2-40 would not change the configuration and the edge protection of the adjacent single-family residential zones as established in Sections 23.34.010 or 23.34.011 of the Seattle Municipal Code.

D. Compact, concentrated commercial areas, or nodes, shall be preferred to diffuse, sprawling commercial areas.

The change in the designation of the site from NC1-30 to NC2-40 would not diminish the compact and concentrated character of the existing commercial area along California Avenue SW. The proposed rezone would not enable diffusion or sprawl of the existing commercial area.

Commercial development is located along both sides of California Avenue SW from SW Walker Street southward to SW Hinds Street and begins again at SW Dakota Street continuing south to the Alaska Junction and beyond. The linear pattern of commercial development along California Avenue SW would not be characterized as sprawling, but rather as a concentrated commercial corridor along both sides of a major arterial.

E. The preservation and improvement of existing commercial areas shall be preferred to the creation of new business districts.

The proposed rezone would not result in an expansion of the existing commercial area occupied by the existing commercial uses. No new business districts would be created by the proposal. A rezone of the area could be considered an intensification of the existing business district because it would allow an increase in the variety of commercial uses without creating a new business district.

SMC 23.34.072 Conclusion: The subject property has been zoned for commercial purposes since the 1920's and has continually functioned as such. The area is currently zoned for commercial development and a change from NC1-30 to NC2-40 will not constitute an encroachment into the surrounding residential areas. Continuing the designation of the site as commercial will not conflict with the preferred configuration and edge protection of the adjacent residential zones nor will it diminish the compact and concentrated character of the existing commercial area along California Avenue SW. The proposed rezone would not enable diffusion or sprawl of the existing commercial area. The proposed rezone from NC1-30 to NC2-40 would meet the criteria of SMC Section 23.34.009, as described above.

SMC 23.34.074 Neighborhood Commercial 1 (NC1) zone function and locational criteria:

A. Function. To support or encourage a small shopping area that provides primarily convenience retail sales and services to the adjoining residential neighborhood, where the following characteristics can be achieved:

1. *A variety of small neighborhood-serving businesses;*
2. *Continuous storefronts built to the front lot line;*
3. *An atmosphere attractive to pedestrians;*
4. *Shoppers walk from store to store.*

The subject properties include storefronts built to the front lot line, residential structures converted to commercial purposes, commercial structures with parking in front, residential and commercial structures with courtyard style entrances, single use residential structures, and parking lots. The block has an atmosphere attractive to pedestrians who can walk from store to store.

Businesses at the site include real estate offices, law offices, doctors, dentists, hair salons, eating and drinking establishments, large residential buildings, as well as mixed-use buildings. The commercial properties provide services to the surrounding neighborhood and also to the greater West Seattle area. Businesses are accessed by car, public transportation, bike, or by walking from the immediate neighborhood and greater West Seattle area.

The rezone area is better suited to, and presently functions more like, an NC2 than an NC1 zone designation because it is located within a large, multi-block shopping area on a primary arterial with a number of small and medium sized businesses that serve an area larger than the immediate residential neighborhood.

B. Locational Criteria. A Neighborhood Commercial 1 zone designation is most appropriate on land that is generally characterized by the following conditions:

1. *Outside of urban centers and urban villages, or within urban centers or urban villages where isolated or peripheral to the primary business district and adjacent to low-density residential areas;*
2. *Located on streets with limited capacity, such as collector arterials;*
3. *No physical edges to buffer the residential areas;*

4. *Small parcel sizes;*
5. *Limited transit service.*

The northwestern and eastern parcels of the subject property are inside the Admiral Residential Urban Village. These parcels are the only commercially zoned blocks with an NC1-30 designation within the ARUV. All other commercially zoned blocks in the ARUV are zoned NC2-40. The primary business area is located inside of the ARUV and stretches for approximately 6 blocks of California Ave SW.

The southwestern parcels are adjacent to, but outside of the ARUV, as noted in earlier analysis. These parcels currently contain 1-story restaurant and commercial uses.

All the parcels of the subject property are located on California Ave SW, which is a Minor Arterial. SW Hanford St is adjacent to the north end of the site and is designated a Collector Arterial (a less intensive designation than a Minor Arterial). SW Hines St is near the south end of the site and is a neighborhood non-arterial street. There is good capacity on the streets and sidewalks.

There is an alley separating the Neighborhood Commercial properties from the residential development to the west. A topographic difference of approximately 14' separates the Neighborhood Commercial properties from the residential development to the east.

The original platted parcels in this area measured 2500 square feet in size, but many parcels have been combined to single developed lots. The average lot is approximately 5,334 square feet in size, which isn't a particularly small parcel size for neighborhood commercial development in this area.

There is a moderate level of transit service along and near California Avenue SW. The area is served by five bus routes (128, 55, 51, 85, and 57) that provide service to key employment, retail and educational centers that include downtown Seattle, South Center, Alaska Junction, Delridge and South Seattle Community College.

SMC 23.34.074 Conclusion: The site only marginally meets the threshold Functional Criteria for NC1. There are a variety of businesses providing services to the surrounding neighborhood as well as the greater West Seattle community. The site has storefronts built to the front lot line in a pedestrian-oriented environment. The northwestern and eastern parcels are located inside the Admiral Residential Urban Village. California Ave SW is a Minor Arterial, which carries more traffic than a Collector Arterial. The subject parcels are separated from adjacent single family residential by either an alley or topography change. The lot sizes range from approximately 2,700 square feet to 10,000 square feet in size, which is representative of platting in the area. There is a moderate level of transit service.

SMC 23.34.076 Neighborhood Commercial 2 (NC2) zones, function and locational criteria:

A. ***Function. To support or encourage a pedestrian-oriented, shopping district that provides a full range of household and personal goods and services, including***

convenience and specialty goods, to the surrounding neighborhoods, and that accommodates other uses that are compatible with the retail character of the area such as housing or offices, where the following characteristics can be achieved:

1. *A variety of small to medium-sized neighborhood-serving businesses;*

As described above, a variety of sizes and types of retail and other commercial businesses exist at street level in the rezone area.

Existing ground floor uses within the proposed rezone area include:

- Picture framing shop
- Fitness facility
- Martial arts facility
- Hair salon
- Real estate offices
- Nail salon
- Medical dental office
- Attorney's office
- Approximately 15 apartment buildings

A full range of goods and services is available in the immediate vicinity of the subject properties:

- Lafayette Elementary (3 blocks), Madison Middle School (1.5 blocks), West Seattle High (1 block).
- Hiawatha Park Community Center, soccer and baseball fields, tennis courts, playground and pool (2 blocks)
- Fairmount Park and Ravine (5 blocks)
- Admiral Public Library (5 blocks)
- Swedish Medical Center clinic (1 block)
- West Seattle Dental (within the rezone area)
- Admiral Theatre (3.5 blocks)
- Three specialty grocery stores (within 5 blocks)
- Two churches (within 5 blocks)
- Two banks (within 3 blocks)

The proposed rezone could result in larger individual businesses for the following uses (See SMC 23.47A.004 Chart A for specific requirements and conditions associated with uses):

Use	NC1-30 sq.ft. allowed	NC2-40 sq.ft. allowed
Agricultural uses (aquaculture and horticulture)	10000	25000
Eating and drinking establishments	10000	25000
indoor sports and rec	10000	25000
food processing/craft work	10000	25000
medical services	10000	25000
offices	10000	25000

Auto sales and service		
retail sales and service	10000	25000
General sales and service	10000	25000-50000
Heavy Sales and service		
retail of major durables and non-household	10000	25000
Marine Sales and service		
marine service stations	10000	25000
sales and rental of small boats	10000	25000
minor vessel repair	10000	25000
Institutions	10000	25000
Public facilities - work release centers	10000	25000
Utility Services	10000	25000

NC2-40 zoning would also permit the following uses that are not permitted under the existing NC1-30 zoning (See SMC 23.47A.004 Chart A for specific requirements and conditions associated with uses):

Use	Allowed in NC2 and not NC1
Entertainment	
adult cabarets	allowed
theater and spectator sports	allowed
lodging	allowed with conditional use
Auto sales and service	
sales and rental	allowed
vehicle repair	allowed
Marine Sales and service	
sales and rental of large boats	allowed
light manufacturing	allowed
Parking	
Dry boat storage	allowed
Principal use parking	allowed

2. *Continuous storefronts built to the front lot line;*

The site has storefronts built to the front lot line, residential structures converted to commercial purposes, commercial structures with parking in front, residential and commercial structures with courtyard style entrances, single use residential structures, and parking lots, along California Avenue SW in the area of the proposed rezone. The proposed zoning would allow development to more closely reflect the desired functional character of Neighborhood Commercial zones, lessen auto-oriented developments, and allow a greater variety of uses.

3. *An atmosphere attractive to pedestrians;*

The pedestrian activity along California Avenue SW is currently moderate and attractive to pedestrians in terms of sidewalks, street trees, continuous storefronts with display windows, potted plants, bicycle racks, appropriate signage, and overhead weather protection in the form of awnings. The existing visual interest and sense of safety add to the atmosphere attractive to pedestrians. Any new development allowed under the proposed NC2-40 zoning that exceeded design review thresholds in SMC 23.41 would be required to go through the design review process. The design review process includes review of the pedestrian environment.

4. *Shoppers can drive to the area, but walk from store to store;*

The area of the proposed rezone meets this criterion because shoppers can drive to the area, park on California Avenue SW and walk from store to store. The proposed rezone may encourage development at current parking codes. Future development could provide off-street parking which would enhance the retail environment and reduce the demand for on street parking in the neighborhood.

B. Locational Criteria. A Neighborhood Commercial 2 zone designation is most appropriate on land that is generally characterized by the following conditions;

1. *Primary business districts in residential urban villages, secondary business districts in urban centers or hub urban villages, or business districts, outside of urban villages, that extend for more than approximately two blocks;*

The northwestern and eastern parcels of the rezone area are located within the Admiral Residential Urban Village. The southwestern parcels are outside the ARUV, but directly adjacent to commercial development that continues to the Admiral Junction area. The business district stretches for at least 6 blocks along California Ave SW and includes all the parcels in the proposed rezone area.

2. *Located on streets with good capacity, such as principal and minor arterials, but generally not on major transportation corridors;*

The rezone area is served by California Ave SW, which is designated as both a Minor Arterial and Major Transit Street. There is good street capacity in the vicinity of the rezone.

3. *Lack of strong edges to buffer the residential areas;*

The commercial properties in the proposed rezone area face toward California Ave SW and away from the adjacent single family residential development to the east and west. The properties are separated from single family residential to the west by an alley, and from single family residential to the east by sloped topography. There is some separation provided by these conditions, but not necessarily a 'strong edge' to buffer the adjacent residential areas.

4. *A mix of small and medium sized parcels;*

The underlying platted lots measure 25 by 109 feet on the west side of California Avenue SW and 25 by 100 feet on the east side of California. The developed parcels are a mix of 50 and 100 foot wide parcels which represents a mix of small and medium sized parcels ranging from 2,700 square feet to 10,000 square feet in area.

5. *Limited or moderate transit service.*

There is a moderate level of transit service along and near California Avenue SW. The area is served by five bus routes (128, 55, 51, 85, and 57) that provide service to key employment, retail and educational centers that include downtown Seattle, South Center, Alaska Junction, Delridge and South Seattle Community College.

SMC 23.34.076 Conclusion:
Overall, the site appears to meet the function and locational criteria for a Neighborhood Commercial 2 zone:

Functional Criteria:
1) A variety of small to medium-sized businesses offering a range of goods and services to the surrounding neighborhoods
2) Many of the storefronts are built to the front lot line
3) The pedestrian activity along the subject segment of California Avenue SW is active and benefits from a variety of building types, good sidewalks, and attractive pedestrian amenities
4) Shoppers and customers arrive to the area by car, bus, foot and bicycle and can then easily walk from business to business.

Locational Criteria:
1) The northwestern and eastern parcels are located within a Residential Urban Village. The southwestern parcels are located immediately adjacent to the Admiral business district that extends for more than two blocks.
2) The rezone area is along the east and west side of California Avenue SW, which is a Minor Arterial and a Major Transit Street
3) The topographic and alley separation provide some buffer to adjacent residential development, but the overall patterns lack a 'strong edge' to adjacent residential development.
4) There is a mixture of small and medium sized parcels
5) There is moderate transit service

RECOMMENDATION – REZONE

Based on the analysis undertaken in this report, and the weighing and balancing of all the provisions in SMC 23.34, the Director recommends that the proposed rezone from Neighborhood Commercial 1 with a 30' height limit to Neighborhood Commercial 2 with a 40' height limit be **APPROVED.**

ANALYSIS - SEPA

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant, September 5, 2007, and annotated by the Department. The information in the checklist, supplemental information provided by the applicant, and the experience of the lead agency with review of similar projects form the basis for this analysis and decision.

The SEPA Overview Policy (SMC 25.05.665 D) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, certain neighborhood plans, and other policies explicitly referenced may serve as the basis for exercising substantive SEPA authority.

The Overview Policy states in part: "where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation" (subject to some limitations). Under certain limitations and/or circumstances (SMC 25.05.665 D 1-7) mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate.

Short-term Impacts

Approval of the proposed rezone to NC2-40 would allow more variety of commercial uses, 10 feet of additional height and increased density. Short-term impacts resulting from construction are anticipated including: decreased air quality due to suspended particulates from demolition, grading, clearing, and building activities and hydrocarbon emissions from construction vehicles and equipment, temporary soil erosion, increased dust caused by drying mud tracked onto streets during construction activities, increased traffic and demand for parking from construction equipment and personnel, increased noise, increases in carbon dioxide and other greenhouse gas emissions, and consumption of renewable and non-renewable resources. Several adopted codes and/or ordinances provide mitigation for some of the identified impacts including; the Stormwater, Grading and Drainage Control Code regulates site excavation for foundation purposes and requires that soil erosion control techniques be initiated for the duration of construction. The Puget Sound Clean Air Agency (PSCAA) regulations require control of fugitive dust to protect air quality. The Building Code provides for construction measures in general. The Noise Ordinance regulates the time and amount of construction noise that is permitted in the City.

Most short-term impacts are expected to be minor. Compliance with the above applicable codes and ordinances will reduce or eliminate most adverse short-term impacts to the environment. However, impacts associated with air quality, noise, construction traffic and parking warrant further discussion. Any future development on the site will likely exceed the threshold requiring Design Review and SEPA, so additional analysis of the short-term impacts will occur at that time. However, the short-term impacts to air quality are discussed below.

Air

Greenhouse gas emissions associated with development come from multiple sources; the extraction, processing, transportation, construction and disposal of materials and landscape disturbance (Embodied Emissions); energy demands created by the development after it is completed (Energy Emissions); and transportation demands created by the development after it is completed (Transportation Emissions). Short-term impacts generated from the embodied emissions results in increases in carbon dioxide and other green house gasses thereby impacting air quality and contributing to climate change and global warming. While these impacts are adverse they are not expected to be significant due to the relatively minor contribution of greenhouse gas emissions from specific future projects in the rezone area. The other types of emissions are considered under the use-related impacts discussed later in this document. No SEPA conditioning is necessary to mitigate air quality impacts pursuant to SEPA policy SMC 25.05.675A.

Long-term Impacts

Long-term or use-related impacts are also anticipated as a result of approval of this proposal including: increased bulk and scale on the site, increased traffic in the area and increased demand for parking, increased demand for public services and utilities, increases in carbon dioxide and other greenhouse gas emissions, and increased light and glare.

Several adopted City codes and/or ordinances provide mitigation for some of the identified impacts. Specifically these area: the Stormwater, Grading and Drainage Control Code which requires onsite detention of stormwater with provisions for controlled tightline release to an approved outlet and may required additional design elements to prevent isolated flooding, the City Energy Code which will require insulation for outside walls and energy efficient windows, and the Land Use Code which controls site coverage, setbacks, building height and use and contains other development and use regulations to assure compatible development. Compliance with these applicable codes and ordinances is adequate to achieve sufficient mitigation of most long term long-term impacts, although some impacts warrant further discussion which will occur during the SEPA and Design Review process at the time of a development proposal for this site.

Drainage

Rain water on roofs and on the driveways is the major source of water runoff on the site. The rain water on the roofs will be collected in gutters and connected to the storm drainage system. No drainage will be directed to the adjoining streets. Verification of an appropriate stormwater control system and its proposed location of connection to the public system will be required to be shown on the construction plans. No additional mitigation measures will be required pursuant to SEPA.

Environmental Health

Operational activities, primarily vehicular trips associated with future construction and future development energy consumption, are expected to result in increases in carbon dioxide, and result in increases in carbon dioxide and other greenhouse gas emissions which adversely impact air quality and contribute to climate change and global warming. While these impacts are adverse, they are not expected to be significant due to the relatively minor contribution of greenhouse gas emissions from this project and do not warrant mitigation under SEPA.

Height, Bulk, and Scale

Development under the proposed rezone would result in an additional 10 feet of building height adjacent to residential areas. This could result in shadowing to adjacent properties, and reduced light and air.

The Land Use Code includes setback requirements for commercial and mixed-use development adjacent to existing residential zones, intended to address some of the height, bulk, and scale impacts of new development.

Any development that exceeds Design Review thresholds in SMC 23.41 would be required to go through design review. Design review considers mitigation for height, bulk and scale through modulation, articulation, landscaping, and façade treatment.

The adopted Design Guidelines for the Admiral Residential Urban Village specify how new projects should address site planning, height, bulk, and scale compatibility, architectural elements and materials, the pedestrian environment, and landscaping. The Design Guidelines refine the goals and policies in the Admiral Neighborhood Plan and must be considered in the Design Review Board's recommendations for proposed new development projects within the Admiral Residential Urban Village.

Section 25.05.675.G.2.c of the Seattle SEPA Ordinance provides the following: "The Citywide Design Guidelines (and any Council-approved, neighborhood design guidelines) are intended to mitigate the same adverse height, bulk, and scale impacts addressed in these policies. A project that is approved pursuant to the Design Review Process shall be presumed to comply with these Height, Bulk, and Scale policies. This presumption may be rebutted only by clear and convincing evidence that height, bulk and scale impacts documented through environmental review have not been adequately mitigated. Any additional mitigation imposed by the decision maker pursuant to these height, bulk, and scale policies on projects that have undergone Design Review shall comply with design guidelines applicable to the project." The height, bulk or scale impact issues will be addressed during the Design Review process for any new project proposed on the site. Additional mitigation is not warranted under SEPA.

Traffic and Transportation

The area proposed for rezoning currently has about 80 residential units, and roughly 60,000 square feet of commercial uses. The predominant commercial uses are offices (including medical/dental), health clubs, and restaurants.

It is assumed that the maximum probable development would include 386 residential units and 51,529 square feet of restaurant use (see analysis in response to SMC 23.34.008.F.2.e in the Rezone section above). The proposed rezone could result in a net increase of approximately 96 units beyond what would be allowed under current zoning at the site.

The Institute of Transportation Engineers (ITE) Trip Generation Manual estimates that residential units generate approximately 6.7 daily vehicle trips per unit. The Manual estimates that a residential unit will generate 0.51 vehicle trips in the AM peak hour and 0.62 trips in the PM peak hour.

For this proposed rezone, these rates would result in approximately 650 new daily trips, 49 trips in the AM peak hour, and 60 in the PM peak hour from the additional residential units.

A moderate level of bus service exists between the area of the proposed rezone and destinations such as retail, educational and major employment centers downtown and elsewhere. Five bus routes have stops within three blocks of the rezone area. Given the location of the rezone area on an arterial and the opportunities for transit use, the potentially greater number of residential units is not expected to substantially increase the volume of traffic circulation or change the levels of service at nearby intersections relative to development currently allowed under the existing NC1 30' zoning.

Similar ground floor commercial uses would be allowed under both the existing and proposed zoning. However, the maximum size of many commercial uses would be increased from 10,000 square feet to 25,000 square feet. This could result in a small number of somewhat larger commercial spaces, compared to a potential larger number of smaller spaces allowed under current zoning. The potential change in trip generation and traffic volumes, if any, would depend on the specific development proposed. Individual properties may be more likely to develop given the additional development capacity if the rezone is approved; traffic and transportation impacts of projects exceeding SEPA thresholds will be determined at the time of project application.

Parking

The parking policy in Section 25.05.675M of the Seattle SEPA Ordinance states that parking impact mitigation may be required only where on-street parking is at capacity as defined by the Seattle Transportation Department or where the development itself would cause on-street parking to reach capacity. Parking utilization in the vicinity appears to be below capacity and on-street parking can be found during the daytime or evening hours. The parking spaces provided on-site in the parking garage must meet the code requirement and would be expected to accommodate the parking demand generated by the project. Mitigation of parking impacts will be considered during the SEPA review of any future proposed project on the rezone site.

Summary

In conclusion, it is anticipated that the development potential of rezoning the site from NC1-30 to NC2-40 will result in probable adverse impacts to the environment. However, due to their temporary nature and limited effects, the impacts are not expected to be significant. Conditions to mitigate the potential development impacts will be imposed during the SEPA review of future development proposals.

DECISION - SEPA

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirements of the State Environmental Policy Act (RCW 43.21C), including the requirement to inform the public agency decisions pursuant to SEPA.

[X] Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21C.030 2C.

[ ] Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030 2C.

RECOMMENDED CONDITIONS - SEPA

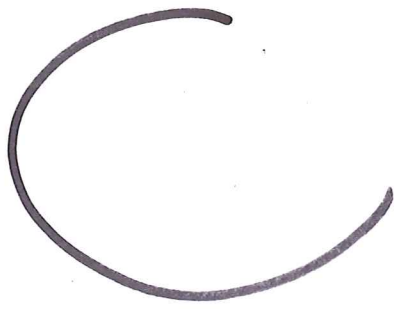
None.

RECOMMENDED CONDITIONS – REZONE

None.

Signature: _____ Date: _____

Shelley Bolser AICP, LEED AP, Senior Land Use Planner
Department of Planning and Development



City of Seattle
Department of Planning and Development (DPD)

PLAN COVERSHEET

Updated 10/1/06

Available online at: www.seattle.gov/DPD/publications/Forms/Coversheet.pdf

1. APPLICANT INFORMATION

INSTRUCTIONS: Fill in all areas, in sections 1–7 of the Coversheet, that pertain to your project. Please note that sections 8–14 will be filled out by DPD staff.

PROJECT ADDRESS 3200 California Avenue SW PROJECT # 3007538

DESCRIPTION OF WORK Council land use action to rezone 152,755 sq.ft. of land from NC1–30 NC2–40 located on the East side of the 3200 block of California Ave. SW. (3200 through 3280) and the West side of the 3200 block of California Ave. SW. (3201 through 3255) including 4208 SW. Hinds, 3401, 3405 and 3407 California Ave. SW.

OWNER Roger Cayce ADDRESS 3210 California Ave. East, Seattle WA. 98116
OWNER PHONE 206/938–6400 EMAIL

CONTACT PERSON Josh Stepherson ADDRESS 917 18th Ave East, Seattle WA 98112
PHONE 206/321–4205 FAX EMAIL josh@teamsoapbox.com
PREVIOUS MUPS RELATED TO PROJECT NONE
RELATED STANDARD PLANS

2. LAND USE CODE INFORMATION

ZONE NC1–30 Assessor's Parcel No. See Application
OVERLAY ZONING Admiral Residential Urban Village
HISTORIC OR LANDMARK DISTRICT None
SHORELINE ZONE None
Exempt ☐ Req. Shoreline Review ☐
SEPA
Exempt ☐ Requires Review ☒

DESIGN REVIEW? No ☒ Yes ☐
If yes, please provide:
Planner:
Planner phone:

EXISTING USE	SQ. FT.	PROPOSED USE	SQ. FT.
Not affected by this permit scope			

Permit # establishing existing use

DEPARTMENT OF NEIGHBORHOODS CERTIFICATE OF APPROVAL REQUIRED? No ☒ Yes ☐

STREET/ALLEY IMPROVEMENTS OR WORK IN RIGHT–OF–WAY REQUIRED? No ☒ Yes ☐

PARKING SPACES: N/A
Existing #: Onsite ____ Offsite ____ Accessible ____
Proposed #: Onsite ____ Offsite ____ Accessible ____
Off site Location:

NUMBER OF DWELLING UNITS: N/A
Existing ____ Proposed New ____
Demolished ____ Live–work Units ____
TOTAL UNITS: ____

3. HOUSING UNIT OCCUPANCY

DEFINITION: Housing unit means any dwelling unit, housekeeping unit, guest room, dormitory, or single room occupancy unit, and may include a residential unit in a commercial building, an artist's studio dwelling unit, or a live/work unit.

CHECK ONLY ONE BOX BELOW, INDICATING HOUSING OCCUPANCY AT DATE OF PERMIT APPLICATION.

☐ Unit(s) is/are unoccupied
☐ Unit(s) is/are occupied by a residential tenant(s)
☐ Unit is occupied by the owner of the property
☐ Do not know
☐ There is/are no housing unit(s) on the property
☐ Refer to Property Owner/Tenant Assistance
☒ Housing unit on property is not affected by this permit scope.

I certify, under penalty of perjury under the laws of the state of Washington, that the above information is true and correct.

Owner/Applicant Signature | Josh Stepherson Printed Name | Date & Place

4. GROUND DISTURBANCE

GROUND DISTURBANCE: No ☒ Yes ☐ Cut: cubic yds. ____ Maximum Height ____ Fill: cubic yds. ____ Maximum Height ____

DISPOSAL SITE: Outside City of Seattle ☐ Inside City of Seattle ☐ Address and/or Permit #

EROSION CONTROL IS REQUIRED PRIOR TO ANY GROUND DISTURBANCE. Please refer to Temporary Erosion and Sediment Control (TESC) Plan.

CUSTOMER ALERT!

Site Inspection Required Prior to First Ground Disturbance–Call (206) 684–8900
A DPD site inspection is required prior to any ground disturbance related to this permit, including tree cutting, clearing, grubbing or grading.

Preconstruction Conferences, When Required–Call (206) 684–8860
A DPD PRECONSTRUCTION CONFERENCE should be scheduled prior to beginning work. A conference is required for the following types of work:
1. When any special inspections are indicated on the plan
2. When land use or design review conditions are indicated on the plan
3. When a DPD plans examiner specifies on plans unusual or complex inspection or occupancy requirements

Rules for Ufer Grounds–Call (206) 684–5383
If you have any questions or concerns regarding the rules (2005 NEC) for installation ufer grounds, please contact DPD's Electrical Technical Backup, Monday– Friday, 7a.m.–4:30p.m.

Required SDOT Permits and Inspections
STREET TREE INSPECTIONS: Protection and/or planting/pruning/removal of street trees requires SDOT inspection and approval.
Call prior to construction: Commercial/Multifamily Zones, (206) 684–5693; Single Family Zones, (206) 684–7997
STREET USE PERMITS:
Call prior to construction: (206) 684–5283

Water Service Inspection by SPU Required
All Water Service Piping On Property must be inspected prior to backfilling trench. For information and inspection, call Seattle Public Utilities (SPU) at (206) 684–5800. For water quality backflow protection information and inspection, call SPU at (206) 684–3536.

5. BUILDING CODE INFORMATION

Multiple Buildings in this Project?
No ☐
Yes ☐ Fill out separate sheets and attach.
Shown on plan sheet

Building Code Edition:
☐ 2003 Seattle Building Code
☐ 2003 Seattle Residential Code
☐ 2003 SBC (structure only)

PROVIDE THIS INFORMATION FOR EACH BUILDING IN YOUR PROJECT:

DPD Building ID(s) (see Building Data Sheet)

Existing # of Above–grade stories ____ Proposed # of Above–grade stories ____
Existing # of Below–grade stories ____ Proposed # of Below–grade stories ____

Mezzanines: No ☐ Yes ☐ Location
Building Code Type of construction

FLOOR LEVEL	GROUP	OCCUPANCY/USE	FLOOR AREA	SPRINKLER (Y if yes)	OTHER FIRE PROTECTION

Remodel: Construction Project Value: $
Sprinklers: NFPA 13 ☐ Fire alarm ☐
NFPA 13R ☐ Other system ☐ Type?
Partial system ☐ Location
Change Of Occupancy No ☐ Yes ☐ From to
Posted Occupancy:

EMERGENCY SYSTEMS PROVIDED:
Elevator Pressurization ☐
Stairway Pressurization ☐
Smoke Removal System ☐
Exit And Pathway Lighting ☐
Emergency Generator ☐

6. ENERGY/MECHANICAL CODE

SCOPE OF MECHANICAL WORK DESCRIPTION:

RELATED BUILDING PERMIT PROJECT# RECEIPT

LOCATION OF DUCTWORK OR MECHANICAL EQUIPMENT:
Interior N ☐ Y ☐ Exterior Walls N ☐ Y ☐ Rooftop N ☐ Y ☐

MECHANICAL–ONLY PERMIT–Project Value: $

APPLICABLE OCCUPANCY:
☐ Group R
☐ Other than Group R

BUILDING ENVELOPE COMPLIANCE:	HEATED	SEMI–HEATED	UNHEATED SPACE
☐ Existing envelope–no change	☐	☐	☐
☐ Existing envelope–altered	☐	☐	☐
☐ New envelope	☐	☐	☐

See compliance data on sheet:

HVAC MECHANICAL SYSTEM:
☐ Not included in this application
☐ Included in this application (see scope description for detail)
Separate permit required for: Plumbing, Gas piping, Boiler, and Refrigeration systems.

Is this building air conditioned? No ☐ Yes ☐

OTHER MECHANICAL EQUIPMENT INCLUDED IN THIS APPLICATION:
☐ Commercial kitchen hood exhaust system
☐ Fume hood
☐ Spray paint booth
☐ Other–specify

DOCUMENT SUBMITTED:
☐ Group R equipment sizing calc (unit by unit)
☐ Cooling and heating load calculation (for other than Group R)
☐ Target UA calculation
☐ Structural load calculation (for mechanical equipment)
☐ Noise compliance report (for mechanical equipment)
☐ Commercial kitchen hood worksheet
☐ Other

LIGHTING: Separate electrical permit application required

Prescriptive Energy Options (Residential Envelope):
I ☐
II ☐
III ☐
IV ☐
V ☐

SINGLE FAMILY/DUPLEX
Min. equipment size
Max. equipment size

7. GREEN BUILDING
www.seattle.gov/dpd/CityGreen

LEED
Leadership in Energy & Environmental Design Green Building Rating System™ (LEED)
☐ LEED for New Construction (LEED–NC)
☐ LEED for Core & Shell (LEED–CS)
☐ LEED for Commercial Interiors (LEED–CI)
☐ LEED for Existing Building (LEED–EB)
☐ LEED for Homes (LEED–H)
☐ LEED for Neighborhood Development (LEED–ND)
☐ LEED Application Guide

BUILT GREEN™
☐ Built Green Remodeler
☐ Built Green Home Builder
☐ Built Green Multi–Family
☐ Built Green Communities
Built Green Rating Anticipated:
☐ 1–2 Star
☐ 3 Star
☐ 4 Star
☐ 5 Star

LEED Rating Anticipated:
☐ Platinum
☐ Gold
☐ Silver
☐ Certified

OTHER PROGRAMS
☐ Sea Green: Seattle's Affordable Housing
☐ Labs for the 21st Century (Labs21)
☐ Green Guide for Healthcare (GGHC)
☐ ENERGY STAR® Home Label

DPD STAFF ONLY
To Fill Out Sections 8–14

8. LAND USE CONDITIONS (DPD staff use only; insert additional sheets if needed)

Assigned Planner Phone

TO BE COMPLETED BY DPD STAFF ONLY

NEW CURB CUT REQUIRED? No ☐ Yes ☐ Residential ☐ Commercial ☐

9. SPECIAL INSPECTIONS
(DPD staff use only; attach extra sheets as needed)

ARCHITECT:
Name:
Phone:

ENGINEER:
Name:
Phone:

GEOTECHNICAL INSPECTIONS:
☐ Soil Bearing Verification
Notes:
☐ Fill–Verify Structural Fill and Compaction
☐ Excavation–Observe and Monitor Excavation
☐ Drainage–Sub/Surface Drainage Installation
☐ Erosion Control–Temp/Permanent
☐ Other
☐ Other
☐ Other

Geotechnical Firm:
Name:
Phone:

STRUCTURAL INSPECTIONS:
☐ Concrete–Reinforced Concrete CIP
Notes:
☐ Shotcrete
☐ Reinforced Masonry Level 1
☐ Structural Steel Fabrication
☐ Structural Steel Erection
☐ Wood Seismic Resistance System (for IBC only)
Notes:
☐ Epoxy Grouting
Notes:
☐ Mechanical Anchor Bolt Installation
Notes:
☐ Epoxy Grouted Anchor Bolt Installation
Notes:
☐ Other
☐ Other
☐ Other

Inspection Agency:
Name:
Phone:

Code Alternate:
See Sheet:

OTHER: ☐ ☐ ☐ ☐

Call (206) 684–8860 to schedule a pre–construction conference before the start of construction.

10. DRAINAGE & SEWER REVIEW (DPD staff use only)

DPD SEWER AND DRAINAGE REVIEW DESK: (206) 684–5362

DRAINAGE REVIEW REQUIRED? No ☐ Yes ☐
☐ Flow control required
☐ No flow control required
☐ Impervious surface this project (new or replaced) sq.ft.
☐

NOTE: The drainage system shown in these plans may be changed at the time of side sewer permit issuance to meet standard plans and methods.

☐ Route for drainage review

NOTE: A separate side sewer permit is required from DPD. For more information, call the Sewer and Drainage Review Desk at (206) 684–5362

SIDE SEWER REVIEW REQUIRED? No ☐ Yes ☐
☐ No Conflict with side sewer
☐ Construction conflicts with applicant's side sewer. Contact Public Health Department at (206) 233–7914
☐ Construction conflicts with side sewer serving another property. Contact DPD Sewer and Drainage Review Desk at (206) 684–5362
☐ Conflict with public utility main (requires buildover). Contact SPU at (206) 684–7563
☐

11. ENVIRONMENTALLY CRITICAL AREAS INFO

ENVIRONMENTALLY CRITICAL AREAS (ECA):
☒ Site is not located in ECA
☐ Mapped ECA designation: 1 2 3 4 5 6 7 8 9 10
☐ ECA identified by Preapplication Site Visit Report as:

☐ ECA Exemption [See review details in Hansen.]
Reviewed by:
☐ Denied
☐ Granted. Type:

☐ Small Project Waiver
New Developmental Coverage–this permit: sq.ft.
Previous Developmental Coverage after October 31, 1992:
Permit #, sq.ft.
Permit #, sq.ft.
TOTAL: sq.ft.

12. SHOP DRAWINGS, KEY AREA INSPECTION & BUILDING CONDITIONS (DPD staff use only)

Sprinkler drawings required for:
☐ NFPA 13
☐ NFPA 13 R
☐ Partial system
Location
☐ Fire alarm

13. PERMIT ISSUANCE AUTHORIZATION (DPD staff use only)

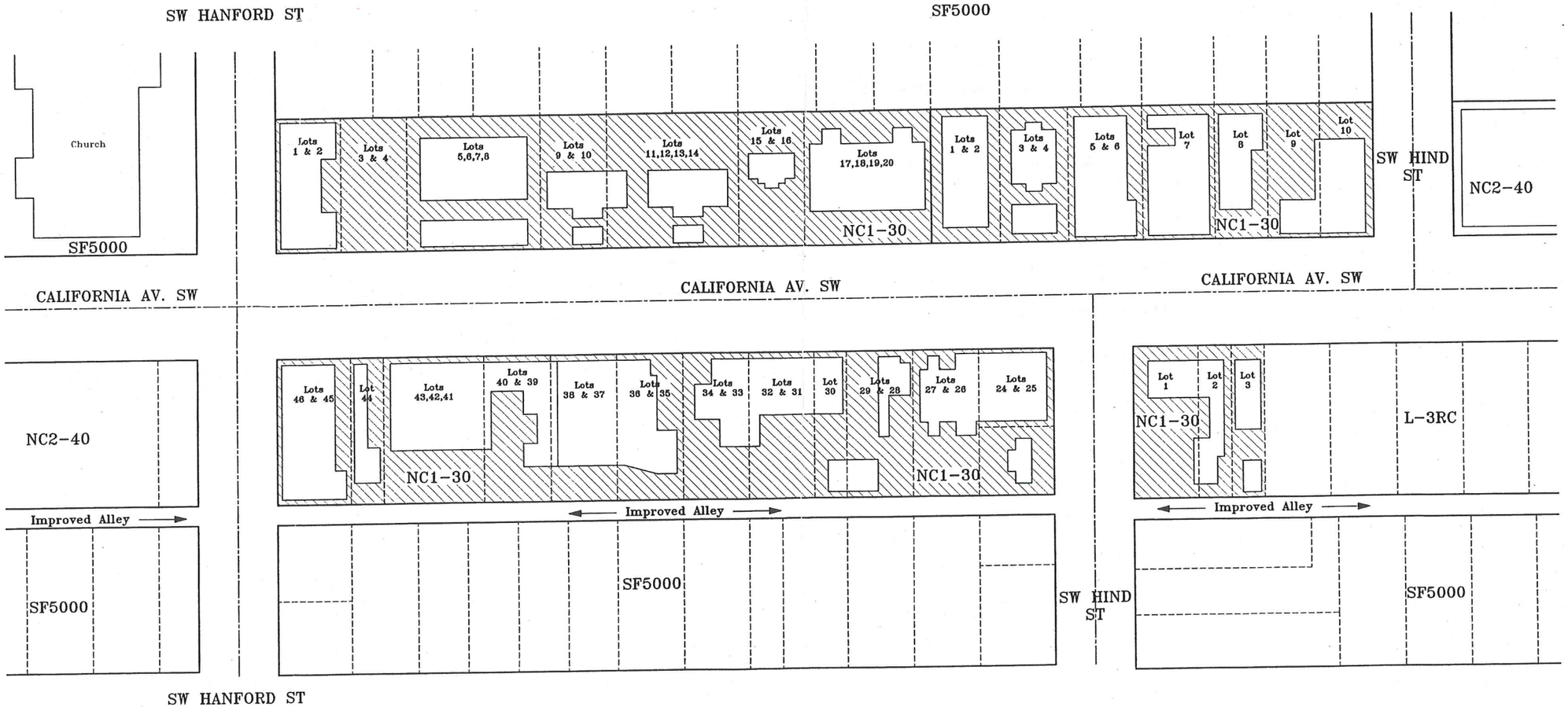
Review Location	Approved: Initials	Approved: Date	Notes
ZONING (incl. street improvements)			
CURB CUT			
ORDINANCE			
STRUCTURAL			
ENERGY			
MECHANICAL			
DRAINAGE			
ECA			
GRADING			
WATER (SPU)			
FIRE			
HEALTH (King County)			
NOISE			
CONVEYANCE/ELEVATOR			
SHORING (SDOT)			
STREET IMPROVEMENT (SDOT)			
PARKS			
PROTECTED DISTRICTS (DON)			
SEPA EXEMP			
LAND USE REVIEW			

14. DEPARTMENT SIGN OFFS (DPD staff use only)

ISSUED BY: Initials Date

BUILDING PLANS EXAMINER	MECHANICAL PLANS EXAMINER	DATE RECEIVED AT INTAKE
		RECEIVED SEP 5 – 2007 DEPT OF PLANNING AND DEVELOPMENT

City of Seattle Hearing Examiner EXHIBIT 6
Appellant ___ ADMITTED ___
Respondent ___ DENIED ___
Department ✓
FILE # CF 308944, MUP-10-014(W)



Site Plan

1" = 40' - 0"

NOTE:

Shaded area indicates area of Rezone FROM NC1-30 To NC2-40

Legal Description:

California Addition Lots 1 thru 3
Mountain View Park Addition s Lots 24 thru 46
Major Archie Addition Lots 1 thru 10
Hainsworth Heights Lots 1 thru 20

RECEIVED
SEP 5 - 2007
DEPT OF PLANNING AND DEVELOPMENT

Thiennes/Williams Architects, PLLC
Paul Thienes/Terry Williams
3201 1st Ave. South Suite #230 Seattle, WA. 98134
206/625-9753 Fax 206/625-0700

Admiral Rezone

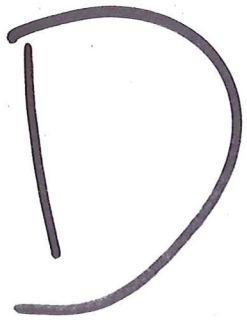
Block Plan & Rezone Area

3200 and 3400 block California Ave. S.W. Seattle WA.

09/05/2007

C1

of



N15 In implementing neighborhood plans, work with neighborhood groups to refine and prioritize recommendations in light of changing circumstances and consistent with the adopted goals and policies of each neighborhood plan.

N16 Permit the addition of new strategies, including regulatory changes, through the neighborhood plan implementation process when existing tools are inadequate to meet implementation needs.

N17 Support and encourage the incorporation of cultural elements, such as public art and historic resources, in the implementation of neighborhood plans. In future planning efforts, include a broad range of creative skills to improve the value of the neighborhood projects.

N18 Monitor progress toward implementing Council adopted neighborhood plans and communicate results to City officials, neighborhood planning participants and interested citizens.

N19 Support neighborhood plan stewardship with the goal of promoting continued cooperation between the City and local neighborhoods in implementing adopted neighborhood plan goals and policies, carrying out neighborhood plan work plan activities and implementing this Comprehensive Plan.

These efforts should be directed toward not only accomplishing specific projects, but also toward fostering the ability of neighborhoods to inspire people with the energy, interest and ability to work collaboratively with the City in implementing neighborhood plans.

B Adopted Neighborhood Plans

B-1 Admiral

land use goals

A-G1 Land use within the residential urban village that conforms to Admiral' s vision of a neighborhood with a pedestrian oriented small town atmosphere.

A-G2 The Admiral neighborhood is predominately a single-family housing community.

land use policies

A-P1 Encourage development that conforms with the neighborhood' s existing character and scale, and further promotes a pedestrian-friendly environment.

A-P2 Maintain the character and integrity of the existing single-family zoned areas by maintaining current single-family zoning outside the urban village on properties meeting the locational criteria for single-family zones.

A-P3 Seek to ensure community involvement in land use code changes.

A-P4 The special L3 and L4 locational criteria for the evaluation of rezones to the L3 and L4 designations inside of urban villages, shall not apply in the Admiral Residential Urban Village.

transportation goals

A-G3 A residential urban village with an adequate parking supply to serve customers, residents and employees.

A-G4 People walk, bicycle or ride buses when traveling inside the Admiral neighborhood.

City of Seattle Hearing Examiner
EXHIBIT
Appellant ___
Respondent ___ ADMITTED ✓
Department ✓ DENIED ___
9
FILE # CF 308944, MUP-10-014(W)

transportation policies

A-P5 Future developments and significant remodels should seek to provide adequate parking.

A-P6A Strive to attain adequate levels of parking that serves the urban village and adjacent transitional areas, and to discourage parking from commercial areas or other activity centers from spilling over onto residential streets.

A-P6B Work with the community in addressing parking issues.

A-P7 Seek to anticipate and address future parking needs.

A-P8 Strive to eliminate local traffic safety hazards, and discourage cut-through traffic on residential streets.

A-P9 Seek to ensure that streets are clean and attractive, are calmed, and have sufficient capacity and a high level of service.

A-P10 Seek to improve pedestrian and vehicular traffic safety and convenience.

A-P11 Seek to anticipate and address future traffic circulation needs.

A-P12 Seek to improve water-based commuting connections from West Seattle to downtown.

A-P13 Seek to assure that transit routing, scheduling and transfer points meet neighborhood needs.

A-P14 Seek to provide good access to and from West Seattle.

A-P15 Work with the Admiral neighborhood to minimize loss and damage from landslides and land erosion.

A-P16 Seek to improve facilities for bicycles, skateboards and pedestrians.

A-P17 Seek to increase community awareness of emerging transportation technologies.

housing policy

A-P18 Seek to ensure that public-assisted housing is well integrated within the Admiral neighborhood by seeking to keep it dispersed, small-scale and aesthetically integrated, in keeping with Admiral's small town image.

human services goal

A-G5 A neighborhood with adequate community, educational, recreational, safety and social services to serve its residents.

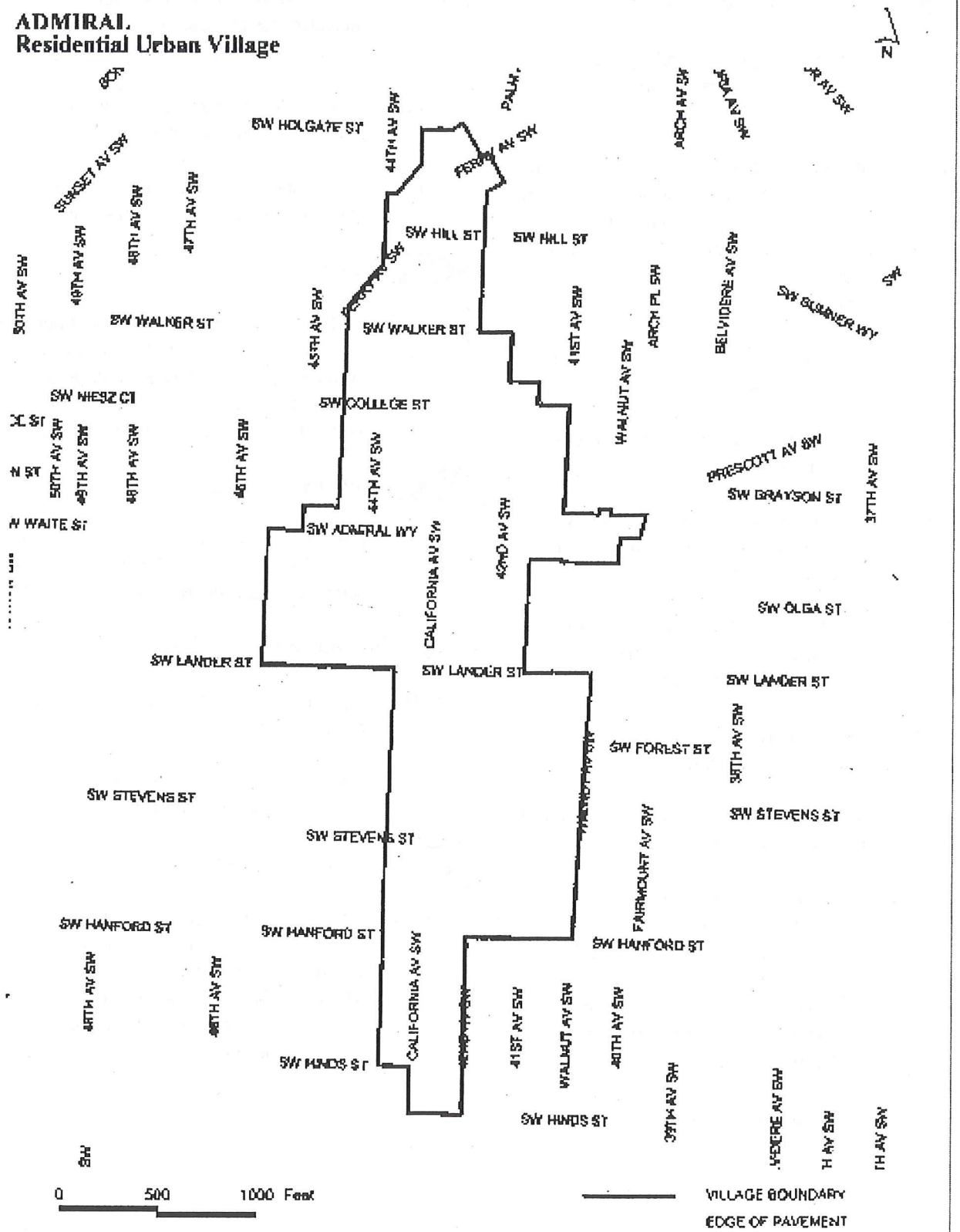
human services policies

A-P19 Support local efforts to improve the safety of the Admiral neighborhood.

A-P20 Seek to provide adequate fire and police service for the planning area.

capital facilities policies

A-P21 Seek to ensure neighborhood involvement, through the involvement of community organizations, in the identifying and siting of publicly-sponsored capital projects, including those that impact the natural environment.


ADMIRAL
Residential Urban Village
SW HOLGATE ST
SW HILL ST
SW WALKER ST
SW COLLEGE ST
SW ADMIRAL WY
SW LANDER ST
SW FOREST ST
SW STEVENS ST
SW HANFORD ST
SW HINDS ST
SW OLGA ST
SW GRAYSON ST
PRESCOTT AV SW
CALIFORNIA AV SW
FAIRMOUNT AV SW
WALNUT AV SW
ARCH PL SW
BELVIDERE AV SW
SW BORNER WY
SUNSET AV SW
50TH AV SW
49TH AV SW
48TH AV SW
47TH AV SW
46TH AV SW
45TH AV SW
44TH AV SW
42ND AV SW
41ST AV SW
40TH AV SW
39TH AV SW
38TH AV SW
37TH AV SW
0
500
1000 Feet
VILLAGE BOUNDARY
EDGE OF PAVEMENT

A-P22 Strive for excellent coordination between City departments, and between the City and the County, especially on projects that impact the natural environment.

utilities goals

A-G6 The neighborhood is well served with infrastructure and capital improvements.

A-G7 Pollution levels have been reduced in the Admiral Neighborhood.

utilities policies

A-P23 Seek to ensure the adequacy of neighborhood's utilities to meet on-going growth.

A-P24 Seek to provide levels of lighting for streets and sidewalks that enhance safety.

A-P25 Seek to clean up noise and air pollution, and litter and graffiti.

economic development policies

A-P26 Seek to encourage retail services desired by the community.

A-P27 Seek to advocate for the health and diversity of merchants located in the Admiral business district.

community building goal

A-G8 The City and the Admiral neighborhood continue to collaborate in planning efforts.

community building policy

A-P28 Seek to promote community-building opportunities for Admiral neighborhood residents.

cultural resources policy

A-P29 Encourage public art that reflects the heritage and lifestyle of the Admiral neighborhood.

parks & open space goal

A-G9 Open spaces, parks and playgrounds in the Admiral planning area have been preserved and maintained.

parks & open space policies

A-P30 Work with existing neighborhood groups to seek to ensure that programming of park facilities reflects the needs of the neighborhood.

A-P31 Seek to provide open space within the Admiral neighborhood to serve the community' s needs and to protect critical areas and natural habitat.

A-P32 Seek to preserve the integrity of the Olmsted design at Hiawatha Park.

A-P33 Seek to preserve and extend the neighborhood's tree canopy.

A-P34 Seek to provide convenient pedestrian access to Admiral' s parks, playgrounds and open space.

community character goals

A-G10 A Residential Urban Village with a vibrant and attractive character.

A-G11 A high quality, diverse neighborhood where developers and businesses benefit from sustaining excellence and from filling local needs.

A-G12 A neighborhood with high expectations and standards for public services, building and landscaping.

community character policies

A-P35 Support neighborhood involvement in land use decisions, especially in decisions related to variances and conditional uses.

A-P36 Seek to ensure that the designs of private development and public spaces support each other to enhance and reinforce Admiral' s identity.

B-2 Aurora-Licton

designation of the Aurora-Licton residential urban village goal

AL-G1 An Aurora-Licton Residential Urban Village which is a vibrant residential community, with a core of multi-family housing, pedestrian-oriented neighborhood retail shops and services, and open space clustered immediately east of Aurora Avenue North. The core area should be fully accessible to residents east and west of Aurora Avenue.

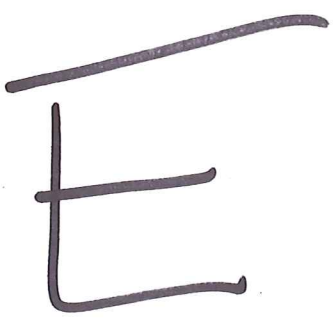
designation of the Aurora-Licton residential urban village policies

AL-P1 Maintain the current balance of residential and commercial areas within the urban village boundaries. Consider future zoning changes that would reduce conflicts between adjacent areas; promote the development of a neighborhood-serving and pedestrian-oriented commercial core and promote transitions between single-family areas and commercial areas.

AL-P2 Protect the character and integrity of Aurora-Licton's single family areas within the boundaries of the Aurora-Licton urban village.

AL-P3 Encourage development to enhance the neighborhood's visual character through use of tools such as City-wide and Aurora-Licton neighborhood-specific design guidelines, including Aurora Avenue specific guidelines.

AL-P4 Encourage the development of enhanced transit connections to the village core, the Northgate transit hub, and the Northgate high capacity transit station.



3007538

Buildings on the east side of the 3200 block of California Ave SW
From south to north

Looking southeast at intersection of California Ave SW and SW Hinds Street

City of Seattle Hearing Examiner
EXHIBIT

Appellant ___
Respondent ___ ADMITTED ✓ 54
Department ✓ DENIED ___

FILE CF 308944, MUP-10-014(W)

Buildings on the east side of the 3200 block of California Ave SW
From south to north

Buildings on the east side of the 3200 block of California Ave SW
From south to north

Buildings on the east side of the 3200 block of California Ave SW
From south to north

Buildings on the east side of the 3200 block of California Ave SW
From south to north

Buildings on the east side of the 3200 block of California Ave SW
From south to north

Looking east - Intersection of California Ave SW and SW Hanford Street

West side of California Ave SW

Looking west – California Ave SW and SW Hanford Street

Buildings on west side of 3200 block of California Ave SW
North to south

Buildings on west side of 3200 block of California Ave SW
North to south

Buildings on west side of 3200 block of California Ave SW
North to south

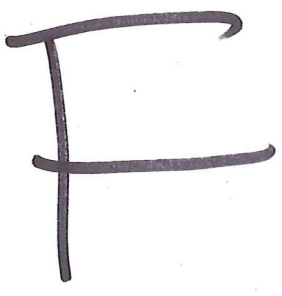
Buildings on west side of 3200 block of California Ave SW
North to south

Buildings on west side of 3200 block of California Ave SW
North to south

Buildings on west side of 3200 block of California Ave SW
North to south

Three buildings on 3400 block of California Ave SW

Looking southwest corner of California Ave SW and SW Hinds Street



Measurement at south end of 42nd Ave SW/California Ave SW (3281 42nd Ave SW)		
Highest elevation on the eastern NC lots per Seattle GIS topo layer:		**378**
Highest height with allowed exceptions under NC1-30, measured from highest point		
30' + 7' under 23.47A.011.A.1.b + **15'** in some places for mechanical	52	430
in areas without mechanical (30+7)	37	415
in areas without mechanical, and only allowed 4' extra height because 7' blocks views	34	412
Highest height with allowed exceptions under NC2-40		
40' + 7' under 23.47A.011.A.1.b + **15'** in some places for mechanical	62	440
in areas without mechanical (40+7)	47	425
in areas without mechanical, and only allowed 4' extra height because 7' blocks views	44	422
Highest buildable elevation (20' from front and rear lot lines) on SFR lots to the east per Seattle GIS topo layer:		**384**
first floor elevation of an SFR built on lowest lot		384
second floor elevation of an SFR built on lowest lot		394
third floor elevation of an SFR built on lowest lot		404
Highest elevation at which a view would be possible from upper floor for a six foot tall person		410
Would any view be likely at this SFR site with full NC1-30 build out?	***No***	
Conclusion: NC1-30 at full build out would fully block private views. NC2-40 would have no greater view impact than NC1-30		

Notes

1. The south end of the block is the flattest, measured from California to 42nd Ave SW, and would therefore have the most impacted views by full build out on California Ave SW
2. The north end of the block is the steepest, measured from California to 42nd Ave SW, and would therefore have the least impacted views by full build out on California Ave SW. Views would be fully blocked even by NC1-30 build out.
3. The highest elevation of commercial lots is measured at the east property line, even though a 10' setback would be likely

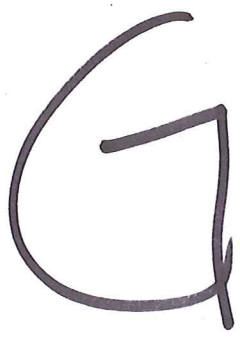
4. The highest buildable elevation on SFR lots is measured 20' from front lot line (per 20' required yard under 23.44.014); measurement errs on the conservative side for determining possible view blockage, since this would be the highest elevations that could be built
5. "Yes" or "No" determination is based on logical equation. "Yes" indicates that NC1-30 full development would not block the view to the west, as viewed by a six foot tall person on the third floor of a SFR built at this site. "No" indicates that same view would be blocked by NC1-30 full development.

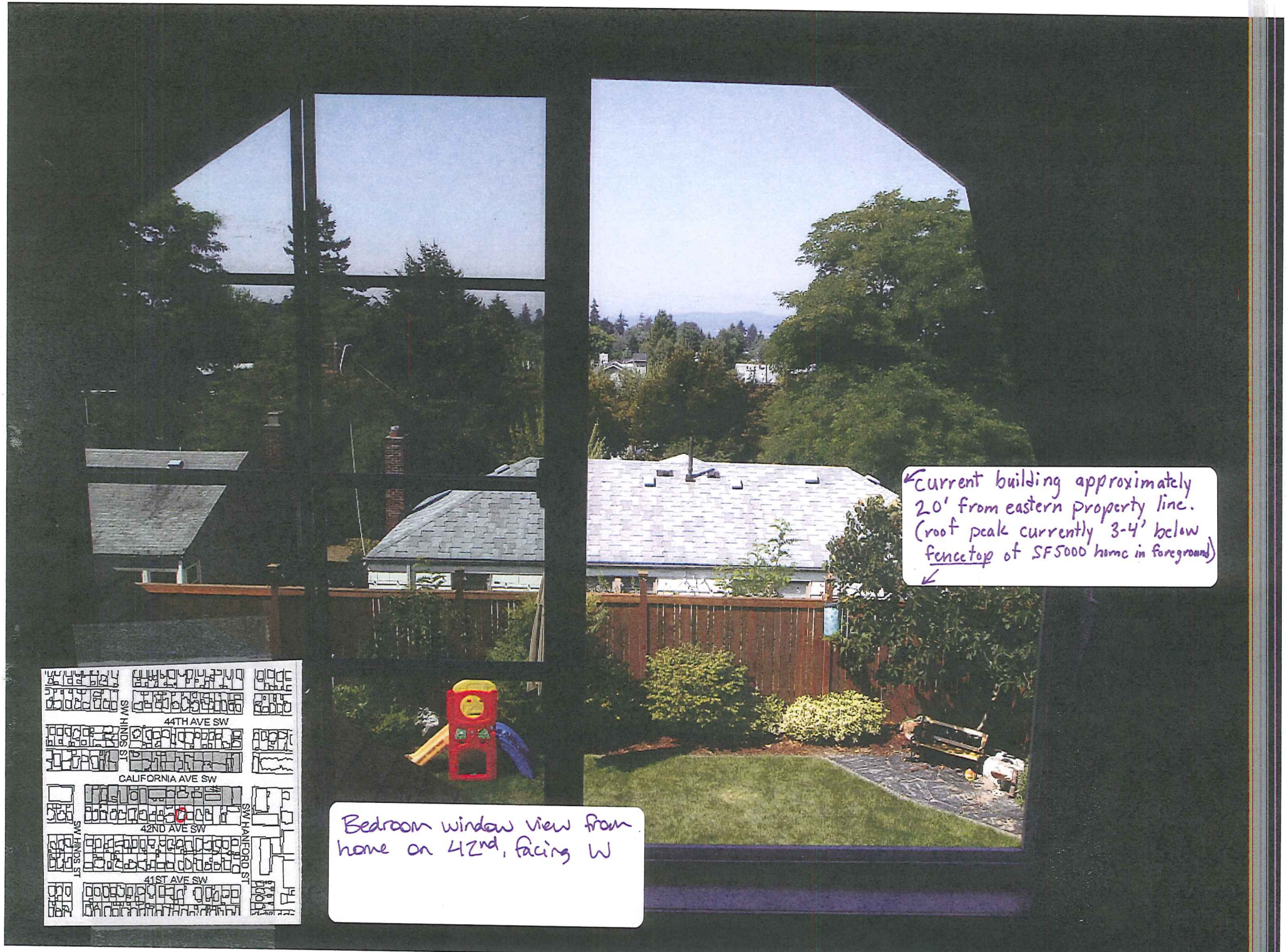
City of Seattle Hearing Examiner
EXHIBIT
Appellant ___
Respondent ___ ADMITTED ✓
Department ✓ DENIED ___
14
FILE # CF 308944, MUP-10-014(W)

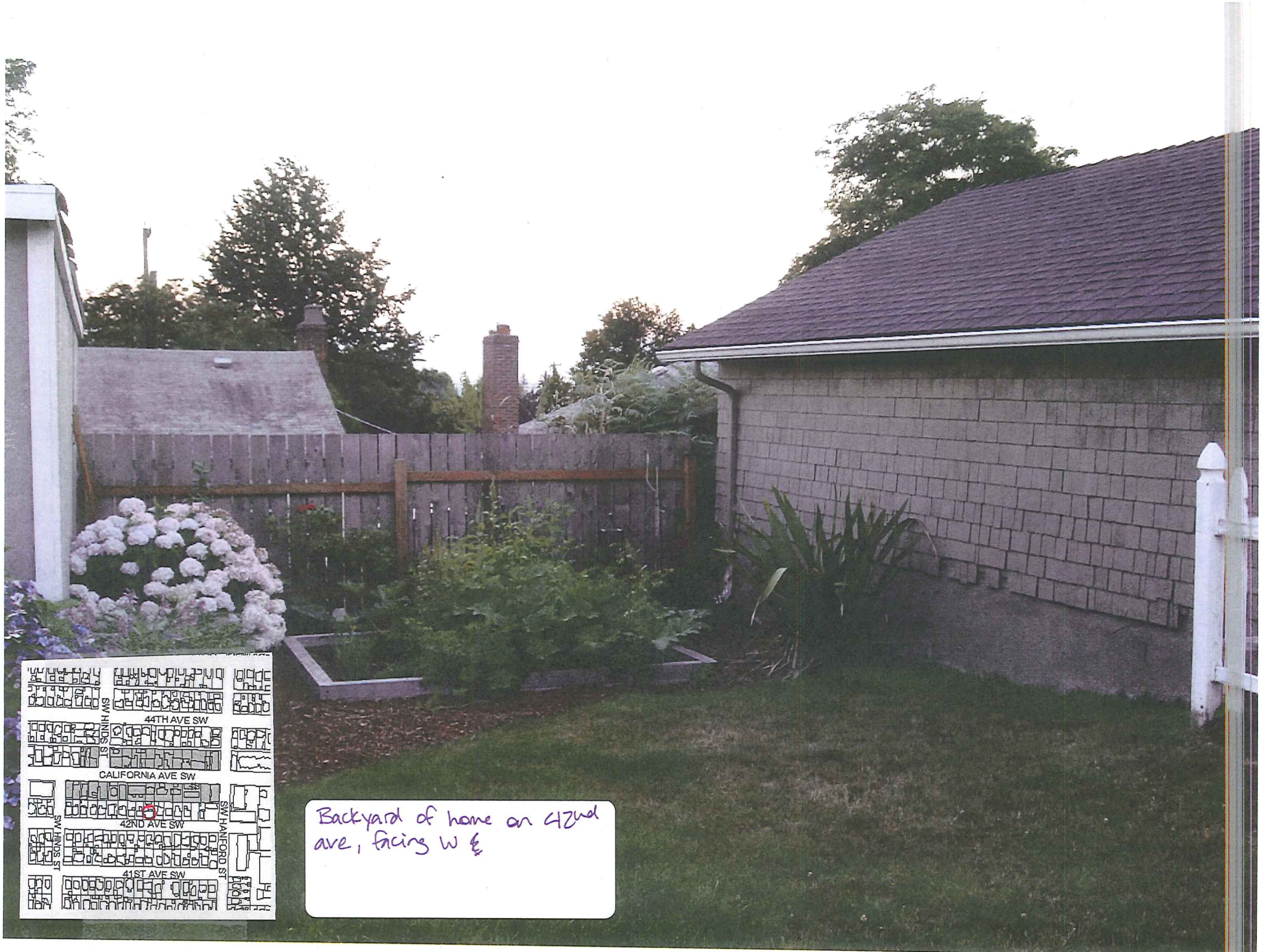
	Height	Elevation
Measurement at mid block of 42nd Ave SW/California Ave SW (3243 42nd Ave SW)		
Highest elevation on the eastern NC lots per Seattle GIS topo layer:		**386**
Highest height with allowed exceptions under NC1-30, measured from highest point		
30' + 7' under 23.47A.011.A.1.b + **15'** in some places for mechanical	52	438
in areas without mechanical (30+7)	37	423
in areas without mechanical, and only allowed 4' extra height because 7' blocks views	34	420
Highest height with allowed exceptions under NC2-40		
40' + 7' under 23.47A.011.A.1.b + **15'** in some places for mechanical	62	448
in areas without mechanical (40+7)	47	433
in areas without mechanical, and only allowed 4' extra height because 7' blocks views	44	430
Highest buildable elevation (20' from front and rear lot lines) on SFR lots to the east per Seattle GIS topo layer:		**388**
first floor elevation of an SFR built on lowest lot		388
second floor elevation of an SFR built on lowest lot		398
third floor elevation of an SFR built on lowest lot		408
Highest elevation at which a view would be possible from upper floor for a six foot tall person		414
Would any view be likely at this SFR site with full NC1-30 build out?	***No***	
Conclusion: NC1-30 at full build out would fully block private views. NC2-40 would have no greater view impact than NC1-30		

Heights - Impact to private views from proposed rezone

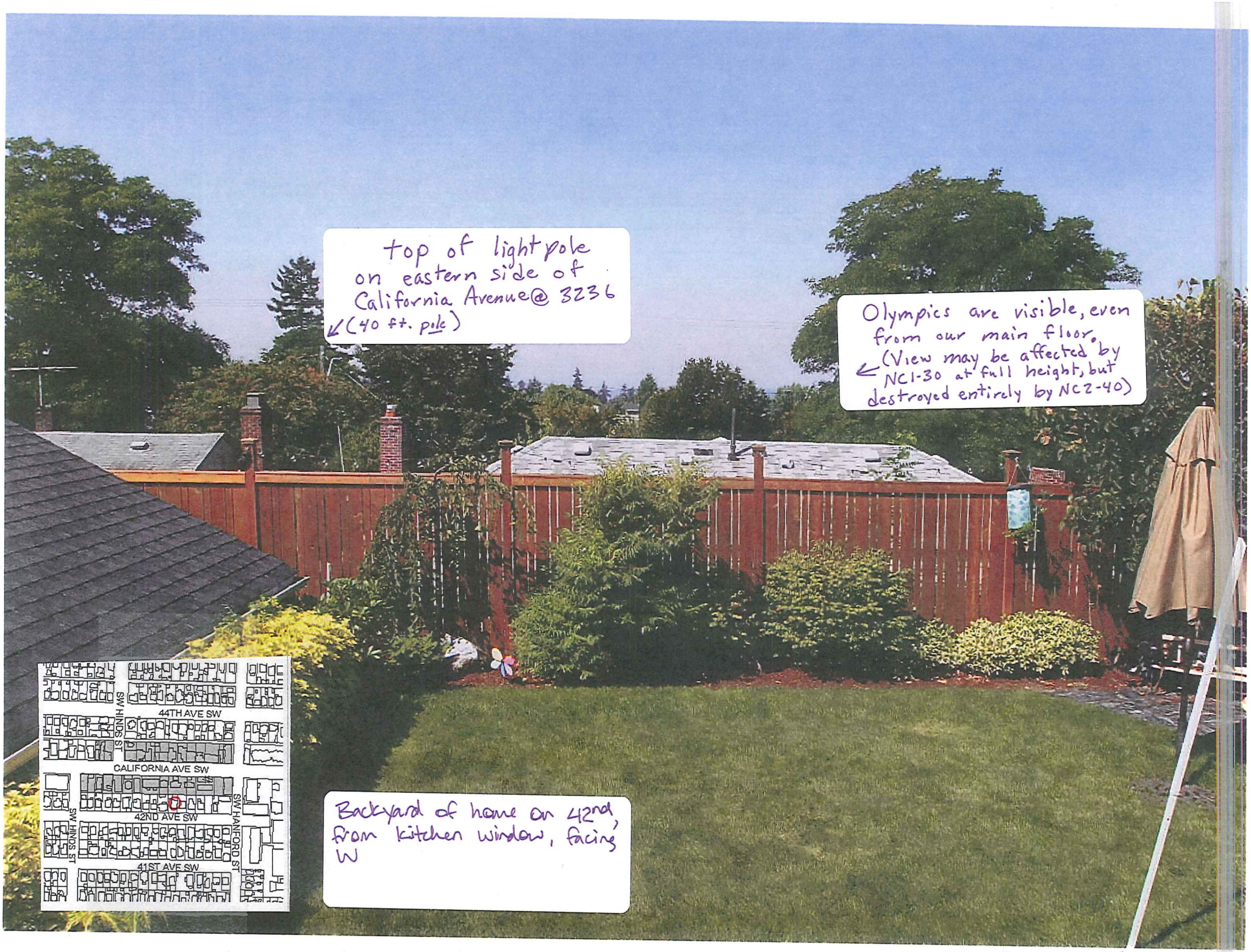
	Height	Elevation
Measurement at north end of 42nd Ave SW/California Ave SW (4209 SW Hanford St)		
Highest elevation on the eastern NC lots per Seattle GIS topo layer:		**382**
Highest height with allowed exceptions under NC1-30, measured from highest point		
30' + 7' under 23.47A.011.A.1.b + **15'** in some places for mechanical	52	434
in areas without mechanical (30+7)	37	419
in areas without mechanical, and only allowed 4' extra height because 7' blocks views	34	416
Highest height with allowed exceptions under NC2-40		
40' + 7' under 23.47A.011.A.1.b + **15'** in some places for mechanical	62	444
in areas without mechanical (40+7)	47	429
in areas without mechanical, and only allowed 4' extra height because 7' blocks views	44	426
Highest buildable elevation (20' from front and rear lot lines) on SFR lots to the east per Seattle GIS topo layer:		**380**
first floor elevation of an SFR built on lowest lot		380
second floor elevation of an SFR built on lowest lot		390
third floor elevation of an SFR built on lowest lot		400
Highest elevation at which a view would be possible from upper floor for a six foot tall person		406
Would any view be likely at this SFR site with full NC1-30 build out?	***No***	
Conclusion: NC1-30 at full build out would fully block private views. NC2-40 would have no greater view impact than NC1-30		

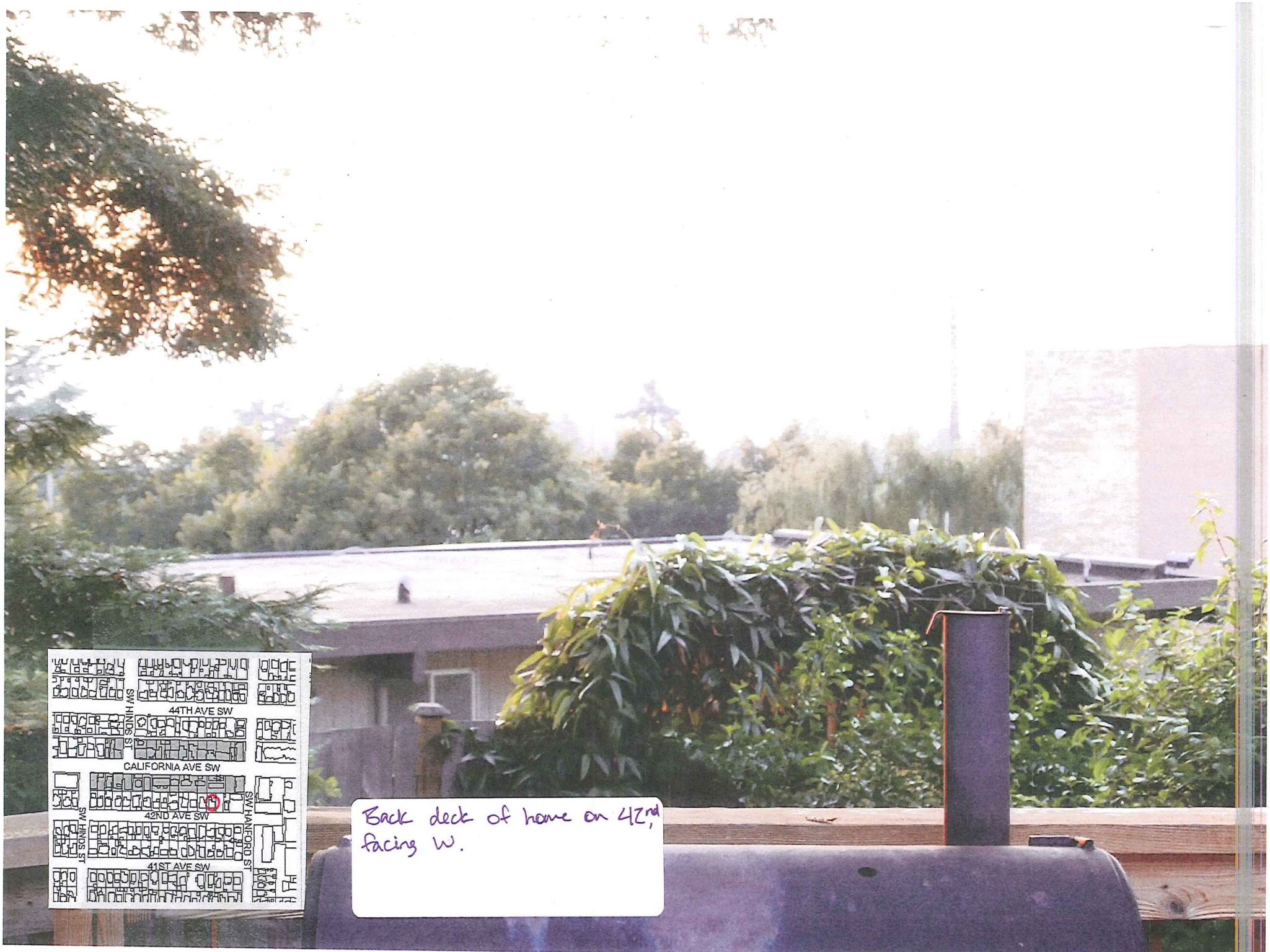



44TH AVE SW
SW HINOS ST
CALIFORNIA AVE SW
42ND AVE SW
SW HANFORD ST
41ST AVE SW
Current building approximately 20' from eastern property line. (roof peak currently 3-4' below fencetop of SF5000 home in foreground)
Bedroom window view from home on 42nd, facing W

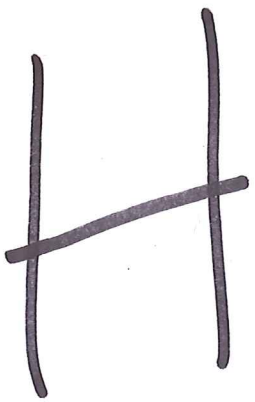


Backyard of home on 42nd ave, facing W &


top of light pole on eastern side of California Avenue @ 3236
↙ (40 ft. pole)
Olympics are visible, even from our main floor.
← (View may be affected by NC1-30 at full height, but destroyed entirely by NC2-40)
Backyard of home on 42nd, from kitchen window, facing W
44TH AVE SW
HINDS ST
CALIFORNIA AVE SW
42ND AVE SW
SW HANFORD ST
41ST AVE SW



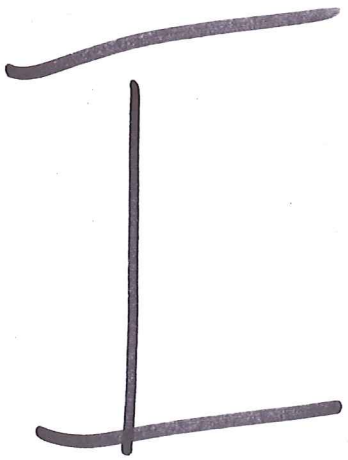
Back deck of home on 42nd facing W.



Appellant objections to certain Hearing Examiner Conclusions

	Summary of Hearing Examiner's conclusions									
Appellant	**The rezone is consistent with growth criteria for urban villages, as it increases zoned capacity within the urban village and is consistent with the neighborhood plan (Conclusion #4)**	**Rezone does not result in encroachment of commercial land into residential areas (Conclusion #5)**	**Neighborhood meets some characteristics of NC 1 zones (Conclusions #6)**	**Neighborhood best meets criteria for NC2-40 zoning (Conclusion #7)**	**Views from adjacent residential zones would be blocked from development permitted under NC1-30 zoning (Conclusion #9)**	**Height and scale of existing development is not a good measure of the area's development potential (Conclusion #10)**	**The adopted neighborhood plan does not have criteria relevant to the proposed rezone (Conclusion #12)**	**The proposed rezone would have a positive impact on housing (Conclusion #15)**	**Zoning principles are aimed at buffering less intensive zones from more intensive zones…these principles are not implemented along the California Ave SW corridor (Conclusion #13)**	**Pedestrian safety would be improved with new sidewalks, lighting and reduced curb cuts (conclusion #19)**
Wingard					X					
McIntosh/Caster/ Muller	X		X	X	X	X	X[1]	X	X	X
Annest					X[2]					
Peck/Wingard/ Muller		X		X	X					
Ross							X[3]			

[1] These appellants object to the Hearing Examiner not allowing the 1998 Admiral Residential Urban Village plan into the record. The adopted Neighborhood Plan for the Admiral Neighborhood is included in the Comprehensive Plan.
[2] The Annest's appeal includes references to height related data that was not included into the Hearing Examiner's record. The Annest's raise concern that they did not have adequate opportunity to have this data included in the record due to the timing of the various hearing presentations by all parties.
[3] Mr. Ross objects to the Hearing Examiner's findings and conclusions concerning the neighborhood plan, as the 1998 Admiral Plan was not admitted into the record. The relevant neighborhood plan is found in the City's Neighborhood Plan section of the Comprehensive Plan and is included in the record as Hearing Examiner's Exhibit 9. Mr. Ross also includes references to a Central Puget Sound Growth Management Hearing Board decision concerning the use of neighborhood plans.



FILED
CITY OF SEATTLE

2010 SEP 16 PM 2:03

CITY CLERK

September 15, 2010
Phil Wingard
3227 42nd Ave SW
Seattle, WA 98116

Seattle City Council
Built Environment Committee
c/o Seattle City Clerk

Reference: Council File 3007538, DPD reference 308944
Subject: Appeal of Hearing Examiner recommendation in Council File referenced above

Dear City Council Members

I am writing this letter to appeal the referenced zoning change recommended by Hearing Examiner Sue A. Tanner (referenced above). Relief sought is the denial of the rezone request and retention of the existing NC1-30 zoning.

Specifically, I object to Item 9 of the Examiner's Conclusions, which falsely states that

> "...most views from those residences would be blocked if the site were fully built out at NC1-30 zoning, and any remaining views would be blocked by build-out at NC2-40."

This statement is false, and is based on erroneous calculations made by DPD personnel. In fact, there currently exists physical evidence of this falsehood. One NC2-40 lot is fully built-out on the northeast portion of the subject commercial lots (apartment building on southwest corner of intersection between California Ave SW and SW Hanford St). To the east is a single family residence that *overlooks* the NC2-40 zoned building with a view of the Puget Sound and the Olympic Mountains to the west. Further, the majority of the residential lots to the east of the subject commercial lots possess similar or higher elevations relative to the front lot line of the adjacent NC1-30 zoned commercial lots.

The Hearing Examiner based her Item 9 conclusion on erroneous DPD calculations. In those calculations, the baseline elevation explicitly used for establishing view blockage by full build-out of NC1-30 commercial buildings was the highest eastern point of the lot. However, that single point is 20 to 30 feet higher than the front lot line at the sidewalk, the baseline elevation from which any pedestrian friendly commercial building would be built. The DPD calculations assume that a commercial building could be built that floats 20 to 30 feet above the sidewalk on California Ave SW, grounded solely at the highest easternmost point on the lot.

The correct baseline elevation for "continuous storefronts built to the front lot line", whether NC1-30 or NC2-40, is the sidewalk elevation on California Ave SW to the west not the much higher elevation where the commercial lots meet the adjacent residential lots to the east. Calculations based on the corrected baseline elevation show that the majority of the Sound and Olympic views that the eastern single-family residential lots legally possess would remain with a full build-out to NC1-30, but if the zoning were increased to NC2-40 then those views would be in some cases largely obscured or eliminated. It would not be possible to mitigate that damage through a design review process if the commercial rezone were approved, because by approving the rezone, the City Council would have already stolen the views and associated values possessed by the residential property owners under the existing NC1-30 zoning.

Therefore, I urge you to disregard the Hearing Examiner's recommendation and deny the application for zoning change.

Sincerely,

Phil Wingard

9/15/10

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CITY CLERK

September 14, 2010 (amended per request by 9/28/10 with clarification to Findings #13, 14)

To the City Council and City Clerk
Re: DPD Reference Number 308944, Council File #3007538

This letter is in appeal to the findings and recommendations of the Hearing Examiner for the City of Seattle regarding the proposal to rezone 152,755 square feet (the 3200 block and part of the 3400 block) of California Avenue Southwest from NC1-30 to NC2-40. We live in single family residences on 44th Ave. S.W., either directly abutting the subject site or in the next block south.

Our objections to the Hearing Examiner's findings and recommendations include the following:

Findings of Fact

12. ***"The Director has proposed text amendments to the City's lowrise multifamily zones that, if approved by the City Council, would consolidate the Lowrise 3 and Lowrise 4 zones and allow building heights up to 40 feet within them."***

    It is unclear how a potential change in height allowances that is under appeal and not approved is relevant to the Finding of Fact.

13, 14. ***"In evaluating a rezone proposal, consideration is to be given to those parts of a neighborhood plan that have been adopted by the City Council, with particular attention given to any adopted policies that guide future rezones. (SMC23.34.008.D).... The rezone policies in the adopted Admiral Neighborhood Plan address only rezones away from single-family zoning outside the Urban Village and rezones to L3 and L4 zoning inside the Urban Village."***

    We believe the findings and conclusions of the Hearing Examiner (and DPD) are in error in that they excluded and neglected to consider portions of the Admiral Neighborhood Plan that are relevant to the rezone proposal. Applicable portions of the ANP have been cited and submitted to the record from those who oppose the rezone (e.g., comments by Mark Wainwright, Admiral Neighborhood Association). Our objection is to the Hearing Examiner (and DPD) not taking into account portions of the plan in reaching her findings and conclusions. We also agree with and support the appeal filed in this matter by Dennis Ross that shows how and why specific omissions of the Admiral Neighborhood Plan render the conclusions and findings of the Hearing Examiner in violation of the Growth Management Act regarding the Neighborhood Plan.

16. ***"The Director held a public meeting on the proposal on November 8, 2007, and the pubic comment period was extended to December 5, 2007. During the comment period the Department received 55 written statements. Thirty-one supported the rezone and 24 opposed it. Additional comment letters were received after the***

comment period and were forwarded for the Hearing Examiner's consideration ... In total, public testimony and comments submitted to the Examiner ran approximately two to one in opposition to the proposed rezone."

The public meeting referred to (the only public meeting held, by request of the Admiral Neighborhood Association) was not November 8. Notice was posted on poles November 22 (Thanksgiving Day) of the meeting scheduled for November 29. The meeting was attended by about 100 people (most speaking opposed). In fact, due to strong opposition, the short timeline, and a DPD review Malli Anderson said would take months, Ms. Anderson extended the December 5 comment deadline to January 31, 2008. It was carefully confirmed that comments submitted during the extended period would receive equal consideration and weight. After the DPD Director's Recommendation was issued, comments sent in good faith before January 31 were found to be clipped together in the file and not included in the tally reported in the Recommendation. This lack of inclusion was brought to the Hearing Examiner's attention and the "additional comments" were forwarded for the record. It is unclear if or how these comments were considered by the multiple planners involved in developing the Recommendation, or what effect under-reporting the opposition may have had on subsequent public response to the Recommendation.

Conclusions

4. ***"The proposed rezone satisfies SMC 23.34.008.A., as it would increase the zoned capacity of the urban village, and the capacity would be consistent with the density established in the Urban Village Appendix to the Comprehensive Plan."***

Adding an additional 96 housing units DPD calculates the rezone would provide (DPD Recommendation, pg 16) is not needed in the urban village and could have a negative impact if added this far from the Admiral core business district. Per comments submitted by the Admiral Neighborhood Association (Dec. 5, 2007) in opposition to the proposal the capacity of the urban village as zoned is already consistent with established density goals:

"The Admiral Residential Urban Village, as currently zoned, provides more than adequate development potential within the existing NC2-40 zone to fulfill the projected need for housing and associated retail and commercial development a stated in the Comprehensive Plan for 2024. The City of Seattle Comprehensive Plan, in Appendix UV-A4, lists the quantity of additional households to be added to the Admiral Residential Urban Village area by 2024 at 200. Even considering potentially more rapid growth of the area than called for in the Comp. Plan would be within reason, so a quantity as high as 250 or 300 may be possible. That said, in the 98 acres of the Admiral Residential Urban Village, there exists in excess of 400,000 sq. ft. of undeveloped or underdeveloped property currently zoned NC2-40. For the sake of this comment, let's assume that an NC2-40 zoned, 10,000 sq. ft. parcel with ground floor retail and three levels of residential units could contain approximately 20 (or more) housing units. **With over 400,000 sq. ft. of NC2-40 zoned land already in**

the Admiral Residential Urban Village, future development could yield in excess of 800 housing units and hundreds of thousands of square feet of commercial space. Additionally, the proposed rezone would decentralize development from the immediate core of the Urban Village, pulling both retail and residential uses away from the area best served by transit and other City services. With the current, pressing need to create an even stronger retail core at the intersection of California Ave. SW and SW Admiral Way, this proposal can't be supported."

6., 7. **As stated in Findings # 23 (pg. 5):** ***"SMC 23.34.074.B provides locational criteria for the NC1 zone: 'Outside of ... urban villages, or within... urban villages where isolated or peripheral to the primary business district and adjacent to low-density residential areas."*** **Per conclusion #6:** ***"The site meets some of the functional and locational criteria for the NC1 zone. It includes a variety of small business, some of which serve primarily the adjoining residential neighborhood..."***

In fact, the 3200 block of California is not only the farthest block from the core Admiral Junction business district serving the urban village, but is separated and buffered from the district by a large senior housing complex and Lafayette Elementary School (on the west side of California Avenue S.W.) and by Hiawatha Park, West Seattle High School, and a religious institution (on the east side of California Ave. S.W.). The site currently includes many small neighborhood businesses that neighbors can and do walk to, including a pizza restaurant, fitness facility, hair salon, picture framing shop, and others.

9. ***"... to the east, most views from those residences would be blocked if the site were fully built out at NC1-30 zoning, and any remaining views would be blocked by build-out at N2-40.... This would be an issue to be addressed in design review of the projects proposed for the site."***

It is unclear how a situation in which "any remaining views would be blocked by build-out at NC2-40" could be addressed in design review.

10. ***"The predominant height and scale of existing development on the site is not a good measure of the area's overall development potential. A better measure is the height and scale of development to the north and south on California Ave. S.W. During the last 20 years, many parcels within surrounding areas that are zoned for 40-foot heights have been redeveloped, which indicates the area's likely development potential."***

Development potential at 30-foot height limits is also evident within the subject site and nearby. At least five businesses in the subject site have been remodeled in the recent past (e.g., Swinery, Blackboard Bistro, Prost, Bohemian, and Spiros). Also, within three blocks of the site several new buildings have been built to 30-foot height limits. This includes a large multi-housing complex bordering the site (3400 block, west side of California); and new mixed-used commercial and multi-family buildings at 3443/3445 and 3727 California Ave. S.W. (vibrant buildings that conform to the existing character and scale of the subject site).

12. **Per Findings of Fact 14 (pg. 3):** ***"The adopted Neighborhood Plan does include policies that would apply to development under either NC1-30 or NC2-40 zoning, including a policy that encourages development in conformance with the neighborhood's existing character and scale and promotes a pedestrian-friendly environment (A-P1)."*** **Per Conclusion #12 (pg. 8):** ***"Although the adopted Neighborhood Plan does not include policies relevant to the proposed rezone, future development under NC2-40 zoning would meet policy A-P1 because it would conform to the existing character and scale of development along much of the nearby California Ave. S.W. commercial area.."*** (Underlined for emphasis)

    Although the site was zoned at 40-foot height limits prior to 1957, then again from 1986 to 1990, only one building has been built to a 40-foot height limit. Development allowable at NC2-40 zoning will not conform to the existing neighborhood's character and scale of the subject site. New allowed heights could approach 55 feet (including allowances for commercial awnings, mechanical equipment, rooftop pitch, and the east to west slope across California Ave. S.W.). Business sizes allowed would increase from 10,000 square feet to 25,000 (50,000 for sales/services). And the types of businesses allowed in NC2 (as listed per code in DPD recommendation, pg. 28) could be much more disruptive, including auto and marine (large boat) sales/rental, vehicle repair, light manufacturing, theater/spectator sports, adult cabarets, lodging, and principal use parking.

13. ***"The zoning principles listed in SMC 23.34.008.E are generally aimed at buffering less intensive zones from more intensive zones, if possible. However, as noted above, these principles have not been implemented along most of the California Ave. S.W. commercial corridor in this area. At the site, the only transition or buffer separating the existing NC!-30 zone on the site from the adjacent SF5000 zoning to the east is the topographic break between the zones. On the west side, an alley provides the only buffer between the two zones."***

    Since zoning principles are "generally aimed at buffering less intensive zones from more intensive zones, if possible"; with gradual transitions between zoning categories (including height limits) preferred, implementation of zoning principles would be best served and is "possible" here by leaving zoning at NC1-30. That zoning "principles have not been implemented" elsewhere does not seem a meritable argument for increasing this lack of implementation by making a bad situation worse through upzoning more than 150,000 square feet of property where buffer zones between commercial and SF zoning as described are minimal.

15. ***"The proposed rezone would have a positive impact on housing, as it would provide the opportunity for an additional floor of new dwelling units over and above the number that could be provided under existing NC1-30 zoning. The additional floor could offset some of the cost of underground parking and thereby increase the likelihood that development would occur in this underdeveloped block of California Ave. S.W."***

The negative impact on affordable housing has not been addressed. As was noted in DPD's Recommendation (pg. 27), approximately 15 apartment buildings exist within the subject site. This large stretch of affordable housing stands to be replaced with expensive housing, given the increased costs related to new construction, more sound views (due to increased heights), and underground parking applicants have stated the rezone will make feasible.

19. ***"There is no indication in the record that future development under the proposed zoning would have a negative impact on pedestrian safety. It is likely that pedestrian safety would be improved by the new sidewalks, lighting and potential reduction in curbcuts that would accompany new development."***

Per the record the subject site triangulate within three schools (Lafayette Elementary two blocks north; West Seattle High School on California Avenue in the block north; and Madison Middle School a block southwest). This indicates negative impacts to pedestrian safety related to increased density DPD projects with a rezone (DPD Recommendation pg. 16). Also, given a lack of any plans it is unclear how a conclusion was reached that "it is likely pedestrian safety would be improved by the new sidewalks, lighting and a potential reduction in curbcuts that would accompany new development."

Other: We also draw the attention of the Council to a matter of inquiry by the Hearing Examiner not addressed in the Findings of Fact. Exhibit #57 of the record is listed as a request the Hearing Examiner made to DPD Manager Roberta Baker in response to public comment made during the public hearing August 18, 2010. The public comment asked about $27,000 (or more) in fees seemingly waived for the applicants of the proposal (as evidenced in the DPD file and the on-line permit, with no explanation included).

In conclusion, this appeal is directed to the Hearing Examiner's specific Findings and Conclusions, so does not include many valid points previously argued by the majority opposition. We humbly request the Seattle City Council carefully weigh and consider the full record in determining whether this rezone is best for the community and the city. We particularly ask this since public opportunity for meaningful dialogue and feedback (a route that would have been available if this had been a contract rezone that included plans) seems gravely insufficient in relation to the proposal's scope and impacts it bodes to bordering residences, the neighborhood, and the urban village.

Please keep in mind when reviewing public feedback that only one community meeting was ever held by DPD about the proposal, in 2007 (at the request of ANA). After a nearly three-year span a 35-page recommendation was released in the heart of summer (when many are away), with limited response times that included two appeals periods over the July 4th and Labor Day holidays. The one public meeting held in 2007 was cut short (before everyone commented) so those who didn't speak have literally been limited to five minutes of public sharing at the Hearing Examiner's meeting.

We request that the recommendation to rezone this property be denied. We also request the option of oral comments. If any portion of this appeal is deemed invalid or inadmissible, we request remaining, admissible remarks be considered separately.

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Chris Caster
3015 44th Ave. S.W.
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2010 SEP 16 PM 12:48
CITY CLERK

September 14, 2010

To the City Council and City Clerk:
Re: DPD Reference Number 308944, Council File #3007538

This letter is in appeal to the findings and recommendations of the Hearing Examiner for the City of Seattle regarding the proposal to rezone 152,755 square feet (the 3200 block and part of the 3400 block) of California Avenue Southwest from NC1-30 to NC2-40. We live in single family residences on 44th Ave. S.W., either directly abutting the subject site or in the next block south.

Our objections to the Hearing Examiner's findings and recommendations include the following:

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12. ***"The Director has proposed text amendments to the City's lowrise multifamily zones that, if approved by the City Council, would consolidate the Lowrise 3 and Lowrise 4 zones and allow building heights up to 40 feet within them."***

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We object that certain portions of the Admiral Neighborhood Plan were not admitted to the findings. We agree with and support the appeal filed in this matter by Dennis Ross that, due to these exclusions, the conclusions and findings of the Hearing Examiner are in violation of the Growth Management Act regarding the Neighborhood Plan.

16. ***"The Director held a public meeting on the proposal on November 8, 2007, and the pubic comment period was extended to December 5, 2007. During the comment period the Department received 55 written statements. Thirty-one supported the rezone and 24 opposed it. Additional comment letters were received after the comment period and were forwarded for the Hearing Examiner's consideration ... In total, public testimony and comments submitted to the Examiner ran approximately two to one in opposition to the proposed rezone."***

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rezone would decentralize development from the immediate core of the Urban Village, pulling both retail and residential uses away from the area best served by transit and other City services. With the current, pressing need to create an even stronger retail core at the intersection of California Ave. SW and SW Admiral Way, this proposal can't be supported."

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In fact, the 3200 block of California is not only the farthest block from the core Admiral Junction business district serving the urban village, but is separated and buffered from the district by a large senior housing complex and Lafayette Elementary School (on the west side of California Avenue S.W.) and by Hiawatha Park, West Seattle High School, and a religious institution (on the east side of California Ave. S.W.). The site currently includes many small neighborhood businesses that neighbors can and do walk to, including a pizza restaurant, fitness facility, hair salon, picture framing shop, and others.

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12. **Per Findings of Fact 14 (pg. 3):** ***"The adopted Neighborhood Plan does include policies that would apply to development under either NC1-30 or NC2-40 zoning, including a policy that encourages development in conformance with the neighborhood's existing character and scale and promotes a pedestrian-friendly environment (A-PI)."*** **Per Conclusion #12 (pg. 8):** ***"Although the adopted Neighborhood Plan does not include policies relevant to the proposed rezone, future development under NC2-40 zoning would meet policy A-P1 because it would conform to the existing character and scale of development along much of the nearby California Ave. S.W. commercial area.."*** (Underlined for emphasis)

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Other: We also draw the attention of the Council to a matter of inquiry by the Hearing Examiner not addressed in the Findings of Fact. Exhibit #57 of the record is listed as a request the Hearing Examiner made to DPD Manager Roberta Baker in response to public comment made during the public hearing August 18, 2010. The public comment asked about $27,000 (or more) in fees seemingly waived for the applicants of the proposal (as evidenced in the DPD file and the on-line permit, with no explanation included).

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Please keep in mind when reviewing public feedback that only one community meeting was ever held by DPD about the proposal, in 2007 (at the request of ANA). After a nearly three-year span a 35-page recommendation was released in the heart of summer (when many are away), with limited response times that included two appeals periods over the July 4th and Labor Day holidays. The one public meeting held in 2007 was cut short (before everyone commented) so those who didn't speak have literally been limited to five minutes of public sharing at the Hearing Examiner's meeting.

We request that the recommendation to rezone this property be denied. We also request the option of oral comments. If any portion of this appeal is deemed invalid or inadmissible, we request remaining, admissible remarks be considered separately.

Lynn McIntosh
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Chris Caster
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FILED
CITY OF SEATTLE
2010 SEP 28 PM 4:04
CITY CLERK

To: Michael Jenkins, City Council Clerk

From: Dino and Janna Annest, 3231 42nd Ave SW, Seattle, 98116

Re: Annest appeal of HE ruling regarding proposed project # 3007538

Date: September 27, 2010

Dear Michael,

This letter is an answer to and clarification of a portion of the appeal we filed regarding the proposed rezone at 3210 California Avenue Southwest, project # 3007538. These changes do not in any way apply to any part of the appeal that does not deal with the GPS measurements for which you requested clarification.

The numbers provided by the GPS device were to reinforce the information included in our initial letter to the HE (turned in at the beginning of the hearing) and to rebut the inaccurate testimony given by the DPD. This rebuttal was promised but not provided for during the hearing.

In an effort to correct the record and the information contained in the DPD recommendation on this matter, we offered accurate altitudes of both California Avenue and the adjacent street to the east, 42nd Avenue SW. In our initial letter to the HE (submitted at the beginning of the rezone hearing), we reported that the difference in heights between our yard and California Avenue was approximately 25', which was the most precise measurement we could obtain at the time (the distance as measured with GPS is actually 26'). After printing that letter but just prior to the hearing, I obtained more accurate numbers from a friend who has a very precise GPS device, and had those numbers at the hearing.

I was informed by two sources (one land-use attorney and one person from the DPD on the phone) that the DPD and the project applicant would be presenting first at the hearing, followed by public comment. That did not happen. The HE announced at the beginning of the hearing that the public comments would be first and then the DPD report and the project applicants, to be followed

by a chance for rebuttal. Those of us in attendance therefore assumed that we would have a chance for rebuttal. I was prepared to provide the precise GPS numbers in rebuttal, in response to (a) the statement of the DPD made during the hearing that (paraphrased) "a full build-out at the NC1-30 zoning heights will block most or all of the views" of the residents of 42nd Ave SW and (b) the report used by the DPD to determine the heights of buildings (exhibit 14) listing on a starting altitude of 583 feet.

After public comment, the HE announced that the rest of the time would be spent in DPD report and the applicant's argument. I asked her at that time when we would be given the opportunity for rebuttal, and she said we would not. I was troubled to hear this, because I had kept my primary comments brief in accordance with the HE's instructions.

Please contact me if any further explanation is required, and thank you for your time and consideration.

Sincerely,

Dino L. Annest

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2010 SEP 16 PM 2:04
CITY CLERK

To the City Council and City Clerk:

Re: DPD Reference Number 308944, Council File #3007538

An Appeal to the Seattle City Council in the Matter of the Application of Josh Stephenson for a rezone for property located at 3210 California Avenue SW.

If any portion of this appeal is deemed invalid or inadmissible, we request that all remaining, admissible remarks be considered separately from those section(s) which are invalidated.

We ask that the request to rezone this property be denied.

We also request the option of an oral argument before members of the council.

The bases for this appeal are as follows:

1. Errors in both analysis and application are present in the recommendation by the DPD and the decision by the Hearing Examiner with regard to the proposed area and its relationship to the adjacent SF5000 lots located on 42nd Avenue.

2. Clear directives in the Seattle Municipal Code were ignored when they are specifically to be considered in the decision.

3. Requirements/mitigations for such a rezone could be better met, and the possibility of such was not considered, or was at least omitted, in the decision.

SMC 23.34.009 states, *"... the **natural topography** of the area and its surroundings, and **the likelihood of view blockage shall be considered**."* The DPD recommendation states on Page 3, paragraph 3 – "There is approximately 18 feet of slope across the eastern parcels and approximately 8 feet of slope across the northwestern and southwestern parcels." This is completely false. The accurate variation in the topography between the sidewalk of California Avenue's eastern parcels and 42nd Avenue Southwest (the SF5000 area adjacent to the east of those parcels with no alley to act as buffer) is zero feet at Hinds Avenue to the south and 26-30 feet at mid-block (addresses 3227-3243). The eastern sidewalk of California Avenue on this block ranges from 553-558 feet in altitude, as determined by a Garmin eTrex Vista HCx GPS unit. The altitude of the adjacent properties on 42nd Avenue SW range from 564 feet on the south end of the block to 584-589 feet in the middle.

Also, the altitudes used in the DPD recommendation for the possible heights of buildings under both zoning classifications were all based at the top of that slope (as high as 583 feet), then added the 30-33 or 40-43 foot building height to those starting points which, if it were actually applied to new buildings, would mean that a new business on California

Avenue would rise approximately 70 feet from the sidewalk, at 556 feet of altitude, to the DPD reported 628 foot roofline! This report is misleading and inappropriate.

On page 15, the DPD recommendation states:

> Views – The Olympic Mountains and Puget Sound are visible from many parts of the site, including public rights of way and private properties. DPD has considered the potential impacts of the proposed rezone on adjacent views. It appears full build-out under existing NC1-30 zoning would block most, if not all private views from adjacent properties to the east. There would be no appreciable difference to private views between NC1-30 zoning and NC2-40 zoning.

SMC 23.34.008 states that a buffer shall be provided between less intensive zones and more intensive zones, if possible. The HE offers on page 8 of her decision "the only transition or buffer . . . is the topographic break between the zones." This is accurate, but a unique situation exists which makes the next staement absolutely false.

The HE's decision (page 9, number 17) states that

> Full build-out of the site under either the existing NC1-30 zoning or the proposed NC2-40 zoning would result in shadows to the north, east, and west . . . and would impact views from adjacent properties to the east.

This is not only false, in this case, the opposite is true: the substantial difference between the altitude of the area's eastern properties and the adjacent SF5000 homes on 42nd Avenue SW affords the latter views of the Olympics and the western horizon that would NOT be dramatically diminished by a full build-out at NC1-30. The addition of 10-14 feet, as provided by this rezone, would destroy those views and dramatically reduce the value of the homes of the residents of 42nd Avenue. To illustrate, the ground level of our backyard at 3231 42nd Avenue SW sits 28 feet above the sidewalk of California Avenue. A full NC1-30 build-out of the California Avenue property adjacent to ours would place the rooftop of a 33 foot building nearly level with our backyard fence, with no diminished view. A full NC2-40 build-out, however, not only blocks our main floor view, a maximum width commercial building not only blocks the upper floor view, it also places at least one full set of condominium windows 8 feet horizontally from our property line facing into our daughter's bedroom and casting a much more substantial shadow on our yard. The value of our property would not simply be reduced – the property would enter another class with regard to real estate terminology. Instead of a "partial view" home, which is how our house was listed when we bought it, the home will drop below the "territorial view" category to a listing of "view: none". This represents an unreasonable loss of value to a home that we purchased with the understanding that the buildings in front of us could only go so high due to the city's zoning laws. It is unconscionable that you might allow this to happen to an entire block of citizens who have made our lives here. We are not naïve, we are aware of the forces at work here and we are defending the homes which we have worked and paid for.

Finally, in our letter to the HE dated August 18, 2010, we offered the possibility of reasonable mitigations for such a broad blanket rezone, emphasizing that a contract rezone makes much more sense here. They could have been imposed by the HE. She not only disregarded them, she failed to mention that they had even been proposed. It would have been prudent and fair for her to at least disclose in her findings that they had been proposed. The letter read as follows:

> **Potential Mitigation.** If any rezone were to occur, particularly along the Eastern Properties which lack any buffer whatsoever, we urge the Hearing Examiner to consider imposing the following restrictions in the interests of protecting our privacy and property values.
>
> • No lights on the east side of building higher than 20 feet above the sidewalk level.
> • Upper level setback – buildings no more than 50% of lot depth at 30 feet above the sidewalk.
> • No windows on the east side of the buildings (facing the SF 5000 residences).
> • All HVAC/cellular equipment screened for aesthetics and noise.
> • No building systems outlets pointing toward SF 5000 residences.
> • Traffic entry consolidated, one entry per building per block.
> • No above-ground parking.
> • 100% of parking per SEPA met inside each building.
> • All services screened for aesthetic and noise purposes.
> • Service entries be only located on California Avenue, not on narrower side streets.

We ask that you consider the errors, inaccuracies, and omissions above and deny this rezone. Thank you.

Sincerely,

Dino L. Annest 9-14-10

Janna J. Annest 9/16/10

FILED
CITY OF SEATTLE

2010 SEP 16 PM 12:46

CITY CLERK

Olivia Sarah Peck
3217 42nd Avenue SW
Seattle, WA 98116

September 15, 2010

To the City Council and the City Clerk

Re: DPD reference Number 308944, Council File # 36007538

This letter is in appeal to the findings and recommendations of the Hearing Examiner for the City of Seattle regarding the proposal to rezone property near 3210 California Avenue SW.

I hereby request that this application for re-zoning be DENIED.

The reason for my appeal is that I believe the city has violated the rules about process of this application. My civil rights have been ignored.

I wrote a letter against this re-zoning and sent it to the DPD as I was told I could do. I never received any more information from the DPD or anybody else about the process, or what would come next or anything.

My family and neighbors had to tell me about the Hearing Examiner's meeting. I wrote another letter to the Hearing Examiner and had it submitted at the hearing. AGAIN, I never got a reply in any form. Nobody even told me that the Hearing Examiner had made a decision.

It is wrong for the city to ignore its citizens when they are speaking about such an important topic. Because this was handled incorrectly, the rezone should not be allowed.

I request to be allowed the option of having an adult speak with me or maybe for me, in oral argument.

Thank you,

Olivia Peck

Olivia Peck

To the City Council and City Clerk:

Re: DPD Reference Number 308944, Council File #3007538

A Group Appeal to the Seattle City Council in the Matter of the Application of Josh Stepherson for a rezone for property located at 3210 California Avenue SW.

Be it hereby known that where our views and concerns are coincidental to one another, we have jointly herein expressed those issues in the following appeal. Furthermore, we have nominated the following persons to act in our behalf as regards the issues presented in this document:

- Cole Eric Peck
- Phil Wingard
- Lisa Muller

FILED
CITY OF SEATTLE
2010 SEP 16 PM 12:49
CITY CLERK

With the following provisions:

These nominated representatives shall be authorized to communicate in our behalf, as one group, in opposition to the above-mentioned Rezone application. By joining in this joint appeal addressing the issues herein, we in no way relinquish any individual rights, but explicitly reserve such rights, including the right to act individually with respect to any and all aspects of the legal process.

If any portion of this appeal is deemed invalid or inadmissible, we request that all remaining, valid or admissible remarks be considered separately from those section(s) which are invalidated.

We also request the option of an oral argument.

With all due respect to the process, we seek permission for as many as possible of the individuals below, to be given the opportunity for oral argument. We would ask that, at a minimum, this group be allowed the opportunity to put forward not less than five (50) spokespersons and not more than ten (10) from the list below to present oral argument on behalf of the entire group.

We hereby ask that the request to rezone this property be denied.

SIGNED:

Name	Signature	Address	Phone	Email

SIGNATURE PAGES ATTACHED

To the City Council

I. The following section addresses, as specifically as possible, the Seattle Municipal Codes upon which we believe errors have been made.

A) Natural topography & views Ignored

While not all neighbors in the area have views, the rezone request has not answered homeowners' complaints about lost views. It is apparent to us that **SMC 23.34.009** requires more substantial acknowledgement of this issue, *"... the **natural topography** of the area and its surroundings, and **the likelihood of view blockage shall be considered**."*

B) Encroachment on residential not accurately described & violation of Neighborhood Plans

According to the Director's Review as recapped in the Hearing Examiner's review, **SMC 23.34.072** *"discourages encroachment of commercial development into residential areas and encourages compact, concentrated commercial areas or nodes over diffuse, sprawling commercial areas."*

This rezone is in violation of this code. Representatives of the Admiral Neighborhood Association have issued remarks in objection to this rezone on the very basis that it will be harmful to urban village concept – pulling businesses away from that concentrated area (Admiral) and extending them out into the perimeter of the village where they (larger businesses made possible under NC2-40 zoning) will (in another violation of the code) encroach on the residential neighborhoods east and west of California street in the rezone area.

It should be further pointed out that the city may be in violation of **SMC 23.34.008** since we understand that, according to a past-president of the Admiral Neighborhood Association, the neighborhood plan states quite clearly that no rezoning should occur.

In a letter addressed to Malli Anderson on December 5, 2007, the Admiral Neighborhood Associations states that they, "cannot support the proposed rezone of the 3200 block of California Ave. SW." and the following reasons were given:

1) "The proposed rezone runs **contrary to the Admiral Residential Urban Village Plan.**
2) The Admiral Residential Urban Village, as currently zoned, provides more than adequate development potential within the existing NC2-40 zone to fulfill the projected need for housing and associated retail and commercial development as **stated in the Comprehensive Plan for 2024.**"
3) ...the proposed rezone presents no plan, design or other compelling potential development scenario that would warrant consideration by the Admiral community.

> Furthermore, there is no clearly defined public benefit from the proposal." (bold added for emphasis)

We would take those arguments even further and insist that this rezone could, in fact, have a negative impact (commercially and environmentally) on both of the nearest urban shopping districts/urban villages. Larger business created in the rezone area are only likely to pull *driving* customers *away* from Admiral or Alaska junctions by creating more competition that will have an adverse affect on both. Additionally, the Alki Neighborhood Association has also communicated disapproval of the rezone. It would not, under any circumstance, create shared walking customers with either (Alaska or Admiral) area since it is too far removed from the centers of both.

The fact that this area is too far removed from the walking areas of surrounding commercial centers, and is furthermore separated by the three public schools that surround it, means that to rezone this area is in principle a violation of **SMC 23.34.072**, "The preservation and improvement of existing commercial areas shall be preferred to the creation of new business districts" in that it essentially allows the creation of a new, secluded "business district" along California Street that is an furthermore an "encroachment of commercial development into residential areas" (which) "shall be discouraged."

C) Area does NOT fit description of NC2-40 zoning

SMC 23.34.076 again points to a major problem with this rezone: The codes specifically address the rule that an NC2 zone should be the kind of place people drive to, and then walk around. This block is NOT situated to be a walkable part of the two primary business districts in the "greater West Seattle neighborhood". Therefore, if it is a destination at all, it is and will always be a drive-in-then-drive-away area. With every single street touching the rezone already at (parking) capacity, this is a compound problem that the rezone request has not factually addressed. This area does NOT fit that definition of the kind to be zoned NC2-40!

D) Current zoning is ideal for the area

We believe that SMC 23.34.074.A/B makes it quite clear that the area **as currently zoned** is already doing exactly what it should be doing and need not be changed – the right kinds of businesses are present, or are capable of being present, without any zoning changes.

A review of that code will show that the status quo is perfectly suited to NC1 zoning:

> *"B. Locational Criteria. A Neighborhood Commercial 1 zone designation is most appropriate on land that is generally characterized by the following conditions:*

1. Outside of urban centers and urban villages, or within urban centers or urban villages where isolated or peripheral to the primary business district and adjacent to low-density residential areas;

This area, while nominally within the Admiral urban village (at its very southern tip) is, as has been shown, in actuality an isolated business area that is surrounded by low-density (single family) residential and the schools that serve those families.

2. Located on streets with limited capacity, such as collector arterials;

Opponents to the rezone have made it clear that most of the streets in/around the proposed rezone are of limited capacity! The DPD & Hearing Examiner have acknowledged that 42nd between Hanford and Hines has limited parking due to being a fire lane for West Seattle High School. At the rezone northern border, SW Hanford street is already a limited-access hazard area given that it is metro buses, school buses and service vehicles must stop on a hill, in front of a (4' wide) alley, blocking the intersection (with California Avenue SW) and with limited view of oncoming or crossing traffic uphill (at the intersection with 42nd Avenue SW). Although on paper it is a local connector/minor transit street, only the eastbound lane provides parking and the westbound lane is not wide enough for its "bicycle" designation. Furthermore, SW Hinds street is virtually useless, serving as little more than a driveway for the medical building located on the corner of Hinds & California Avenue SW.

More importantly to this point, the description of NC2 zoning specifically calls for "streets with good capacity". This is a critical area in need of review! We have already shown that 3 out of four of the streets on the Eastern block of California Ave SW in the rezone are NOT up to the task of accommodating NC2 zoned neighbors! Furthermore, 42 and 44th Avenues SW BOTH dead-end" just outside of the rezone area and so they are not to be considered suitable for transportation in and out of the rezone area!

3. No physical edges to buffer the residential areas;

Again, this is a precise definition of the proposed rezone area. There are not only "no buffers," the block is actually thinner and longer than ANY of the NC2 zones in the area. This fact has not been adequately addressed and will be reviewed further in this appeal.

4. Small parcel sizes;

All of the parcels on the backside of the entire rezone area are single-family residences, on very small parcels. This is also the case with some of the property within the rezone area. Not a single parcel is large enough to accommodate the depth of building that the applicants claim to want to build. We will come back to this issue later, since it represents several issues with the rezone AND the application process.

5. Limited transit service.

This area has very limited transit service. Only two routes on California Avenue SW and one more route (a limited route, at that) on SW Hinds. The Hinds street route is further reduced

by any snow closures, since it is located on a hill on which buses cannot drive in inclement weather.

In conclusion, there are many businesses now within the proposed rezone area that meet the NC1 goals perfectly. Neighbors can and do walk regularly to the local restaurant (a family pizza restaurant) and to the workout facilities in the area and other facilities. The overwhelming residential opposition of the proposed rezone is, in part, proof of the effectiveness of existing zoning in providing the types of services sought by city planners and local residents.

This issue is also addressed in **SMC 23.34.009**, "*The demand for permitted goods and services and the potential for displacement of preferred uses shall be considered.*" No demand for a change in goods or services has been shown and no proof has been given that those existing now (or capable of existing with current zoning) are inadequate for the neighborhood.

This is a point that have been virtually ignored in the findings; that the existing zoning actually works and the people living in these zones like it this way! This is the point that, again, was also supported by the Admiral Neighborhood Association.

Another problem that has not been solved, related to changing the status quo, is that the applicants have not answered (and the city has not asked) about our concerns that existing tenants (both residential and commercial) benefit from the fact that this is an affordable area to live and do business. The Hearing Examiner makes no mention of this issue in her report, even though they (the approximately 15 affordable apartment buildings in the area) are mentioned in the city's 35-page recommendation.

Finally, the DPD and Hearing examiner have consistently understated the level of residential opposition to this rezone. Petitions, jointly signed letters, and persons speaking in behalf of groups have been ignored. If counted correctly, the opposition to this rezone exceeds 100 local residents and businesses, organizations and churches. For example, the Episcopal Church located at Hanford & California Avenue SW has made known its opposition to the rezoning, as have business owners within the proposed rezone area. And again, representatives of the Admiral Neighborhood Association and Alki Community Council and the Admiral Community Council have all expressed opposition as well.

E) Error of Fact not considered in evaluating impacts

Additionally, we wish to point out an error of fact that is most obviously seen in Paragraph number 15, under "Proposal" of the Findings and Recommendation" of the Hearing Examiner, which states that the request is to build 40' tall buildings. It is upon this assumption, that the buildings will be 40' tall, that DPD and other findings have said that issues of shadow, privacy, bulk, pollution, noise, "canyon effect" on California Avenue...and other decisions... have been made. It appears to have gone unrecognized that the proposal allows in practice for taller

buildings than it would appear on paper. This is so because the land in question is on a slope (which varies, as has been noted). This slope would, under existing building code, allow for buildings that are in actuality as much as 50 feet tall as measured from the sidewalk at California Street. We would argue vehemently that ALL of the related discussions – including but not limited to, environmental and impact on neighboring homes/yards – should be revisited by the DPD taking into account the practical height, rather than the theoretical height of what would be built.

II. We will now address our multiple concerns with the process that make this rezone a questionable issue – with some likelihood that there is the potential for unethical behavior involved, which is yet to be discovered.

A) False Deadlines

We, the opponents of this rezone object to the fact that we were told that the period for submitting letters and comments would be extended into January. Ms. Malli Anderson specifically advised multiple persons that this was to be the case. Later, when the issue was reviewed, and in the DPD report, the record shows that letters received after December 5 but before the verbal timeline given by Ms. Anderson, were PULLED from the official count of opponents vs. proponents and the writing of the report suggests that this issue carries at least some weight. Public Comment was ignored! This is simply unacceptable.

B) Understated Opposition

We reiterate what has been stated, that the official records have erroneously understated the level of opposition to this re-zone.

C) Waived Fees

Given that the local public's views were not represented, we hereby take exception to being footed with the bill for DPD work on this application. The record shows that the applicants owed approximately $38,000 dollars in fees and that the DPD appears to have threatened the applicants with cancellation and collections if said fees were not paid promptly. The record then shows that in excess of $27,000 in processing fees were waived with the stroke of a pen. To date, no satisfactory answer has been given regarding this issue, in spite of being an official part of the Hearing Examiners files. We believe that in a climate of severe budget shortfalls, eliminating fees for individuals without complete and acceptable explanation is simply unacceptable.

Of additional concern is the suspicion expressed by some members of this group that these fees were left intentionally unpaid in order to affect the timing of this process – to avoid or delay public scrutiny.

D) Rules of Order/Conduct

The applicant was allowed to speak at the Hearing Examiner's meeting for public comment. The Hearing Examiner herself stated that this was an exceptional circumstance and had to advise the applicant that he was to speak to the examiner and not directly to other members of the public who were present. We object to the applicant being given this additional and irregular use of the podium in the Hearing Examiner's chambers.

Furthermore, under oath, the applicant made a false claim about the winter 2007 meeting, claiming that "most" of the people at that meeting were there in favor of the rezone petition. This is a clear and obvious fabrication of the truth that can be proven false on the testimony of at least a dozen witnesses.

E) Big Promises Accepted Verbatim/Uncritical Review

We are surprised that the city can be so easily persuaded by a group of real estate developers and hired PR consultants. We are saddened to see the applicants very words inserted or paraphrased in the various documents where we would have expected more critical review.

By far the most important aspect of such critical review is a critique of what the applicants have claimed they can give the neighborhood and the city in exchange for our lost property values, views, parking spaces and neighborhood character, in short, a comfortable and perfectly livable block (now).

A simple review of the rhetoric at each of the meetings/hearings and throughout this process will show that what is being requested (by the applicants) and what is being promised do NOT match, and we are of the opinion that they cannot match. More is being promised than can be realized. This subject was alluded to earlier and we now bring it to the attention of the City Council.

WHAT WILL THEY BUILD?

According to comments from the applicants for the rezone, if they are awarded the rezone, they will be able to build:

- Bigger, better buildings
- Larger storefront retail or other businesses and mixed-use retail/residential
- With extra parking for customers
- Additional housing with underground/covered or off-street parking
- Improve lighting, sidewalk appeal and neighborhood ambiance
- Capable of being serviced (trash, etc) without stopping traffic on West Seattle's most important main street.

...All as a result of the new construction possible under a rezone to NC2-40, because 10 extra feet makes it all possible.

Furthermore, we are told as a result, there will be MORE net parking available in the immediate area after they are done than there is now. They want us to believe that increased density will make more parking available.

Ladies and gentlemen of the Council, we urge you to consider what others have obviously failed to realize; that these promises are false pipe dreams, designed to lure you into their plans. All that is required is an informal review existing building code along with an audit of what exists now in the area, and it will be seen that even if their intentions were of the best kind, they could not possibly do what they are promising!

NC2-40 Zoning is being granted, in part, on the promise that new retail or other ground floor businesses will line the street (as is highly desired in NC2 zoning) AND that (with the extra 10 foot capacity) the building will have new covered parking that will accommodate more than the minimum number of space required by the code.

We did a walking survey of the buildings along California Avenue SW all the way from Admiral to Alaska streets and found that there is not one single such building in existence that would a) fit on the property and b) meet existing building codes and c) work under even NC2-40 zoning.

We found one excellent example of building that met most of the above criteria. It was located on the eastern side at approximately 4116 California Avenue SW . It had a nice storefront, rear entry parking, and service entry from the back. It appears to be about 40 feet high.

There is only one problem. The block in the proposed re-zone area (between California Ave SW & 42nd Ave SW) is too thin, on too much of a slope, and has no alley. Such a building could not even be built that could accommodate BOTH storefronts AND off-

street parking! If it were placed on the much-thinner eastern proposed re-zone area, it would extend stretch all the way from the street to BEYOND the rear property line! We must state it again! There is insufficient buffer space for any building of NC2-40 design and there is no way whatsoever to access building from the backside – meaning that all service, access and parking activity will negatively impact California Street and the inadequate feeder streets in the area. This is the longest, most narrow block in the area, and is unsuitable to NC-40 construction!

F) Various other public comments of the applicants which raise questions

Of less importance, but worthy of mention, the applicants have made comments in meetings, hearings and in public that range from merely confusing to what may well amount to outright lies.

For example, in the first (and only) public meeting on this rezone, nearly 100 people showed up to learn about and speak out about this rezone. At this meeting, the applicant was booed down when he attempted to represent that a rezone would bring an influx of new jobs to the area, and that the applicants already had plans on the board of what they might do. When asked for specifics on both of these statements, the applicant backed off of their stance and have not attempted to reiterate these claims.

In another example, the applicant, Josh Stepherson has published on his website, the claim that as a public affairs consultant, his firm "is working with area residents, businesses and property owners to revitalize a block in the Admiral Business district of West Seattle. The project aims to spur the creation of more housing, jobs and businesses." As the most affected, nearest neighbors to this rezone, we firmly object to this demeaning and false public statement. To this, we wish to direct the Council to Josh Stepherson's employers' comments in the West Seattle Blog, in which he indicated what we already believe – that the area is already vital and doing well with new businesses moving in and thriving.

Our last note on this subject is that we have expressed concern that at the beginning of this process, the applicant, Mr. Josh Stepherson, was a city employee in a department that would have some input on this subject (Department of Transportation) and that he had not voluntarily revealed this information to interested parties (including, but not limited to, Malli Anderson of the DPD). Additionally, as shown by his "friends" in government positions (including Council members) on Facebook (for example), he has had frequent opportunity to violate the appearance of fairness in the process and although he is no longer a city employee, we hold in question what insider contact may

have taken place to secure this re-zone in spite of the overwhelming community opposition to it.

It may not affect the council's decision that these comments were made in public forums, but we believe that this may be indicative of a "salesmanship" that could serve as cause for us all to be wary of what is being promoted. It is a sign to us that we should enter this discussion cautiously, with the knowledge that the applicant does not appear to be averse to false representations.

In concluding, we will share a few of the personal impacts that this rezone will have on local families.

One family in a home along the rezone area has a child who has been diagnosed with asthma. It is important for him to have plenty of open air and breathing room, and so his bedroom was situated on the upper floor of their home where the breeze could best reach his room. Recently a large home was built, blocking some of that breeze. Now, with this re-zone, it is possible that taller buildings behind his home will block the last of the free-flowing air that will reach his bedroom. This family is concerned about the affect the stale air will have on his health. They oppose NC2-40 zoning.

In another family, along a different section of the proposed rezone, there is a mother who is often kept awake by the fans coming from the buildings behind her home. She has complained to the city and others about this, and has been told that the fans are all within code. This doesn't help her ability to sleep. She worries that larger buildings, with larger systems, and taller walls that will divert/echo any sounds, will further damage her sleep. She is opposed to NC2-40 zoning.

Another family already has to park their car across the street from their home because regulations only allow parking on one side of the street. The man in this home recently suffered a stroke, and has to walk to his car – sometimes just across the street, but sometimes at a considerable distance. He is concerned that since apartment dwellers currently don't use available parking in their buildings (because even though developers may build parking spaces, they don't always make them available at an affordable price to tenants). If new apartments are built or mixed use, or just businesses added, he'll find himself jockeying for parking even more than he does now. He is opposed to NC2-40 zoning.

One family simply sold their home and moved out of the neighborhood, due in part to their grave concerns about the negative impact this re-zone will have on their lifestyle

and property value. Certainly, this is a concern shared by many within the neighborhood and we regret the loss of a good neighbor. They, of course, opposed re-zoning.

There are more stories like these, and each one represents an issue that neighbors have with this application for a re-zone. And with each story, as we have shown, there are valid, legal and practical reasons for denying the decision to approve this re-zoning application.

We therefore urge you to deny this decision, and help us keep our neighborhood as the vibrant, alive, active and enjoyable community that it already is.

Thank you.

Attachments: Signatures of Co-appellants – 4 pages (copies of "page 2 of 12")

FILED
CITY OF SEATTLE
2010 SEP 29 PM 1:16
CITY CLERK

September 29, 2010 (amended per request with clarification)

To the City Council and City Clerk:

Re: DPD Reference Number 308944, Council File #3007538

A Group Appeal to the Seattle City Council in the Matter of the Application of Josh Stepherson for a rezone for property located at 3210 California Avenue SW.

Be it hereby known that where our views and concerns are coincidental to one another, we have jointly herein expressed those issues in the following appeal. Furthermore, we have nominated the following persons to act in our behalf as regards the issues presented in this document:

- Cole Eric Peck
- Phil Wingard
- Lisa Muller

With the following provisions:

These nominated representatives shall be authorized to communicate in our behalf, as one group, in opposition to the above-mentioned Rezone application. By joining in this joint appeal addressing the issues herein, we in no way relinquish any individual rights, but explicitly reserve such rights, including the right to act individually with respect to any and all aspects of the legal process.

If any portion of this appeal is deemed invalid or inadmissible, we request that all remaining, valid or admissible remarks be considered separately from those section(s) which are invalidated.

We also request the option of an oral argument.

With all due respect to the process, we seek permission for as many as possible of the individuals below, to be given the opportunity for oral argument. We would ask that, at a minimum, this group be allowed the opportunity to put forward not less than five (50) spokespersons and not more than ten (10) from the list below to present oral argument on behalf of the entire group.

We hereby ask that the request to rezone this property be denied.

SIGNED:

Name	Signature	Address	Phone	Email

SIGNATURE PAGES ATTACHED

SIGNED:

Name	Signature	Address	Phone	Email
HEIDI HUTCHINSON		3015 44th AVE. SW 98116	937.7136	
CHRIS CASTER		3015 44th AVE. SW 98116	972.7352	
Margaret Fitzpatrick		3217 45th Ave SW 98116	937-9643	
CLARK GOSS		3045 45th Ave SW 98116	387.3418	
John Fitzpatrick		3217 45th Ave SW 98116	937 9643	
Tricia Mun	Tricia Mun	3427 46th Ave SW 98116	7895316	
Lynn McIntosh	Lynn McIntosh	3246 44th Ave SW 98116	938-8153	

SIGNED:

Name	Signature	Address	Phone	Email
BEATA METZELAAR	Beata M	3210 42nd Ave SW-A	206 9140903	
Cynthia Coleman	Coleman	3240 42nd Ave SW	206 920-0920	
Sean	Coleman	3240 42nd Ave SW	206 473-3468	
~~[illegible]~~	~~[illegible]~~	~~3216 [illegible] SW~~ ~~[illegible]~~	~~[illegible]~~	
Sheila Begley	S Begley	3246 42nd Ave SW	206 778-89[illegible]	
Crystal Benser	Crystal Benser	3246 42nd Ave SW	206 932-6221	
Marvel Carpenter	Marvel Carpenter	3200 Cal. Av. SW #35	933-7971	
Gary Metzelaar	[illegible]	3210 42nd Ave SW	206 914 0902	
Tamblyn Schnacke	[illegible]	4301 SW Hanford Ave #3	206 854-9778	
STEPHEN LEVEY	Stephen Levey	3263 42nd Ave SW	206 938-0418	
JARI REED	Jari Reed	3263 42nd Ave SW	938-0418	
Monica Wingard	Mwingard	3227 42nd Ave SW	935-0989	
John Hanson	John Hanson	3216 42 SW	206-937-1248	
Lows Hess	[illegible]	3226 42nd Ave SW	423-503-5348	lhess@pcrg.com
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Jeremy Stilwell	[illegible]	4118 Evanston Ave N	~~318~~	
JOHN M. WHITE	John M. White	3250 #3 California Ave SW		
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To the City Council

I. The following section addresses, as specifically as possible, the Seattle Municipal Codes upon which we believe errors have been made.

A) Natural topography & views Ignored

While not all neighbors in the area have views, the rezone request has not answered homeowners' complaints about lost views. It is apparent to us that **SMC 23.34.009** requires more substantial acknowledgement of this issue, *"... the **natural topography** of the area and its surroundings, and **the likelihood of view blockage shall be considered**."*

B) Encroachment on residential not accurately described & violation of Neighborhood Plans

We believe the findings and conclusions of the Hearing Examiner (and DPD) are in error in that they excluded and neglected to consider portions of the Admiral Neighborhood Plan that are relevant to the rezone proposal. However, for the purpose of this appeal, any references herein to the "Admiral Neighborhood Plan" or "Neighborhood Plan" in this appeal are in reference to applicable portions of the ANP that have been cited and submitted to the record in comments from those who oppose the rezone.

According to the Director's Review as recapped in the Hearing Examiner's review, **SMC 23.34.072** *"discourages encroachment of commercial development into residential areas and encourages compact, concentrated commercial areas or nodes over diffuse, sprawling commercial areas."*

This rezone is in violation of this code. Representatives of the Admiral Neighborhood Association have issued remarks in objection to this rezone on the very basis that it will be harmful to urban village concept – pulling businesses away from that concentrated area (Admiral) and extending them out into the perimeter of the village where they (larger businesses made possible under NC2-40 zoning) will (in another violation of the code) encroach on the residential neighborhoods east and west of California street in the rezone area.

It should be further pointed out that the city may be in violation of **SMC 23.34.008** since we understand that, according to a past-president of the Admiral Neighborhood Association, the neighborhood plan states quite clearly that no rezoning should occur.

In a letter addressed to Malli Anderson on December 5, 2007, the Admiral Neighborhood Association states that they, "cannot support the proposed rezone of the 3200 block of California Ave. SW." and the following reasons were given:

1) "The proposed rezone runs **contrary to the Admiral Residential Urban Village Plan.**

2) The Admiral Residential Urban Village, as currently zoned, provides more than adequate development potential within the existing NC2-40 zone to fulfill the projected need for housing and associated retail and commercial development **as stated in the Comprehensive Plan for 2024.**"
3) ...the proposed rezone presents no plan, design or other compelling potential development scenario that would warrant consideration by the Admiral community. Furthermore, there is no clearly defined public benefit from the proposal." (bold added for emphasis)

We would take those arguments even further and insist that this rezone could, in fact, have a negative impact (commercially and environmentally) on both of the nearest urban shopping districts/urban villages. Larger business created in the rezone area are only likely to pull *driving* customers *away* from Admiral or Alaska junctions by creating more competition that will have an adverse affect on both. Additionally, the Alki Neighborhood Association has also communicated disapproval of the rezone. It would not, under any circumstance, create shared walking customers with either (Alaska or Admiral) area since it is too far removed from the centers of both.

The fact that this area is too far removed from the walking areas of surrounding commercial centers, and is furthermore separated by the three public schools that surround it, means that to rezone this area is in principle a violation of **SMC 23.34.072**, "The preservation and improvement of existing commercial areas shall be preferred to the creation of new business districts" in that it essentially allows the creation of a new, secluded "business district" along California Street that is an furthermore an "encroachment of commercial development into residential areas" (which) "shall be discouraged."

C) Area does NOT fit description of NC2-40 zoning

SMC 23.34.076 again points to a major problem with this rezone: The codes specifically address the rule that an NC2 zone should be the kind of place people drive to, and then walk around. This block is NOT situated to be a walkable part of the two primary business districts in the "greater West Seattle neighborhood". Therefore, if it is a destination at all, it is and will always be a drive-in-then-drive-away area. With every single street touching the rezone already at (parking) capacity, this is a compound problem that the rezone request has not factually addressed. This area does NOT fit that definition of the kind to be zoned NC2-40!

D) Current zoning is ideal for the area

We believe that SMC 23.34.074.A/B makes it quite clear that the area **as currently zoned** is already doing exactly what it should be doing and need not be changed – the right kinds of businesses are present, or are capable of being present, without any zoning changes.

A review of that code will show that the status quo is perfectly suited to NC1 zoning:

"B. Locational Criteria. A Neighborhood Commercial 1 zone designation is most appropriate on land that is generally characterized by the following conditions:

1. Outside of urban centers and urban villages, or within urban centers or urban villages where isolated or peripheral to the primary business district and adjacent to low-density residential areas;

This area, while nominally within the Admiral urban village (at its very southern tip) is, as has been shown, in actuality an isolated business area that is surrounded by low-density (single family) residential and the schools that serve those families.

2. Located on streets with limited capacity, such as collector arterials;

Opponents to the rezone have made it clear that most of the streets in/around the proposed rezone are of limited capacity! The DPD & Hearing Examiner have acknowledged that 42nd between Hanford and Hines has limited parking due to being a fire lane for West Seattle High School. At the rezone northern border, SW Hanford street is already a limited-access hazard area given that it is metro buses, school buses and service vehicles must stop on a hill, in front of a (4' wide) alley, blocking the intersection (with California Avenue SW) and with limited view of oncoming or crossing traffic uphill (at the intersection with 42nd Avenue SW). Although on paper it is a local connector/minor transit street, only the eastbound lane provides parking and the westbound lane is not wide enough for its "bicycle" designation. Furthermore, SW Hinds street is virtually useless, serving as little more than a driveway for the medical building located on the corner of Hinds & California Avenue SW.

More importantly to this point, the description of NC2 zoning specifically calls for "streets with good capacity". This is a critical area in need of review! We have already shown that 3 out of four of the streets on the Eastern block of California Ave SW in the rezone are NOT up to the task of accommodating NC2 zoned neighbors! Furthermore, 42 and 44th Avenues SW BOTH dead-end" just outside of the rezone area and so they are not to be considered suitable for transportation in and out of the rezone area!

3. No physical edges to buffer the residential areas;

Again, this is a precise definition of the proposed rezone area. There are not only "no buffers," the block is actually thinner and longer than ANY of the NC2 zones in the area. This fact has not been adequately addressed and will be reviewed further in this appeal.

4. Small parcel sizes;

All of the parcels on the backside of the entire rezone area are single-family residences, on very small parcels. This is also the case with some of the property within the rezone area. Not a single parcel is large enough to accommodate the depth of building that the applicants claim to want to build. We will come back to this issue later, since it represents several issues with the rezone AND the application process.

5. Limited transit service.

This area has very limited transit service. Only two routes on California Avenue SW and one more route (a limited route, at that) on SW Hinds. The Hinds street route is further reduced by any snow closures, since it is located on a hill on which buses cannot drive in inclement weather.

In conclusion, there are many businesses now within the proposed rezone area that meet the NC1 goals perfectly. Neighbors can and do walk regularly to the local restaurant (a family pizza restaurant) and to the workout facilities in the area and other facilities. The overwhelming residential opposition of the proposed rezone is, in part, proof of the effectiveness of existing zoning in providing the types of services sought by city planners and local residents.

This issue is also addressed in **SMC 23.34.009**, "*The demand for permitted goods and services and the potential for displacement of preferred uses shall be considered.*" No demand for a change in goods or services has been shown and no proof has been given that those existing now (or capable of existing with current zoning) are inadequate for the neighborhood.

This is a point that have been virtually ignored in the findings; that the existing zoning actually works and the people living in these zones like it this way! This is the point that, again, was also supported by the Admiral Neighborhood Association.

Another problem that has not been solved, related to changing the status quo, is that the applicants have not answered (and the city has not asked) about our concerns that existing tenants (both residential and commercial) benefit from the fact that this is an affordable area to live and do business. The Hearing Examiner makes no mention of this issue in her report, even though they (the approximately 15 affordable apartment buildings in the area) are mentioned in the city's 35-page recommendation.

Finally, the DPD and Hearing examiner have consistently understated the level of residential opposition to this rezone. Petitions, jointly signed letters, and persons speaking in behalf of groups have been ignored. If counted correctly, the opposition to this rezone exceeds 100 local residents and businesses, organizations and churches. For example, the Episcopal Church located at Hanford & California Avenue SW has made known its opposition to the rezoning, as have business owners within the proposed rezone area. And again, representatives of the Admiral Neighborhood Association and Alki Community Council and the Admiral Community Council have all expressed opposition as well.

E) Error of Fact not considered in evaluating impacts

Additionally, we wish to point out an error of fact that is most obviously seen in Paragraph number 15, under "Proposal" of the Findings and Recommendation" of the Hearing Examiner, which states that the request is to build 40' tall buildings. It is upon this assumption, that the

buildings will be 40' tall, that DPD and other findings have said that issues of shadow, privacy, bulk, pollution, noise, "canyon effect" on California Avenue...and other decisions... have been made. It appears to have gone unrecognized that the proposal allows in practice for taller buildings than it would appear on paper. This is so because the land in question is on a slope (which varies, as has been noted). This slope would, under existing building code, allow for buildings that are in actuality as much as 50 feet tall as measured from the sidewalk at California Street. We would argue vehemently that ALL of the related discussions – including but not limited to, environmental and impact on neighboring homes/yards – should be revisited by the DPD taking into account the practical height, rather than the theoretical height of what would be built.

II. We will now address our multiple concerns with the process that make this rezone a questionable issue – with some likelihood that there is the potential for unethical behavior involved, which is yet to be discovered.

A) False Deadlines

We, the opponents of this rezone object to the fact that we were told that the period for submitting letters and comments would be extended into January. Ms. Malli Anderson specifically advised multiple persons that this was to be the case. Later, when the issue was reviewed, and in the DPD report, the record shows that letters received after December 5 but before the verbal timeline given by Ms. Anderson, were PULLED from the official count of opponents vs. proponents and the writing of the report suggests that this issue carries at least some weight. Public Comment was ignored! This is simply unacceptable.

B) Understated Opposition

We reiterate what has been stated, that the official records have erroneously understated the level of opposition to this re-zone.

C) Waived Fees

Given that the local public's views were not represented, we hereby take exception to being footed with the bill for DPD work on this application. The record shows that the applicants owed approximately $38,000 dollars in fees and that the DPD appears to have threatened the applicants with cancellation and collections if said fees were not paid promptly. The record then shows that in excess of $27,000 in processing fees were waived with the stroke of a pen. To date, no satisfactory answer has been given regarding this issue, in spite of being an official part of the Hearing Examiners files. We

believe that in a climate of severe budget shortfalls, eliminating fees for individuals without complete and acceptable explanation is simply unacceptable.

Of additional concern is the suspicion expressed by some members of this group that these fees were left intentionally unpaid in order to affect the timing of this process – to avoid or delay public scrutiny.

D) Rules of Order/Conduct

The applicant was allowed to speak at the Hearing Examiner's meeting for public comment. The Hearing Examiner herself stated that this was an exceptional circumstance and had to advise the applicant that he was to speak to the examiner and not directly to other members of the public who were present. We object to the applicant being given this additional and irregular use of the podium in the Hearing Examiner's chambers.

Furthermore, under oath, the applicant made a false claim about the winter 2007 meeting, claiming that "most" of the people at that meeting were there in favor of the rezone petition. This is a clear and obvious fabrication of the truth that can be proven false on the testimony of at least a dozen witnesses.

E) Big Promises Accepted Verbatim/Uncritical Review

We are surprised that the city can be so easily persuaded by a group of real estate developers and hired PR consultants. We are saddened to see the applicants' very words inserted or paraphrased in the various documents where we would have expected more critical review.

By far the most important aspect of such critical review is a critique of what the applicants have claimed they can give the neighborhood and the city in exchange for our lost property values, views, parking spaces and neighborhood character, in short, a comfortable and perfectly livable block (now).

A simple review of the rhetoric at each of the meetings/hearings and throughout this process will show that what is being requested (by the applicants) and what is being promised do NOT match, and we are of the opinion that they cannot match. More is being promised than can be realized. This subject was alluded to earlier and we now bring it to the attention of the City Council.

WHAT WILL THEY BUILD?

According to comments from the applicants for the rezone, if they are awarded the rezone, they will be able to build:

- Bigger, better buildings
- Larger storefront retail or other businesses and mixed-use retail/residential
- With extra parking for customers
- Additional housing with underground/covered or off-street parking
- Improve lighting, sidewalk appeal and neighborhood ambiance
- Capable of being serviced (trash, etc) without stopping traffic on West Seattle's most important main street.

...All as a result of the new construction possible under a rezone to NC2-40, because 10 extra feet makes it all possible.

Furthermore, we are told as a result, there will be MORE net parking available in the immediate area after they are done than there is now. They want us to believe that increased density will make more parking available.

Ladies and gentlemen of the Council, we urge you to consider what others have obviously failed to realize; that these promises are false pipe dreams, designed to lure you into their plans. All that is required is an informal review existing building code along with an audit of what exists now in the area, and it will be seen that even if their intentions were of the best kind, they could not possibly do what they are promising!

NC2-40 Zoning is being granted, in part, on the promise that new retail or other ground floor businesses will line the street (as is highly desired in NC2 zoning) AND that (with the extra 10 foot capacity) the building will have new covered parking that will accommodate more than the minimum number of space required by the code.

We did a walking survey of the buildings along California Avenue SW all the way from Admiral to Alaska streets and found that there is not one single such building in existence that would a) fit on the property and b) meet existing building codes and c) work under even NC2-40 zoning.

We found an example of a building that met most of the above criteria, also located on California within the area discussed in DPD and other hearing discussions or documents. While, this is not intended to be a specific example but rather a hypothetical model for what is being promised, we could describe it as follows: It had a nice storefront, rear

entry parking, and service entry from the back. It appears to be about 40 feet high. These are all the criteria of promised buildings in the re-zone area.

There is only one problem. The block in the proposed re-zone area (between California Ave SW & 42nd Ave SW) is too thin, on too much of a slope, and has no alley. Such a building could not even be built that could accommodate BOTH storefronts AND off-street parking! If such a building were placed on the much-thinner eastern proposed re-zone area, it would extend stretch all the way from the street to BEYOND the rear property line! We must state it again! There is insufficient buffer space for any building of NC2-40 design and there is no way whatsoever to access building from the backside – meaning that all service, access and parking activity will negatively impact California Street and the inadequate feeder streets in the area. This is the longest, most narrow block in the area, and is unsuitable to NC-40 construction!

F) Various other public comments of the applicants which raise questions

Of less importance, but worthy of mention, the applicants have made comments in meetings, hearings and in public that range from merely confusing to what may well amount to outright lies.

For example, in the first (and only) public meeting on this rezone, nearly 100 people showed up to learn about and speak out about this rezone. At this meeting, the applicant was booed down when he attempted to represent that a rezone would bring an influx of new jobs to the area, and that the applicants already had plans on the board of what they might do. When asked for specifics on both of these statements, the applicant backed off of their stance and have not attempted to reiterate these claims.

In another example, the applicant, Josh Stepherson has published on his website, the claim that as a public affairs consultant, his firm "is working with area residents, businesses and property owners to revitalize a block in the Admiral Business district of West Seattle. The project aims to spur the creation of more housing, jobs and businesses." As the most affected, nearest neighbors to this rezone, we firmly object to this demeaning and false public statement. To this, we wish to direct the Council to Josh Stepherson's employers' comments in the West Seattle Blog, in which he indicated what we already believe – that the area is already vital and doing well with new businesses moving in and thriving.

Our last note on this subject is that we have expressed concern that at the beginning of this process, the applicant, Mr. Josh Stepherson, was a city employee in a department

that would have some input on this subject (Department of Transportation) and that he had not voluntarily revealed this information to interested parties (including, but not limited to, Malli Anderson of the DPD). Additionally, as shown by his "friends" in government positions (including Council members) on Facebook (for example), he has had frequent opportunity to violate the appearance of fairness in the process and although he is no longer a city employee, we hold in question what insider contact may have taken place to secure this re-zone in spite of the overwhelming community opposition to it.

It may not affect the council's decision that these comments were made in public forums, but we believe that this may be indicative of a "salesmanship" that could serve as cause for us all to be wary of what is being promoted. It is a sign to us that we should enter this discussion cautiously, with the knowledge that the applicant does not appear to be averse to false representations.

In concluding, we will share a few of the personal impacts that this rezone will have on local families.

One family in a home along the rezone area has a child who has been diagnosed with asthma. It is important for him to have plenty of open air and breathing room, and so his bedroom was situated on the upper floor of their home where the breeze could best reach his room. Recently a large home was built, blocking some of that breeze. Now, with this re-zone, it is possible that taller buildings behind his home will block the last of the free-flowing air that will reach his bedroom. This family is concerned about the affect the stale air will have on his health. They oppose NC2-40 zoning.

In another family, along a different section of the proposed rezone, there is a mother who is often kept awake by the fans coming from the buildings behind her home. She has complained to the city and others about this, and has been told that the fans are all within code. This doesn't help her ability to sleep. She worries that larger buildings, with larger systems, and taller walls that will divert/echo any sounds, will further damage her sleep. She is opposed to NC2-40 zoning.

Another family already has to park their car across the street from their home because regulations only allow parking on one side of the street. The man in this home recently suffered a stroke, and has to walk to his car – sometimes just across the street, but sometimes at a considerable distance. He is concerned that since apartment dwellers currently don't use available parking in their buildings (because even though developers may build parking spaces, they don't always make them available at an affordable price

to tenants). If new apartments are built or mixed use, or just businesses added, he'll find himself jockeying for parking even more than he does now. He is opposed to NC2-40 zoning.

One family simply sold their home and moved out of the neighborhood, due in part to their grave concerns about the negative impact this re-zone will have on their lifestyle and property value. Certainly, this is a concern shared by many within the neighborhood and we regret the loss of a good neighbor. They, of course, opposed re-zoning.

There are more stories like these, and each one represents an issue that neighbors have with this application for a re-zone. And with each story, as we have shown, there are valid, legal and practical reasons for denying the decision to approve this re-zoning application.

We therefore urge you to deny this decision, and help us keep our neighborhood as the vibrant, alive, active and enjoyable community that it already is.

Thank you.

Attachments: Signatures of Co-appellants – 4 pages (copies of "page 2 of 12")

September 22, 2010

FILED
CITY OF SEATTLE
2010 SEP 23 PM 2:35
CITY CLERK

To the City Council and City Clerk, Response for Clarification

Re: DPD Reference Number 308944, Council File #3007538

I am filing an appeal to findings and recommendations of the Hearing Examiner for the City of Seattle regarding the rezone of 3210 California Avenue Southwest from NC1-30 to NC2-40. My name is Dennis Ross. I was President of the Admiral Community Council during the Admiral Neighborhood planning process from 1996 to 1999. The Admiral Community Council was a major stakeholder in the composition of the Admiral Neighborhood Plan.

My objections to the findings and recommendations to approve this rezone concern:

1. Portions of the Neighborhood Plan were not included in the findings and conclusions of this decision.

   a. I testified regarding the Central Puget Sound Growth Management Hearing's Board final decisions and order (attached to this appeal, pg. 27-28) dated April 3, 1995, which states, in part: "Fifth, the City argues that subarea plans are completely optional. While that is correct in the abstract, the Board has rejected the City's argument that it is optional whether such land use policy enactments are adopted pursuant to the GMA. While the City has the option to undertake neighborhood plans or not undertake neighborhood plans, it does not have the option to keep, in effect, two sets of land use policy books – one to satisfy the GMA and one to shield its local land use policy decisions from the GMA."

   b. The Neighborhood Plan states the following:

      Key Strategy 1, Recommendation 1.2: The Planning Coalition recommends that existing zoning should remain with no changes within the Admiral Residential Urban Village because of the Coalition's strong desire to maintain the existing character of the community. Refer to Key Strategy Figure 1, Current Zoning and Key Strategy Table 1, Existing Zoning Categories and Development Standards Summary.

      Policy 1.2: To enhance the existing character of the neighborhood, buildings should not exceed the following heights, unless it can be clearly shown, through a very public process with meaningful community input, that increasing the height enhances the Admiral neighborhood (this includes height increases allowed for sloped roofs):

      - 40 feet for NC2-40
      - 30 feet for NC2-30 and L3, and
      - 25 feet for L2 and L1 zones.

      This will require a change to the Seattle Land Use Code. See Key Strategy Figures 2 and 3, Streetscape Elevations.

- The Coalition does not, at this time, envision and instance where exceeding the height limits just noted would enhance the Admiral neighborhood: The Coalition, does recognize that, if in the future it can be shown that exceeding this height would enhance the neighborhood, exceeding these height limits should be allowed.)

Recommendation 1.4: The City and the Admiral community should work together to develop a process where the community can provide enhanced and meaningful input into any height increasing exceptions including that for sloped roofs (where community desires carry more weight then they currently do).

c. I believe that the omissions of the above from the conclusions and findings of the Hearing Examiner are in violation of the Growth Management Act regarding the Neighborhood Plan.

2 NR 2. Errors in finding of fact: No. 11 (pg. 3) states that in the mid-nineties all but the southwestern parcels in the subject site were included within the urban village. This is not correct. These parcels were adopted into the Neighborhood Plan in 1999 when the Neighborhood Plan was approved and adopted by the City of Seattle at the request of the Planning Coalition and validated by the neighborhood.

3 NR 3. Conclusion No. 15 (pg. 8). This states that the additional floor could offset some of the costs of additional parking and therefore increase the likelihood that development could occur in this undeveloped block of California Avenue Southwest. This statement is counter to the city's professed parking policies, which consistently tend to reduce parking requirements to reduce housing costs. The city has recently reduced parking requirements for NC zones and is proposing reduced parking for L3 and L4 zones. The costs of this additional underground parking would increase the costs of affordable housing.

4 NR 4. Exhibit 49 is incorrect. The packet of information submitted by the applicant to the Admiral Community Council at the Admiral Community Council meeting November 13, 2007 did not occur. The Admiral Community Council did not meet on November 13 so the applicant, Josh Stepherson, and the DPD Planner, could not have attended that meeting and submitted the packet of information in question to the Community Council.

For the reasons stated above I believe that this rezone should be denied. I also request an oral argument.

Dennis Ross

Dennis Ross
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Seattle, WA 98116
(206) 876-0455

FILED
CITY OF SEATTLE
2010 SEP 14 PM 3:04
CITY CLERK

September 14, 2010

To the City Council and City Clerk:

Re: DPD Reference Number 308944, Council File #3007538

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   - The Coalition does not, at this time, envision and instance where exceeding the height limits just noted would enhance the Admiral neighborhood: The Coalition,

does recognize that, if in the future it can be shown that exceeding this height would enhance the neighborhood, exceeding these height limits should be allowed.)

Recommendation 1.4: The City and the Admiral community should work together to develop a process where the community can provide enhanced and meaningful input into any height increasing exceptions including that for sloped roofs (where community desires carry more weight then they currently do).

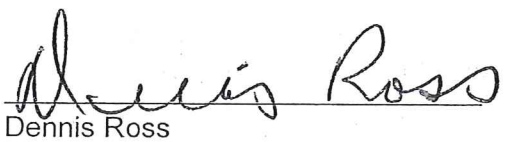
I believe the conclusions and findings of the Hearing Examiner are in violation of the Growth Management Act regarding the Neighborhood Plan.

4 Errors in finding of fact. No. 11 (pg. 3) states that in the mid-nineties all but the southwestern parcels in the subject site were included within the urban village. This is not correct. These parcels were adopted into the Neighborhood Plan in 1999 when the Neighborhood Plan was approved and adopted by the City of Seattle at the request of the Planning Coalition and validated by the neighborhood.

5. Conclusion No. 15 (pg. 8). This states that the additional floor could offset some of the costs of additional parking and therefore increase the likelihood that development could occur in this undeveloped block of California Avenue Southwest. This statement is counter to the city's professed parking policies, which consistently tend to reduce parking requirements to reduce housing costs. The city has recently reduced parking requirements for NC zones and is proposing reduced parking for L3 and L4 zones. The costs of this additional underground parking would increase the costs of affordable housing.

6. Exhibit 49 is incorrect. The packet of information submitted by the applicant to the Admiral Community Council at the Admiral Community Council meeting November 13, 2007 did not occur. The Admiral Community Council did not meet on November 13 so the applicant, Josh Stepherson, and the DPD Planner, could not have attended that meeting and submitted the packet of information in question to the Community Council.

For the reasons stated above I believe that this rezone should be denied. I also request an oral argument.



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STATE OF WASHINGTON

WEST SEATTLE DEFENSE FUND, NEIGHBORHOOD RIGHTS CAMPAIGN, AND CHARLES CHONG, Petitioners, v. CITY OF SEATTLE, Respondent.	**Case No. 95-3-0073** ***(WSDF III)*** **FINAL DECISION AND ORDER**

I. PROCEDURAL BACKGROUND

On October 5, 1995, the Central Puget Sound Growth Management Hearings Board (**CPSGMHB** or the **Board**) received a Petition for Review from West Seattle Defense Fund, Neighborhood Rights Campaign, and Charles Chong (hereafter referred to as **WSDF**). WSDF claims that specified amendments to the City of Seattle (**Seattle** or the **City**) comprehensive plan — adopted in Ordinance 117735 in response to a remand order from this Board — are not in compliance the Growth Management Act (**GMA** or the **Act**), or with this Board's findings in *Friends of the Law v. King County*, CPSGMHB No. 94-3-0009 (1994) (***FOTL II***), in *WSDF v. City of Seattle*, CPSGMHB Case No. 94-3-0016 (1995) (***WSDF I***), and in *WSDF et al. v. Seattle*, CPSGMHB Case No. 95-3-0040 (1995) (***WSDF II***).

On November 27, 1995, the Board entered a Prehearing Order that established a schedule for filing prehearing briefs and included a statement of four legal issues to be determined by the Board.

On January 22, 1996, the Opening Brief of West Seattle Defense Fund, Neighborhood Rights Campaign, and Charles Chong (**WSDF's Opening Brief**) was filed with the Board. WSDF incorporated the following documents by reference in its Opening Brief and, for convenience, also attached copies to the brief[1]:

Documents filed on October 18, 1995 for *WSDF I* compliance hearing

[1] The reference in brackets to the documents incorporated by reference in WSDF's Opening Brief is to the exhibit number WSDF assigned each document.

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WSDF's Hearing Statement in Response to Seattle's Statement of Compliance [Attachment 2-I]

Declaration of Bob. C. Sterbank in Support of WSDF's Response to Seattle's Statement of Compliance [Attachment 2-II] and five attachments:

Exhibit A -- Public Notice 57513 of July 7, 1995

Exhibit B -- August 24, 1995 Land Use Information Service Weekly Bulletin

Exhibit C -- May 11, 1995 Land Use Information Service Weekly Bulletin

Exhibit D -- September 21, 1995 Land Use Information Service Weekly Bulletin

Exhibit E -- Affidavit of Publication in *The Daily Journal of Commerce* for Ordinance 117735 on August 7, 1995

Declaration of Charles Chong [Attachment 2-III] with one attachment:

Exhibit A -- Partial Transcript of June 20, 1995 Seattle City Council Planning & Regional Affairs Committee Public Hearing.

Declaration of Julie Brown [Attachment 2-IV] with one attachment:

Exhibit A -- Transcript of July 12, 1995 Seattle City Council Planning & Regional Affairs Committee Public Hearing;

Documents filed on October 26, 1995 for *WSDF I* compliance hearing

Declaration of Alfred A. Rousseau in Support of WSDF Response to City Statement of Compliance [Attachment 2-VIII];

Second Declaration of Charles Chong in Support of WSDF Response to City Statement of Compliance [Attachment 2-VII].

Documents filed on November 1, 1995 for *WSDF I* compliance hearing

WSDF's Reply on Seattle's Statement of Compliance; [Attachment 2-V]

Declaration of Bob C. Sterbank in Support of WSDF's Reply on Seattle's Statement of Compliance [Attachment 2-VI], with fourteen attachments:

Exhibit A -- June 20, 1995 Agenda for Planning & Regional Affairs Committee

Exhibit B -- June 26 - July 21, 1995 Seattle City Council Meeting Schedule

Exhibit C -- July 3 - July 28, 1995 Seattle City Council Meeting Schedule

Exhibit D -- July 10 - August 4, 1995 Seattle City Council Meeting Schedule

Exhibit E -- July 17 - August 11, 1995 Seattle City Council Meeting Schedule

Exhibit F -- July 24 - August 18, 1995 Seattle City Council Meeting Schedule

Exhibit G -- July 28, 1995 Agenda for Planning & Regional Affairs Committee

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Exhibit H -- July 31 - August 25, 1995 Seattle City Council Meeting Schedule
Exhibit I -- October 25, 1995 excerpt from *The Seattle Times*
Exhibit J -- July 31, 1995 partial transcript of Seattle City Council hearing
Exhibit K -- October 26, 1995 Land Use Information Service Weekly Bulletin
Exhibit L -- October 24, 1995, memorandum from Sherry D. Harris to interested persons re: public hearing notice.
Exhibit M -- City of Seattle announcement re: availability of Plan
Exhibit N -- July 30, 1992 Land Use Information Service Weekly Bulletin

On February 5, 1996, the City of Seattle's Brief (**City's Brief**) was filed with the Board. The City also incorporated by reference the documents it filed for the compliance hearing in *WSDF I,* but did not attach them to its brief:

Documents filed on September 8, 1995 for *WSDF I* compliance hearing
City of Seattle's Statement of Compliance and five attachments:
Exhibit 1 -- Ordinance 117735 and Attachment 1 and Appendices;
Exhibit 2 -- October 1993 Growth Management Act Projections for the City of Seattle;
Exhibit 3 -- Attachment 3: Capital Facilities Analysis for Five Urban Centers;
Exhibit 4 -- Attachment 4: Planning for Maintenance of Capital Facilities;
Exhibit 5 -- Attachment 5: Background Documents for Transportation Impact Analysis.

Documents filed on October 27, 1995 for *WSDF I* compliance hearing
City of Seattle's Reply to WSDF's Response to City's Statement of Compliance;
Declaration of Bob Morgan.

On February 12, 1996, WSDF's Reply Brief was filed with the Board.

The Board held a hearing on the merits at 9:30 a.m. on Wednesday, February 14, 1996, at 3400 One Union Square in Seattle, Washington. Board members M. Peter Philley, Presiding Officer in this matter, Joseph W. Tovar, and Chris Smith Towne were present from the Board. Peter J. Eglick and Bob C. Sterbank represented WSDF and Robert D. Tobin represented the City. Cynthia J. LaRose of Robert H. Lewis & Associates, Tacoma, provided court reporting services. No witnesses testified.

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II. FINDINGS OF FACT

No material facts were disputed by the parties. The Board enters the following undisputed facts:

1) July 1, 1994, was the deadline for Central Puget Sound jurisdictions to adopt comprehensive plans. In addition, unless a Central Puget Sound city or county requested an extension in writing, July 1, 1994 was also the deadline for that jurisdiction to adopt development regulations that are consistent with and implement the comprehensive plan. RCW 36.70A.040(3)(d).

2) On July 25, 1994, Seattle Ordinance 117221 was passed by the Seattle City Council adopting the Seattle Comprehensive Plan (the **Plan**) pursuant to the requirements of the Growth Management Act (**GMA** or the **Act**).

3) On October 7, 1994, WSDF filed a petition for review with the Board challenging Seattle's Plan for failing to comply with the requirements of the GMA and the State Environmental Policy Act (**SEPA**). *West Seattle Defense Fund v. Seattle* (***WSDF I***), CPSGMHB Case No. 94-3-0016.

4) On December 12, 1994, Seattle Ordinance 117430 was passed by the Seattle City Council. The ordinance adopted development regulations that implement the City of Seattle's Plan (the **Implementing Development Regulation Ordinance**). It did not take effect until April 3, 1995.

5) Also on December 12, 1994, Seattle Ordinance No. 117434 (the **Map Ordinance**) was passed by the Seattle City Council. The ordinance amended the Official Land Use Map of the City of Seattle and also did not take effect until April 3, 1995.

6) January 1, 1995, was the deadline imposed upon Central Puget Sound jurisdictions to adopt development regulations to implement comprehensive plans, if the jurisdiction, like Seattle, had obtained a six month extension from the Washington State Department of Community, Trade and Economic Development (**DCTED**) pursuant to RCW 36.70A.040(3)(d).

7) On March 13, 1995, WSDF filed a Petition for Review challenging the City's Implementing Development Regulation and Map Ordinances, CPSGMHB Case No. 95-3-0040 (***WSDF II***).

8) On April 3, 1995, Sections 1 through 90 and 92 of the Implementing Development Regulation Ordinance (*see* Section 95 of the Implementing Development Regulation Ordinance, at 95) and the Map Ordinance (*see* Section 2 of the Map Ordinance, at 1) became effective.

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9) On April 4, 1995, the Board entered its Final Decision and Order in *WSDF I*, remanding the Capital Facilities Plan Element and the Transportation Element of the Plan for further action to bring these provisions into compliance with the requirements of the GMA. The Board's Final Decision and Order in *WSDF I* was not subsequently appealed to superior court.

10) On May 11, 1995, the Seattle Department of Construction and Land Use (**DCLU**) published its "Weekly Bulletin Announcing Land Use Applications, Decisions, Hearings and Appeals" announcing a June 6, 1995 public hearing of the City Council's Planning & Regional Affairs Committee to take testimony on items to consider for possible amendments to the Plan [as part of the annual amendment process authorized by RCW 36.70A.130.][2] This constituted the first step of the annual amendment process. The bulletin also announced a later step would be held in the fall of 1995 when the City Council would accept public testimony on the merits of amendments under review. Exhibit C to the Declaration of Bob C. Sterbank in Support of WSDF's Response to Seattle's Statement of Compliance [Attachment 2-II to WSDF's Opening Brief]. This annual amendment process is separate from the City's efforts to amend its Plan in response to the Board's Final Decision and Order in *WSDF I*, the 'remand amendments".

11) On May 15, 1995, Governor Lowry approved all but sections 103, 302 and 903 of Engrossed Substitute House Bill (**ESHB**) 1724, "An ACT Relating to implementing the recommendations of the governor's task force on regulatory reform on integrating growth management planning and environmental review." ESHB 1724 gives the Board the authority to issue a "determination of invalidity."

12) On June 16, 1996, the City 'sent" a copy of the agenda[3] for the City Council's Planning & Regional Affairs Committee meeting of June 20, 1996 to all persons on the committee's mailing list, i.e., approximately 170 addresses (excluding government recipients) including local newspapers and Peter Eglick, WSDF's counsel. On the agenda was a staff briefing for City staff to present a staff report, recommendation and background briefing to the committee regarding proposed Plan remand amendments in response to the Board's *WSDF I* decision. The briefing, although open to the public, was not intended to be a public hearing. Declaration of Bob Morgan, attached to City of Seattle's Reply to WSDF's Response to City's Statement of Compliance, at 2.

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[2] A proposal from WSDF received a "do not consider" recommendation from both the Executive Department – Office of Management and Planning (**OMP**) and the Seattle Planning Commission.

[3] The Board does not have a copy of a document actually labeled as an "agenda" for the June 20, 1995 meeting. The record (Exhibit A to the Declaration of Bob C. Sterbank in Support of WSDF's Reply on Seattle's Statement of Compliance [Attachment 2-VI to WSDF's Opening Brief[) does contain a document entitled: Planning and Regional Affairs Committee -- Tuesday, June 20, 1995 -- 2:00 p.m., that presumably constitutes the committee's agenda that was sent to those persons on the committee's mailing list.

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13) On June 20, 1995, the City Council's Planning & Regional Affairs Committee held a public meeting. Councilmember Jim Street chaired the meeting with Council Member Margaret Pageler present. The staff report and recommendation on the remand amendments were not ready in time for the meeting. Declaration of Bob Morgan, attached to City of Seattle's Reply to WSDF's Response to City's Statement of Compliance, at 3, ¶7. Councilmember Street announced that the committee would not receive the scheduled briefing on agenda item no. five, 'the Hearing Board Capital Facilities Issues-Response...," because the committee was expected to receive "... the actual recommendations within about five days...." Exhibit A to the Declaration of Charles Chong [Attachment 2-III to WSDF's Opening Brief]. *See also* Exhibit A to Declaration of Bob C. Sterbank in Support of WSDF's Reply on Seattle's Statement of Compliance, Agenda Item No. 5 [Attachment 2-VI to WSDF's Opening Brief].[4]

14) On June 26, 1995, the City Council passed Resolution No. 29151, approved a work plan for the OMP to review, consider and recommend to the Executive and Council potential amendments to the Plan [as part of the annual amendment process]. Exhibit A to the Declaration of Bob C. Sterbank in Support of WSDF's Response to Seattle's Statement of Compliance [Attachment 2-II to WSDF's Opening Brief].

15) On June 29, 1995, the 'Mayor's Report and Recommendations -- Growth Management Hearings Board Response" (the **Mayor's Report**) in response to the Board's *WSDF I* decision was forwarded to the City Council. The Mayor's Report contained a set of proposed Plan remand amendments, a summary, and a discussion of the amendments. A cover memo from Tom Tierney, Director of OMP, to Jim Street, President of the City Council, indicated that the final City Council action on the proposal was scheduled for July 31, 1995. *See* Exhibit 1-I.f attached to WSDF's Opening Brief, at 1, first sentence; *see also* Exhibit 8 to WSDF's Reply in Support of Petition for Review filed in *WSDF II* for an actual copy of the Mayor's Report.

16) On June 29, 1995 and on July 7, 1995, the City sent notice of a July 12, 1995, public meeting and public hearing of the City Council's Planning and Regional Affairs Committee.[5] The notice was mailed to everyone on the City Council's general mailing list of over 550 recipients, including radio stations, major newspapers (including *The West Seattle Herald*) and Peter Eglick, WSDF's attorney of record in this case. Declaration of Bob Morgan attached to City of Seattle's Reply to WSDF's Response to City's Statement of Compliance, at 3, ¶8 and at 2, ¶4.

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[4] On June 20, 1995, the Planning & Regional Affairs Committee did, by a 2-0 vote, recommend approval of a work plan for OMP to review, consider and recommend to the Executive and Council potential amendments to the Comprehensive Plan [as part of the annual review process]. Exhibit A to Declaration of Bob C. Sterbank in Support of WSDF's Reply on Seattle's Statement of Compliance, Addendum, Agenda Item 6 [Attachment 2-VI to WSDF's Opening Brief

[5] The Board assumes that the actual notice that the City sent was a copy of the Seattle City Council Meeting Schedule discussed immediately below, since the language on it is identical to the language quoted in Mr. Morgan's Declaration at 3, ¶8.

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17) The Seattle City Council Meeting Schedule for July 3 - July 28, 1995, lists a public hearing, abbreviated as 'PH', for the Planning Committee at 6:00 p.m. on Wednesday, July 12, 1995. The reverse side of the schedule contained the following details:

> PLANNING AND REGIONAL AFFAIRS COMMITTEE--PUBLIC HEARING
> Wednesday, July 12, 6:00 p.m.
> The Committee will take public testimony on the City's response to the Growth Management Hearings Board's decision on the Comprehensive Plan. For those wishing to testify, a sign-up sheet will be available outside the door to the Council Chambers at 5:30 p.m. Councilmember Jim Street will chair. Exhibit C to the Declaration of Bob C. Sterbank in Support of WSDF's Reply on Seattle's Statement of Compliance [Attachment 2-VI to WSDF's Opening Brief].[6]

18) On July 12, 1995, the City Council's Planning and Regional Affairs Committee held a public hearing on the draft remand amendments to the Plan. *See* Declaration of Bob Morgan attached to City of Seattle's Reply to WSDF's Response to City's Statement of Compliance, at 3. Councilmember Jim Street chaired the hearing and was the only member of the committee present. Upon oral request just minutes before the beginning of the hearing, City staff provided members of WSDF with a packet of information on the proposed amendments to the Plan, which included the Mayor's Report and the June 29, 1995 cover memorandum from Tom Tierney to Councilmember Jim Street discussed in Finding of Fact No. 15 above. Four members of the public testified including Charles Chong, a named Petitioner in this case and President of WSDF, and Julie Brown, a member of WSDF. Declaration of Charles Chong, at 3-4 [Attachment 2-III to WSDF's Opening Brief]; and Declaration of Julie Brown, at 3 [Attachment 2-IV to WSDF's Opening Brief]; *see also* Exhibit A to Declaration of Charles Chong and Exhibit A to Declaration of Julie Brown for a partial transcript of the hearing.

19) On July 23, 1995, ESHB 1724 took effect.[7]

20) On an unspecified date, the City sent unspecified notice of a July 28, 1995, public meeting of the City Council's Planning and Regional Affairs Committee to all persons listed on the City Council's general mailing list. Declaration of Bob Morgan, attached to City of Seattle's Reply to WSDF's Response to City's Statement of Compliance, at 4, ¶9. The Morgan Declaration does not indicate when the notice was sent, in what form the notice was given or whether the notice informed the recipient that the committee would be voting upon the proposed Plan amendments, drafted in response

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[6] The Seattle City Council Meeting Schedule for July 10 - August 4, 1995, contained the identical information as the July 3-28, 1995 schedule. *See* Exhibit D to the Declaration of Bob C. Sterbank in Support of WSDF's Reply on Seattle's Statement of Compliance [Attachment 2-VI to WSDF's Opening Brief

[7] Sections 801 through 806 of ESHB 1724 took effect on June 1, 1995, pursuant to Section 904.

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to the Board's *WSDF I* decision. Exhibit G to the Declaration of Bob C. Sterbank in Support of WSDF's Reply on Seattle's Statement of Compliance (Attachment 2-VI to WSDF's Opening Brief) is a document captioned as follows:

PLANNING AND REGIONAL AFFAIRS COMMITTEE
Friday, July 28, 1995
2:00 p.m.

The second item on this document refers to CB [Council Bill] 110810, which is described as "Amending the City of Seattle Comprehensive Plan." The document further indicates that CB 110810 is up for "discussion and vote."

21) The Seattle City Council Meeting Schedule for July 3 - July 28, 1995 (Exhibit C to the Declaration of Bob C. Sterbank in Support of WSDF's Reply on Seattle's Statement of Compliance [Attachment 2-VI to WSDF's Opening Brief]) lists a July 28, 1995, meeting of the Planning and Regional Affairs Committee. However, it does not indicate in any manner whatsoever what topics would be considered at the meeting or whether the committee would be voting on any matters. The same is true for subsequent Meeting Schedules for July 28, 1995. *See* Exhibits D, E, and F to the Declaration of Bob C. Sterbank in Support of WSDF's Reply on Seattle's Statement of Compliance [Attachment 2-VI to WSDF's Opening Brief].

22) A July 28, 1995, City Council staff memorandum from Bob Morgan and Martha Lester to Planning and Regional Affairs Committee members constituted the City Council staff's recommendation for Plan amendments in response to the Board's decision in *WSDF I*. The Council staff's recommendations constituted "amendments to the amendments" proposed in the Mayor's Report and were referenced as CB No. 110810. Exhibit 1-III.C to WSDF's Opening Brief.

23) On July 28, 1995, the City Council's Planning and Regional Affairs Committee held a public meeting where it voted to recommend approval to the full City Council of the Plan remand amendments contained in CB 110810. This meeting was not a public hearing although it was open to the public. *See* Declaration of Bob Morgan, attached to City of Seattle's Reply to WSDF's Response to City's Statement of Compliance, at 3-4, ¶9; *see also* Exhibit G to the Declaration of Bob C. Sterbank in Support of WSDF's Reply on Seattle's Statement of Compliance, item no. 2 [Attachment 2-VI to WSDF's Opening Brief].

24) On an unspecified date, unspecified notice of a City Council's on public meeting July 31, 1995 was "sent" to all persons listed on the City Council's general hearing and mailing list. *See* Declaration of Bob Morgan, attached to City of Seattle's Reply to WSDF's Response to City's Statement of Compliance, at ¶10. The Morgan Declaration does not indicate in what form or when the notice was sent or whether the notice informed the recipient that the City Council would be considering and/or voting

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upon the proposed Plan amendments, drafted in response to the Board's *WSDF I* decision.

25) The Seattle City Council Meeting Schedules for July 10 - August 4, 1995, July 17 - August 17, 1995, July 24 - August 18, 1995, and July 31 - August 25, 1995, each list a meeting of the full City Council at 2:00 p.m. on Monday, July 31, 1995. None of the schedules contains any information whatsoever indicating that the full City Council would hold a public meeting and/or public hearing on the City's Plan remand amendments drafted in response to the Board's decision in *WSDF I*. Exhibit D, E, F, and H respectively to the Declaration of Bob C. Sterbank in Support of WSDF's Reply on Seattle's Statement of Compliance [Attachment 2-VI to WSDF's Opening Brief].

26) The City did not publish any notice in June or July, 1995, in its legal newspaper, *The Daily Journal of Commerce*, regarding public meetings or public hearings of the City Council or any of its committees to take testimony, review, consider and/or vote on the proposed Plan amendments in response to the Board's Final Decision and Order in *WSDF I*. Declaration of Bob C. Sterbank in Support of WSDF's Response to Seattle's Statement of Compliance, at 2, ¶3 [Attachment 2-II to WSDF's Opening Brief].

27) The City did not publish any notice in DCLU's Land Use Information Service Weekly Bulletin for the months May - September, 1995, regarding public meetings or public hearings of the City Council or any of its committees to take testimony, review, consider and/or vote on the proposed Plan amendments in response to the Board's Final Decision and Order in *WSDF I*. Declaration of Bob C. Sterbank in Support of WSDF's Response to Seattle's Statement of Compliance, at 2, ¶4 [Attachment 2-II to WSDF's Opening Brief].[8]

28) Nothing in the record before the Board indicates that the City provided notice to anyone that the full City Council would be taking action on the proposed remand amendments to Seattle's Plan, drafted in response to the Board's decision in *WSDF I*.

29) Nothing in the record before the Board indicates that the full City Council ever held a public hearing where members of the public could testify on the proposed remand amendments to Seattle's Plan, drafted in response to the Board's decision in *WSDF I*.

30) On July 31, 1995, the Seattle City Council met to consider and vote on CB No. 110810 as amended, the package of proposed remand amendments to the Plan drafted

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[8] In contrast, the City published notice in the October 26, 1995 DCLU Weekly Bulletin of two public hearings, on November 20 and 21, 1995, regarding this Board's remand in *WSDF II* of the City's Implementing Development Regulations and Map Ordinance. The notice contained an extensive, detailed description of the proposed amendments. Exhibit K to the Declaration of Bob C. Sterbank in Support of WSDF's Reply on Seattle's Statement of Compliance [Attachment 2-VI to WSDF's Opening Brief].

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in response to the Board's *WSDF I* decision. Six motions to amend the proposed amendments carried. Ultimately, the City Council vote was nine in favor and none opposed to pass CB No. 110810 as amended. Consequently, the Seattle City Council passed Ordinance No. 117735 -- "An Ordinance amending the City of Seattle Comprehensive Plan" (the **Plan Amendment Ordinance**). Attachment 1 to City of Seattle's Statement of Compliance. *See also* Exhibit 1-IV.f (Journal of Proceedings) to WSDF's Opening Brief, at 10; Exhibit J (partial meeting transcript) to Declaration of Bob C. Sterbank in Support of WSDF's Reply on Seattle's Statement of Compliance [Attachment 2-VI to WSDF's Opening Brief]; and Declaration of Bob Morgan attached to City of Seattle's Reply to WSDF's Response to City's Statement of Compliance, at 4.

31) On August 7, 1995, the City published notice of adoption of Ordinance No. 117735, the Plan remand amendments (in response to the Board's *WSDF I* decision) in *The Daily Journal of Commerce*. Exhibit E to the Declaration of Bob C. Sterbank in Support of WSDF's Response to Seattle's Statement of Compliance [Attachment 2-II to WSDF's Opening Brief]. *See also* the Declaration of Bob Morgan attached to City of Seattle's Reply to WSDF's Response to City's Statement of Compliance, at ¶11.

32) On August 24, 1995, DCLU published its "Weekly Bulletin Announcing Land Use Applications, Decisions, Hearings and Appeals." The document announced a September 27, 1995, public hearing to take comments on proposed amendments to the Plan [as part of the annual amendment process.] Exhibit B to the Declaration of Bob C. Sterbank in Support of WSDF's Response to Seattle's Statement of Compliance [Attachment 2-II to WSDF's Opening Brief].

33) September 1, 1995, was the deadline the Board gave Seattle in *WSDF I* to bring its Comprehensive Plan into compliance with the Board's Final Decision and Order and the requirements of the Act.

34) On September 11, 1995, the Board entered its Final Decision and Order in *WSDF II* remanding portions of both the Implementing Development Regulation Ordinance and the Map Ordinance and giving the City until December 1, 1995, to bring these ordinances into compliance with the GMA. The decision was not subsequently appealed to superior court.

35) On September 21, 1995, DCLU published its "Weekly Bulletin Announcing Land Use Applications, Decisions, Hearings and Appeals" announcing a Determination of Non-Significance had been issued for an amendment [as part of the annual amendment process] that added a human development element to Seattle's Plan. Exhibit D to the Declaration of Bob C. Sterbank in Support of WSDF's Response to Seattle's Statement of Compliance [Attachment 2-II to WSDF's Opening Brief].

36) On October 26, 1995, notice of public hearings of the Seattle City Council to take comments on proposed amendments to the Map Ordinance and the Implementing

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Development Regulation Ordinance (in response to the Board's remand in *WSDF II)* was published in *The Daily Journal of Commerce*. *See* Finding of Fact No. 1 in the Board's Finding of Compliance in *WSDF II*.

37) On November 2, 1995, the Board entered a Finding of Compliance in *WSDF I*, finding that the City "at the barest absolute minimum" had procedurally complied with the Board's Final Decision and Order, but withholding a determination of substantive compliance until this case, *WSDF III*. The Finding of Compliance was not subsequently appealed to superior court.

38) On November 21 and 22, 1995, the Seattle City Council held public hearings on the proposed remand amendments to the Map Ordinance and the Implementing Development Regulation Ordinance (in response to the Board's decision in *WSDF II)*. *See* Finding of Fact No. 2 in the Board's Finding of Compliance in *WSDF II*.

39) On November 27, 1995, the City Council passed Ordinance No. 117919 that amended the Map Ordinance and the Implementing Development Regulation Ordinance (in response to the Board's remand in *WSDF II)*.

40) On January 11, 1996, the Board entered a Finding of Compliance in *WSDF II*. The finding was not subsequently appealed to superior court.

III. DISCUSSION AND CONCLUSIONS

Legal Issue No. 1

In adopting Ordinance 117735 pursuant to a remand from the Board, did the City comply with the requirements of the Growth Management Act (GMA) at RCW 36.70A.020(11) and .140 for enhanced public participation?

Position of the Parties

WSDF

WSDF contends that when a jurisdiction is ordered by the Board on remand to take certain actions, the Act's enhanced public participation requirements (RCW 36.70A.020(11) and .140) apply. Initially, WSDF claimed that "Seattle completely ignored its obligations" and "... failed to provide any written notice of any public hearings concerning proposed Plan [remand] amendments, or City Council consideration of them...." WSDF's Hearing Statement in Response to Seattle's Statement of Compliance, at 4-5.

In its reply, WSDF acknowledged that the City did provide written notice of the July 12, 1995 standing committee meeting but argued that this notice was "cryptic" and "buried" in coded abbreviations, footnotes and single-space type. Attachment 2-V, at 2 and 4. In

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particular, WSDF charges that a June 20, 1995 City Council committee meeting was canceled because WSDF members arrived; it further contends that when the City held a public hearing on July 12, 1995, copies of the proposed remand amendments were not made available to the public. Instead, WSDF members "... had to demand to be given the personal copies of the sixty-plus pages of materials carried into the room by City staffers;"

> ... Without an opportunity to review the City's proposed amendments in advance, the opportunity to testify was meaningless... Attachment 2-V, at 5, fn 10.

Moreover, WSDF contends that the City never held another public hearing to take testimony after the public had the opportunity to thoroughly review the materials. Attachment 2-V, at 7.

Furthermore, WSDF alleges that no "genuine public hearing" was held nor were members of the public notified that they could submit written comments to the City Council. "In short, there was neither an iterative nor an interactive process; there was no public process at all." WSDF's Hearing Statement in Response to Seattle's Statement of Compliance, at 5. On reply, WSDF characterizes the entire course of events as "a stealth compliance process." WSDF's Reply on Seattle's Statement of Compliance, at 2.

WSDF also points out that the notice of the City Council meeting where final action on the proposed remand amendments was taken did "... not reveal that the meeting on July 31 was for the purpose of considering or adopting amendments to the Comprehensive Plan." WSDF's Reply on Seattle's Statement of Compliance [Attachment 2-V], at 4. WSDF asks how it could comment in writing when its members did not know that written comments would be accepted and they did not know when the full City Council would consider and take final action upon the proposed remand amendments. Attachment 2-V, at 7, fn 16.

Finally, WSDF points out that "... when it wants to, the City knows exactly how to provide public notice." WSDF refers to the City's public participation process for the *WSDF II* remand amendments that contain detailed background information, indicates where and when information will be available, announces two public hearings a full month in advance and provides opportunity for written comment. Attachment 2-V, at 6.

Seattle

The City contends that a 1995 amendment to RCW 36.70A.140 allows cities and counties to reduce the amount of public participation required on remand to only that which is "appropriate and effective under the circumstances." City's Brief, at 20.

> It is simply not the case that public participation in the context of legislative plan adoption is the same as appropriate public participation in the context of a party's response to a judicial order of compliance. City's Brief, at 21.

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The City maintains that what the Board primarily required it to do on remand was "perform additional work and describe the results of that work in the Plan." City's Brief, at 21.

> As such, much of the remand required the City to undertake additional technical analysis, which might or might not have entailed new amendments to the Plan.... The proposed amendments did not entail any new policy direction different from what was contained in the adopted Plan. City's Brief, at 22.

Procedurally, the City claims that its actions were appropriate under the circumstances of the Board's remand since a public hearing was held, notice was mailed (including to WSDF's attorney), and members of WSDF appeared at the hearing and testified. Seattle further contends that any member of the public could have requested the staff report on the Plan remand amendments prior to the July 12, 1995 public hearing, and could have submitted written comments on the proposed remand amendments prior to the July 31, 1995 final action on the Plan remand amendments by the City Council. City's Brief, at 23.

Discussion

RCW 36.70A.020 contains the GMA's planning goals which:

> ... are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040. The following goals are not listed in order of priority and shall be used exclusively for the purpose of guiding the development of comprehensive plans and development regulations:

Subsection (11) is the relevant citizen participation goal for the GMA planning process. It provides:

> (11) Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

RCW 36.70A.140, entitled "Comprehensive plans--Ensure public participation," was adopted in 1990 when the GMA was first enacted. In 1995, this section was amended[9] for the first time so that it now provides (1995 language is underlined):

> Each county and city that is required or chooses to plan under RCW 36.70A.040 shall establish <u>and broadly disseminate to the public a public participation program identifying</u> procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans. The procedures shall provide

[9] Engrossed Substitute House Bill No. 1724, Chapter 347, § 107, Laws of 1995.

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> for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments. In enacting legislation in response to the board's decision pursuant to RCW 36.70A.300 declaring part or all of a comprehensive plan or development regulation invalid, the county or city shall provide for public participation that is appropriate and effective under the circumstances presented by the board's order. Errors in exact compliance with the established program and procedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the program and procedures is observed.

In addition, the preamble to RCW 36.70A.070, the section of the Act entitled "Comprehensive plans--Mandatory elements," provides:

> The comprehensive plan of a county or city that is required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan. The plan shall be an internally consistent document and all elements shall be consistent with the future land use map. A comprehensive plan shall be adopted and amended with public participation as provided in RCW 36.70A.140. Emphasis added.

At issue here is the City's amendment of its Plan in response to the Board's Order in *WSDF I*. As the preamble to RCW 36.70A.070 indicates, the GMA's public participation requirements apply to both initial adoption and subsequent amendments to comprehensive plans. RCW 36.70A.140 confirms this. Neither provision excludes from the process amendments made on remand. If the legislature intends to distinguish between remand amendments and annual amendments, and to exclude the former from the Act's public participation requirements, it must amend the Act accordingly.

The City misreads the 1995 amendment to RCW 36.70A.140, particularly the language:

> ...In enacting legislation in response to the board's decision pursuant to RCW 36.70A.300 declaring part or all of a comprehensive plan or development regulation invalid, the county or city shall provide for public participation that is appropriate and effective under the circumstances presented by the board's order....

The cited language applies only when the Board has issued a determination of invalidity. The Board did not declare any portion of the Plan invalid in *WSDF I*. Nonetheless, the Board now concludes that by necessary implication, a similar rule regarding the nature and extent of public participation on remand (but without invalidation) is necessary. Unlike the lengthy GMA process for initial adoption of comprehensive plans, which may literally have begun on the day the GMA became effective but did not culminate until adoption of a plan several years later, the maximum timeframe in a remand scenario is 180 days.

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Accordingly, the level of public participation may not be the same for the initial adoption of a comprehensive plan and the amendment of such a plan due to a Board remand. Nevertheless, RCW 36.70A.140 still applies on remand. **The Board holds that, in cases where a GMA enactment is remanded but not declared invalid, the following test will be applied to determine how much public participation was appropriate under the circumstances. The Board will apply the following factors to the facts:**

1) **the *general public's expectation* of the public participation process that would apply on remand, based on: a) the locally established public participation program and; b) actual past practice in conformance with that program;**
2) **the *amount of time* given to a jurisdiction to comply;**
3) **the *scope of the remand*;**
4) **the *nature of the corrective action* that must be taken to bring an enactment into compliance; and**
5) **the *level of discretion* afforded a jurisdiction in taking actions to bring an enactment into compliance.**

Application of the Test

In order to apply this test, the Board first sets forth the order of remand in the Board's April 4, 1995, Final Decision and Order in *WSDF I*. It provided as follows:

> The City of Seattle Comprehensive Plan is **in compliance** with the requirements of the Growth Management Act except:
>
> 1.) Capital Facilities Plan Element—The Capital Facilities Plan Element is **remanded** with instructions for the City to bring it into compliance consistent with the Board's Final Decision and the requirements of RCW 36.70A.070(3).
>
> 2.) Transportation Element—The Transportation Element of the Plan is **remanded** with instructions for the City to bring it into compliance consistent with the Board's Decision and the requirements of RCW 36.70A.070(6).
>
> It is not the Board's role to impose its opinions about the value or wisdom of optional features of a comprehensive plan. Instead, the Board is charged with determining whether those features are internally consistent and comply with the requirements of the Act. The Board's holding that the Plan's Capital Facilities Plan and Transportation Elements do not comply with the requirements of the Act, particularly because of the manner in which only urban centers and urban villages have been adopted, is not a judgment that the urban villages strategy itself is faulty. To the contrary, the City's urban village strategy appears to be the kind of innovative technique that the Act encourages. Yet the Act also requires that a community's vision, as embodied in its comprehensive plan, be supported by an analytical rigor and an ability to provide the necessary infrastructure.

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The Board notes that it is up to the City to determine how to comply with the Board's directives. Seattle has several choices, ranging at the extremes from fully adopting all categories of urban villages, to totally deleting references to the urban villages strategy and its components. If the City elects to fully adopt all categories of urban villages, it must be certain to conduct the required analysis and document it either directly or by reference in the Plan itself. The middle ground would be for the City to conduct the required analysis necessary for its urban centers and urban villages adopted to date, and to include that analysis directly in the Plan or by incorporating the relevant analysis by reference. Additional data and analysis would later be included when the Plan is amended to adopt other parts of the urban villages strategy, for instance, the adoption of hub and residential urban villages.

3.) Pursuant to RCW 36.70A.300(1)(b), the City is given until **5:00 p.m.** on **Friday, September 1, 1995**, to bring its Plan into compliance with the Board's Final Decision and Order and the requirements of the Act. The City shall file by **5:00 p.m.** on **Friday, September 8, 1995**, one original and two copies with the Board and serve a copy on WSDF of a statement indicating what attempts, if any, it made to comply with this Final Decision and Order. The Board will promptly schedule a compliance hearing sometime thereafter. *WSDF I*, at 79-80 (emphasis in original).

Factor 1

The general public might logically turn to the Seattle Municipal Code for assistance in determining what the City's public participation process was. SMC 23.76.062[10] discusses

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[10] MC 23.76.062 Council hearing and decision.

A. Public Hearing. The Council shall itself conduct a public hearing for each Type V (legislative) land use decision. The Council may also appoint a hearing officer to conduct an additional fact-finding hearing to assist the Council in gathering information. Any hearing officer so appointed shall transmit written Findings of Fact to the Council within ten (10) days of the additional hearing.

B. Notice of Hearings.

1. Notice of the Council hearing on a Type V decision shall be provided by the Director at least thirty (30) days prior to the hearing in the following manner:
   a. Inclusion in the general mailed release;
   b. Posting in the Department; and
   c. Publication in the City's official newspaper.
2. Additional notice shall be provided by the Director for public hearings on City facilities, Major Institution designations and revocation of Major Institution designations, as follows:
   a. Mailed notice; and
   b. At least four (4) placards posted on or near the site.

C. Council Decision. In making a Type V land use decision, the Council shall consider the oral and written testimony presented at the public hearing, as well as any required report of the

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Type V legislative actions[11] of the City Council, such as the Plan amendment in this case. The Board assumes that adoption of or amendment to a comprehensive plan is a legislative action within the meaning of SMC 23.76.062. This provision required the City Council to "itself conduct a public hearing" and publish notice of the hearing in the City's official newspaper.

The City's actual public participation process for the adoption of the Plan is set forth in *WSDF I*, at 71-73. This process included three public hearings by the City Council. In addition, draft proposals were distributed to libraries and neighborhood service centers, and flyers were mailed announcing the availability of these draft documents, and a schedule of workshops and hearings was distributed. The Board also notes that the City, in response to the remand in *WSDF II*, published notice of public hearings in its official newspaper (*see* Finding of Fact 36) and the full City Council held public hearings (*see* Finding of Fact 38).

In addition, the Board notes that, as part of its annual plan amendment process, the City published notice in DCLU's *Weekly Bulletin* announcing public hearings (see Finding of Fact 32; *see also* Finding of Fact 35) and in the process of initially adopting the Plan, utilized the DCLU weekly newsletter for making announcements. *See* Exhibits M and N to the Declaration of Bob C. Sterbank in support of WSDF's Reply on Seattle's Statement of Compliance.

The record before the Board conclusively proves that the City did not publish notice of the actions to adopt the amendments in question here in its official newspaper (*see* Finding of Fact 26); nor did the City publish notice in DCLU's *Weekly Bulletin* (Finding of Fact 27); nor did the City Council itself conduct a public hearing (*see* Findings of Fact 29 and 30). Accordingly, the general public's expectation of the City's public participation process was not met.

Director. The City Council shall not act on any Type V decision until the end of the appeal period for the applicable DNS or Final EIS or, if an appeal is filed, until the Hearing Examiner issues a decision affirming the Director's DNS or EIS decision.

[11] SMC 23.76.004, entitled "Land use decision framework" describes Type V legislative actions as follows:

> A. Land use decisions are classified into five (5) categories based on the amount of discretion and level of impact associated with each decision. Procedures for the five (5) different categories are distinguished according to who makes the decision, the type and amount of public notice required, and whether appeal opportunities are provided. Land use decisions are categorized by type in Exhibit 23.76.004 A.
>
> ...
>
> C. Type IV and V decisions are Council land use decisions. Type IV decisions are quasi-judicial decisions made by the Council pursuant to existing legislative standards and based upon the Hearing Examiner's record and recommendation. Type V decisions are legislative decisions made by the Council in its capacity to establish policy and manage public lands. Emphasis added.

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Factor 2

Pursuant to RCW 36.70A.300(1)(b), the Board in its discretion may give a noncomplying jurisdiction up to one hundred and eighty days to bring an enactment into compliance. The less time the Board gives to a jurisdiction to comply, the less public participation will be required. Conversely, if the Board gives a jurisdiction more time to comply, a full 180 days for instance, more public participation will be required. In *WSDF I*, the Board gave the City from April 4, 1995 to September 1, 1995, a period of 150 days -- nearly the maximum amount of time to comply. Accordingly, looking at just this factor, the Board anticipates more, rather than less, public participation than had it given the City a lesser amount of time to comply.

Factor 3

While the first two factors are objective in nature, the next three are more subjective. In examining the test as a whole, the Board cannot look solely to the objective factors. The amount of public participation must also be commensurate with the scope of the remand. Does the remand affect an entire jurisdiction, or limited parcels of property? Does the remand go to "the heart" of the noncomplying legislative enactment or is it a peripheral issue, a minor internal inconsistency, for instance, that must be corrected?

In this case, the scope was limited to urban villages rather than to the entire geographic area of the City. However, pursuant to the Plan, a majority of the anticipated future population and employment growth for the City of Seattle is directed to these urban villages. Therefore, the scope of the remand was very broad.

Factor 4

The Board must also consider the nature of the remand. For instance, occasions will arise where the Board will grant a jurisdiction the maximum 180 day period to achieve compliance, yet the public will not be able to participate until later into the process because the nature of the remand requires the jurisdiction to conduct additional research and/or prepare analysis of additional information that does not become available until sometime into the 180 day period.

In this instance, while some of the information required by the remand order was arguably already available because of the Mayor's recommended Plan, the Board did require some additional new information, and even the pre-existing information required new analysis. While the Mayor's Plan was based on urban villages with population dispersed to locations with precise boundaries throughout the City, the adopted Plan had the effect of limiting this population dispersal to only five urban centers. Accordingly, the general public could not have actively participated during the entire 150 day remand period, since some of this period would be consumed with the production and analysis of new information and the re-analysis of old information.

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Factor 5

Closely related to the nature of the remand is the maximum level of discretion afforded to a local jurisdiction in taking a compliance action. If no or little discretion is granted by the remand (e.g., delete policy 'x'), little public participation will be required. In contrast, if substantial discretion is afforded the local jurisdiction by the remand (e.g., comply with the Act's requirements), more public participation will be required.

In this case, the Board afforded the City the maximum level of discretion in determining how to comply with the Board's order. This was not an instance where the Board directed the City to take a specific, easily quantifiable step. Instead, the Board stated that:

> ...it is up to the City to determine how to comply with the Board's directives. Seattle has several choices, ranging at the extremes from fully adopting all categories of urban villages, to totally deleting references to the urban villages strategy and its components.... Emphasis in original.

Looking at the five factors as a whole, the Board holds that the City did not comply with RCW 36.70A.140. Although a subcommittee of the City Council held a public hearing, and the City did mail notice to certain persons on its mailing list, as the Board has already held, this constituted "at the barest absolute minimum" procedural compliance on remand in *WSDF I*. Such a "barest absolute minimum" does not meet the mandate of RCW 36.70A.140 for "early and continuous" public participation, albeit public participation limited by the five-part test set forth above.

Once Seattle acquired the information necessary and analyzed it, the City had a duty to afford the general public, including WSDF, a reasonable opportunity to review and comment before taking action. The City might adhere to its own public participation practices followed in *WSDF II* as one way to meet this duty. In contrast, here the City followed neither the procedures listed in the Seattle Municipal Code, nor the actual precedent established by past practice in both *WSDF I* and *WSDF II*. A citizen looking for notice of the public hearing would not have found it either in the City's official newspaper or the DCLU weekly newsletter. A citizen who appeared at the public hearing (had she or he known of it) would not have been given copies of the proposal to review. The same citizen never would have discovered when the City Council was to meet to take final action on the remand amendments. Lacking the knowledge of when the Council was scheduled to take action, this person would not only have no opportunity to appear and testify, she or he would not know the deadline for submittal of a timely written comment. Again, from the record in prior cases, the Board is aware that the average citizen would have known all of this from information clearly and broadly disseminated by the City. *See* RCW 36.70A.140.

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Conclusion No. 1

The City did not comply with the requirements of the GMA at RCW 36.70A.140 for enhanced public participation, in adopting Ordinance 117735.

Legal Issue No .2

Does Seattle Comprehensive Plan Land Use Policy L127 comply with the GMA's requirements at RCW 36.70A.020(1), (4), (7), (11) and (12), and RCW 36.70A.070?

Positions of the Parties

WSDF

WSDF contends that Land Use Policy L127 is inconsistent with and "openly flouts the Board's express orders previously issued" in *WSDF I* and *II*. WSDF's Opening Brief, at 4-6. WSDF characterizes the policy as an attempt by the City to "hide the ball" by allowing it to adopt plans that do not have city-wide application and leave them out of the Plan. WSDF points out that a reader of the Plan would never know that village-specific planning had been completed or final urban village boundaries adopted, nor be able to file an appeal to the Board since it is a Plan amendment that triggers the ability to appeal pursuant to RCW 36.70A.290(2). WSDF's Opening Brief, at 5-6. In addition, WSDF points out that the language of L127 is not mandatory but instead only suggests that the Plan "may" be amended when final urban village boundaries are adopted. WSDF's Reply, at 5.

WSDF also contends that L127 is inconsistent with RCW 36.70A.020(1), (4), (7) and (11) which require comprehensive plans, and by implication their amendments, to encourage development in areas where urban services exist or can be efficiently provided, to encourage affordable housing and preservation of existing housing stock, to process permits in a timely and fair manner, to provide public participation and to ensure provision of public facilities and services necessary at the time development is available. WSDF contends that if the Act's analysis for neighborhood plans is not incorporated into the Plan through amendments, that the GMA's planning goals are "meaningless." WSDF's Opening Brief, at 6-7.

Finally, WSDF alleges that L127 is inconsistent with RCW 36.70A.070 (preamble) since a comprehensive plan which, by its own text, defers portions of its planning to a future neighborhood planning process, must be later amended to include those neighborhood plans if the plan is to comply. WSDF's Opening Brief, at 7. WSDF points out that it is the Plan itself, for instance Policy N14, that required further action on urban villages through the neighborhood planning process. WSDF's Reply, at 6.

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City of Seattle

The City lists several reasons why it should not be required to include neighborhood plans within its Plan, pointing out that the basic purpose of the policy is simply to explain the intended relationship between the many City programs, policies and plans which lack city-wide application, and the Plan itself. City's Brief, at 3.

First, a comprehensive plan is a generalized policy statement having city-wide application pursuant to RCW 36.70A.030(4). To include neighborhood plans that lack such city-wide application "... would seem contrary to the Act's intent." City's Brief, at 4. Second, the City contends that it is prohibited from amending the Plan more than once a year unless an emergency exists. Therefore, once it incorporates neighborhood plans into its Plan, the City would be prevented from amending the neighborhood plan more than once a year. This would reduce the City's ability to make 'timely decisions" and would "severely" restrict its ability to take action to meet public needs. City's Brief, at 4.

Third, the City claims that including all neighborhood plans in one document would result in an "unwieldy" Plan that rivals the Internal Revenue Code for size and complexity. City's Brief, at 4-5. Fourth, the City complains that if neighborhood plans were required to become part of the Plan, then presumably all the Act's other requirements would apply to neighborhood plans also. City's Brief, at 5, fn 4. Fifth, Seattle maintains that RCW 36.70A.080(2) makes subarea planning a purely optional feature which the Board has held need not be completed at the time of Plan adoption. Furthermore, the incorporation of such subarea planning into a comprehensive plan is also purely discretionary. City's Brief, at 6.

It is the City's position that the Act's planning goals apply only to comprehensive plans and development regulations, but not subarea-type plans, such as its neighborhood plans. Seattle also alleges that many actions it takes must be consistent with the Plan, such as its implementing development regulations, but that does not mean that these regulations must be contained within the Plan itself. City's Brief, at 6.

The City also accuses WSDF of mischaracterizing the Board's prior decisions regarding neighborhood plans. Specifically, the City claims that the Board never required the Plan to contain all the analysis that went into studying localized capital facilities and transportation issues. Furthermore, in discussing the Board's prior ruling that when the neighborhood planning process is complete, the boundaries of urban villages must be shown in the Plan, the City contends that "is exactly what L127 contemplates." City's Brief, at 7.

Discussion

In adopting the Plan Amendment Ordinance, the City added a new Land Use Policy L127 to the Plan, and renumbered all the following policies in the Plan. L127 provides:

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> Generally, Council approval of a plan or program that lacks city-wide application will not be included within, or entail amendment of, the Comprehensive Plan. However, when the Plan is amended, plan maps or text may be updated to reflect Council action, as appropriate. For example, when the Council approves a local plan, such as that for an urban village, the final boundaries for the village may be depicted on Plan maps. Attachment 1 to City's Statement of Compliance, at 2 (emphasis added).

The GMA defines the term "comprehensive plan" at RCW 36.70A.030(4), which provides:

> "Comprehensive land use plan," "comprehensive plan," or "plan" means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter. Emphasis added.

The GMA also contemplates that a jurisdiction may elect to have a "land use policy statement" for a smaller portion of its geographic area, as evidenced by RCW 36.70A.080 which authorizes subarea plans. While the term "subarea plan" is not defined in the Act, it appears as an "optional element" of comprehensive plans at RCW 36.70A.080, which provides:

> (2) A comprehensive plan may include, where appropriate, subarea plans, each of which is consistent with the comprehensive plan.

In prior cases, the Board examined the relationship between the requirements of the GMA, including a GMA comprehensive plan, and pre-GMA "subarea plans", which is to say, specific land use policy plans with applicability only to a geographic subarea of the jurisdiction. The first such case was *Happy Valley Assoc., et al. v. King County* CPSGPHB 93-3-0008 (1993) ***(Happy Valley)***, which addressed King County's East Sammamish Community Plan Update process. In the Order Granting King County's Motion to Dismiss, the Board stated:

> This Board has outlined the interactive and iterative nature of the planning hierarchy established by the GMA. *See*, for instance, *Edmonds and Lynnwood v. Snohomish County*, CPSGPHB Case No. 93-3-0005 (1993), at 26 - fn. 10; and Snoqualmie, at 17. The Board has also noted the important distinction in the GMA between policy documents, such as CPPs and comprehensive plans, and development regulations. *Edmonds*, at 26; *Gutschmidt*, at 15; *Poulsbo*, at 23. However, the Board has not yet commented upon subarea plans. As RCW 36.70A.080(2) reveals, they are a subset of comprehensive plans. Therefore, subarea plans also are planning policy documents under the GMA. They may contain more specific policies aimed at a localized area within a city or county. Emphasis added.

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In *Northgate Mall Partnership v. City of Seattle*, CPSGPHB 93-3-0009 (1993) (***Northgate***), the Board examined a pre-GMA land use policy enactment of the City of Seattle entitled the 'Northgate Area Comprehensive Plan." The Board had to specifically address the meaning of the word 'generalized" in the Act's definition of comprehensive plan. In the Order Granting Seattle's Motion to Dismiss (November 8, 1993), the Board concluded:

> The Board concludes, therefore, that the word "generalized" is not used to distinguish between comprehensive plans and development regulations. What, then, does "generalized" mean in this context? Where, as here, a statute does not define a material term, the word should be given its ordinary meaning. In ascertaining common meaning, resort to dictionaries is acceptable. *TLR, Inc. vs. Town of La Center*, 68 Wn. App. 29, 33, 841 P.2d 1276 (1992).
>
> *Webster's II New Riverside University Dictionary*, 524 (1984) defines "generalized: as:
>
> Not well-adapted to a specific environment or function: undifferentiated.
>
> This definition suggests that a comprehensive plan consists of policy statements that have general application to the entire city rather than to a specific sub-environment or differentiated portion of the entire city. The Board therefore holds that the term "generalized" refers to the entire geographic area within a city or county. A comprehensive plan for GMA purposes has general application throughout the whole jurisdiction. A plan that covers a subset of that area, such as the Northgate area of Seattle, is too localized to be an area-wide comprehensive plan. It applies only to a discrete area within the whole. Accordingly, a document such as the Final Northgate Plan, if brought into compliance with the GMA, would constitute a subarea plan. *See Happy Valley*, at 18-20, and RCW 36.70A.080(2). Emphasis added.
>
> ...
>
> While the Final Northgate Plan may continue to exist beyond July 1, 1994 and arguably may have some legal status as a non-GMA enactment, the Board notes that it is not a GMA compliance document, and can have no legal effect in making GMA related decisions. Importantly, the City should be mindful that not later than July 1, 1994, the City will be obliged by RCW 36.70A.120 to "perform its activities and make capital budget decisions" in conformity with the GMA-required comprehensive plan.

In *Cities of Tacoma, Milton, Puyallup and Sumner v. Pierce County*, CPSGPHB No. 94-3-0001, Final Decision and Order (1994) (***Tacoma***), the Board discussed Pierce County's pre-existing community plans:

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> The Board agrees with the County's characterization of the overlap areas as "for informational purposes" and agrees with the Cities' argument that non-GMA planning documents, including the Pierce County community plans in question, have no binding or directive legal effect on GMA enactments. *Tacoma*, at 44.
>
> ....
>
> The County is not prohibited from referring to pre-existing community plans that were adopted under authority other than the GMA. Referring to such plans is a recognition of the hours of effort and community involvement that went into the development of those plans. However, if the County elects to utilize such community plans as subarea plans of its comprehensive plans, they must comply with the Act, including the requirement that they are consistent with the County's comprehensive plan, the plans of adjacent jurisdictions and the PCCPPs. *Tacoma*, at 46 (emphasis added)

Recently, in *Sky Valley, et al., v. Snohomish County*, CPSGMHB Case No. 95-3-0068 (1996) (***Sky Valley***), the Board reiterated the potential status of pre-GMA subarea plans as follows:

> At such time as the County elects to incorporate sub-area plans, by whatever name, it will be obliged to comply with the requirements of the Act. The Board notes that the County did not adopt the pre-GMA sub-area plans as GMA enactments. **The Board holds that pre-GMA sub-area plans need not be adopted as GMA enactments in order to continue to have useful application in local land use decision-making. However, such pre-GMA sub-area plans may not be used to satisfy a GMA requirement unless they are specifically incorporated by reference and adopted for that purpose pursuant to the requirements of the Act; nor may they supersede any specific policy or regulatory directive contained in a GMA enactment.** The County understood this nuance, as explicitly acknowledged in the Plan's adopting ordinance No. 94-125. Emphasis in original; footnote omitted.

Most recently, in *Benaroya, et al., v. Redmond*, CPSGMHB Case No. 95-3-0072 (1996), (***Benaroya***), the Board stated:

> In this instance, the Board concludes that the Act does not permit a "neighborhood veto", whether *de jure* or *de facto*, and the policies challenged here cannot achieve such an outcome. The ultimate decision-makers in land use matters under the GMA are the elected officials of cities and counties, not neighborhood activists or neighborhood organizations. Citizens provide input to the land use decision-making process, but "citizens do not decide." *See Poulsbo, et al., v. Kitsap County (Poulsbo)*, CPSGMHB Case No. 92-3-0009 (1993), at 36.
>
> The decision-making regime under GMA places great importance on the comprehensive plan. A city may choose to undertake optional neighborhood

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planning, pursuant to RCW 36.70A.080; however, those neighborhood plans must comply with the Plan and the requirements of the GMA. *Benaroya*, at 22.

From prior cases, the Board is aware that cities (e.g., Bothell, Redmond, and Bellevue) frequently use the term "neighborhood plan" while counties (e.g., King, Pierce and Snohomish) often use the term "community plan" to connote a geographic subset of the entire city or county and have characterized those "plans" as, essentially, localized land use policy documents. The Board concluded that "neighborhood plans" and "community plans" are "subarea plans" within the meaning of RCW 36.70A.080(2).

Accordingly, the Board holds that, by whatever name (e.g. neighborhood plan, community plan, business district plan, specific plan, master plan, etc.), a *land use policy plan* that is adopted after the effective date of the GMA and purports to guide land use decision-making in a portion of a city or county, is a subarea plan within the meaning of RCW 36.70A.080. While a city or a county has discretion whether or not to adopt such optional enactments, once it does so, the subarea plan is subject to the goals and requirements of the Act and must be consistent with the comprehensive plan.

The legislature clearly intended for GMA comprehensive plans to replace the land use plans that preceded the Act (i.e., pre-GMA land use plans, both jurisdiction-wide and sub-area in geographic scope). The Board's holdings in the above cited cases are founded on that key understanding that the Act requires a very different framework for planning and a very different type of plan than were required before the enactment of the GMA. At the same time, the Board has acknowledged that this departure from past practice would be so significant for many jurisdictions, that some period of transition from the old to the new was necessary and appropriate. *See Happy Valley*, at 24. Likewise, the Board has concluded that, so long as they did not contradict or otherwise thwart the Act and GMA plans, pre-GMA plans could have some continued, albeit diminishing, value. Thus, the Board concluded that the legislature did not intend that jurisdictions planning under the Act "throw away" all of the effort and value that those earlier planning exercises represent. *See Northgate*, at 17.

In the present case, it is significant to note that, unlike the Board's prior cases which dealt with pre-GMA subarea plans, the "neighborhood plans" that Seattle contemplates under L127 are not pre-GMA enactments. Rather, they are *prospective* land use policy subarea plans. Here, the City is describing land use policy subarea plans that it intends to adopt more than six years after the effective date of the GMA and at least two years after the adoption of its GMA comprehensive plan. *See* Finding of Fact 2.

The Board has not addressed the length of the period of transition for local governments to wean themselves from the reliance on pre-GMA subarea plans; however, it does not seem unreasonable that, six years after the adoption of the GMA, local governments operate within the Act's framework for coordinated and internally consistent planning - rather than cling to the fragmented and disconnected land use planning that led to the

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enactment of the GMA in the first place. While the Board has made reasonable allowance for cities and counties to make limited and diminishing use of pre-GMA subarea plans, both common sense and the Act's goals and requirements oblige cities and counties to treat new localized land use policy enactments as subarea plans within the meaning of RCW 36.70A.080(2). **The Board holds that the discretion conferred upon cities and counties by RCW 36.70A.080(2) is the discretion to undertake new detailed subarea land use policy plans. If they do so, such plans must be adopted as part of the comprehensive plan; the GMA has removed the discretion of cities and counties to undertake new localized land use policy exercise disconnected from the city-wide, regional policy and state-wide objectives embodied in the local comprehensive plan.**

Turning specifically to the arguments raised by the City, the Board rejects them.

First, the Board responds to the City's argument that the comprehensive plan is a "generalized" policy, and therefore presumably need not include specific policy statements in neighborhood plans. In the *Northgate* case, the Board cited the dictionary meaning of "generalized" to conclude that a subarea plan, by itself, is insufficient to constitute the citywide comprehensive plan required by RCW 36.70A.040. The Board did not then conclude, and does not conclude now, that the generalized nature of a comprehensive plan under the GMA precludes such a plan from having very specific and detailed policies. Indeed, RCW 36.70A.070(1) directs that the land use element of a plan is to designate:

> ... the proposed *general* distribution and *general* location and extent of the uses of land, where appropriate, for agriculture, timber production, housing, commerce, industry, recreation, open spaces, public utilities, public facilities, and other land uses.

The use of the adjectives 'general' in RCW 36.70A.070(1) and 'generalized' in RCW 36.70A.030(4) do not change the basic direction of the Act that the Plan is to be a "coordinated land use policy statement" that directs specifically what uses and densities are to be located within each and every part of the land area of a city or county.

Apart from the foregoing analysis, the Board also notes that the City "opened its own door" on the subject of the form of such urban village adoption by explicitly stating in the Plan that this will be accomplished through the "neighborhood planning process." [12] Thus,

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[12] Policy N-14 provides:

> Ensure that all urban centers, urban villages, and manufacturing/industrial centers are included in comprehensive neighborhood plans, which at a minimum do the following:
>
> ...
>
> c. Establish boundaries for hub urban villages and residential urban villages considering as one option the boundaries identified in Appendix A for each urban village, provided, that: if at the end of the neighborhood planning cycle, a village boundary has not been established for a hub or residential urban village, the boundary shown in Land Use Appendix A of this plan shall become the boundary for that village;

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the City represented that the remainder of the comprehensive plan's core organizing concept, its urban village strategy, would be carried out by the setting of final boundaries in the Plan as determined by the neighborhood plan adoption process, either explicitly or by default. For the City to now argue, by means of Policy L127, that the establishment of such boundaries and the adoption of specific land use policy to accomplish urban villages is a "plan or program that lacks city-wide application," and thus need not be included within the plan, is disingenuous.

Second, the City claims that the Act's limitation of Plan amendments to once a year would unreasonably restrict the City's flexibility to respond to changing needs. The Board is not persuaded by this argument. The Act explicitly allows an exception for the initial adoption of a subarea plan (i.e., a neighborhood plan). *See* RCW 36.70A.130(2)(a)(i). If, after initial adoption of a subarea plan, Seattle finds a serious need to amend a subarea plan, the Act provides an opportunity for the City to depart from the once-a-year limitation by finding that an emergency exists. *See* RCW 36.70A.130(2)(b).

Third, the City complains that to include its neighborhood plans as attachments to the Plan would result in a voluminous document rivaling the Internal Revenue Code. The obvious answer to this problem is to incorporate the neighborhood plans by reference, and make appropriate mutual reference in both documents, rather than attach thirty neighborhood plans to the body of the Plan., Thus, a reader of either a localized neighborhood plan land use policy statement or of the Plan itself, cannot help but be aware of the fact that the neighborhood, and its localized land use policy plan, exist in the broader context of the entire city and its Plan.

The City complains that the subject material of some of these neighborhood plans will be unrelated to land use policy. Again, this seems to be largely a logistical and organizational problem that can be addressed in any number of ways. It would be a simple matter, for example, to identify subsections of a 'neighborhood plan" that the City agrees have land use and GMA implications, and other subsections that discuss unrelated matters, such as Green Lake neighborhood dog-leash policy or a Ballard sister-neighborhood program with Poulsbo. The GMA does not require the City to adopt as amendments to the Plan 'all manner of municipal plans and programs"; only those that fall within the realm of a 'land use policy statement."

Fourth, the City complains that if neighborhood plans must become a part of the Plan, then all the Act's other requirements would apply also. The City is correct in this assessment.

Fifth, the City argues that subarea plans are completely optional. While that is correct in the abstract, the Board has rejected the City's argument that it is optional whether such land use policy enactments are adopted pursuant to the GMA. While the City has the option to undertake neighborhood plans or not undertake neighborhood plans, it does not

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... Plan, at 115.

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have the option to keep, in effect, two sets of land use policy books - one to satisfy the GMA and one to shield its local land use policy decisions from the GMA.

In short, the Board does not fault Seattle for utilizing neighborhood planning. Indeed, public participation is the metaphorical and literal bedrock of GMA planning and that bedrock is found at the neighborhood level of every county and city. In order for growth management to be more than a remote and largely irrelevant accounting and legal exercise, it must have meaning on the ground at the neighborhood level. It is with these principles in mind that the Board evaluated the City's proposal to have L127, in effect, insulate the City's neighborhood plans from the City's Plan. For both legal and practical reasons, the Board finds the City's arguments in defense of L127 unpersuasive.

If GMA stands for nothing else, it stands for the proposition that the citizens of a neighborhood are also citizens of a larger community, be it a city and/or a county, a region and indeed, the state itself. To allow the City to proceed with a neighborhood planning process that is segmented and insulated from the goals and requirement of the Act, and the policy documents that the Act requires of cities and counties, would ignore this basic axiom of comprehensive planning.

Conclusion No. 2

Seattle Comprehensive Plan Land Use Policy L127 does not comply with the GMA's requirements at RCW 36.70A.020(1), (4), (7), (11) and (12), and RCW 36.70A.070. The Board will remand it to the City with instructions to either delete it or otherwise amend it to clarify that, any neighborhood plan or program, in whole or in part, that purports to guide land use decision-making, must be adopted as part of the Plan pursuant to RCW 36.70A.080(2).

Legal Issue No. 3

Does the Seattle Comprehensive Plan Capital Facilities Element and Appendices, specifically at 93-94 (including Goals G1-G7 and Policies C1-C6), 95-96 (Sections B-F), and A115-A134, and as amended by Ordinance 117735, comply with the requirements of RCW 36.70A.070(3)?

Conclusion No. 3

Because the Board has answered Legal Issues 1 and 2 in the negative, and is remanding the Plan to the City, it need not and will not address Legal Issue No. 3.

Legal Issue No. 4

Does the Seattle Comprehensive Plan Transportation Element and Appendices, specifically at 57-67, 76-79, A30-A49, and as amended by Ordinance 117735, comply with the requirements of RCW 36.70A.070(6)(a) through (d)?

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Conclusion No. 4

Because the Board has answered Legal Issues 1 and 2 in the negative, and is remanding the Plan to the City, it need not and will not address Legal Issue No. 4.

IV. ORDER

Having reviewed and considered the above-referenced documents and the file in this case, having considered the oral arguments of the parties, and having deliberated on the matter, the Board orders:

1) Ordinance 117735 is **remanded** in its entirety with instructions to the City to first comply with the requirements of the Growth Management Act (GMA) at RCW 36.70A.020(11) and .140 for enhanced public participation before re-adopting it.

2) Land Use Policy L127 in Ordinance No. 117735 is **remanded** with instructions to the City to delete it or otherwise bring it into compliance with this decision and the requirements of the Act.

3) Pursuant to RCW 36.70A.300(1)(b), the Board directs the City to comply with this Final Decision and Order no later than: **4:00 p.m.** on **Monday, July 1, 1996.**

4) The City shall file by **4:00 p.m. on Monday, July 8, 1996**, one original and three copies with the Board and serve a copy on WSDF of a statement of actions taken to comply with the Final Decision and Order. The Board will then promptly schedule a compliance hearing to determine whether the City has procedurally complied with this Order. If the Plan is amended, substantive compliance will not be determined until and unless new petitions for review are filed within 60 days of publication of notice of adoption of such Plan amendments.

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So ORDERED this 2nd day of April, 1996.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

M. Peter Philley
Board Member

Joseph W. Tovar, AICP
Board Member

Chris Smith Towne
Board Member

Note: This Final Decision and Order constitutes a final order as specified by RCW 36.70A.300 unless a party files a Petition for Reconsideration pursuant to WAC 242-02-830.

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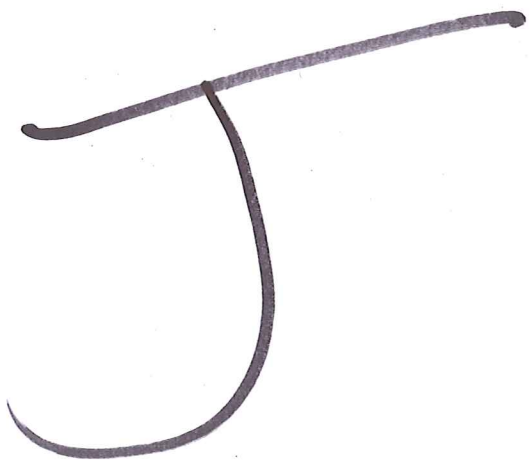

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BEFORE THE CITY COUNCIL
CITY OF SEATTLE

In the Matter of an Appeal
by Dennis Ross
From the Findings and Recommendation
Of the Hearing Examiner for the City of Seattle

CF # 308944

JOSH STEPHERSON, on behalf of
ROGER CASEY AND MIKE GAIN

DPD Reference:
3007538

DPD RESPONSE TO APPEAL

The Department of Planning and Development (DPD) response to the appeals raised is as follows, in reference to the appeal dated September 22nd, 2010 by Dennis Ross of 2109 California Ave SW, #102:

Summary of appeal issue:

1. **Neighborhood Plan**
   Unadopted portions of the Admiral Neighborhood Plan were not used in evaluating the proposed rezone. The appeal references a Central Puget Sound Growth Management Hearings Board Final Decision and Order.
2. **Admiral Urban Village boundaries**
   The appellant states that the borders of the Admiral Urban Village were modified in 1999 to include the southwest parcels described in the proposed rezone.
3. **Financial feasibility of future development**
   The appellant seems to disagree with the idea that an additional floor of residential area could offset the cost of underground parking for possible future development at this site.
4. **Exhibit 49 accuracy**
   The appellant states that there was no November 13, 2007 Admiral Community Council meeting and the date on the exhibit is incorrect.

Facts:

1. SMC 23.34.008.D requires that only adopted Neighborhood Plans may be used in evaluating proposed rezones.
2. The appellant has not submitted any exhibits indicating that the northeast and northwest parcels of this rezone application were not part of the Urban Village prior to 1999.
3. The appellant has not submitted any exhibits indicating that underground parking would have negative impacts to housing or designated low income housing.
4. The applicant for this proposal submitted Exhibit 49 as part of the review of MUP 3007538.

5. Malli Anderson was the Land Use Planner originally assigned to this application. Ms. Anderson verbally indicated to the reassigned Planner Shelley Bolser that she attended an Admiral Community Council meeting as shown on the Admiral Community Council agenda in the MUP file.

Conclusions:

1. The proposed rezone was analyzed using adopted portions of the Admiral Neighborhood Plan, as required by SMC 23.34.008.D. There is no error in the record or the Hearing Examiner's analysis.
2. The proposed rezone area was part of the Admiral Urban Village as early as 1999. It is possible that these parcels were not part of the Urban Village in the mid 1990's, although the appellant has not provided any exhibits to supplement the record with this information. If it is true that those parcels were not part of the Urban Village prior to 1999, the analysis remains unchanged and therefore the appeal item should have no impact on the outcome of the rezone or record.
3. The appellant has not demonstrated that future development as a result of the proposed rezone would have a negative impact on housing or affordable housing, or that underground parking would make future development financially infeasible.
4. It is possible that the date on the Admiral Community Council meeting packet is incorrect. The date of the meeting, the meeting itself, and the meeting packet were not used in the analysis of the proposed rezone. If this appeal item is true, the rezone analysis would remain unchanged and therefore the appeal item would have no impact on the rezone or the record.

References in the record:

- Exhibit 1, DPD Rezone Recommendation and SEPA Determination
  - pages 10-11, SMC 23.34.008.D and page 23, 23.34.009.E (Neighborhood Plans)
  - page 14, SMC 23.34.008.F.1.a (Housing impacts)
- Findings and Recommendation of the Hearing Examiner
  - Findings of Fact #11 and #13
  - Conclusion #15

Entered this 18th day of October, 2010.

Shelley Bolser, Senior Land Use Planner, AICP, LEED AP
Department of Planning and Development

cc: Dennis Ross
Olivia Peck
Dino Annest and Janna Annest

Cole Peck
Phil Wingard
Lisa Muller
Lynn McIntosh
Chris Caster
Josh Stepherson

BEFORE THE CITY COUNCIL
CITY OF SEATTLE

In the Matter of an Appeal
by Phil Wingard
From the Findings and Recommendation
Of the Hearing Examiner for the City of Seattle

CF # 308944

JOSH STEPHERSON, on behalf of
ROGER CASEY AND MIKE GAIN

DPD Reference:
3007538

DPD RESPONSE TO APPEAL

The Department of Planning and Development (DPD) response to the appeals raised is as follows, in reference to the appeal dated September 15th, 2010 by Phil Wingard of 3227 42nd Ave SW:

Summary of appeal issue:
Height Measurement
This appeal seems to focus on how height is measured in relation to grade. Mr. Wingard indicates that he believes the height of a potential building in the commercially zoned properties on the east side of California Ave SW would be measured from a 'baseline' at the grade of the sidewalk on California Ave SW.

Facts:

1. SMC 23.86.006.A.1 requires the methodology for measuring building height per the Land Use Code: *"The height shall be measured at the exterior walls of the structure. Measurement shall be taken at each exterior wall from the existing or finished grade, whichever is lower, up to a plane essentially parallel to the existing or finished grade..."*
2. In the case of a sloped lot, this method of measurement may result in a stepped building that responds to grade changes and maximum height at each wall.
3. The commercially zoned lots on the east side of California Ave SW are sloped, with the higher slope located on the eastern portion of the lot near the single family zoned parcels.
4. Setbacks in this zone would require up to a 15' setback from the east property line, per SMC 23.47A.014. The resulting structure could be 37' or higher with in places with mechanical equipment, measured at the existing grade at a distance of 15' from the east property lines, under the existing NC1-30 zoning (SMC 23.47A.012).
5. The methodology of measuring height per SMC 23.86 and 23.47A was not discussed in the Hearing Examiner hearing.

Conclusions:

1. Height measurement methodology as defined by SMC 23.86 and the existing topography at this site support the DPD analysis and the Hearing Examiner conclusions regarding potential view blockage. The appeal letter describes a method of height measurement that is not permitted by SMC 23.86.
2. This indicates there is no error in the record or the Hearing Examiner's analysis.

References in the record:

- Exhibit 51, DPD Rezone Recommendation and SEPA Determination, page 15: SMC 23.34.008.F.1.c (views)
- Exhibit 14, Copy of DPD's analysis regarding potential view blockage (from MUP file 3007538)
- Findings and Recommendation of the Hearing Examiner, Conclusion #9

Entered this 18th day of October, 2010.

Shelley Bolser, Senior Land Use Planner, AICP, LEED AP
Department of Planning and Development

cc: Dennis Ross
Olivia Peck
Dino Annest and Janna Annest
Cole Peck
Phil Wingard
Lisa Muller
Lynn McIntosh
Chris Caster
Josh Stepherson

BEFORE THE CITY COUNCIL
CITY OF SEATTLE

In the Matter of an Appeal
by 53 individuals represented
by Cole Peck, Phil Wingard, and Lisa Muller
from the Findings and Recommendation
of the Hearing Examiner for the City of Seattle

CF # 308944

JOSH STEPHERSON, on behalf of
ROGER CASEY AND MIKE GAIN

DPD Reference:
3007538

DPD RESPONSE TO APPEAL

The Department of Planning and Development (DPD) response to the appeals raised is as follows, in reference to the appeal letters dated September 16th, 2010 and September 29th, 2010 by 53 individuals represented by Cole Eric Peck, Phil Wingard, and Lisa Muller.

Summary of appeal issues:

1. **Analysis of natural topography and view blockage**
   The appellants disagree that these items have been sufficiently analyzed.
2. **Analysis of commercial development encroaching into residential areas and creating new business districts**
   The appellants disagree with the analysis and recommendation.
3. **Consideration of Neighborhood Plans**
   The appellants believe the unadopted portions of the Admiral Neighborhood Plan should have been considered with this rezone analysis.
4. **Analysis of urban village capacity for this rezone**
   The appellants argue that there is sufficient capacity and therefore the rezone doesn't meet this criterion.
5. **NC1 and NC2 function and locational criteria**
   The appellants disagree with the DPD and Hearing Examiner analysis and conclusions.
6. **Height analysis**
   The appellants disagree with the Hearing Examiner findings of fact regarding height analysis.
7. **Public comments**
   The appellants believe that public comment letters were removed from the record if they were received after "December 5th" (year not specified in the appeal letter), and they believe the official records don't accurately reflect the opposition.
8. **Fees**
   The appellants disagree with DPD waiving some of the fees that were due.

9. **Hearing format**
   The appellants disagree with the hearing format and the ability of the proposed rezone property owner to testify during the public comment portion of the rezone hearing.
10. **NC2-40 type construction feasibility at this site**
    The appellants argue that the length of this block with no adjacent alley make it impossible to provide both parking access and retail at the street level.

Facts:

1. SMC 23.86.006.A.1 requires the methodology for measuring building height per the Land Use Code: *"The height shall be measured at the exterior walls of the structure. Measurement shall be taken at each exterior wall from the existing or finished grade, whichever is lower, up to a plane essentially parallel to the existing or finished grade..."* In the case of a sloped lot, this method of measurement may result in a stepped building that responds to grade changes and maximum height at each wall.
2. The commercially zoned lots on the east side of California Ave SW are sloped, with the higher slope located on the eastern portion of the lot near the single family zoned parcels.
3. Setbacks in this zone would require up to a 15' setback from the east property line, per SMC 23.47A.014. The resulting structure could be 37' or higher with in places with mechanical equipment, measured at the existing grade at a distance of 15' from the east property lines, under the existing NC1-30 zoning (SMC 23.47A.012).
4. The methodology of measuring height per SMC 23.86 and 23.47A was not discussed in the Hearing Examiner hearing.
5. Exhibit 14 indicates that the view analysis was completed using DPD Geographic Information System (GIS) maps, and included four notes describing general changes in topography according to those maps. This analysis is summarized on page 15 of Exhibit 5.
6. Analysis of General Rezone Criteria (SMC 23.34.008 including urban village zoned capacity, Neighborhood Plans, and Zoning Principles) is included in Exhibit 5 and the Hearing Examiner's Findings and Recommendation.
7. Analysis of the NC1 and NC2 function and locational criteria (23.34.074 and 23.34.076) is included in Exhibit 1 and the Hearing Examiner's Findings and Recommendation.
8. Analysis of height impacts (SMC 23.34.009) is included in Exhibit 5 and the Hearing Examiner's Findings and Recommendation.
9. Public comments are accepted by DPD from the time of Notice of Application until publication of the rezone recommendation and SEPA determination. All public comments received during this time were included in the record (Exhibit 48).
10. Fee adjustments are described in the email from Roberta Baker (Exhibit 57)
11. Hearing format is defined in the Hearing Examiner Rules of Practice and Procedure.

12. The appellants have not provided any studies or expert statements regarding the feasibility of NC2-40 type construction at this site.

Conclusions:

1. The appellants have not provided any evidence or expert witness statements that would indicate the proposed rezone was insufficiently analyzed in either the DPD or the Hearing Examiner's recommendations.
2. All public comments that were received by the time DPD completed the draft analysis on December 29, 2009 have been considered in the DPD analysis and are part of the record (Exhibit 48).
3. The appeal letter lists a variety other observations that are not within the scope of review for DPD, the Hearing Examiner, or City Council.

References in the record:

- Exhibit 5, DPD Rezone Recommendation and SEPA Determination
- Exhibit 14, Copy of DPD's Analysis regarding Potential View Blockage (from MUP File 3007538)
- Exhibit 48, packet of comment letters received by DPD in response to Rezone and SEPA Review for MUP 3007538
- Exhibit 57, email from DPD Manager Roberta Baker, explaining why fees were waived
- Findings and Recommendation of the Hearing Examiner

Entered this 18th day of October, 2010.

Shelley Bolser, Senior Land Use Planner, AICP, LEED AP
Department of Planning and Development

cc: Dennis Ross
Olivia Peck
Dino Annest and Janna Annest
Cole Peck
Phil Wingard
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BEFORE THE CITY COUNCIL
CITY OF SEATTLE

In the Matter of an Appeal
By Olivia Peck
From the Findings and Recommendation
Of the Hearing Examiner for the City of Seattle

CF # 308944

JOSH STEPHERSON, on behalf of
ROGER CASEY AND MIKE GAIN

DPD Reference:
3007538

DPD RESPONSE TO APPEAL

The Department of Planning and Development (DPD) response to the appeals raised is as follows, in reference to the appeal dated September 15th, 2010 by Olivia Peck of 3217 42nd Ave SW:

Summary of appeal issue:

Insufficient Public Notice of Hearing Examiner hearing

The appellant notes that she was not sent notice of the August 18, 2010 appeal and rezone hearing, and did not receive notice of the Hearing Examiner's Appeal Decision or Rezone Recommendation

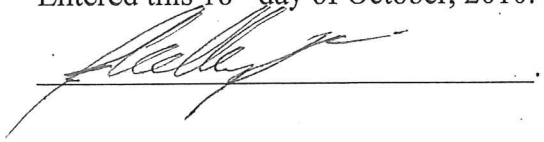
Facts:

1. DPD provides mailed notice of Hearing Examiner hearings, per SMC 23.76.
2. The Hearing Examiner's office provides mailed notice of Hearing Examiner decisions and recommendations, per Hearing Examiner Rules of Practice and Procedure.

Conclusions:

1. DPD records show that mailed notice of the Hearing Examiner hearing was sent to the Peck household at 3217 42nd Ave SW. Although the notice was addressed to Cole Peck and Sarah Peck, it seems reasonable that since Olivia Peck lives in the same household, she would have been made aware of this notice.
2. Mailed notice of the Hearing Examiner Findings and Recommendation is sent by the Hearing Examiner's Office. Evidence of mailed notice the Hearing Examiner rezone recommendation is available in the official record.

Entered this 18th day of October, 2010.



Shelley Bolser, Senior Land Use Planner, AICP, LEED AP
Department of Planning and Development

cc: Dennis Ross
Olivia Peck
Dino Annest and Janna Annest
Cole Peck
Phil Wingard
Lisa Muller
Lynn McIntosh
Chris Caster
Josh Stepherson

BEFORE THE CITY COUNCIL
CITY OF SEATTLE

In the Matter of an Appeal
by Lynn McIntosh, Chris Caster, and Lisa Muller
From the Findings and Recommendation
Of the Hearing Examiner for the City of Seattle

CF # 308944

JOSH STEPHERSON, on behalf of
ROGER CASEY AND MIKE GAIN

DPD Reference:
3007538

DPD RESPONSE TO APPEAL

The Department of Planning and Development (DPD) response to the appeals raised is as follows, in reference to the appeal letter dated September 14th, 2010 by Lynn McIntosh, Chris Caster, and Lisa Muller.

Summary of appeal issues:

1. **Relevance of considering proposed Multi-family Lowrise code changes**
   The appellants don't understand why the proposed Multi-family Lowrise code changes are a relevant finding of fact.
2. **Consideration of Neighborhood Plans**
   The appellants believe the unadopted portions of the Admiral Neighborhood Plan should have been considered with this rezone analysis.
3. **Date of public meeting and consideration of public comments**
   The appellants disagree with the November 8, 2007 meeting date reference and don't believe public comments were considered in review of the proposed rezone.
4. **Rezone criteria related to capacity in urban villages (23.34.008.A)**
   The appellants disagree with the DPD and Hearing Examiner analysis and conclusions because they feel the existing zoning could meet the Admiral Residential Urban Village growth target.
5. **Business district boundaries**
   The appellants disagree with the Hearing Examiner conclusions that this block is part of the Admiral Junction business district.
6. **Views analysis**
   The appellants don't understand how potential view blockage could be addressed through design review.
7. **Development potential**
   The appellants disagree with the Hearing Examiner's conclusions on development potential.
8. **Admiral Neighborhood Plan policy A-P1**

The appellants disagree that the proposed rezone would meet the adopted Admiral Neighborhood Plan policy A-P1 relating to character and scale.

9. **Zoning Principles**
   The appellants disagree with the Hearing Examiner's conclusions regarding impact on adjacent zones.
10. **Affordable Housing Impacts**
    The appellants seem to believe there are designated affordable housing units on the properties associated with the proposed rezone.
11. **Pedestrian Safety Impacts**
    The appellants argue that density would have a negative impact on pedestrian safety because of the location of three schools nearby.
12. **Fees**
    The appellants disagree with the reasons why DPD waived some fees that were accrued with this rezone application.
13. **Window of time for public comment and appeal**
    The appellants disagree with the timing of the DPD recommendation because it was published during the summer, and are unhappy that the appeal periods included July 4th and Labor Day.

Facts:

1. SMC 23.34.008.C requires that proposed rezone analysis includes consideration of previous and potential zoning changes in the area of the proposed rezone.
2. SMC 23.34.008.D requires that only adopted Neighborhood Plans may be used in evaluating proposed rezones.
3. Page 4 of Exhibit 5 (DPD Analysis) notes that the public meeting was held on November 29, 2007.
4. SMC 23.34.008.A requires that proposed rezones shall not reduce zoned capacity for urban villages to less than 125% of the growth targets and shall not be less than the densities established in the Urban Village element of the Comprehensive Plan.
5. Conclusions 6 and 7 of the Findings and Recommendation of the Hearing Examiner and pages 25-30 of Exhibit 5 describe the analysis related to NC1 and NC2 function and locational criteria.
6. Pages 11-12 of Exhibt 5 include analysis of design review in relation to future construction.
7. Admiral Neighborhood Plan policy A-P1 (Exhibit 9) states, "Encourage development that conforms with the neighborhood's existing character and scale, and further promotes a pedestrian friendly environment."
8. The proposed rezone parcels do not include any covenanted or officially designated affordable housing units.
9. Pedestrian safety impacts are analyzed on page 15 of Exhibit 5 and Conclusion 19 of the Findings and Recommendation of the Hearing Examiner.
10. Exhibit 57 is an email from DPD Manager Roberta Baker explaining why some fees were waived for this application.

11. The window of time during which public comments were accepted for the proposed rezone was from the time of notice of application on November 8, 2007 and the time the draft Recommendation was complete on December 29, 2007.
12. 93 public comments were accepted by DPD between November 8, 2007 and December 29, 2009, and are included as Exhibit 48 in the record.
13. The appeal period for the SEPA DNS was June 28, 2010 to July 12, 2010. An appeal was received during that time frame, and the appeal hearing was held on August 18, 2010.
14. The appeal period for the Findings and Recommendation of the Hearing Examiner was September 2, 2010 to September 15, 2010.

Conclusions:

1. On page 10 of Exhibit 5, the analysis for the proposed rezone includes consideration of potential zoning changes in and around the area of the proposed rezone, as required by SMC 23.34.008.C. The proposed Multi-family Lowrise code changes are one of the potential zoning changes in and around the area of the proposed rezone.
2. The proposed rezone was analyzed using adopted portions of the Admiral Neighborhood Plan, as required by SMC 23.34.008.D. There is no error in the record or the Hearing Examiner's analysis.
3. It appears there may be a typographical error in the notice dates in the Hearing Examiner Finding of Fact #16. The correct public comment periods and public meeting dates are listed on page 4 of the DPD Analysis (Exhibit 5).
4. DPD accepts public comment from the time of notice of application until the draft recommendation is complete. In this case, DPD accepted and considered all public comments received between the notice of application on November 8, 2007 and the time the draft recommendation was complete on December 29, 2009. All comments are considered equally, regardless of whether they were received at the public meeting or outside of the public meeting. All written comments received by DPD are part of the record (Exhibit 48).
5. Pages 8-9 of Exhibit 5 and Conclusion 20 of the Findings and Recommendation of the Hearing Examiner note the requirement for rezones related to growth targets and adopted densities in urban villages. The criterion is whether the proposed rezone would at least meet these densities. Analysis of whether existing zoning meets growth targets is not a criterion of proposed rezones.
6. Pages 25-30 of Exhibit 5 and Conclusions 6 and 7 of the Findings and Recommendation of the Hearing Examiner describe the nature of the business district and how the proposal meets the function and location criteria for NC2 zoning.
7. Conclusion 9 of the Findings and Recommendation of the Hearing Examiner notes design review in relation to future construction. Although private views are not a criterion of design review, there are adopted design review guidelines that help to mitigate the impacts of height, bulk, and scale from new development. Those guidelines are discussed on pages 11-12 of Exhibit 5.
8. Conclusion 10 of the Findings and Recommendation of the Hearing Examiner and page 22 of Exhibit 5 include analysis of development potential for the area.

9. Finding of Fact 14 and Conclusion 12 of the Findings and Recommendation of the Hearing Examiner, and pages 10-11 of Exhibit 5 include analysis of the proposed rezone in relation to the adopted Admiral Neighborhood Plan.
10. Conclusion 13 Findings and Recommendation of the Hearing Examiner and pages 11-14 of Exhibit 5 include analysis of zoning principles and a description of zoning patterns in the area.
11. Impacts to housing are discussed in Conclusion 15 of the Findings and Recommendation of the Hearing Examiner and page 14 of Exhibit 5. There are no designated affordable housing units on any of the subject properties associated with this rezone.
12. Impacts to pedestrian safety are discussed on page 15 of Exhibit 5 and Conclusion 19 of the Findings and Recommendation of the Hearing Examiner, and were considered with the SEPA analysis (page 33-34 of Exhibit 5). Specific impacts related to development proposals will be analyzed at the time of development application.
13. DPD waived some fees associated with this proposal, as explained by DPD Manager Roberta Baker in Exhibit 57. The rationale for DPD waiving permit fees is not within the purview of the Hearing Examiner and is not related to the criteria for the proposed rezone.
14. DPD received approximately 93 comment letters and verbal comment at one public meeting. The total time during which DPD accepted public comment stretched for more than two years. The window for public comment was longer than for many similar applications subject to public comment.
15. The Hearing Examiner's office received an appeal to the SEPA Determination of Non-Significance and a hearing was held. I'm not aware that the Hearing Examiner received any additional appeal requests due to insufficient appeal periods.
16. Communication from Council Staff indicates that six appeals were filed in response to the Findings and Recommendation of the Hearing Examiner. I'm not aware that Council has received any additional appeal requests due to insufficient appeal periods.
17. Although the SEPA appeal period and the Hearing Examiner Recommendation appeal period coincided with holidays, the appeal periods each ran for 14 days. Each of the holidays included only one additional day during which businesses were closed.
18. The DPD Recommendation was published in June. It is not reasonable to expect that DPD will not publish decisions or recommendations during the summer months, given our responsibility as a public entity providing services to customers and the public.

References in the record:

- Exhibit 5, DPD Rezone Recommendation and SEPA Determination
- Exhibit 9, City of Seattle Comprehensive Plan, Neighborhood Element, Admiral Neighborhood
- Exhibit 48, packet of comment letters received by DPD in response to Rezone and SEPA Review for MUP 3007538

- Exhibit 57, DPD Manger Roberta Baker Response to Public Comment About Fees Waived for the Proposed Rezone and SEPA Review
- Findings and Recommendation of the Hearing Examiner
    - Findings of Fact 12, 13, 14, 16
    - Conclusions 4, 6, 7, 9, 10, 12, 13, 15, 19

Entered this 18th day of October, 2010.

Shelley Bolser, Senior Land Use Planner, AICP, LEED AP
Department of Planning and Development

cc: Dennis Ross
Olivia Peck
Dino Annest and Janna Annest
Cole Peck
Phil Wingard
Lisa Muller
Lynn McIntosh
Chris Caster
Josh Stepherson

BEFORE THE CITY COUNCIL
CITY OF SEATTLE

In the Matter of an Appeal
by Dino and Janna Annest
From the Findings and Recommendation
Of the Hearing Examiner for the City of Seattle

CF # 308944

JOSH STEPHERSON, on behalf of
ROGER CASEY AND MIKE GAIN

DPD Reference:
3007538

DPD RESPONSE TO APPEAL

The Department of Planning and Development (DPD) response to the appeals raised is as follows, in reference to the appeal dated September 16th, 2010 by Dino and Janna Annest, and clarification letter dated September 27, 2010 by Dino Annest, all of 3231 42nd Ave SW:

Summary of appeal issues:

1. **Measurement of height and topography changes**
   The appellants describe topography changes in the area and disagree with DPD's method of height measurement.
2. **Rezone application type**
   The appellant disagrees with the ability for the applicant to apply for a standard rezone instead of a contract rezone for this proposal.
3. **Rezone conditions**
   The appellant wishes to have specific conditions imposed on any rezone approval at this site.
4. **Hearing format**
   The appellant disagreed with the hearing format and the inability of those offering public comment related to the rezone to rebut DPD's rezone testimony at the hearing.

Facts:

1. SMC 23.86.006.A.1 requires the methodology for measuring building height per the Land Use Code: *"The height shall be measured at the exterior walls of the structure. Measurement shall be taken at each exterior wall from the existing or finished grade, whichever is lower, up to a plane essentially parallel to the existing or finished grade..."* In the case of a sloped lot, this method of measurement may result in a stepped building that responds to grade changes and maximum height at each wall.

2. The commercially zoned lots on the east side of California Ave SW are sloped, with the higher slope located on the eastern portion of the lot near the single family zoned parcels.
3. Setbacks in this zone would require up to a 15' setback from the east property line, per SMC 23.47A.014. The resulting structure could be 37' or higher with in places with mechanical equipment, measured at the existing grade at a distance of 15' from the east property lines, under the existing NC1-30 zoning (SMC 23.47A.012).
4. The methodology of measuring height per SMC 23.86 and 23.47A was not discussed in the Hearing Examiner hearing.
5. Exhibit 14 indicates that the DPD view analysis was completed using DPD Geographic Information System (GIS) maps, and included four notes describing general changes in topography according to those maps. This analysis is summarized on page 15 of Exhibit 5.
6. The September 27, 2010 appeal letter indicates that the appellant wishes to introduce Global Positioning System (GPS) topography measurements to the record.
7. SMC 23.34.002 refers to 23.76 for applicants wishing to seek rezones to amend the Official Land Use Map.
8. SMC 23.34.004.A allows for contract rezones with Property Use and Development Agreements that may include conditions placed on the rezone by the City Council.
9. Hearing format is defined in the Hearing Examiner Rules of Practice and Procedure.

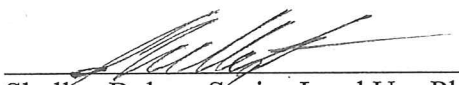
Conclusions:

1. DPD relied on GIS maps for measurement of topography and view blockage, since the applicant did not provide surveyed elevations. The appellants have not provided any accepted methods of topography measurement to refute this information, such as surveyed elevations.
2. Height measurement methodology as defined by SMC 23.86 and the existing topography at this site support the DPD analysis and the Hearing Examiner conclusions regarding potential view blockage. This indicates there is no error in the record or the Hearing Examiner's analysis.
3. SMC 23.34 does not require applicants to submit for a contract rezone in order to meet rezone criteria.
4. The appellants note that the mitigation measures they describe were included in a letter to the Hearing Examiner. The official record transmitted from the Hearing Examiner to the City Clerk should include a copy of that letter. The Hearing Examiner did not include the appellants listed mitigation measures as recommended conditions of the rezone approval.
5. The appellant has not provided evidence showing the Hearing was not conducted in accordance with the Rules of Practice and Procedure.

References in the record:

- Exhibit 5, DPD Rezone Recommendation and SEPA Determination, page 15: SMC 23.34.008.F.1.c (views)
- Exhibit 14, Copy of DPD's analysis regarding potential view blockage (from MUP file 3007538)
- Findings and Recommendation of the Hearing Examiner, Conclusion #9

Entered this 18th day of October, 2010.



Shelley Bolser, Senior Land Use Planner, AICP, LEED AP
Department of Planning and Development

cc: Dennis Ross
Olivia Peck
Dino Annest and Janna Annest
Cole Peck
Phil Wingard
Lisa Muller
Lynn McIntosh
Chris Caster
Josh Stepherson

October 18, 2010

Seattle City Council
c/o: Seattle City Clerk

Re: Clerk File 308944 (DPD Project 3007538).

I have been working with a coalition of community members, property owners, businesses owners, residence and organizations who are interested in seeing an enhanced subject area that provides a mix of more housing, employment and services on the 3200 block of California Avenue SW that is a part of the Admiral Residential Urban Village.

This application, which requests changing the zoning from NC1-30 to NC2-40, has undergone substantial city and public review beginning in September of 2007. For more than 36 months the merits of this request have been discussed and considered.

The public has been provided substantial notice and given numerous opportunities for input. As such, the community has been involved and provided meaningful feedback both pro and con.

Taking all of this into account, the Department of Planning and Development (DPD) and the Hearing Examiner, have both independently reviewed and issued findings recommending the rezone of the 3200 block of California Avenue SW from Neighborhood Commercial 1-30 to Neighborhood Commercial 2-40.

This proposal is now before the City Council.

We are writing to refute a number of statements made by persons appealing the Hearing Examiner's recommendation to the City Council.

Because a number of the appeal items focused on three principal issues, views, suitability for NC2 zoning and un-adopted aspects of the neighborhood plan, three new reference tables were created for comparison and compatibility purposes.

- REFERENCE TABLE #1 – Views & Building Elevations
- REFERENCE TABLE #2 – Adopted Neighborhood Plan, Land Use Section
- REFERENCE TABLE #3 - NC1 and NC2 Comparison and Relation to Subject Area

The information included in these tables are mostly taken from the existing record. We ask that they are included in the record.

Thank you for your time and consideration.

Sincerely,

Josh Stepherson
2128 Westlake Avenue
Seattle, WA 98121

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Phil Wingard Appeal Response

In regard to Mr. Wingard's appeal there are a number of inaccurate assumptions that have led him to believe that the statement ".,. most views from those residences would be blocked if the site were fully built out at NCl-30 zoning, and any remaining views would be blocked by build-out at NC2-40" was false.

1. ***"One NC2-40 lot is fully built-out on the northeast portion of the subject commercial lots (apartment building on the southwest corner of intersection between California and Hanford.***

This statement is inaccurate and the building identified is not a good representation of what a fully built-out NC2-40 building would look like. This building, seen below, was not "fully built-out" based on 40' building heights rather 30' building heights. Due to the east-to-west slope, building codes allowed them to create 3 floors of residences and a parking garage off of California Ave SW.

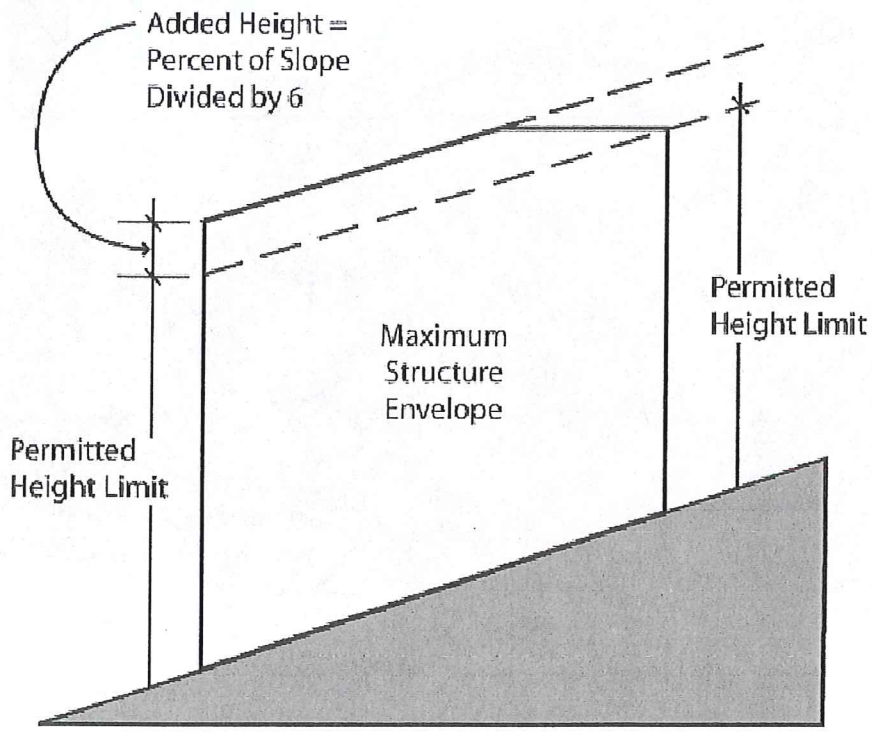
Note: It also appears as though this building has a flat roof. Existing NC building codes allow for pitched roofs and other building equipment (elevator shafts, AC etc) that could increase building heights above and beyond what is shown in this picture.

2. ***"The Hearing Examiner based her Item 9 conclusion on erroneous DPD calculations. In those calculations, the baseline elevation explicitly used for establishing view blockage by full build-out of NCl-30 commercial buildings was the highest eastern point of the lot..... The correct baseline elevation for "continuous storefronts built to the front lot line", whether NCl-30 or NC2-40, is the side-walk elevation on California Ave SW to the west not the much higher elevation where the commercial lots meet the adjacent residential lots to the east."***

Mr. Wingard's assumption that the elevation for determining view blockage to residences on 42nd Ave SW should be the sidewalk on California Avenue SW is incorrect. Per Seattle Municipal Code the allowable building heights is taken off of the elevation.

"ON SLOPED LOTS, EXCEPT IN THE SOUTH LAKE UNION URBAN CENTER, ADDITIONAL HEIGHT IS PERMITTED ALONG THE LOWER ELEVATION OF THE STRUCTURE FOOTPRINT, AT THE RATE OF 1 FOOT FOR EACH 6 PERCENT OF SLOPE, TO A MAXIMUM ADDITIONAL HEIGHT OF 5 FEET (SEE EXHIBIT B FOR 23.47A.012) ABOVE THE OTHERWISE APPLICABLE HEIGHT LIMIT.

Exhibit 23.47A.012 B
Height Limits on Sloped Sites



Conclusion: DPD used the correct assumptions and calculations in estimating the extent of view blockage under existing NC1-30 zoning. Therefore the statement that ".,.most views from those residences would be blocked if the site were fully built out at NCl-30 zoning, and any remaining views would be blocked by build-out at NC2-40." is accurate.

3. *".....views that the eastern single-family residential lots legally possess...."*

- A number of views are presently blocked
- Most existing views would likely be blocked under full build-out of existing NC1-30 zoning
- Private views are not legally protected or possessed

Historically, zoning and allowable building heights in the subject area have been greater than 30' (35' or 40'). When most of the residences on the west side of 42nd Ave SW were built (early/mid 1900's) the subject area was zoned for 40' building heights.

4. *"It would not be possible to mitigate that damage through a design review process"*

The Seattle design review process and West Seattle Design Review Board is a tool that the city uses to ensure high-quality design and gives citizens a voice in the design of new multifamily and commercial buildings. Additionally, it provides a forum for neighborhoods, developers, architects and city staff to work together to ensure that new development is compatible and fits into the neighborhoods character. In a number of instances, it has proven to be an effective tool toward achieving good design that helps to mitigate a building's impact on adjacent sites.

As part of any development in the subject area, design review will be mandatory. The adopted Admiral Neighborhood Design Guidelines will help guide design review.

Several areas of focus and particular attention of the West Seattle Design Review Board, which includes an Admiral resident who is involved in the Admiral Neighborhood Council, are:

A-1 Responding to Site Characteristics – The siting of buildings should respond to specific site conditions and opportunities such as

B-1 Height, Bulk and Scale Compatibility – Projects should be compatible with the scale of development anticipated by the applicable Land Use Policies for the surrounding area and should be sited and designed to provide a sensitive transition to near-by, less-intensive zones. Projects on zone edges should be developed in a manner that creates a step in perceived height, bulk and scale between the anticipated development potential of the adjacent zones.non-rectangular lots, location on prominent intersections, unusual topography, significant vegetation and views or other natural features.

C-4 Exterior Finish Materials – Building exteriors should be constructed of durable and maintainable materials that are attractive even when viewed up close. Materials that have texture, pattern, or lend themselves to a high quality of detailing are encouraged.

C-1 Architectural Context – New buildings proposed for existing neighborhoods with a well-defined and desirable character should be compatible with or complement the architectural character and siting pattern of neighboring buildings.

E-1 Landscaping to Reinforce Design Continuity with Adjacent Sites – Where possible, and where there is not another overriding concern, landscaping should reinforce the character of neighboring properties and abutting streetscape.

E-2 Landscaping to Enhance the Building and/or Site

Response to Lynn McIntosh, Chris Caster and Lisa Muller

1. (Finding of Fact 12) "The Director has proposed text amendments to the City's lowrise multifamily zones that, if approved by the City Council, would consolidate the Lowrise 3 and Lowrise 4 zones and allow building heights up to 40 feet within them."

It is unclear how a potential change in height allowances that is under appeal and not approved is relevant to the Finding of Fact.

This information is included in the Site and Vicinity section of the HE's Findings of Fact in order to provide a complete description of the surrounding area.

The proposed text amendments to Lowrise Multifamily zones is relevant to the size and compatibility and scale of the proposed NC2-40 zoning within the subject area.

The proposed Lowrise Multifamily text amendments will allow for building heights of 40+ in the L3 zones. L3 zoning is part of a small segment of the subject area and sites to the south.

*Taking into account the existing NC2-40 zoning to the north and south, if the text amendments were approved, more than 90% of the allowable building heights along California Avenue SW, between the north end of the Admiral Residential Urban Village and the south end of the Alaska Junction Urban Village would be 40'+ or higher. *

**Note: One half block at SW Charlestown St and California Ave SW, outside of the Urban Villages, is zoned NC1-30.*

The subject area is part of the Admiral Residential Urban Village and is intended to receive more density than areas outside. To allow taller buildings and higher density in the non-urban village sections of California Ave SW would be contrary to the Comprehensive Plan and neighborhood goals.

2. (Finding of Fact 1,14) "In evaluating a rezone proposal, consideration is to be given to those parts of a neighborhood plan that have been adopted by the City Council, with particular attention given to any adopted policies that guide future rezones. (SMC23.34.008.D).... The rezone policies in the adopted Admiral Neighborhood Plan address only rezones away from single-family zoning outside the Urban Village and rezones to L3 and L4 zoning inside the Urban Village."

We object that certain portions of the Admiral Neighborhood Plan were not admitted to the findings.

The HE's report provides an accurate description and assessment of relevant sections of the adopted Admiral Neighborhood Plan.

Furthermore, neighborhood plan (adopted and unadopted) has been discussed and taken into account when considering this rezone. It has been part of applicants submittal, formal public comment period, DPD Review and Director's Report, Hearing Examiner's Review.

The rezone supports <u>all</u> of the applicable adopted segments of the Admiral Neighborhood Plan.

To view more details responding refute claims that the Neighborhood Plan was not considered please view the *"Admiral Neighborhood Plan"* section.

3. (Conclusion 4) "The proposed rezone satisfies SMC 23.34.008.A, as it would increase the zoned capacity of the urban village, and the capacity would be consistent with the density established in the Urban Village Appendix to the Comprehensive Plan. "

Adding an additional 96 housing units DPD calculates the rezone would provide (OPO Recommendation, pg 16) is not needed in the urban village and could have a negative impact if added this far from the Admiral core business district.

The Hearing Examiner's determination that the rezone satisfies SMC 23.34.008 is accurate. The rezone will not reduce zoned capacity.

The 96 housing units was a calculation used by city departments to ensure that there was sufficient infrastructure and capacity in the area as it relates to water, sewer, traffic etc. The existing infrastructure is capable of accommodating building under NC2-40.

The impact of the rezone should it be approved is unknown. However, this rezone will make mixed use building more feasible. As a result, some new mixed use buildings will be built that will contribute to reaching the 2024 goals. This will have a positive impact on the neighborhood by:

- Creating more housing
- Creating more services
- Creating more jobs
- Locating jobs and housing near services
- Encouraging more transit, biking and walking
- Making the most of infrastructure investments
- Increase tax base
- Improved building design that conforms to neighborhood design guidelines and character

5. (Conclusions 9) " ... to the east, most views from those residences would be blocked if the site were fully built out at NC1-30 zoning, and any remaining views would be blocked by build-out at N2-40.... This would be an issue to be addressed in design review of the projects proposed for the site. "

It is unclear how a situation in which "any remaining views would be blocked by build-out at NC2-40" could be addressed in design review.

This assumes a full build out of the subject area which is speculation – (Full build out of the subject area is unlikely..it has not happened to NC2-40 areas nearby). As new developments are proposed the Seattle design review process and West Seattle Design Review Board is a tool that the city uses to ensure high-quality design and gives citizens a voice in the design of new multifamily and commercial buildings. Additionally, it provides a forum for neighborhoods, developers, architects and city staff to work together to ensure that new development is compatible and fits into the neighborhoods character.

In a number of instances, it has proven to be an effective tool toward achieving good design that helps to mitigate a buildings impact on adjacent sites.

As part of any development in the subject area design review will be mandatory. The adopted Admiral Neighborhood Design Guidelines will help guide design review.

6A. (Conclusions 12) " Development allowable at NC2-40 zoning will not conform to the existing neighborhood's character and scale of the subject site.

NC2-40 zoning better conforms with surrounding neighborhood zoning and scale.

NC2-40 zoning exists immediately to the north and south of the subject area. All of the zoning on SW California Ave SW, with the exception of West Seattle School and Hiwaytha Park, are zoned NC2-40 between Hinds and SW Walker St.

Additionally, The proposed Lowrise Multifamily text amendments will allow for building heights of 40+ in the L3 zones. L3 zoning is part of a small segment of the subject area and sites to the south.

*Taking into account the existing NC2-40 zoning to the north and south, if the text amendments were approved, more than 90% of the allowable building heights along California Avenue SW, between the north end of the Admiral Residential Urban Village and the south end of the Alaska Junction Urban Village would be 40'+ or higher.

**Note: One half block at SW Charlestown St and California Ave SW, outside of the Urban Villages, is zoned NC1-30.*

Historically this area has been zoned between 35' and 40' since 1923. As recently as 1990 it was zoned for 40' building heights.

6B. (Conclusions 12) "And the types of businesses allowed in NC2 (as listed per code in DPO recommendation, pg. 28) could be much more disruptive, including auto and marine (large boat) sales rental, vehicle repair, light manufacturing, theater/spectator sports, adult cabarets, lodging, and principal use parking."
Similar types of businesses are permitted in NC1 and NC2.

Comparison of NC1 to NC2 and how it relates to subject area is on next page.....

The subject area presently functions more like a NC2 zone than NC1 zone. See table below:
REFERENCE TABLE #3 - NC1 and NC2 Comparison and Relation to Subject Area

NC1	Compatibility	Notes
Small shopping area that provides sales & services to adjoining residence		
Variety of small neighborhood businesses		
Shoppers walk from store to store	✓	
Outside of Urban Villages		Minimally. 3 of 30 parcels outside urban village
Located on streets with limited capacity		
Small parcel size		
Limited transit		
No physical edges to buffer the residential areas	✓	Partial – Minimal buffer on east side of subject area to residence
NC2		
Pedestrian –oriented shopping area that provides a full range of services to surrounding neighborhood	✓	Restaurants, daycare, health care, accounting/business services, fitness, hair care, real estate, design and building services etc.
Variety of small to medium sized businesses	✓	
Shoppers can drive to area but walk from store to store	✓	Subject area located on California Ave. On and off street parking. Excellent pedestrian facilities.
Located in Urban Village	✓	Part of Admiral Residential Urban Village.
Located on streets with good capacity, such as minor arterials	✓	Located on California Ave SW which is designated a "minor" north/south arterial
Mix of small and medium sized parcels	✓	Parcel sizes range from 2,500 to 10,000 sq. ft.
Limited or moderate transit	✓	Bus stop within subject area. Multiple transit routes within walking distance. California Ave designated part of city of Seattle Transit Network.
Lack of strong edges to buffer residential areas	✓	Minimal buffer on east side. Alley buffers west side to residence

7. (Conclusion 15) The negative impact on affordable housing has not been addressed.

To the best of our knowledge this area is market rate housing. There is no evidence that by changing the zoning to NC2-40 the area will not be an affordable place to live and do business.

Case in point: The blocks zoned NC2-40 immediately to the north appear to be affordable for residence and businesses.

Additionally, under NC2-40 zoning, the Seattle Housing Authority has been able to build more than 40 affordable housing units for senior citizens on the block immediately to the north of the subject area.

Over time, a mix of new housing would be created that would serve the diverse needs of Seattle. This rezone would make it more feasible and possible to create additional housing than what is presently there. This will support city efforts to keep up with demand and goals to accommodate the anticipated 86,000+ more residents by 2024. As well as, help focus density outside of single family areas.

8. (Conclusion 19) "There is no indication in the record that future development under the proposed zoning would have a negative impact on pedestrian safety. It is likely that pedestrian safety would be improved by the newsidewalks, lighting and potential reduction in curbcuts that would accompany new development."

Per the record the subject site triangulate within three schools (Lafayette Elementary two blocks north; West Seattle High School on California Avenue in the block north; and Madison Middle School a block southwest). This indicates negative impacts to pedestrian safety related to increased density DPD projects with a rezone (DPO Recommendation pg. 16).

The nearby presence of schools to the subject area in no way indicates negative impacts to pedestrian safety.

This area has excellent pedestrian facilities with wide sidewalks on both sides of the street that are buffered from traffic on California Ave SW by landscaping, an on-street parking/loading area and a bike lane.

At the intersections are new ADA compliant ramps, pedestrian crosswalks and a traffic signal, with a pedestrian meter, at SW Hanford Street. *See pictures below*

The areas pedestrian facilities would be improved by any future development which would be likely required to upgrade any nearby pedestrian problems areas.

This area has pedestrian facilities similar to the Admiral and Alaska Junction Business District's which are zoned for NC2-40 and above.

Response to Mr. Dino Annest and Ms. Janna Annest

1. **SMC 23.34.009 states, " ... the natural topography of the area and its surroundings, and the likelihood of view blockage shall be considered." The DPD recommendation states on Page 3, paragraph 3 - "There is approximately 18 feet of slope across the eastern parcels and approximately 8 feet of slope across the northwestern and southwestern parcels." This is completely false.**

The DPD's statement is accurate. As part of the record a map of the subject area was submitted that provides elevation levels that are based off of 2007 City of Seattle GIS readings.

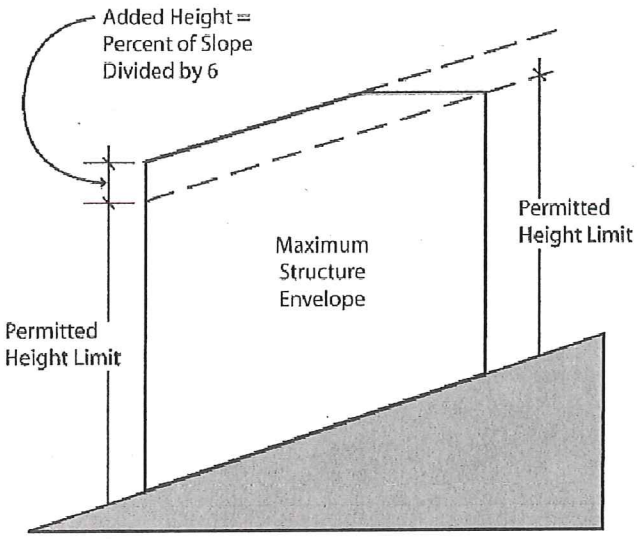
The map supports DPD's statement above.

2. **Also, the altitudes used in the DPD recommendation for the possible heights of buildings under both zoning classifications were all based at the top of that slope (as high as 583 feet), then' added the 30-33 or 40-43 foot building height to those starting points which, if it were actually applied to new buildings, would mean that a new business on California Avenue would rise approximately 70 feet from the sidewalk, at 556 feet of altitude, to the DPD reported 628 foot roofline! This report is misleading and inappropriate.**

Per Seattle Municipal Code the allowable building heights is taken off of the elevation.

"ON SLOPED LOTS, EXCEPT IN THE SOUTH LAKE UNION URBAN CENTER, ADDITIONAL HEIGHT IS PERMITTED ALONG THE LOWER ELEVATION OF THE STRUCTURE FOOTPRINT, AT THE RATE OF 1 FOOT FOR EACH 6 PERCENT OF SLOPE, TO A MAXIMUM ADDITIONAL HEIGHT OF 5 FEET (SEE EXHIBIT B FOR 23.47A.012) ABOVE THE OTHERWISE APPLICABLE HEIGHT LIMIT.

Exhibit 23.47A.012 B
Height Limits on Sloped Sites



DPD used the correct assumptions and calculations in estimating the extent of view blockage under existing NC1-30 zoning. Therefore the statement that ".,.most views from those residences would be blocked if the site were fully built out at NCl-30 zoning, and any remaining views would be blocked by build-out at NC2-40." is accurate.

Response to Mr. Cole Eric Peck, Mr. Phil Wingard and Ms. Lisa Muller

1. (1A) Natural topography & views Ignored
While not all neighbors in the area have views, the rezone request has not answered homeowners' complaints about lost views. It is apparent to us that SMC 23.34.009 requires more substantial acknowledgement of this issue, " ... the natural topography of the area and its surroundings, and the likelihood of view blockage shall be considered."

The statement above is not accurate.

Throughout this entire process topography & view blockage have been given substantial consideration as it relates to application #3007538. Views were considered, discussed and made part of the record in the applicant submittal, formal public comment, DPD review, DPD Director's Report, and Hearing Examiner review.

In regard to impacts on views the record has been very clear: *"It appears full build-out under existing NC1-30 zoning would block most, if not all private views from adjacent properties to the east. There would be no appreciable difference to private views between NC1-30 zoning and nC2-40 zoning."*

For more information regarding view blockage see "Heights & View Blockage" and response to Mr. Wingard.

2. (1B) Encroachment on residential not accurately described & violation of Neighborhood Plans

SMC 23.34.072 "discourages encroachment of commercial development into residential areas and encourages compact, concentrated commercial areas or nodes over diffuse, sprawling commercial areas."

"This rezone is in violation of this code."

There is no encroachment to residential single family areas. This area has been zoned business/commercial since 1923.

Under the rezone it would continue to be as compact and concentrated as it has been historically. All boundaries between residential and commercial activities will stay the same.

The rezone supports SMC 23.34.072 by encouraging the creation of some more commercial space than what presently exists and helping to relieve pressure to expand commercial areas.

3. (1B. continued) According to the Director's Review as recapped in the Hearing Examiner's review, SMC 23.34.072 "discourages encroachment of commercial development into residential areas and encourages compact, concentrated commercial areas or nodes over diffuse, sprawling commercial areas."

This rezone is in violation of this code. .... it will be harmful to urban village concept - pulling businesses away from that concentrated area (Admiral) and extending them out into the perimeter of the village where they (larger businesses made possible under NC2-40 zoning) will (in another violation of the code) encroach on the residential neighborhoods east and west ....

Appellants stated that the rezone would violate SMC 23.34.072, be harmful to the urban village, and encroach on residential neighborhoods is inaccurate.

Harmful to urban village: The subject area is part of the Admiral Residential Urban Village that is presently zoned mixed-use (commercial & residence) that is designated for more density.

Therefore a healthier, more vibrant subject area benefits the urban village and supports SMC 23.34.072.

Commercial development in residential areas and reducing sprawl:
The rezone is not proposing any encroachment of commercial development or zoning into residential areas. This area has been zoned business/commercial since 1923.

Under the rezone it would continue to be as compact and concentrated as it has been historically. All boundaries between residential and commercial activities will stay the same.

The rezone supports SMC 23.34.072 by encouraging the creation of some more commercial space than what presently exists and helping to relieve pressure to expand commercial areas.

4. (1B) **It should be further pointed out that the city may be in violation of SMC 23.34.008 since we understand that..... the neighborhood plan states quite clearly that no rezoning should occur.**

The adopted and unadopted aspects of the neighborhood plan have been discussed and considered.

Seattle Municipal Code requires that Council-adopted neighborhood plans be taken into consideration.

The adopted neighborhood plan has been taken into consideration and does not state that no rezoning should occur in the Admiral Residential Urban Village. -See Neighborhood Plan Answer -

In the case of the Recommendation 1.2, which states "no rezoning should occur..." the City response was a follows:

City Response *- The City recognizes the neighborhood's support for maintaining the existing zoning. Future rezone analyses will take into consideration the Council-recognized neighborhood plan policies among other criteria in evaluating any individual rezone proposals.*

So, while the City recognized the recommendation, it did not approve it. It went on to specifically state that the Council-recognized neighborhood plan policies would be among the criteria taken into consideration in a future re-zone, not the un-adopted recommendations. This has occurred.

Additionally, to infer that no zoning changes have or are taking place within the Admiral urban village since the rezone is not accurate. Zoning changes are taking place in the urban village, some of which have been supported by at least one of the appellants.

5. **(1B Admiral Neighborhood Assoc #2) The Admiral Residential Urban Village, as currently zoned, provides more than adequate development potential within the existing NC2-40 zone to fulfill the projected need for housing and associated retail and commercial development as stated in the Comprehensive Plan for 2024."**

The appellant asserts there is a standard of "adequate" development potential for Urban Villages in the Comprehensive plan and that, perhaps, once met there is a requirement or policy to not expand it further. This is not true.

City code sets a target of "...no less than 125%" of an Urban Village's Comprehensive Plan growth target but does not set or recommend an upper limit.

SMC 23.34.008, in order to ensure there is enough zoned capacity in urban centers and urban villages, establishes the following criteria for approving a rezone:

1. *In urban centers and urban villages, the zoned capacity for the center or village taken as a whole shall be no less than 125% of the growth targets adopted in the Comprehensive Plan for that center or village.*

2. For the area within the urban village boundary of hub urban villages and for residential urban villages taken as a whole the zoned capacity shall not be less than the densities established in the Urban Village Element of the Comprehensive Plan.

These criteria were established to keep rezones from reducing zoned capacity in these areas. The proposed rezone would increase zoned capacity, not decrease it, and so meets the standard.

6. **(1B Admiral Neighborhood Assoc #3)... the proposed rezone presents no plan, design or other compelling potential development scenario that would warrant consideration by the Admiral community. Furthermore, there is no clearly defined public benefit from the proposal."**

The application is a general rezone. As such, no specific plan is proposed or required.

Additionally, the subject area is comprised of 30 parcels and 20+ property owners that has historically been zoned for building heights higher than 30' since 1923. As recently as 1990 it was zoned for 40' building heights.

Any future proposed development would have the specific details described above and would include community involvement and input throughout the design and permitting process.

Any proposed development would be subject to a public benefit assessment which citizens can comment on.

7. **(1B page 2).... that this rezone could, in fact, have a negative impact (commercially and environmentally) on both of the nearest urban shopping districts/urban villages, Larger business created in the rezone area are only likely to pull driving customers away....**

There is no evidence that the change to NC2-40 zoning would have this impact.

Creating vibrant commercial areas: A strong, vibrant Admiral business district and 3200 block of California Ave SW are not mutually exclusive.

The subject area is part of the Admiral Residential Urban Village and is on a primary north/south arterial. It has been zoned business/commercial since 1923.

As part of the Residential Urban Village it is identified as an area to provide services to the surrounding community.

Due in part to existing zoning, no substantial reinvestment has been made in the subject area. Many buildings are reaching the end of their design life and require substantial improvements, long-term storefront vacancies are not uncommon and at least one building has been abandoned for 3+ years.

Environmental health: There is no indication that there will be a negative environmental impact as a result of this rezone. All proposed developments will be subject to city review and permitting. Today's building standards are much more stringent and environmentally friendly than when the existing buildings were developed.

Additionally, by locating more jobs and services near where people live more people will be likely to get out of their car and walk, bike or use the bus.

8. **(1B page 2).... The fact that this area is too far removed from the walking areas of surrounding commercial centers, and is furthermore separated by the three public schools that surround it, means that to rezone this area is in principle a violation of SMC 23.34.072, "The preservation and improvement of existing commercial areas shall be preferred to the creation of new business districts" in that it essentially allows the creation of a new, secluded "business district"**

The subject area is in a designated commercial area. The proposal supports SMC 23.34.072 efforts to preserve and improve existing commercial areas.

Too far removed from walking areas:
Because it is not at the commercial epicenter of theAdmiral its importance to the urban village and to establishing a strong Admiral commercial area should not be discounted.

Generally, most people have shown a willingness to walk approximately a ¼ mile for transit, goods, services, education and employment. The subject area is two blocks from the Admiral commercial core well within that range.

As the record shows in *"List of Services Near Subject Area"* this area is ideally located for increased density and conducive to creating a more pedestrian oriented, walkable area.

Pedestrian Facilities:
Lastly, this area has excellent pedestrian facilities with wide sidewalks on both sides of the street that are buffered from traffic on California Ave SW by landscaping, an on-street parking/loading area and a bike lane.

At the intersections are new ADA compliant ramps, pedestrian crosswalks and a traffic signal, with a pedestrian meter, at SW Hanford Street. *See pictures below*

This area has pedestrian facilities similar to the Admiral and Alaska Junction Business District's which are zoned for NC2-40 and above.

9. **(1B page 2).... ..... violation of SMC 23.34.072, "The preservation and improvement of existing commercial areas shall be preferred to the creation of new business districts" in that it essentially allows the creation of a new, secluded "business district" along California Street that is an furthermore an "encroachment of commercial development into residential areas" (which) "shall be discouraged."**

The proposed rezone is not creating a new business district. This section of California Avenue is an established section of an existing commercial area. The rezone will improve this section of the Admiral Residential Urban Village by causing future development to be more consistent with development in the rest of the neighborhood.

This proprosal rather supports SMC 23.34.072 by encouraging and making possible more substantial investment and " improvement of existing commercial areas."

10. (1C and D Page 4-6) Area does NOT fit description of NC2-40 zoning .....
.....A review of that code will show that the status quo is perfectly suited to NC1 zoning:
The proposed rezone area only minimally conforms to the Locational Criteria for NC1 zoning. The subject area presently functions more like a NC2 zone than NC1 zone. See table below:

NC1	Compatibility	Notes
Small shopping area that provides sales & services to adjoining residence		
Variety of small neighborhood businesses		
Shoppers walk from store to store	✓	
Outside of Urban Villages		Minimally. 3 of 30 parcels outside urban village
Located on streets with limited capacity		
Small parcel size		
Limited transit		
No physical edges to buffer the residential areas	✓	Partial – Minimal buffer on east side of subject area to residence
NC2		
Pedestrian –oriented shopping area that provides a full range of services to surrounding neighborhood	✓	Restaurants, daycare, health care, accounting/business services, fitness, hair care, real estate, design and building services etc.
Variety of small to medium sized businesses	✓	Small and medium businesses in areas
Shoppers can drive to area but walk from store to store	✓	Subject area located on California Ave. On and off street parking. Excellent pedestrian facilities.
Located in Urban Village	✓	27 of 30 parcels part of Admiral Residential Urban Village
Located on streets with good capacity, such as minor arterials	✓	Located on California Ave SW which is designated a "minor" north/south arterial
Mix of small and medium sized parcels	✓	Parcel sizes range from 2,500 to 10,000 sq. ft.
Limited or moderate transit	✓	Bus stop within subject area. Multiple transit routes within walking distance. California Ave designated part of city of Seattle Transit Network.
Lack of strong edges to buffer residential areas	✓	Minimal buffer on east side. Alley buffers west side to residence

11. (1D page 6) Another problem that has not been solved, related to changing the status quo, is that the applicants have not answered (and the city has not asked) about our concerns that existing tenants (both residential and commercial) benefit from the fact that this is an affordable area to live and do business.

To the best of our knowledge all of the housing within the subject area is market rate.

There is no evidence that by changing the zoning to NC2-40 the area will not be an affordable area to live and do business.

Case in point: The blocks zoned NC2-40 immediately to the north appear to be affordable for residence and businesses.

Additionally, under NC2-40 zoning, the Seattle Housing Authority has been able to build more than 40 affordable housing units for senior citizens.

Overtime, NC2-40 zoning will allow a broader mix of new housing to be created that would serve the diverse needs of Seattle. This rezone would make it more feasible and possible to create additional housing than what is presently there. This will support city efforts to keep up with demand and goals to accommodate the anticipated 86,000+ more residents by 2024. As well as, help focus density outside of single family areas.

12. (1E page 6) Additionally, we wish to point out an error of fact that is most obviously seen in Paragraph number 15, under "Proposal" of the Findings and Recommendation" of the Hearing Examiner, which states that the request is to build 40' tall buildings. It is upon this assumption, that the buildings will be 40' tall, that DPD and other findings have said that issues of shadow, privacy, bulk, pollution, "canyon effect" on California Avenue ... and other decisions ... have been made. It appears to have gone unrecognized that the proposal allows in practice for taller buildings than it would appear on paper. This is so because the land in question is on a slope (which varies as has been noted). This slope would, under existing building code, allow for buildings that are in actuality as much as 50 feet tall as measured from the sidewalk at California Street.....

The issue of slope and building heights higher than 40' above is known, was part of the discussion, has been considered and is part of the record. This has been part of the public discussion since the fall of 2007.

This was factored into DPD's determination in the Director's Report that *"It appears full build-out under existing NC1-30 zoning would block most, if not all private views from adjacent properties to the east. There would be no appreciable difference to private views between NC1-30 zoning and nC2-40 zoning."*

The appellant errs in quoting the Hearing Examiner's Report. The HE Findings and Recommendation - Proposal Section 15 is as follows:

The Applicant seeks a rezone of the subject property from Neighborhood Commercial 1 zoning with a 30-fotr height limit (NC1-30) to Neighborhood Commercial 2 zoning with a 40-foot height limit (NC2-40). No height limits greater than 40 feet are proposed, and no development project is associated with the rezone.

13. (IIE Page 9) We did a walking survey of the buildings along California Avenue SW all the way from Admiral to Alaska streets and found that there is not one single such building in existence that would a) fit on the property and b) meet existing building codes and c) work under even NC2-40 zoning.

Two examples of NC2-40 buildings near subject area:

- 2735 California Ave SW – 1.5 blocks north
- 3033 California Ave SW - .5 blocks north

14. (II E Page 10) There is insufficient buffer space for any building of NC2-40 design and there is no way whatsoever to access building from the backside - meaning that all service, access and parking activity will negatively impact California Street and the inadequate feeder streets in the area. This is the longest, most narrow block in the area, and is unsuitable to NC-40 construction!

As exists today, access to properties on the east side of subject will take place off of California Ave SW. Specific issues related to location of services, access points, parking etc. will be addressed in design review and permitting of any future proposed building.

There is no evidence that area is unsuitable for NC-40 construction.

HEIGHTS & VIEW BLOCKAGE

As part of any rezone Seattle Municipal Code 23.34.009 B requires that the natural topography of the area and its surroundings, and the likelihood of **view** blockage shall be considered.

Throughout this entire process view blockage has been given substantial consideration as it relates to application #3007538.

Views were considered, discussed and made part of the record in the following areas:

1. Applicant Submittal –
    a. Height Limits of the proposed rezone analysis
    b. Topographical map with elevation markings
    c. Environmental (SEPA) Checklist

2. Formal Public Comment Period
    a. Formal letters
    b. Public meeting with DPD planner

3. Department of Planning & Development's Review
    a. Planners review of the record
    b. Director's Report

4. Hearing Examiner
    a. Public testimony
    b. Applicant & DPD testimony
    c. Hearing Examiner follow-up questioning
    d. Review of the record

In regard to impacts on views the record has been very clear:

"It appears full build-out under existing NC1-30 zoning would block most, if not all private views from adjacent properties to the east. There would be no appreciable difference to private views between NC1-30 zoning and nC2-40 zoning."

Though a full build-out in either NC1-30 or NC2-40 zoning is unlikely, the above statement is accurate. As part of application #3007538 a map of the subject area was provided which included elevation and contour lines produced by the city of Seattle GIS in July 2007.

Utilizing the submitted elevation map and King County property records, attached for your review is a breakdown of how views to existing residents on the west side of 42nd Ave SW would likely be impacted under NC1-30 (existing zoning) full build out.

REFERENCE TABLE #1 – VIEWS & BUILDING ELEVATION

Assumed view blockage under NC1-30 full build out

Assumptions:

- 37' – 42' building height (includes roof top items like AC & elevator shafts) in NC1-30 for properties on the east side of the 3200 block of California Ave SW.
- Information for houses on west side of 42nd Ave SW from King County Assessors Records
- Elevations based off map supplied July 23, 2007 by City of Seattle Geographic Systems Information.
- For reference purposes only. Topography and elevation in area varies.

42nd Ave SW addresses (Westside)	Number of Stories	Approximate ground elevation on the westside of residences on 42nd Avenue	Approximate elevation about 10' from eastern lot boundary for California Ave parcels	Likely view blockage under NC1-30 full build out	Notes
4209	1	370	376	Full view blockage	
3205	2	382	376	Partial view blockage	Northern views maintained.
3209	2	382	374	Partial view blockage	
3213	2	382	374	Partial view blockage	
3217	2	382	378	Full view blockage	
3223	1	383	380	Full view blockage	
3227	1	383	380	Full view blockage	
3231	2	383	380	Full view blockage	
3235	1.5	381	376	Full view blockage	
3243	2	388	382	Full view blockage	
3249	2	388	382	Full view blockage	
3253	1	390	382	Full view blockage	
3259	2.5	390	386	Full view blockage	
3261	1	388	379	Full view blockage	
3263	2	388	382	Full view blockage	
3273	1	384	378	Full view blockage	
3277	2	383	376	Full view blockage	
3281	1	383	376	Full view blockage	

Neighorohood Plan

As part of any rezone Seattle Municipal Code requires that Council-adopted neighborhood plans be taken into consideration.

The Admiral Neighborhood Plan has been thoroughly considered, discussed and made part of the record throughout this process. The DPD and the Hearing Examiner have received numerous comments regarding the Admiral Neighborhood Plan from the public.

Specifically it has been a part of the record in the following areas:

1. Applicant Submittal –
    a. General Rezone Criteria

2. Formal Public Comment Period
    a. Formal letters
    b. Public meeting with DPD planner

3. Department of Planning & Development's Review
    a. Planner's review of the record
    b. Director's Report

4. Hearing Examiner
    a. Public testimony
    b. Applicant & DPD testimony
    c. Hearing Examiner follow-up questions to DPD
    d. Review of the record

Unadopted parts of Admiral Neighborhood Plan

Several appellants have stated that the Hearing Examiner and the Department of Planning and Development neglected to consider a portion of the Admiral Neighborhood Plan that is relevant to the rezone proposal.

Specifically they reference an unadopted recommendation that there be no future changes to the zoning in the Admiral Neighborhood. It states:

Recommendation 1.2: *The Planning Coalition recommends that existing zoning should remain with no changes within the Admiral Residential Urban Village because of the Coalition's strong desire to maintain the existing character of the community. Refer to Key Strategy Figure 1, Current Zoning and Key Strategy Table 1, Existing Zoning Categories and Development Standards Summary.*

This segment of the Admiral Neighborhood Plan was acknowledged in the applicant's rezone submittal and discussed with DPD as far back as an Admiral Council meeting back in the fall of 2007 where the applicant and planner were present.

Background: Recommendation 1.2

As part of the Neighborhood Plan process the City assembles a work schedule for the Plan in the form of an Approval and Adoption Matrix. The Plan and the Matrix are submitted together to City Council for a vote. The Plan is "recognized" by the Council and the Matrix is "approved" in the same Resolution.

The Approval and Adoption Matrix is, in essence, the Neighborhood Plan broken down into individual strategies and activities and prioritized by the neighborhood-planning group. The appropriate City departments then comment on each of these items and they are presented in the Matrix as the City Response. This is reviewed, changed if appropriate, and finalized by the City Council.

The City's responses to the Plan sections take a variety of formats including scheduling activities for completion and listing activities already implemented, to deferring neighborhood recommendations until they can be examined on a citywide basis.

In the case of the Recommendation 1.2 referenced above the City response was a follows:

City Response *- The City recognizes the neighborhood's support for maintaining the existing zoning. Future rezone analyses will take into consideration the Council-recognized neighborhood plan policies among other criteria in evaluating any individual rezone proposals.*

So, while the City recognized the recommendation, it did not approve it. It went on to specifically state that the Council-recognized neighborhood plan policies would be among the criteria taken into consideration in a future re-zone, not the un-adopted recommendations.

Bottom Line: The neighborhood plan is and has been one of the criteria taken into account when considering this rezone. The rezone supports all of the applicable adopted segments of the Admiral Neighborhood Plan. Additionally, it supports the majority of applicable unadopted segments of the Admiral Neighborhood Plan.

Recent & Proposed Zoning changes

Zoning changes within the Admiral Neighborhood Plan boundaries have and are taking place.

Some individuals who have appealed and attempted to block this rezone citing Recommendation 1.2 fail to mention this fact. In some cases, individuals have supported other recent rezones in the Admiral Residential Urban Village.

Two specific zoning changes are:

- Approved rezone of 2622 California Ave SW (Safeway)– NC2-40 to NC3-40 and L3 to NC3-40

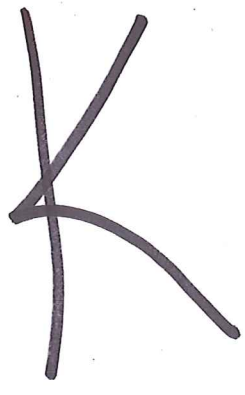
- Proposed Lowrise Multifamily text amendments - Allows for 40' building heights in L3 zones. If approved more than 90% of the building heights along California Avenue SW, between the north end of the Admiral Residential Urban Village and the south end of the Alaska Junction Urban Village would be 40'+.

**Note: Excludes subject area and one half block at SW Charlestown St and California Ave SW, outside of the Urban Villages, is zoned NC1-30.*

REFERENCE TABLE #2 – Adopted Neighborhood Plan, Land Use Section

Conformity to Council Adopted Admiral Neighborhood Plan		
	Is the rezone consistent with the Council Adopted Admiral Neighborhood Plan?	Notes:
Land use goals		
A-G1 Land use within the residential urban village that conforms to Admiral' s vision of a neighborhood with a pedestrian oriented small town atmosphere.	Yes	Changing this area from NC1 to NC2 conforms to the Admiral's vision of a neighborhood with a pedestrian oriented small town atmosphere. Specifically the NC2 criteria are designed "...to support or encourage a pedestrian-oriented shopping district."
A-G2 The Admiral neighborhood is predominately a single-family housing community.	Not applicable	The re-zone proposal does not impact the single-family nature of the Admiral neighborhood.
Land use policies		
A-P1 Encourage development that conforms with the neighborhood' s existing character and scale, and further promotes a pedestrian- friendly environment.	Yes	The principal zoning in the Admiral Residential Urban Village is NC2-40. This rezone will encourage future development of this block to conform to the character and scale of the rest of the Admiral neighborhood.

A-P2 Maintain the character and integrity of the existing single-family zoned areas by maintaining current single-family zoning outside the urban village on properties meeting the locational criteria for single-family zones.	Not applicable	This rezone request will have no impact on zoning in the single-family zoned areas.
A-P3 Seek to ensure community involvement in land use code changes.	Yes	This rezone proposal has included community involvement at every step.
A-P4 The special L3 and L4 locational criteria for the evaluation of rezones to the L3 and L4 designations inside of urban villages, shall not apply in the Admiral Residential Urban Village.	Not applicable	None of the properties within the propose rezone area are L3 or L4 zoned.



From: Dino and Janna Annest
3231 42nd Ave SW
Seattle, WA 98116

October 23, 2010

FILED
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2010 OCT 25 PM 3:5
CITY CLERK

Seattle City Council
c/o: Michael Jenkins, City Council Legislative Analyst

Re: DPD Project 3007538

This Letter responds to Mr. Josh Stepherson's October 18, 2010 answer to our appeal of this project and to DPD representative Shelly Bolser's answer to same.

Mr. Stepherson and Ms. Bolser both claim that the DPD's determination of "approximately 18 feet of slope across the eastern parcels" (p. 3, ¶ 3) is accurate. Mr. Stepherson bases this conclusion on the statement that "as part of the record a map of the subject area was submitted that provides elevation levels that are based off of 2007 City of Seattle GIS readings." This information was not included in any findings of the HE or in Ms. Bolser's initial recommendation, and we believe it is inaccurate. The eastern slope measurements range from less than 8 feet to as much as 26 -28 feet depending on the parcel. Accordingly, we request the production of the referenced map.

Though the project proponents and the DPD agree with each other ad nauseum, and Ms. Bolser questions the method of obtaining those heights/altitudes repeatedly, the physical height differences remain the same: at 3227 42nd Ave SW, the drop from the western property line to California Avenue is 28 feet, and at 3231 42nd Ave SW the drop is also 28 feet. These numbers are absolutely crucial in the determination of whether or not the build-out at NC1-30 would block the view in the same way that a build-out at NC2-40 would.

In response to our assertion that the full build-outs at NC2-40 would result in a dramatic, devastating change to the views, privacy, and value of our homes when the same at NC1-30 would not, respondants offered the following:

-Mr. Stepherson provides Exhibit 23.47A.012B, which shows Height Limits on Sloped Sites.

- Ms. Bolser maintains that the eastern property line is the appropriate point from which to measure the starting point for the proposed buildings.

-The HE's decision stated the need for "continuous storefronts built to the front lot line."

The facts are as follows:

- The greatest portion of the slope occurs just to the west of the eastern property line of the eastern parcels (in most cases, approximately 60% of the slope occurs in the rear/easternmost 25 feet of the eastern parcels); in other words, the 30 foot height limit, measured from the highest point where a wall can be erected, which is at least 8 feet from our properties, means at least an 8 foot drop in the heights reported by the DPD.

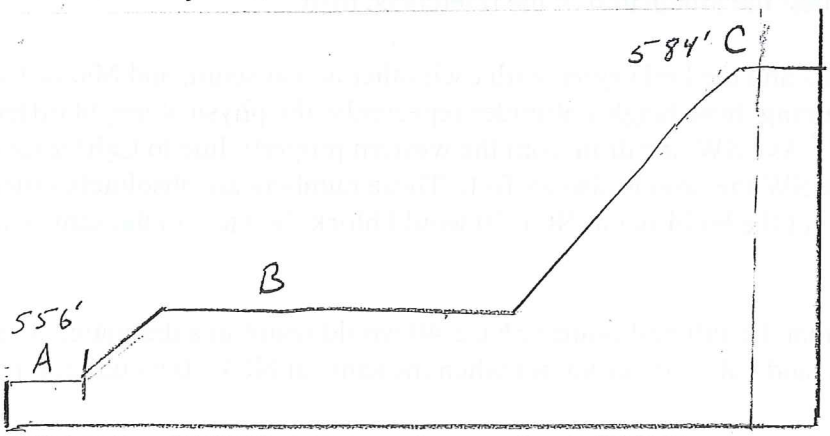
-These height limits, if applied to the eastern parcels, would very literally mean the following: A building with a storefront at 556 feet in altitude (plus or minus 3 feet for leveling) would have a

foundation at the rear of the building that was 26-28 feet higher than it is in the front, and any architect or land use attorney knows that a 26 foot stepped-up foundation in an NC1-30 building with the depth of these proposed lots is not fiscally viable. No foundation does this.

-Respondants' response fails to address our contentions that (A) proposed mitigations should be imposed (the "design review process" argument is once again provided, but we have clear proof on an adjacent block that that process can be avoided by breaking up the parcels into small enough chunks – the design review process should be going on NOW), or (B) that the appeal for this project should be abandoned in favor of more sensible and prudent contract rezones.

-No actual survey has been performed on these parcels in order to provide accurate information about a slope that is quite clearly a central issue in this rezone. The most accurate information about the topography has been the GPS measurements which I obtained using a recognized GPS device and specific points within the rezone. The vagueness with which both the DPD and Mr. Stepherson have assumed, asserted, and concluded without actually taking a single measurement is not only disconcerting, it shows a lack of concern for the neighborhood that Mr. Stepherson claims to hope to improve, and a number of citizens of the city for whom Ms. Bolser works.

DIAGRAM 1 Cutaway view of 3230 California Avenue SW, from south.



(A = sidewalk level of California Avenue, B = approximately 5-6 feet higher than A, level where current house is located, C = eastern property line [dotted vertical line], 21-22 feet higher than B, this is also the western property line of 3227/3231 42nd Avenue SW)

This project is now and has been ill-conceived and approved without consideration of the most important reason why this block is currently zoned at NC1-30: the lack of a buffer between California Avenue and 42nd Ave SW. There is no alley, no buffer, and no protection for the 15 or more owners on 42nd Ave SW whose properties will be substantially devalued as a result of the loss of privacy and view that would result from the proposed rezone.

Thank you for your consideration,

Dino L. Annest

Janna J. Annest (by Dino Annest)

BEFORE THE CITY COUNCIL
CITY OF SEATTLE

CF # 308944, DPD Reference: 3007538

In the Matter of the Response by Josh Stepherson to Appeal by Lynn McIntosh, Chris Caster, and Lisa Muller:

Mr. Steperhson states "three new reference tables were created.... The information included in these tables are mostly taken from the existing record," and inserts the tables in his response. It also appears he attempts to amend the record by adding additional information/calculations as indicated by asterisks in his response. We object to his response in that he has not requested to supplement the record per Council Rules for Quasi-Judicial Proceedings.

Secondly, he states "I have been working with a coalition of community members, property owners, businesses (sic) owners, residence and organizations who are interested in seeing an enhanced subject area..." To imply a coalition supports or is part of the proposal seems misleading. We have never heard of or been invited to participate in any coalition meetings; nor have we seen mention of a coalition in documents related to the proposal, in media coverage, at the one public community meeting held, or at the Hearing Examiner's meeting.

Also, related to this, DPD's Analysis and Recommendation (6/28/10, pg. 4) states, "The applicants and their agent have the formal support of the owners of 23 properties within the rezone area." However, no evidence of formal support of multiple property owners has been presented, as there is no evidence of broader coalitional support. The record does indicate that Mr. Stepherson represents private owners (Mr. Cayce and Mr. Gain) of a large portion of the property (it appears approximately a third of 152,000+ square footage) requested for rezone.

Regarding stated interest in seeing an "enhanced subject area", no specific plans for enhancement have been provided as a reason to request, need, or require a rezone. With nothing proposed there is no evidence of claims for interest in enhancement. The property owners could just as well turn around and sell the property – at a substantial profit – as develop it. As Mr. Stepherson states in his response (#3, pg. 9): "The impact of the rezone should it be approved is unknown."

We are all for enhancing the area, and would work with a true coalition aimed at doing so. We are opposed to a blanket rezone for private property owners without any plan attached and lacking public community forums for discussion. We believe property owners interested in enhancing the ANUV would (as Admiral Safeway recently did in requesting a rezone) approach the Admiral Neighborhood Association and work with the community in developing a plan for development, including enhancements, to justify a zoning change.

Finally, regarding Mr. Stepherson's numerical responses, we stand by our original arguments and believe them to be correct. Also, in response to his comments, regarding # 6A, he states, "Historically this area has been zoned between 35" feet and 40" since 1923. As recently as 1990 it was zoned for 40' foot building heights." Along a similar line of reasoning, the property has never been zoned NC-2, and most property owners (including those of record and residential owners bordering the rezone) purchased property when it was zoned NC1-30, during the past two decades (also when the ARUV was planned and developed). We also dispute the statement

(# 6B, pg. 10) that "similar types of business are permitted in NC1 and NC2". Businesses currently limited to 10,000 square feet (at 30-foot heights) are not similar to what could be built at NC2-40, which would allow auto and (large) marine sales/rental, vehicle repair, light manufacturing, theater/spectator sports, adult cabarets, lodging, and principal use parking up to 25,000 square feet, and up to 50,000 for sales/services, (per DPD Recommendation and Analysis, table pg. 27).

In the Matter of the Response by Seattle DPD to Appeal by Lynn McIntosh, Chris Caster, and Lisa Muller:

We stand by the merits of previous arguments, and add these in response:

1. We amend our statement to say we *disagree* that including the proposed Multi-family Lowrise code changes are relevant findings of fact. Since they are not approved, the situation they reference and use for supporting arguments does not yet exist.

2. Ironically, we understand some property owners joined in the Neighborhood Plan thinking it would protect them from arbitrary rezones considered outside the Neighborhood Plan and driven by private property owners. We agree with and affirm our support of the appeal filed in this matter by Dennis Ross that shows how and why specific omissions of the Admiral Neighborhood Plan render the conclusions and findings of the Hearing Examiner in violation of the Growth Management Act regarding the Neighborhood Plan.

4. We stand by our argument and evidence presented (e.g., comments submitted by the Admiral Neighborhood Association Dec. 5, 2007) that the urban village as zoned is already consistent with established density goals.

7. DPD states in the response that, "private views are not a criterion of design review," but the Analysis and Recommendation states "... to the east, most views from those residences would be blocked if the site were fully built out at NC1-30 zoning, and any remaining views would be blocked by build-out at N2-40.... This would be an issue to be addressed in design review of the projects proposed for the site." These statements are inconsistent.

11. DPD's Recommendation states there are approximately 15 apartment buildings in this area; every one of them is clearly affordable. New construction will necessitate higher rents (or condominium costs) and would be costly if built to take advantage of sweeping views (particularly given an extra floor of allowed views if the rezone were approved).

13. DPD states, "The rationale for DPD waiving permit fees is not within the purview of the Hearing Examiner." However, it was the Hearing Examiner who requested the rationale, "as (subsequently) explained by DPD Manager Robert Baker in Exhibit #57". Since the record indicates seemingly $27,000.00 (or more) in fees were waived at a time when the city is facing deep budget cuts (and given DPD relies on these fees to operate) it is certainly hoped this would be within the Hearing Examiner's (and City Council's) purviews.

14. Regarding public comments, in its response to the appeal DPD states it received "93 public comments" as included as Exhibit 48 in the record (Facts #11), and that the "total time during which DPD accepted public comment stretched for more than two years." DPD's Analysis and

Recommendation, however, states (pg. 4, "Public Comments"), "Notice of the rezone proposal was issued November 8, 2007. The official public notice period was extended to December 5, 2007 as a result of public request. During the official public comment period, DPD received fifty-five comment letters and emails. Thirty-one letters and emails were in support of the proposed rezone and 24 percent were opposed." The Recommendation goes on to summarize these comments; so it seems reasonable to presume these were the only comments considered in developing the Recommendations. When the Hearing Examiner considered all comments (later, by request), she found overall opposition of about two to one. We're concerned not all public comments were taken into consideration and this may have skewed the process of developing the Recommendation and subsequent public response.

18. Our points go beyond "The applicants disagree with the timing of the DPD recommendation because it was published during the summer, and are unhappy that the appeal periods included July 4th and Labor Day." We believe, as stated, there has been insufficient open, public forum given the extent of the proposal (to rezone 152,000+ square feet in our community and ARUV). And that limited opportunities for public input have been further limited by timing. Our community found out about the proposal by posted signage listing only a two-week comment period (in November 2007). The date of the one public community meeting held (only by request of the Admiral Neighborhood Association) was posted on Thanksgiving Day, with a comment period over the holidays. After a nearly three-year span a 35-page recommendation was released in the heart of summer (when many are away), with limited response times that included two appeals periods over holidays (again, when people are away). (The delay in publication of the Recommendation, and timing, appears related to delay in payment of fees per notices to applicants.) The one public meeting held in 2007 was cut short (before everyone commented), so many have not had even had five minutes to share in a public forum. Also, we have not been allowed to contact City Council members from the time of application, in 2007, apparently due to the nature of the application.

Entered this 25th day of October, 2010.

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Before the City Council
City of Seattle

In answer to a DPD response to
the Appeal filed by the group of 53 people
represented by Cole Peck, Phil Wingard and Lisa Muller

CF # 308944

Referencing CF # 308944 (DPD Reference #3007538).

Regarding DPD Statements of "FACT":

1,2,3,4,5,8: The statements that these items are already covered in the (DPD report or Hearing Examiner) record does NOT adequately answer the objections. Among the critical points we have continued to make is that the DPD (and Hearing Examiner) did faulty analysis on false assumptions or came to poor conclusions **without the aid of adequate public comment/representation**. We believe the DPD's reports are so one-sided and biased they may as well have been written by the applicants. This can best be shown by a review of Conclusion #1 in the DPD response (addressed below).

6,7: The DPD again points to the record without clearly refuting our claims that current zoning is adequate and is the preferred zoning of the majority of people who are immediately impacted by this rezoning. Furthermore, it does not prove IN FACT that that a change in zoning is better than existing zoning.

9: See Answer to "Conclusion #2"

10: Reasons for the fee adjustments have not been made known to the public.

11,12: Again, DPD, assumes that expert witnesses are required to refute claims made by the applicant in respect to what they will build and how it will improve the community. Expert witness is not necessary to show that the applicants have lied and/or exaggerated the benefits of a rezone and the DPD has accepted those exaggerated claims without critical review. We, the people who will be impacted by the rezone, are qualified to refute what is little more than conjecture about what "might/could" be built and how it "might/could" conceivably impact our lives.

Regarding DPD Conclusion #1.

DPD claims to have followed land use code in measuring walls. This has not been proven to have been done correctly across the entire list of properties covered under this application. Data tables shown contradict actual experience.

Even if the DPD used correct measuring guidelines for one or two properties, this does not adequately provide a correct picture of the impact of this rezone across **the range of properties as actually witnessed by the people who live there!**

DPD claims we have failed to provide expert witness. We maintain that the residents are sufficiently experts regarding what they can currently see with their own eyes from their own back yards.

Since there is a building on the northern end of the proposed rezone area that is the height of future NC2-40 types, it can be seen in actual practice that the views of some properties would NOT be obstructed under current zoning and that some properties would suffer only limited view blockage under NC2-40 zoning but others would witness complete view blockage AND substantial sunlight blockage and yet others would be in a position to lose all comfortable levels of privacy by the height of 40 foot buildings looking down on them. The simple act of walking out the back door of one or two of the homes within view of the 40 foot building absolutely contradicts and disproves the accuracy of the submitted "facts." Again, the range of impacts is broader than depicted in DPD reports.

The DPD has simply failed to recognize that this rezone is for dozens of properties over one and a half average city blocks, negatively impacting hundreds of residents of Seattle and that the topography varies widely across this entire rezone area. This is why it has been stated over and over (and not adequately answered by the applicants) that this rezone is too broad and affects too many people and properties to be handled with so little public input.

Regarding DPD Conclusion #2

The DPD claim that "all public comment made, right up until DPD published the rezone recommendation and SEPA determination" contradicts prior statements regarding the number of comments in opposition to the rezone. If all comments had been included in the reports, the numbers of people in opposition would have been greater, which may have affected the outcome of this process. **We have given proof, which has not been contradicted, that the opposition to this rezone was understated by both DPD and the Hearing Examiner.**

Regarding DPD Conclusion #3

We will assume that where the DPD does not answer our appeal that there is at least tacit acceptance of the truth/rightness of our objections, and that, therefore, the City Council should accept our reasons for opposing the appeal.

Entered this 25th day of October, 2010.

_____

Cole Peck,
For the 53 Individuals, represented by Cole Peck, Phil Wingard and Lisa Muller

Cc: Dennis Ross
Olivia Peck
Dino Annest & Janna Annest
Phil Wingard
Lisa Muller
Lynn McIntosh
Chris Caster
Josh Stepherson

Before the City Council
City of Seattle

In answer to a response filed by Josh Stepherson to
the Appeal filed by the group of 53 people
represented by Cole Peck, Phil Wingard and Lisa Muller

CF # 308944

Referencing CF # 308944 (DPD Reference #3007538).

We are some of the people who are negatively impacted by the rezone of all of the properties that are subject to rezone under this application.

Firstly, therefore, we would point out the error in the statement made by Josh Stepherson, who claims to be "working with community members, property owners and 'businesses owners' and 'residence' (*we believe he means, "business owners" and "residents" respectively*), has submitted a rezone application for an entire city block, along both sides of the street and equal to approximately 1.5 typical West Seattle blocks. In point of fact, the application states that the people Josh Stepherson has been working with, are the realtors, Cayce & Gain, who are seeking a rezone for personal gain, and against the will of the community surrounding the subject area.

We must immediately point out, again, that although this application has the general title appearance of a rezone of a small amount of property (using on address as a point of reference), it covers a large area that impacts hundreds of residents, many of which are on record as opposing this rezone.

This public has, through several representatives, made clear that it *a*) does NOT approve of the rezone and **b**) is NOT working "with" Josh Stepherson and c) had NOT been heard and given fair voice and representation in this process. Josh Stepherson is not qualified to declare otherwise, and we object to the presumption of such in his filing.

In Response to Josh Stephersons specific replies (as numbered in his reply):

1. (1A) Natural Topography & Views Ignored

   Mr. Stepherson contradicts himself in his answer. He states that a) topography has been addressed and then quotes the filing that states, "It appears full build-out under existing NC1-30 zoning would block most, if not all the private views from adjacent properties to the east. There would be no appreciable difference to private views between NC1-30 and Nc2-40 zoning."

   We have stated that since there is a building on the northern end of the proposed rezone area that is the height of future NC2-40 types, it can be seen in actual practice that the views of some properties would NOT be obstructed under current zoning and that some properties would suffer only limited view blockage under NC2-40 zoning but others would witness complete view blockage AND substantial sunlight blockage and yet others would be in a position to lose all comfortable levels of privacy by the height of 40 foot buildings looking down on them. The simple act of walking out the back door of one or two of the homes within view of the 40 foot building absolutely contradicts and disproves the accuracy of the submitted "facts." Again, the range of impacts is broader than depicted in Mr. Stepherson's documents and DPD reports. Again, a simple walk into the back yards of a few subject properties would be all the expert witness needed to disprove the entire set of graphs, charts and measurements submitted by Mr. Stepherson as it related to the impact of NC1-30 full build out. His charts are wrong.

2/3 (1B) Encroachment

Mr. Stepherson is again misstating the facts and twisting the truth.

Our comment was that rezoning to NC2-40 would allow larger, more intrusive buildings to dominate our back yards and would have negative impacts of such encroachment (i.e. views, lost sunlight, parking) than does the existing commercial zoning because the existing commercial zoning limits the size and scope of commercial activity to a range that is reasonable given the location abutting so many single family residences.

The boundaries won't stay the same. What was once NC1-30 will be NC2-40 with no NC1-30 zoning between the residences and the larger commercial buildings that would be allowed under the new rezoning. That is a change in boundaries. Whereas once our homes were abutted by smaller commercial space, they are to be dominated by larger capacity NC2-40 space!

In effect, a buffer zone will have been removed and dozens of single family residences will have lost their value, livability and quality of life.

Mr. Stepherson's comment that the rezone will help "relieve pressure and expand commercial areas" is simply unproven rhetoric that should not be considered. It is conjecture that contradicts his argument that the rezone will have positive impact on the urban village. The rezone can only logically do one of two things: a) Compete with the Junction(s) – Admiral and Alaska or b) draw business to the Junctions. The statement, "relieve pressure" implies taking business away from those areas and expand implies grow as part of those areas. The statement is contradictory. We would argue that the rezone will have negligible impact on the Junctions (negative or positive) and that Mr. Stepherson is overstating the value to try to offset the harm being done to homes in the area.

4. (1B) Violation

The city has "recognized" the opposition to rezoning but to no affect. The fact remains that the city has simply failed to recognize that this rezone is for dozens of properties over one and a half average city blocks, negatively impacting hundreds of residents of West Seattle.

Furthermore, this rezone has potential negative impact, as previously stated, on the Admiral and Alaska Junction business areas.

This is why it has been stated over and over (and not adequately answered by the applicants) that this rezone is too broad and affects too many people and properties to be handled with so little public input.

The city's "recognition" has failed to address the concerns of the scores of citizens who oppose it!

5&6. (1B Admiral Neighborhood Assn.)

Our statement regarding the adequacy of the existing growth is not a random comment made by us but an opinion offered by the people involved with the planning process – those who are qualified to make such statements.

We stand by the opinion that if an area is adequately equipped to meet its goals then it is undesirable to change zoning for the benefit of a few rich investors and to the detriment of the local community if such rezoning is shown to have no counterbalancing benefits to anyone other than the investors.

This rezone of all of these properties is NOT needed for the purposes of any neighborhood plans or any portion thereof (approved or not-approved). This rezone is NOT needed in order to improve the neighborhood. This rezone is NOT needed to fix anything or help any part of any growth management plans. This rezone is NOT wanted by this neighborhood.

There is likewise NO evidence to support Mr. Stepherson's claims that rezoning WILL benefit anyone (other than Cayce & Gain, of course) so his remark that "there is no evidence that the change to NC2-40 zoning would have this impact" is of no value, and his remaining remarks are simply rhetoric.

7 (see below)
8. Removed from Business Districts

Mr. Stepherson states that the subject area is two blocks from the Admiral commercial core. It is obvious that he does not know the area, or he is again misrepresenting the facts. Two blocks from the center of the proposed rezone area is a park, connected to a school ground (of which, much has been said about additional problems this rezone creates).

Pedestrian Facilities:

To Mr. Stepherson's remarks, if these facilities are so good, then we ask the City Council to consider, why was the argument used that rezoning was needed so that these areas/facilities could be improved?

Furthermore, we have provided photos (already in the record) showing that Hanford and Hinds streets are NOT adequate to the task of servicing the types of buildings allowed with this upzoning.

9&10. Preserve Status Quo

We have already shown in our submissions that the area in question more closely resembles what should be NC1-30 than NC2-40 zoning. Furthermore, we have shown that without question, the overwhelming population of the area desires it that way.

7&11.

To the remarks that rezoning will make more housing affordable, we can only say that it is quite probably true that OUR homes will be more affordable since they will be less valued and less valuable due to the harm done to our property values if this rezone is approved.

12. Refer to Comment 1, above.

13. Survey of Area

Of the examples given, we must inquire: are these already part of the Hearing Examiner's record? If not, they cannot be considered here. If so, then we invite the applicant to show that those buildings would fit onto some of the subject properties. Furthermore, the applicant should have to prove that these buildings do ALL of the things they have been saying they will do when they are given the chance to build: underground parking with excess capacity, improved shop-front building AND residential space. We have yet to see proof they can provide ALL of the things they have promised in their rhetoric.

14. Buffer Space.

Are we to have confidence in design review after being so neglected in this much-more-impactful issue of a rezone of entire city blocks? This is a hard comment for us, as residents to believe. However, we must restate for the record, that what exists today for smaller, less active commercial buildings cannot possibly suffice for NC2-40 type buildings. We insist that the applicant has not supplied enough proof and the city has not done its part to require such proof.

Heights & View Blockage: This has already been addressed earlier. In summary, though, the charts do not show what any resident can see with their own eyes by walking in their own backyard. The DPD and Hearing Examiner might have considered discussing this with the people impacted and by visiting their homes before approving changes that will harm their livelihoods.

RECENT & PROPOSED ZONING CHANGES

Mr. Stepherson points to two recent zoning changes as some level of "proof" or validation that this rezone should be approved. It should be pointed out that BOTH of the rezones he mentions are completely different than what is being considered. One relates to CONSIDERABLY LESS property – a single building on a single piece of land and the other relates to CONSIDERABLY MORE property – all of California street from Alsaka to Admiral. NEITHER is anything like this rezone which is something inbetween. Our description of it is as follows:

This rezone is basically a few greedy entities (individuals), getting approval to rezone entire city blocks of land for personal gain regardless of unproven public benefits, and regardless of overwhelming community opposition.

Neither of the other zoning examples fits that description.

In summary, Mr. Stepherson's remarks bring nothing new to the conversation, and do not adequately answer the HUGE community opposition – from home owners, institutions and business – to this rezone application. We, the members of the community remain committed to seeing our neighborhood protected and preserved for sustainable, positive and productive growth that does NOT require or even desire any zoning changes.