



**Legislative Department  
Seattle City Council  
Memorandum**

**Date:** September 12, 2011

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

**From:** Ketil Freeman, Central Staff

**Subject:** C.F. 309434 - Petition of Lynn Huff for the University Christian Church and the University Presbyterian Church to rezone approximately 129,300 sq.ft. of land at 4715 to 4735 15th Avenue Northeast from Lowrise 3 (L3) multifamily residential to Neighborhood Commercial 3 with a 65 foot height limit (NC3 65) (Project No. 3004384, Type IV).

**Overview**

The University Christian Church, University Presbyterian Church and another property owner (Applicants) have applied for a rezone of a block - two facing half blocks - on 15<sup>th</sup> Avenue NE between NE 47<sup>th</sup> Street and NE 50<sup>th</sup> Street in the University Community Urban Center. The Applicants request a rezone of the block from Lowrise 3 (LR3) multifamily residential to Neighborhood Commercial 3 with a 65 foot height limit (NC3 65). The proposal by the Applicants does not include a concurrent development application. The rezone area proposed by the Applicants includes three parcels on the west side of 15<sup>th</sup> Avenue NE that are currently developed with three to four story multifamily buildings. Those parcels are not controlled by the Applicants and the owners of those parcels are not applicants for the proposed rezone.

The Applicants filed a rezone petition in May 2008. On December 2, 2010 the Department of Planning and Development (DPD) issued an affirmative rezone recommendation and State Environmental Policy Act (SEPA) threshold determination of non-significance. The SEPA threshold determination was appealed by a property owner to the east of the rezone area. The Hearing Examiner held a consolidated hearing on the SEPA appeal and rezone recommendation on March 15, 2011. The record was held open to allow DPD and the Applicants to submit additional information. The Hearing Examiner reopened the hearing on April 14, 2011 for additional questions and public comment. On April 18, 2011 the Hearing Examiner issued a final decision affirming DPD's SEPA threshold determination. The same day the Hearing Examiner recommended that Council *deny* the proposed rezone. In her denial recommendation the Hearing Examiner noted that if a rezone is approved for the block it should be to Neighborhood Commercial 2 with a 65 foot height limit (NC2 65) and subject to limitations set out in a property use and development agreement.

The Hearing Examiner's recommendation to deny the rezone was appealed by the Applicants. The Hearing Examiner's NC2 65 alternative was appealed by the Seattle Displacement Coalition.

## **Type of Action and Materials**

The proposal is a quasi-judicial rezone. Quasi-judicial rezones are subject to the Appearance of Fairness Doctrine prohibiting ex-parte communication. Council decisions must be made on the record established by the City Hearing Examiner.<sup>1</sup>

The Hearing Examiner establishes the record at an open-record hearing. The record contains the substance of the testimony provided at the Hearing Examiner's open record hearing and the exhibits entered into the record at that hearing. Excerpts from the record are attached to this memo. The entire record including audio recordings of the Hearing Examiner's open record hearing are available for review in my office.

Attachments to this memo include:

- The Hearing Examiner's recommendation to deny the rezone (Tab A);
- Appeals of the Hearing Examiner's recommendation by the Applicants and the Seattle Displacement Coalition (Tab B);
- Responses by the Applicants, Seattle Displacement Coalition and the University Park Community Club (Tab C); and
- Replies by the Applicants and the Seattle Displacement Coalition (Tab D).
- Selected exhibits from the record (Tab E); and
- Written public comment (Tab F).<sup>2</sup>

## **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*.<sup>3</sup> 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.<sup>4</sup>

## **Findings, Conclusions and Decision**

The Committee heard oral argument on August 18, 2011. Two options for a recommendation to Full Council are set out below. Draft Council Findings, Conclusions and Decision for each option are also attached.

It should be noted that while there may be a policy basis that supports replacement of affordable housing in certain circumstances, there is not a regulatory basis that would allow the City to compel replacement of affordable housing at this location. DPD did not identify any impacts to affordable housing in its SEPA analysis that could inform a mandatory condition nor does the City's affordable housing incentive program established in S.M.C. Ch. 23.58A apply to commercially zoned property in the University Community Urban Center. However, applicants for contract rezones may agree "to self-imposed restrictions upon the use and development" of a property.<sup>5</sup> Here the Applicants have proposed conditions related to the replacement of affordable housing.<sup>6</sup> The Applicants have also suggested modifications to those conditions in their appeal, response, and at oral argument.

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<sup>1</sup> Seattle Municipal Code (S.M.C.) § 23.76.054.E.

<sup>2</sup> Exhibit 11 and written comment sent to the Hearing Examiner.

<sup>3</sup> S.M.C. § 23.76.056.A and Council Quasi-judicial Rule (CQR) § VI.C.5.a.

<sup>4</sup> S.M.C. § 23.76.056.A.

<sup>5</sup> S.M.C. § 23.34.004.A.

<sup>6</sup> Exhibit 16 and 17

**Option A – Reject the Hearing Examiner’s Recommendation and Approve a Rezone to NC2 65 (Green Paper)**

If the Committee agrees that there is substantial evidence in the record to conclude that the Hearing Examiner erred, the Committee should reject the Hearing Examiner’s recommendation and approve a rezone to NC2 65 subject to conditions in a property use and development agreement.

To do this the Committee would concur with the Applicants that the Hearing Examiner made two primary errors.

1. Overreliance on certain University Community Neighborhood Plan goals and policies without proper consideration of countervailing neighborhood plan goals and policies. For example, the Hearing Examiner’s recommendation is based in part on the conclusion that UC-P2 establishes a policy of encouraging heights up to 65 feet away from the proposed rezone area south of Northeast 43<sup>rd</sup> Street. However, UC-P4 states that the “goals and policies of the UCUC (University Community Urban Center) Neighborhood Plan are not intended to change the policy basis for consideration of rezones proposed after adoption of these goals and policies.”
2. Improper weighing and balancing of LR3 and NC2 function and locational criteria to conclude that the LR3 zone is the most appropriate for the proposed rezone area and that an NC designation would create “an encroachment of commercial development in an established lowrise residential area.”<sup>7</sup>

The draft Council Findings, Conclusions and Decision for this option would reject the conclusions made by the Hearing Examiner that reflect these alleged errors and conclude that the NC2 65 zone designation is most appropriate at this location.

**Option B – Affirm the Hearing Examiner’s Recommendation and Deny the Rezone (Blue Paper)**

If the Committee agrees that the Appellants have not met their burden of proof, the Committee should affirm the Hearing Examiner’s recommendation and deny the rezone.

The draft Council Findings, Conclusions and Decision for this option adopts the Hearing Examiner’s findings and conclusions.

**Next Steps**

If the Committee recommends Option A above, staff will write a rezone bill and work with the Applicants to draft a PUDA with conditions similar to those recommended by the Hearing Examiner. To allow for bill introduction, a Full Council vote would occur no earlier than September 26, 2011.

If the Committee recommends Option B, Full Council action on the rezone petition in Clerk’s File 309434 could happen at the next Full Council meeting.

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<sup>7</sup> Findings and Recommendation of the Hearing Examiner, Conclusion 8 at p.8.