Legislative Department
Seattle City Council
Memorandum

Date: December 11, 2014

To: Mike O'Brien, Chair
Tim Burgess, Vice-Chair
Nick Licata, Member
Planning, Land Use, and Sustainability (PLUS) Committee

From: Martha Lester, City Council Central Staff

Subject: Quasi-Judicial Rezone Application for December 16 PLUS Committee meeting:

Clerk File (C.F.) 312973: Application of Midtown Limited Partnership to rezone land located at 2301 East Union Street from Neighborhood Commercial 2 with a 40 foot height limit (NC2-40) and Neighborhood Commercial 2 with a 40 foot height limit and pedestrian zone designation (NC2P-40) to Neighborhood Commercial 2 with a 65 foot height limit and pedestrian zone designation (NC2P-65) (Project Number 3005931, Type IV).

Background

Hugh Bangasser, for MidTown Limited Partnership, applied for a rezone of a full block at 2301 E. Union Street, at the southeast corner of the intersection of 23rd Avenue and E. Union Street. The existing zoning is NC2P-40 and NC2-40, and the requested zoning for the entire block is NC2P-65 – no change in the base zone (Neighborhood Commercial 2), but an increase in the allowable height from 40 feet to 65 feet, and application of the "P" (pedestrian zone) designation to the entire block.

The Applicant did not propose any specific project for the site, so did not requesting a "contract" rezone, in which a contract (called a property use and development agreement, or PUDA) would impose conditions on the project to be built. The Applicant requested a "general" rezone, without conditions. However, the Council could decide to approve the rezone and impose conditions.

The Department of Planning and Development (DPD) recommended approval of the requested rezone. The Hearing Examiner held an open-record hearing in December 2013, and on December 18, 2013, recommended denial. The Applicant filed an appeal with the Council on December 30, 2013.

Type of Action and Materials

Because this rezone would affect one property, the matter is considered a quasi-judicial rezone under the Seattle Municipal Code. Quasi-judicial rezones are subject to the state Appearance of Fairness Doctrine prohibiting ex-parte communication. Council decisions must be made on the record established by the Hearing Examiner.

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. The entire record including an audio recording of the Hearing Examiner's hearing is in my office and available for review at Councilmembers' convenience.

Standard of Review and Burden of Proof

In making its decision on a quasi-judicial rezone application, the Council applies the *substantial evidence standard of review*. This means that the Council's decision to approve, approve with conditions, or deny the recommendation must be supported by substantial evidence in the record. The Applicant bears the burden of proving that the Hearing Examiner's recommendation should be rejected or modified.[1]

Procedural Status

The PLUS Committee had an initial briefing and discussion of this application at its February 21, 2014, meeting.

A few days before that meeting, a Motion to Intervene had been filed by the Land Use Review Committee (LURC) of the Central Area Neighborhood District Council, which opposes the rezone. Rule V.D.2 of the City Council Rules for Quasi-Judicial Proceedings provides in part that in considering a motion to intervene, the Council shall consider "whether the motion to intervene shows a substantial or significant interest in a quasi-judicial action that is not otherwise adequately represented by [a] party of record." Because at the time, the only parties of record were the Applicant and DPD, both of whom supported the rezone application, Councilmember O'Brien granted LURC's Motion to Intervene on March 11.[2] Thus the official parties of record in this matter are now the Applicant, DPD, and LURC.[3]

Per the Seattle Municipal Code, the Council must issue its decision within 120 days of receiving the Hearing Examiner's recommendation, unless an extension is mutually agreed upon by the Council and the Applicant. Thus the original deadline for Council action was April 17, 2014.

However, on March 7, 2014 (two weeks after the initial PLUS Committee briefing), the Applicant filed a Motion for Postponement. In the motion, the Applicant stated: "This postponement will allow time for consideration of land use alternatives for the MidTown property. That consideration may result in a resolution which will not require the Council to address the Appeal on its merits." Councilmember O'Brien granted the Motion for Postponement, which extended the date for Council decision in the matter to July 18, 2014. Subsequently, the Applicant filed motions for four more postponements, stating that each postponement "will allow a reasonable period of additional time to engage in continued dialogue regarding the MidTown property." Councilmember O'Brien granted those motions, and thus the deadline for Council decision is now January 20, 2015.

In addition to the Motion for Postponement, the Applicant filed three other motions on March 7, 2014:
- Motion for Oral Argument
- Motion for Clarification and Renewed Offering of PUDA
- Motion Requesting Judicial Notice

On November 14, 2014, Councilmember O'Brien granted the Applicant's Motion for Oral Argument (and oral argument will occur at the December 16, 2014, PLUS Committee meeting). On December 8, 2014, the Applicant withdrew its Motion Requesting Judicial Notice.

The Applicant's remaining Motion for Clarification and Renewed Offering of PUDA will be before the PLUS Committee at its December 16 meeting.

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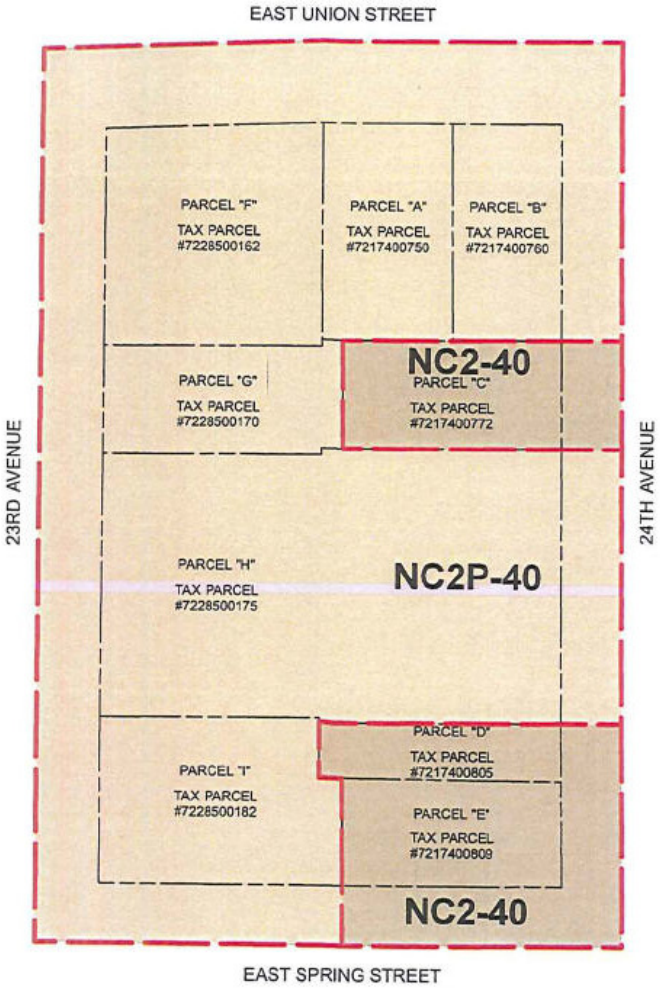
[1] S.M.C. § 23.76.056.A.

[2] Rule IV.B of the City Council Rules for Quasi-Judicial Proceedings authorize the committee chair to make rulings or determinations regarding procedural matters.

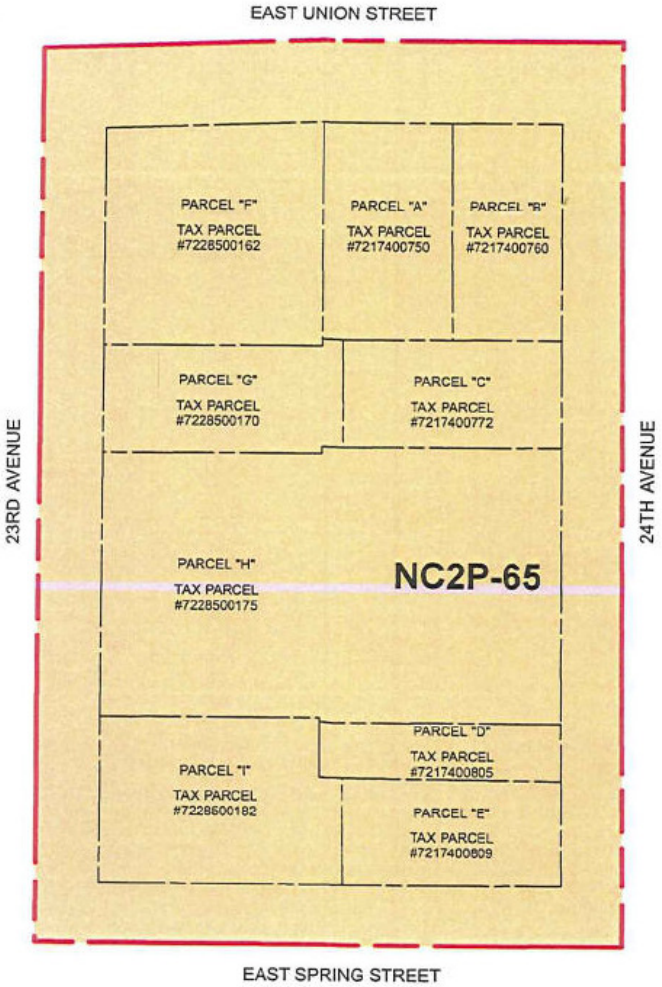
[3] In July and August, three additional entities filed motions to intervene, all in support of the rezone. Because none of them showed a substantial or significant interest not already adequately represented by the Applicant and DPD, Councilmember O'Brien denied those motions to intervene.

Summary of Application and Existing Conditions

There are nine parcels on the block. These two diagrams (Hearing Examiner Exhibit 1) show existing and requested zoning:

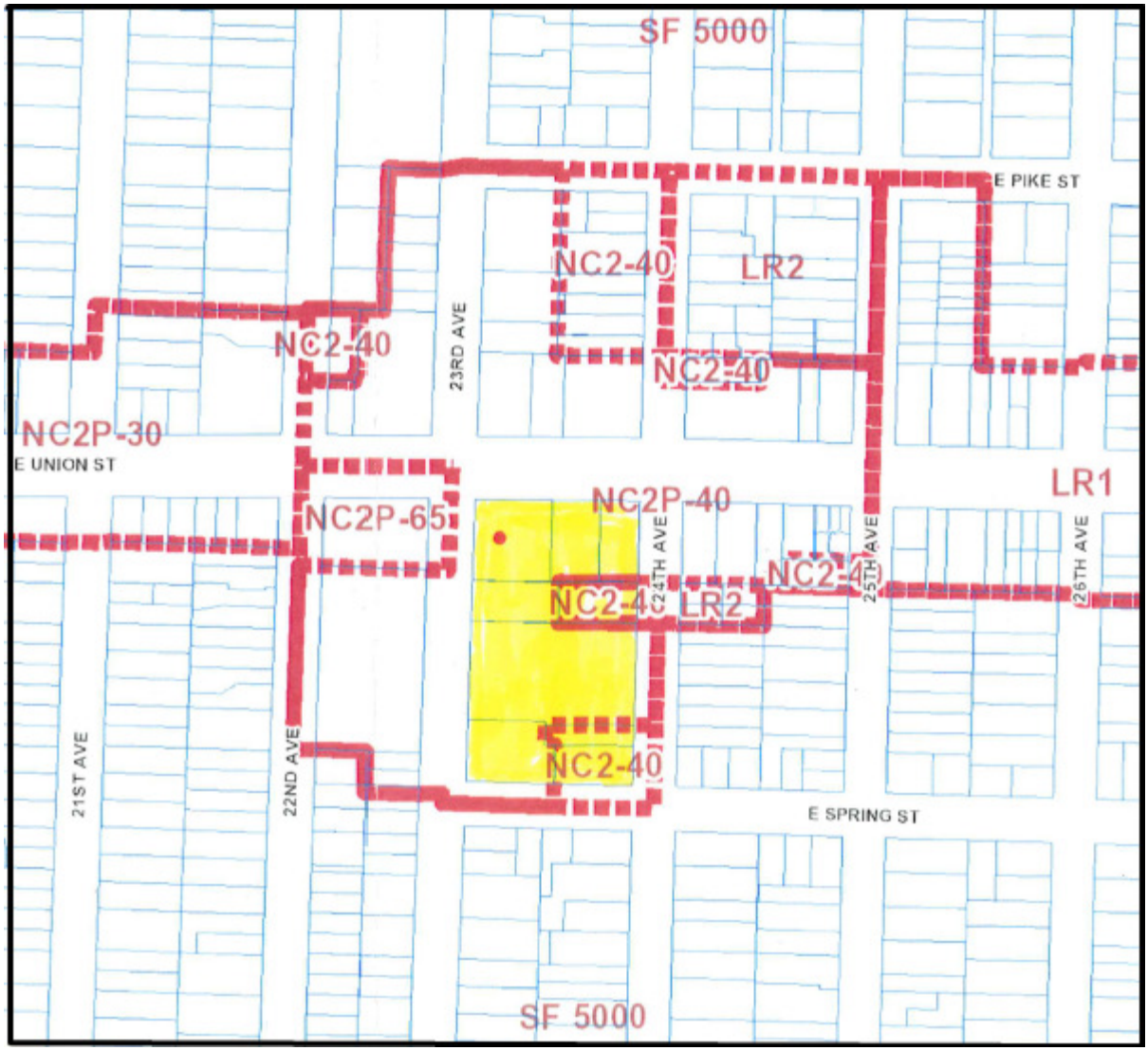


Existing Zoning



Requested Zoning

The following map (excerpt from Hearing Examiner Exhibit 2) shows surrounding zoning, with the subject block highlighted in yellow. Most of the area to the west and north is zoned NC2P-40. A portion due west of the north end of the subject block is zoned NC2P-65, the result of a contract rezone approved by the Council in 2008. To the east, there is NC2P-40, a small area of LR2 (Lowrise 2), and SF 5000 (Single Family). The adjoining area to the south is similarly zoned SF 5000.



Written Public Comments

Attached to this memo are the written public comments submitted to DPD or the Hearing Examiner (all or part of Hearing Examiner Exhibits 9, 11, 12, 14, 15, and 16).

Issue on Appeal

Hearing Examiner's Reasoning

The Hearing Examiner's recommendation included the following Conclusion 23:

"The proposed 65-foot height limit would not match the existing height in the surrounding area, but depending on what kind of development occurs on this site, the height limit could be compatible both with actual and zoned heights in the surrounding area. Similarly, although no major physical buffers are present, the design of future development at the site could provide gradual transition in height and scale and level of activity between the commercial and residential zones. But at this time, as noted by DPD, there are a number of different development scenarios that could occur on this large site, including individual development on the separate lots within the site; Ex. 10, p. 15. Even if it is presumed that design review will apply to future development of this site, it is not known what the outcome of that process would be in terms of project design or conditions. The future compatibility of a 65-foot height limit, or the gradual transition in height, scale and activity between zones, cannot be assumed on the basis of what is in this record."

Key Code Provisions

SMC 23.34.009 sets out rezone criteria related to height. Subsection 23.34.009.D focuses on "compatibility with surrounding area," and states in part: "Height limits for an area shall be compatible with actual and zoned heights in surrounding areas" and "A gradual transition in height and scale and level of activity between zones shall be provided unless major physical buffers [such as streams, ravines, or major traffic arterials] are present."

SMC 23.41.004 requires design review for any new multifamily, commercial, or industrial development in an NC zone that exceeds four dwelling units or 4,000 square feet of nonresidential gross floor area.

Burden of Proof

As noted above, in this Council proceeding on a Hearing Examiner recommendation for a quasi-judicial land use decision, the Applicant bears the burden of proving that the Hearing Examiner's recommendation should be rejected or modified.[4]

Applicant's Motion For Clarification and Renewed Offering of PUDA

In March 2014 (after the PLUS Committee's discussion on February 21), the Applicant filed a Motion For Clarification and Renewed Offering of PUDA. In this motion, the Applicant reiterated that it would agree with a Council-imposed condition requiring any development to be subject to design review.

Intervenor LURC filed a response to the motion, and the Applicant filed a reply. However, note that the Applicant included with its reply an attachment that is not part of the official record assembled by the Hearing Examiner and should not be considered by Councilmembers.

The motion, response, and reply are included in the attachments to this memo.

[4] S.M.C. § 23.76.056.A.

Attachments

- DPD's recommendation (Hearing Examiner Exhibit 10)
- Written public comments submitted to DPD or the Hearing Examiner (all or part of Hearing Examiner Exhibits 9, 11, 12, 14, 15, and 16)
- Hearing Examiner's recommendation
- Applicant's appeal of the Hearing Examiner's recommendation
- DPD's response in support of the Applicant's appeal
- Applicant's Reply Memorandum to DPD's Response to Applicant's Appeal
- Motion to Intervene of the Land Use Review Committee (LURC) of the Central Area Neighborhood District Council[5]
- Applicant's Motion For Clarification and Renewed Offering of PUDA
- Intervenor LURC's Response to Applicant's Motions (1) for Clarification and Offering of PUDA, and (2) Requesting Judicial Notice[6]
- Applicant's Reply Memoranda regarding Motion for Clarification and Offering PUDA and Motion Requesting Judicial Notice

[5] Councilmember O'Brien already granted this Motion to Intervene, but it is included here because it contains LURC's arguments in opposition to the requested rezone.
[6] Note that on December 8, 2014, the Applicant withdrew its Motion Requesting Judicial Notice, so the portion of Intervenor LURC's Response related to that motion is moot.

City of Seattle

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:	3005931
Applicant Name:	Hugh Bangasser, for MidTown Limited Partnership
Address of Proposal:	2301 E. Union Street
Clerk File Number:	312973

SUMMARY OF PROPOSED ACTION

Council Land Use Action to rezone 106,189 sq. ft. of land from NC2-40 and NC2P-40 to NC2P-65. *The property is an entire City block and is bounded by 23rd Avenue to the west, 24th Avenue to the east, E. Union Street to the north and E. Spring Street to the south.

The following approvals are required:

Rezone - Seattle Municipal Code (SMC) Chapter 23.34

SEPA - Environmental Determination - SMC Chapter 25.05

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

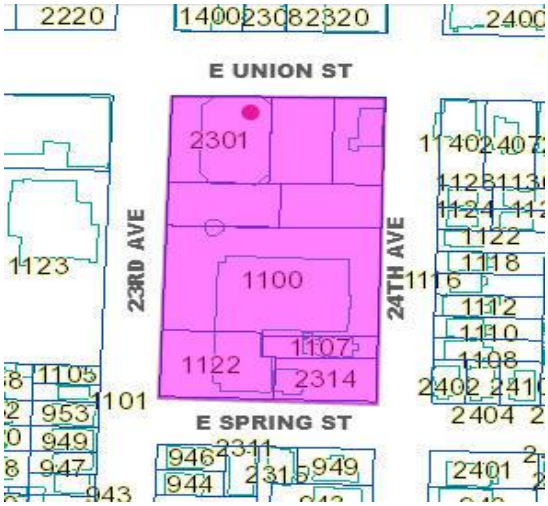
[ ] DNS with conditions

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

* The application notice originally stated that proposed rezone was from NC2P-40 to NC3P-65.

BACKGROUND DATA

Site Description



The proposed rezone site consists of approximately 106,189 sq. ft. of land that comprises an entire City block and is bounded by 23rd Avenue to the west, 24th Avenue to the east, E. Union Street to the north and E. Spring Street to the south. It is aligned with the predominate grid and measures approximately 250 feet running along the south side of E. Union Street in an east/ west direction and extending south between along 23rd Avenue and 24th Avenue E. to E. Spring Street approximately 418 feet.

The area proposed for rezoning is made up of nine tax parcels and consists of platted lots 1-7, Block 5, of Renton Hill Addition, and Lots 1-14, Block 6 of J H Rengstorff's Addition. It is aligned with the predominate grid and measures approximately 250 feet running along the south side of E. Union Street in an east/ west direction and extending south between along 23rd Avenue and 24th Avenue E. to E. Spring Street approximately 418 feet. Five of the nine parcels are overlain with structures with the rest of the lost mostly developed as surface parking areas. The topography of the site is relatively flat. The site is currently entirely zoned NC2P-40.

The site is part of a strip of land running between 20th Avenue and 25th along E. Union Street of neighborhood commercial zoning. At its narrowest point the strip is only a single residential lot in depth as measured from the north or south edge of E. Union street; at its widest it stretches a single block on either side of E. Union Street, extending between E. Pike Street on the north to E. Spring Street on the south.

Vicinity Description

There are nodules of neighborhood zoning beyond the commercial strip, including a block zoned NC2-40 south and east of E. Union at M L King Jr. Way, and a smaller nodule zoned NC1-30 on the north side of E. Union Street just west of 19th Avenue. Except for a smattering of small areas designated with Lowrise zoning (mostly LR1 and LR2) adjacent the neighborhood commercial zoning, the commercial "core," centered at 23rd Avenue and E. Union Street, is situated within a large sea of single family zoning, historically developed with single-family houses.

Historically, the subject site and the parcels directly across E. Union Street have served the broader vicinity as a business hub, providing a post office, local bank, grocery stores, pharmacy, liquor store and a variety of small multicultural shops. In more recent times the area has seen a good deal of retail and service businesses leaving the area. Key bank plans to shutter its local branch across E, Union to the north, the U S Postal Service has announced its intention to terminate its tenancy on site, the Washington State Liquor Control Board divested itself of its retail store at this site.

Project 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 owners/applicants made application, with supporting documentation, per SMC 23.76.040 D, for an amendment to the Official Land Use Map on March 27, 2013.

The property owners noted not only the loss of credit-worthy tenants in the immediate area of the proposed rezone but concerns that these closures and relocations have hindered efforts to attract commercial tenants, investment capital and real estate development interest to their neighborhood. The owners/applicants did not provide any conceptual plans for redevelopment on the lots included within the rezone application.

The original application for this proposal, which was published April 25, 2013, requested a rezone from NC2-40 to NC3-65. During the course of departmental review of the proposal, the applicant continued to meet with business owners and residents of the 23rd and E. Union neighborhood, participating in a series of sessions that had begun prior to the application for the rezone. Additionally, the Department of Planning and Development's Office of Long Range Planning issued, in September 2013, and based upon a series of neighborhood meetings, a "23rd Ave Union-Cherry-Jackson Action Plan," one that recommends an *NC2-65* zoning designation on the applicant's property. The applicant has graciously acceded to this overall vision for the neighborhood and has updated the request from the original NC3-65 to NC2-65 in order to bring it into harmony with the neighborhood's articulated vision and the Department's latest recommendation. Accordingly, the request as revised seeks no change from the current NC2 zone, but only an increase in height from 40' to 65'.

The stated purpose of this updated proposal, as with the original proposal, is to encourage the economic redevelopment of the Union Street and 23rd Avenue business core through a site-specific rezone of the MidTown Center property. The proposed rezone will increase zoned capacity and zoned density by allowing for additional building height and a resultant increase in allowable gross square footage on the same area of land. It is the applicant's stated belief that an accommodation of two additional residential floors, a move that will encourage greater density at the site, and one that mirrors the recent similar site specific rezone on the parcel directly west across 23rd Avenue at 2203 East Union, will allow for a more vital and economically sustainable neighborhood.

Public Comments

Initial notice of the proposed re-zone was published on April 25, 2013. The extended public comment period ended on May 20, 2013. DPD received approximately 22 written comments from nearby residents and property owners. Seven of the comment letters expressed unqualified support for the rezone, while six letters (representing seven individuals) expressed opposition to the rezone. Five comments represented requests for further information or were requests to become parties of record. Five comments represented various degrees of neutrality or resignation, but requested that any development dependent on the rezone should seek to retain

current tenants, especially those businesses owned by persons of color. Some of the commenters also advocated for affordable housing and free parking on site.

ANALYSIS - REZONE

The applicable requirements for this rezone proposal are stated at 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 23.34.086 (Pedestrian designation, Suffix P, function & locational criteria). The zone function statements are to be used to assess the likelihood that the area proposed to be rezoned would function as intended.

The most reasonable order for analysis does not follow the section numbering. In the following analysis, SMC Section 23.34.008 (General rezone criteria) will be considered first. Then follows 23.34.009, which considers the compatibility of height considerations), 23.34.072 general commercial considerations, 23.34.086 (which considers the Pedestrian designation), and finally 23.34.007, which requires synthesis of all the foregoing analyses. The pattern below is to quote applicable portions of the rezone criteria in italics, which is then followed by analyses in regular typeface.

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 one hundred twenty-five percent (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 be within the density ranges established in Section A1 of the Land Use Element of the Comprehensive Plan.*

The subject site and surrounding neighborhood are within the 23rd and Union-Jackson Residential Urban Village (23rd RUV). The Urban Village Appendix to the Seattle Comprehensive Plan set a 650 household increase as the growth target for this Residential Urban Village. This target requires a density increase to nine households per acre (or 4,840 sq. ft. per household) from the existing seven households per acre (or 6,233 Sq. ft. per household). The subject site, as earlier noted is 106,189 sq. ft. in size. Development of additional residential units on this site would contribute to the desired residential density of the Residential Urban Village.

According to the latest available progress report on growth, under Seattle's comprehensive plan the residential urban village has achieved 60% of the targeted growth (*Monitoring Our Progress: Seattle's Comprehensive Plan,* 2003). The proposed rezone will increase zoned capacity by allowing additional building height and the resultant gross square footage (FAR) on the same area of land. The proposed rezone is consistent with SNC 23.34.008.A.1 because the increased in zoned capacity does not reduce capacity below 125% of the Comprehensive Plan growth target. The rezone is also consistent with SMC 23.34.008.A.2 because the increased density contributes to the attainment of densities established in the Comprehensive Plan.

B. Match Between Zone 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.

The proposal is to increase the height limit of a property currently designated Neighborhood Commercial 2-40 (NC2-40) to Neighborhood Commercial 2-65 (NC2-65). SMC 23.34.076 provides the Neighborhood Commercial 2 zone, function and locational criteria. The property at a minimum meets the SMC 23.34.076 zone criteria for the Neighborhood Commercial 2 zone (its current designation). It can accommodate a pedestrian-oriented shopping area that provides a full range of household and personal goods, including convenience and specialty goods, to the surrounding neighborhoods, and can include other uses that are compatible with the retail character of the area such as housing or offices. It is located in a primary business district in a residential urban village, on streets with good capacity and excellent transit service. Because of its size, its location and its traditional function as the community commercial hub, it can achieve the following characteristics: a variety of sizes and types of retail and other commercial businesses at street level; continuous store fronts to the front lot line; substantial pedestrian activity; shoppers can drive to the area, but walk around from store to store; and the excellent transit provides for important means of access and egress for residents and the shoppers using the retail stores within it. The locational criteria for NC2, are consistent with the property because it is the primary business district for the 23rd RUV, is served by two arterials (Union and 23rd), can be buffered from less intense residential areas, is served by excellent transit service and is, as described below, sited at a designated business node of the applicable Urban Village where mixed use buildings of greater than 40' in height are encouraged.

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

The subject property was zoned Community Business (BC) in 1980 and was re-zoned to NC2-40 under the City's prior commercial zoning code (Chapter 23.47) and remained NC2-40 under the most recent commercial zoning code (Chapter 23.47A), enacted in 2006. The zoning history of the surrounding area that includes NC, single-family and low-rise multifamily zones has remained relatively consistent. The property immediately to the west across 23rd Avenue (2203 East Union Street) was re-designated to NC2-65 pursuant to a contract rezone in 2008 (CF 308565).

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.*
2. *Council adopted neighborhood plans that apply to the area proposed for rezone shall be taken into consideration.*
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 Central Area Action Plan II ("CAAP II") is a community-based document, adopted in 1998 as the Central Area's Neighborhood Plan and it encompasses the 23rd RUV. Updated neighborhood policies for the Central Area were also adopted as part of Seattle's Comprehensive Plan update in January 2005. Both CAAP II and the Comprehensive Plan support the rezone proposal. The Comprehensive Plan, as described below, specifically recommends heights greater than 40 feet in Urban Village business nodes such as the subject property. CAAP II contains the following goals, policies, and action plan components that are germane to consideration of the proposed rezone at this location:

- The 23rd and Union neighborhood is "defined as the crossroads of the Central Area, with more activity and better district layout that makes use of the width and potential of East Union. [Development should] rearrange parking on the street and off to make better use of it, and emphasize the district as a convenience shopping area for local residents and workers." (page 4)

- "23rd and Union has long been considered the hub of the Central Area. Its smaller scale lends itself to less residential and commercial density. The vision for the neighborhood focuses on maintaining the cultural and ethnic diversity of the community. In the future, changes will be made thoughtfully, with respect for the past, pride in the present and careful regard for sustainable development in the future. East Union Street will be the focus, both in terms of transportations systems and in becoming the gathering place for the community. To support this vision, an integration of streetscape, street improvement, land use and zoning changes and open space elements will need to come together." (page 9-10)

- "Establish a Pedestrian 2 Overlay at the business core of 23rd and Union." (pages 23 and 28)

- "Create a sense of entry for the Central Area and individual neighborhoods by developing "community gateways" that go beyond placing a sign on a utility pole. Develop landscaped areas, public art pieces, banners, and/or signage at locations that include but may not be limited to… 23rd & Union (page 44)

- "23rd and Union Node – The Community's Business Center. Continue adding commercial office space and professional services. Encourage housing density in and around the commercial area…" (page 50)

  "Moderate Income Housing. Encourage development of market-rate housing affordable to families of modest or moderate incomes. (80% - 120% of median)." (page 66)

- "Through implementation of the comprehensive plan and/or neighborhood planning, designate Key Pedestrian Streets within the highest-density portions of urban villages and along logical connections between villages. Design and operate these streets to be safe and attractive for pedestrians, improve access to transit, encourage street-level activity, and facilitate social interaction. Integrate pedestrian facilities into street improvements on these streets.

Consider strategies such as curb bulbs, mid-block crosswalks, benches, street trees, wider sidewalks, lighting, special paving, overhead weather protection, and grade-separated pedestrian walkways over or under major obstacles to pedestrian movement." (page 72)

- "Union Street Improvements. Improve street landscaping and street furniture and provide lane modification on Union at 23rd Avenue to reduce pedestrian accidents, improve parking, improve safety for bicycles and enhance the business node." (page 82)

- "Union Streetscape and Urban Design. Promote a pedestrian environment along Union between 19th and Martin Luther King Jr. Way. Request Seattle Transportation, the Department of Neighborhoods, and Seattle City Light to work with neighborhood associations to establish streetscape features such as decorative street lighting, seating areas, intersection paving patterns, and community identity markers." (page 84)

The following 2005 Comprehensive Plan goals and policies are also relevant to analysis of this rezone application:

- Policy CA-P1: Enhance the sense of community and increase the feeling of pride among Central Area residents, business owners, employees, and visitors through excellent physical and social environments on main thoroughfares.

- Goal CA-G2: A community where residents, workers, students and visitors alike can choose from a variety of comfortable and competitively convenient modes of transportation including walking, bicycling, and transit and where our reliance on cars for basic transportation needs is minimized or eliminated.

- Goal CA-G3: A community that is served by a well-maintained infrastructure…

- Goal CA-G4: A stable community with a mix of housing types meeting the needs of a wide variety of households, where home ownership is an affordable option for many households.

- Policy CA-P7: Encourage use of travel modes such as transit, bicycles, walking and shared vehicles… and discourage commuting by single occupant vehicle…

- Policy CA-P24: Create a viable business base that will attract investment, focusing on neighborhood retail, professional and personal services, restaurants, and entertainment. Support the urban design element of the Central Area Neighborhood Plan that strengthens development and enhances the pedestrian nature of each area.

- Goal CA-G6: [Develop] distinct but mutually supportive primary business districts along the 23rd Avenue Corridor… 23rd and Union Node --

Business/Restaurant Center: A small scale commercial hub serving the neighborhood, providing a range of residential housing types.

This rezone proposal is consistent with these goals and policies. The neighborhood plan (CAAP II) specifically labels the 23rd and Union intersection as the "23rd and Union Node" and expressly encourages shopping, commercial and residential development with density at the core of that node.

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 shall be minimized by the use of transitions or buffers, if possible. A gradual transition between zoning categories, including height limits, is preferred.*

The updated rezone proposal is solely for an increased height allowance from 40 to 65 feet (the next tallest level designated in the land use code). The existing "P-suffix" parcels along Union and 23rd will remain. Those that do not currently have a "P-suffix" overlay will be rezoned with the "P-suffix". The increased height allowance will result in more viable commercial and residential development on the property, consistent with the recommendation of the Comprehensive Plan and the DPD recommended "23rd Ave Union-Cherry-Jackson Action Plan".

The property to the west has an NC2-65 designation, with an approved master use permit which allows development as a ground-floor retail and 96-unit residential project. The properties to the northwest, north and northeast are currently designated NC2-40. (The DPD recommended "23rd Ave Union-Cherry-Jackson Action Plan indicates that these properties also are suitable for NC2-65 zoning designations.)

All properties on the subject block are currently zoned NC2-40. Properties to the east, across 24th, are zoned NC2-40 and SF 5000. Properties to the south, across Spring Street, are zoned SF 5000. The SF 5000 zoned properties are separated from the proposed rezone property by city streets, and have been adjacent to commercially zoned property for decades. In this light, a change from NC2-40 to NC3-65 will not significantly affect these SF 5000 zoned properties. In addition, Seattle's design review process, which is designed to address, among other issues, appropriate transitions with development on neighboring properties, will review and condition future project-specific development proposals on the property.

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 green spaces.*

The subject property is bordered on all four sides by public rights of way. No other physical buffers exist between the proposed height increase and the existing, surrounding zones.

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.

   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.*

The proposed rezone will not change the currently existing boundaries between the commercially and residentially zoned areas.

4. *In general, height limits greater than forty (40) feet should be limited to urban villages. Height limits greater than forty feet (40) 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.*

The site is located within an urban village where heights greater than 40 feet are contemplated. The proposed rezone will increase the height limit from 40 to 65 feet.

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 proposed rezone will afford the property with the opportunity to be developed with housing at an increased density due to the 65 foot height limit.

   b. *Public services;*

The proposed rezone will not of itself require public services, but subsequent development will.

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

The proposed rezone will allow two stories of additional height without changing the type of uses allowed on the subject property, which is currently developed as a retail commercial center. There will likely be no appreciable negative environmental impacts associated with allowing the proposed denser urban infill development compared to existing zoning.

d. Pedestrian safety;

The area currently has sidewalks, street lights and crosswalks; therefore the proposed rezone will not adversely impact pedestrian safety. New commercial and residential development on the site would increase "eyes on the street," which is assumed to enhance overall safety in the neighborhood. The property has, and will retain, the "pedestrian" designation, on all lots facing Union and 23rd, requiring a number of pedestrian-friendly design elements as part of any site development.

e. Manufacturing activity;

There is no manufacturing activity on the property or in the property's vicinity.

f. Employment activity;

The proposed rezone will result in the opportunity for substantial commercial development, which will provide additional employment opportunities in new retail facilities as well as in constructing and maintaining the commercial and residential development on the subject property.

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

The existing development on the subject property is not considered to have architectural or historic value. No adjacent properties have been identified as having historic value.

h. Shoreline view, public access and recreation.

The proposed rezone will not impact shoreline, public access or recreation uses.

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;

The additional development potential provided by the rezone is minimal in terms relative to street access in the project vicinity.

b. Street capacity in the area;

The additional development potential provided by the rezone will generate traffic which will use street capacity in the area. The street capacity of the area, however, can reasonably accommodate the traffic associated with that additional development potential.

c. Transit service;

The additional development potential provided by the rezone is negligible in terms relative to transit ridership for the project vicinity.

d. Parking capacity;

The area is in a pedestrian zone, with easy transit access both to downtown and to the University of Washington. New development will accommodate any City-required parking on site.

e. Utility and sewer capacity;

The proposed rezone is in an area that has experienced low water pressure, low sewer capacity and flooding issues. Seattle's Comprehensive Plan identifies how the City is addressing these issues: "The capacity of the wastewater system is limited in confined areas of the city, where there have been historic hydraulic and system backup problems. These problems are being addressed through developer-funded facility upgrades and by Seattle Public Utilities CIP." Additional residential density is of concern for existing sewer capacity, but the proposed height increase is not directly related to an increase in residential units on site and the limited local infrastructure is not directly burdened by the proposed rezone for additional height. The current proposal is for a rezone of the site only, Subsequent proposals for actual development on site may have to deal with issues of inadequate capacities and all future development on site will have to meet standards of approval set by Seattle Public Utilities.

f. Shoreline navigation.

The proposed rezone will not impact shoreline navigation.

A. 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 designations in this chapter.

The most significant changed circumstance is that the United States Postal Service has significantly downsized its presence in the existing MidTown Center on the property. Other adverse changes include the shuttering of a local branch of a bank, and the closure of some long-term business establishments. These changes, taken together, could lead to additional vacant storefronts and neighborhood decay. According to the applicant, the rezone is important as a catalyst to encourage redevelopment of the property for residential and commercial purposes as envisioned in the City's Comprehensive Plan, the existing neighborhood plan, and current neighborhood planning which envision this locale as a site that will serve as a neighborhood hub and gathering place and serve as a demonstration of the community's resilience.

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

The proposed rezone is not located in an Overlay district; thus this criterion does not apply.

C. 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.

The subject site does not contain any environmentally critical areas.

<u>SMC 23.34.009 - Height limits of the proposed rezone.</u>

Where a decision to designate height limits in 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.

This rezone seeks only to increase the proposed height limit of parcels zoned NC2 from 40 to 65 feet to accommodate increased housing density and, in order to allow more viable retail development. These two changes are consistent with the type and scale of development intended for the NC2 zones in a residential urban village, as discussed above with regard to the comprehensive and neighborhood plans. In particular, the creation of new commercial development and residential apartments will add density and vitality to the desired pedestrian character of the residential urban village.

The proposed rezone's location at the 23rd and Union intersection, long recognized as a central community hub for the neighborhood, will provide density at the center of the urban village and is expected to encourage redevelopment, particularly with the current use of the MidTown Center property confronted with the loss of the USPS facility and the threat of empty storefronts. The applicant believes that redevelopment authorized by the proposed rezone will bring a substantial number of new residents to the neighborhood, plus the jobs provided by the commercial development on site. As intended with urban villages, this will draw more pedestrian traffic from the surrounding residential neighborhoods to the urban village node, increasing use of local merchants while reducing dependence on automobiles. The rezone is likely to meet demands for permitted goods and services by providing housing and commercial opportunities on the current MidTown Center site.

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.

The immediate vicinity of the proposal site is relatively flat. The site sits halfway on the western slope of a valley that begins on 18th Avenue and slopes downward to Martin Luther King Jr. Way. It then rises from that point to the Madrona neighborhood. The proposal site enjoys easterly views. Because surrounding properties to the site are currently zoned for higher, the same, or lower heights (65 feet, 40 feet, 30 feet, or single family), surrounding properties would generally not be subject to worse view blockage from the proposed 65-foot limit than would currently exist.

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.*

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 D2, are present.*

The subject site and lots along 23rd Avenue, under the current zoning, have a maximum height limit of 40 feet, with the exception of the site immediately to the west, which has a maximum height limit of 65 feet. The existing buildings within this zone, however, generally do not extend to this maximum height.

Existing development in the area is not a good general measure of the area's overall development potential as there remains sufficient additional capacity for more retail and residential development. The goals and policies that apply to the 23rd RUV would be met by the re-development of MidTown into a mixed-use, pedestrian friendly element of the village. Changing the height designation from 40-feet to 65-feet creates a continuous central focal point (combined with the approved project directly to the west across 23rd Avenue) for the 23rd and Union Node, one that intended as an anchor to redevelopment of 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.*

There are no specific discussions of applicable height limits in CAAP II or the Central Area policies in the Seattle Comprehensive Plan, although they do speak to the importance of establishing commercial and residential density in this key community node. The Land Use Element of the Comprehensive Plan contemplates that heights greater than 40 feet may be needed in urban villages. LU120 states: *"Assign heights to commercial areas independently of the commercial zone designations. Allow different areas within a zone to be assigned different height limits based on the appropriate height to*: *further the urban village strategy's goals of focusing growth in urban villages; accommodate the desired functions and intensity of development….* See also CAAP II, p. 50

SMC 23.34.072 - Designation of commercial zones.

This proposal does not seek to change the commercial zoning of the property and assumes the functional and locational validity of the current Neighborhood Commercial 2 zoning (SMC 23.34.076). The property will continue to meet the designation of the commercial zones criteria that emphasize edge transitions and concentrated commercial uses. The proposed rezone takes cognizance of the criterion that states that "the preservation and improvement of existing commercial areas shall be preferred to the creation of new business districts" (SMC 23.34.072. E.).

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

The proposal does not seek to change the NC2 zoning designation of the property. The property continues to meet the locational criteria of the NC2 zone as the primary business district in the 23rd Residential Urban Village. The site is located on a principal arterial (23rd Avenue) and a minor arterial (Union Street), which have good capacity but are not major transportation corridors. The rezone site and its adjacent NC2 parcels are small to medium in size, with the rezone site as one of the larger properties in the area at 106,189 square feet.

The functional criteria of the NC2 zone can be more adequately achieved with future redevelopment of the site.

SMC 23.34.086 - Pedestrian designation (suffix P), function and locational criteria.

The subject property currently has the Pedestrian ("P") designation as a substantial part of its zoning on site, and the proposed rezone does not seek to remove that designation. Appealing to the principle that zoning histories that have resulted in a kind of gerrymandered zoning map are less than desirable from the standpoint of applying and administering uniform development standards to development sites, and therefore do not serve the public interests well, the Director recommends that the two non-contiguous areas within the block that are currently zoned *NC2-40* (and not NC2***P***-40) be zoned NC2P-65 as well. The NC2-40 applies to properties that comprise only 17.3% of the total site. The entire property site continues to meet the locational criteria of the Pedestrian designation as a commercial node in an urban village, zoned NC on both sides of the arterials with excellent pedestrian, bike, and transit access. The proposed additional height will not detract from the pedestrian character of the site and, by providing additional density, it is very likely to promote additional pedestrian and bicycle activity plus transit frequency and accessibility.

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 those 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.

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.

C. Overlay districts established pursuant to neighborhood plans adopted by the City Council may be modified only pursuant to amendments to neighborhood plans adopted or amended by the City Council after January 1, 1995.

D. 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 re-designations as provided in SMC Subsection 23.60.060 B3.

E. 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. This subsection does not apply to the provisions of other chapters including, but not limited to, those which establish regulations, policies, or other requirements for commercial/mixed use areas inside or outside of urban centers/villages as shown on the Future Land Use Map.

F. The procedures and locational criteria for shoreline environment re-designations are located in Sections 23.60.060 and 23.60.220 respectively.

G. 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 above analysis has considered the foregoing criteria and complies with the individual valuations where applicable.

Lacking any development proposals accompanying the rezone application, actual development on the existing parcels could follow a variety of scenarios. There could be no immediate major changes in the current commercial structures on site. The current zoning would allow changes of use on the existing parcels and within the existing commercial structures where some or all of the commercial space would be converted to new commercial uses. New development of single-purpose commercial structures might also take place on individual lots or on lots combined for development. The subject sites are not located in any mapped Environmentally Critical Area (ECA) where restrictions might curtail the full build-out of the sites. The residential portion of a mixed-use structure, however, allowable under a NC2P-65 zoning designation, should exceed the density of structures which might be built under the current NC2P-40 zoning, especially if some of the individual subject sites were to be combined for development purposes.

Given the circumstances of the subject properties, the history of zoning, and the goals of neighborhood planning, as well as the applicable locational and functional criteria in Chapter 23.34 of the Land Use Code, the Neighborhood Commercial 2P zone, with an allowable 65-foot height limit, would appear to be as suitable a zoning designation for the property as is the existing NC2P-40 zone and one that provides more potential for desired residential density. . Although there is unused development potential within existing NC2P-40 zoned property in the 23rd Avenue and E, Union Business District, recent interest in neighborhood development in the area and a longer term perspective would indicate that the an additional 106,189 sq. ft. of

Neighborhood 2 -zoned property with a 65 foot height limit would not constitute a surfeit of property so zoned.

RECOMMENDATION - REZONE

This site and surrounding neighborhood are within the adopted boundaries of the 23rd and Union-Jackson Residential Urban Village. The proposed rezone also meets the general rezone criteria, where applicable. Regarding the neighborhood plan criteria of 23.34.008.D, the adopted neighborhood plan unfortunately gives little specific direction on this rezone question.

The contract rezone proposal will create the opportunity for a development containing a mix of commercial and residential uses that will be compatible with the existing neighborhood context, and preferable to other approvable configurations under the current zoning. The Director recommends **APPROVAL** of this rezone request. The Director also recommends for consideration the following: Should a broader, area-wide rezone of the 23rd Avenue and E. Union Street intersection be contemplated by City Council in the near future, and should that broader rezone be made subject to an "incentive zoning suffix" complying with subchapter 23.58A of the Land Use Code, at such a time the subject site should be made subject to the same suffix.

ANALYSIS – SEPA

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant dated March 27, 2013 and annotated by the Department. The information in the checklist, supplemental information provided by the applicant, (soils report), project plans, 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.

Short-term Impacts

As a non-project action, the proposed amendments will not have any short-term impacts on the environment. Future development affected by this legislation and subject to SEPA will be required to address short-term and long-term impacts on the environment.

Long-term Impacts

The proposal to rezone the subject parcels from NC2-40 and NC2P-40 to NC2P-65 is expected to generate various impacts, but while these impacts may be adverse, they are not expected to be significant. As an incentive for development the rezone could foreseeably add to traffic congestion and provide for other impacts. It is expected that these impacts would be well within the range of impacts expected for this kind of urban development; while significant, such impacts would not be expected to be adverse and generally they would be addressed by existing Land Use and Construction Codes.

The added height allowance should act as an incentive for mixed-use development and an increase in the development of residential units in the area. Residential development, however, would not be required of the site and actual development proposals could diminish the potential for realizing the general residential goals set forth in the Seattle Comprehensive Plan.

The existing right-of-way of 23rd Avenue would continue to operate in periodic crowded conditions which could presumably be intensified by development on the subject site. New development on the subject sites would undoubtedly mean increased surface water runoff due to greater site coverage by impervious surfaces and loss of plant and animal habitat. Future development may increase demand for on-street parking and may result in increased light and glare and noise and traffic and demand for public services and utilities. These long-term or use-related impacts are associated with development, however, and would be addressed at the time of development permit application. No additional SEPA conditioning or mitigating measures are warranted at this time.

Actual development on the sites, if substantial enough, will be subject to further SEPA review. Environmental review resulting in a Threshold Determination is required pursuant to the Seattle State Environmental policy Act (SEPA), WAC 197-11, and the Seattle SEPA Ordinance (Seattle Municipal Code Chapter 25.05). Any required review will include identifying additional mitigation measures needed to achieve consistency with SEPA and other applicable environmental laws.

No new construction of structures is proposed for the subject site at this time. The rezone would result in the opportunity for the property to be developed as single-purpose commercial structures or as mixed-use structures with commercial and residential uses. Future construction of sizeable structures, especially on combined subject parcels, would require SEPA and Design Review.

Future construction activities including construction worker commutes, truck trips, the operation of construction equipment and machinery, and the manufacture of the construction materials themselves might well result in increases in carbon dioxide and other greenhouse gas emissions which adversely impact air quality and contribute to climate change and global warming. There would be no temporary or construction-related impacts directly resulting from the rezone, however, which is a change in a Land Use map designation only. Therefore, no conditioning pursuant to SEPA construction policies is warranted.

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.

CONDITIONS - SEPA

None required.

Signature: (signature on file) Date: November 7, 2013
Michael Dorcy, Senior Land Use Planner
Department of Planning and Development

MD:bg

H:dorcym/doc/decision3005931(rezone).doc

VORM 3005931

City of Seattle Hearing Examiner
EXHIBIT
Applicant ___
Department ✓ ADMITTED ✓
Public ___ DENIED ___
FILE # CF-312993

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xxxx

√QRM

3005931

RECEIVED
MAY 01 REC'D
BY:

If you wish to file written comments and/or receive a notice of the decision, please return this completed form with any written comments you have to: Seattle Department of Planning and Development, 700 5th Ave Ste 2000, PO Box 34019, Seattle, Washington 98124-4019.

Name: ANNE LANDGREN Project #3005931 – Michael Dorcy, 22nd flr

Address: 1408 22ND AVE

SEATTLE, WA Zip: 98122

Comment: I FULLY SUPPORT THE REZONE AS A FUNDAMENTAL STEP TOWARD REJUVINATING BUSINESS + COMMUNITY IN THE 23RD + UNION AREA.

Harris, Johnny

From: MLBrown@bellevuewa.gov
Sent: Wednesday, April 24, 2013 12:22 PM
To: PRC
Subject: Master Project #3005931

The Central District News announced that you are accepting comments about the proposed rezone of the post office parcel at 23rd & Union. (http://www.centraldistrictnews.com/2013/04/the-sign-is-up-23rdunion-post-office-block-could-allow-65-foot-buildings/)

I just wanted to send a quick note that I am in support of this rezone.
I live at 27th & Cherry, and I walk to this business district regularly. I look forward to more neighborhood revitalization, and I think tall buildings will be a great benefit to the community. It will provide more housing, which will provide more customers for the businesses. The more people and businesses that we can get in the neighborhood, the more people will walk around, which deters crime and jump starts more community participation.

Thanks,
Melissa Brown
522 27th Ave

Harris, Johnny

From: Keith Shields [keith.shields@yahoo.com]
Sent: Wednesday, April 24, 2013 1:17 PM
To: PRC
Subject: Master Project #3005931

Hi,

I live in the area near 23rd and Union and strongly support the proposed upzone for the southeast block of that intersection.

Thank you for your time,

Keith Shields
keith.shields@yahoo.com

Harris, Johnny

From: Brian de Place [bdeplace@gmail.com]
Sent: Wednesday, April 24, 2013 8:29 PM
To: PRC
Subject: Master Project #3005931

I live on 20th near E Union st and I feel the 23rd and Union intersection would benefit greatly from a re-zone. The area needs stronger pedestrian attractions and business anchors. A re-zone with residential units on top and retail on the ground would help make this area more active and safer. Thanks,

Brian de Place

Sent from my iPad

Harris, Johnny

From: Sachin Kukreja [sachin_kukreja@hotmail.com]
Sent: Wednesday, June 05, 2013 9:46 PM
To: PRC
Subject: project # 3005931

Hello,

I whole heartedly support the rezone of the 23rd/Union intersection. This area is sorely in need of investment and the higher density will surely incent developers to pour money into the corner. The whole strip between Cherry and Union on 23rd needs to be cleaned up of all the drug gangs. Putting quality housing in that corner will start the rejuvenation process of this blighted area.

Should you need to reach me, I can also be reached by telephone at: 206-412-6130.

Thank you.

Clowe, Michael

From: Julius Schorzman [juliuss@gmail.com]
Sent: Friday, April 26, 2013 7:29 PM
To: PRC
Subject: Master Project #3005931

Hello.

I'd like to write in support of ☒ Pro ☒ Con increasing the height limit on this site. I live nearby (in Madison Valley) and this neighborhood could use a new anchor. With the post office gone, I'm afraid a low rise would turn this neighborhood into a low foot-traffic ghost town.

Please increase the limit to at least 65 feet to entice a larger development in this place.

Clowe, Michael

From: Macias, Michelle
Sent: Friday, May 10, 2013 9:17 AM
To: PRC
Subject: FW: Development on 23rd and Union

-FYI

From: Michael Zitka [mailto:Michael.Zitka@PREMERA.com]
Sent: Friday, May 10, 2013 9:00 AM
To: Macias, Michelle
Subject: Development on 23rd and Union

April 30, 2013

Department Planning and Development
ATTN: Public Resource Center or Assigned Planner
700 5th Ave Ste 2000
PO Box 34019
Seattle WA 98124-4019

To Whom It May Concern:

We would like to express our opposition to the proposed rezone of project #3005931, located at 2301 E Union St. The proposal changes the zoning from NC2P-40' to NC3P 65' for an entire city block. We are opposed to this action for the following reasons:

1. The adjacent uses on the south and east are zoned "Single Family 5000" with a maximum height of 30'. The proposal would allow a height of 65' directly across two narrow, quaint neighborhood streets (Spring St. to the south, and 24th Ave to the east). There are approximately 18 homes and townhomes directly across the street from this project. For this reason, the rezone would be contrary to the zoning principles contained in SMC Section 23.34.008.E:

   "The following zoning principles shall be considered: 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."

2. A development of a full city block to 65 feet would substantially intensify the use of the area from traffic, noise, and shade/light perspectives. A building that size would loom over the existing homes to the east and south, cutting off light during the day and increasing glare at night.

3. Both East Spring Street and 24th Avenue are so narrow that they are limited to one car at a time when cars are parked on the sides (most of the time). These streets cannot accommodate additional traffic and/or parking.

4. There is no compelling economic reason for the proposed rezone. The property located at 2203 E. Union Street was granted a rezone to NC-65, but that property has severe restrictions as to size and parking availability. Furthermore, that property is adjacent to other commercial uses (on the south and west). These reasons do not

apply to the 2301 site as it encompasses a full city block. We believe that any savvy developer should be able to develop a site of that size to the current zoned height of 40' and still make a profit. The private profit that would be enhanced by raising the building height would come at the expense of the rest of the neighborhood and is not justifiable.

In closing, we would like to say that we welcome (and are excited about) new development on this property. But we cannot support the intensity that would come with the proposed rezone.

Please add our names and email addresses to the contact list for any council meetings or other proposed public meetings regarding this property.

Thank you for your consideration,

Michael Zitka

Property Owner 2410 East Spring Street, Seattle wash. 98122

Harris, Johnny

From: Joanna Cullen [jfoxcullen@gmail.com]
Sent: Thursday, May 23, 2013 12:00 AM
To: PRC
Subject: Rezone request #3005931 comment

Dear DPD,
I object to the rezone to NC3P 65 for project 3005931.. The corner property across the street was allowed a contract rezone NC2P 65, which has never materialized during the past 5 years and has likely expired. NC2P 65 was likely going to overwhelm and be a radical departure from the general character if the neighborhood. In granting even an NC2P 65 there should mitigation that includes negotiation for green park space where families and other residents can be. Something that is sorely lacking here. Increase in the amount of set back should also be a part of this mitigation.

I am not a land use expert and feel that it is difficult for members of the public who do not

Council Land Use Action to Rezone 106,189 sq. ft. of land from NC2P-40' to NC3P 65'. The property is an entire City block and is bounded by 23rd Avenue to the west, 24th Avenue to the east, East Union Street to the north and East Spring Street to the south.(CF#312973)

NC2P40, ARTERL, URBNV

Council Land Use Action to Rezone 106,189 sq. ft. of land from NC2P-40' to NC3P 65'. The property is an entire City block and is bounded by 23rd Avenue to the west, 24th Avenue to the east, East Union Street to the north and East Spring Street to the south.(CF#312973)

--
Joanna Cullen
206-329-8514
jfoxcullen@gmail.com

Harris, Johnny

?

From: Joanna Cullen [jfoxcullen@gmail.com]
Sent: Thursday, May 23, 2013 12:15 AM
To: PRC
Subject: Master Use Project #3005931 comments cont.

I realize that I may not have used the exact correct terminology. However, I was recently informed that the May 22 was the deadline for comments and obviously I was working close to midnight on the last one. This one is after midnight, but in hopes that you will allow this followup to my objection. The scale of the businesses allowed by an NC3P 65 would also overwhelm the current local business community. We do not desire the big box and chain model for this neighborhood. We need to bring the neighborhood together through building on what is good in the history, culture, and character of what is here, not tear it down. Thank you.

--
Joanna Cullen
206-329-8514
jfoxcullen@gmail.com

Harris, Johnny

From: Wynnia Kerr [wynnia.kerr@gmail.com]
Sent: Wednesday, May 22, 2013 9:53 PM
To: PRC
Subject: Dept Of Planning Development Project 3005931

Dear Sir or Madam:

For 6 years, I have owned a single family home at 2414 E. Spring Street. Tonight, I attended a meeting of the Union Street Business Association at which there was heated opposition expressed by other property owners to the rezoning of the block at Union, 23rd, 24th and Spring (project 3005931).

I join in opposing the rezoning for many reasons too numerous to list here. Among them are:

Street Congestion
Adjacent streets are mostly single family home neighborhoods with many elderly and young families. A block of large retail business and 6 floors of housing will substantially increase car traffic congestion on nearby residential streets, including my own. As with all traffic congestion, it will be hazardous to residents, discourage walking and degrade the residential environment.

On street parking
Many homes in nearby residential areas do not have garages or other off-street parking. Along with increased traffic, the rezoning will bring increased use of neighborhood parking by shoppers, new residents and visitors. Loosing free on street parking is very detrimental to nearby homeowners and existing small businesses in the neighborhood,

African American Culture
The 23rd and Union intersection has been the hub of Seattle African American culture for decades. Just one example is the ground breaking1990s song by Sir Mixalot, which highlights this intersection. It would be a tragedy for this African American cultural center to be damaged or destroyed by development. To ensure that the African American culture remains vibrant in this area, any development of 23rd &Union should be required to provide financial incentives to help existing minority businesses stay and include low income housing for African Americans.

Sincerely,

Heather W. Kerr

Harris, Johnny

Darcy

From: Samantha Overmyer [samover87@gmail.com]
Sent: Wednesday, May 22, 2013 11:51 PM
To: PRC
Subject: Project #3005931

To Whom It May Concern:

I want to comment on the project #3005931. I moved to the Central District one year ago. I walk through the intersection of 23rd & Union almost every day, sometimes multiple times a day. The amount of sunlight and open sky that this area receives is unique for an urban area and a great resource of life. A 65-foot building in this area will stick out like a sore thumb and be a great obstruction of light.

The Central District is lacking what it needs. The residents of this area need jobs. The CD needs businesses where people here can work and gather. It is lacking community gathering spaces and green spaces. There is no where in the Central District to get fresh produce at a reasonable price. We need a market spaces and local businesses. None of these things need to be in a building any taller or less attractive than Garfield High School.

Make use of what we have. Do not eradicate it and neglect the requests of the natives. Look at history.

Thank you,
Samantha Overmyer

Harris, Johnny

From: Alfred Harris [alfred@alfredharris.com]
Sent: Wednesday, May 22, 2013 11:13 PM
To: PRC
Subject: project #3005931

Hello,

The community meeting this evening was well attended but poorly facilitated and therefore inconclusive.

I'd like further group meetings about this put together by residents rather than graduate students.

Thank you,

Alfred Harris

Clowe, Michael

From: Tova Elise Cubert [tova@speakeasy.net]
Sent: Thursday, July 04, 2013 8:41 AM
To: PRC
Subject: re: #3005931

Hello,

I'm wondering how to get on the list for announcements, design reviews and public comment periods for this project #3005931?

Thank you,

Tova E Cubert
206 778 8682

Harris, Johnny

From: Jill Mangaliman [j.a.mangaliman@gmail.com]
Sent: Wednesday, May 22, 2013 8:16 PM
To: PRC
Subject: Project #~~3005139~~ 3005931

I am commenting on Project #3005139. I am a resident of the Central District neighborhood for the last 5 years, on 24th and Spring, and have lived in Seattle all my life. I am very concerned about the rezoning of the lot on the corner of 23rd and Union - 2301 E Union. There are many small businesses that have been a community hub for the neighborhood, that are predominately African-American-owned and racially diverse, and I am hopeful that these businesses will be protected and given priority to the new spaces created by the development. I want to see a community clause in the zoning that allows community input on what businesses are allowed, that businesses that have been there originally are given an opportunity to return, and that the identity of the Central District, as historically a racially diverse, African-American-centric, family-oriented neighborhood be preserved. I am concerned that dense apartments, recreational and large businesses will take away from the neighborhood's identity, and also take away affordability and parking. We do not want to become another Capitol Hill or "Little Amsterdam." We do not want a density of bars, clubs, and marijuana dispensaries. Also, include affordable housing and free parking for small businesses and all of the residents here. The neighborhood needs to have determination and a clear plan of what is allowed on this corner, and make sure that community members and businesses are not displaced.

Thank you,

Jill Mangaliman
943 24th AVE APT 3
Seattle 98122
2063040997

Harris, Johnny

From: anna finkenzeller [annafinkenzeller@yahoo.com]
Sent: Wednesday, May 22, 2013 8:26 PM
To: PRC
Subject: project #3005931

Hello,
I'm writing about the rezone at 23rd/union. There are many, many families that are concerned about the zoning that will happen. Please delay the rezoning until they include a community clause into the rezoning. It's vital to our community.

Thank you,
Anna Finkenzeller

959 22nd Ave
Seattle, WA 98122
206-200-2018

Harris, Johnny

From: Teresa Clark [clarkteresa@gmail.com]
Sent: Wednesday, May 22, 2013 10:49 PM
To: PRC
Subject: Project #3005931

Dear City of Seattle,

As a resident of the Central District, I wanted to take a minute to weigh in on the possible rezoning of 23rd & Union.

I feel it's important the City preserve African American businesses, community determination of the space, affordable housing, and free parking.

Thanks for taking public comment into consideration.

Respectfully,
Teresa Clark
Seattle, 98144

To: PRC
Subject: Project 3005931

To whom it may concern;

Greetings.

i live but a block away from the proposed development on the block between 23rd/24th and Union/Spring. These is a large sign saying we can leave comments on the environmental impact of the project on the area.

i appreciate the asking for feedback. Yet, i was wondering if there is a way to find more information about the project is that is proposed for the block, what will happen to the businesses and post office, and Umoja Peace Center that are on that block at the moment.

i would greatly appreciate more information about the proposed land use project, its benefactors, timeline, etc.

Thank you for your time and assistance.

Sincerely;
alma

Harris, Johnny

From: alma khasawnih [almakhasawnih@gmail.com]
Sent: Tuesday, May 07, 2013 8:36 AM
To: PRC
Subject: Re: Project 3005931

Good morning;

Thank you for the quick reply.

i looked at the materials and would like higher resolution site plans please; the two online now are difficult to read. Thank you.

Also, i would like the following comments to be included on the community conversation board:

i live on 24th and Spring; i.e. right next to the proposed development area. Knowing that i cannot stop this development, i would like the following to be taken seriously and into account:

1. The developers must give priority to the business owners who are already on this block to return when the development is done and secure similar rent to what they pay now for an agreed upon period. These businesses are: laundromat, 99c store, Louisiana Grill, Post Office, First Cup coffee hut, Mana hairdresser and beauty store, Earl's Cuts, and the liquor store. These owners have been here forever and i've talked to many of them and they want to stay.

All these business, aside from the Post Office, are owned by people of color and should be encouraged and supported throughout the process of transformation. Therefore, their livelihood during construction must be also included in the conversation.

2. The developers should not include a grocery store in their plans: there are 5 grocery stores around this area, the furthest are on Madison and 17th (Trader Joe's and Madison Market, which is an organic coop local, etc. market). There is also Red Apple, Grocery Outlet, and Safeway. Not to mention the corner store on 21th and Union. There is no need for any other grocery store on this particular block.

3. Umoja Peace Center has been on this block for a long time and they must also be given priority on returning to the area.

Thank you for your time.

Sincerely;
alma

On Tue, May 7, 2013 at 7:14 AM, PRC <PRC@seattle.gov> wrote:

Hi Alma,

You can view all the application materials that were submitted for the application. Use the project number in the search by number box.

http://web1.seattle.gov/dpd/edms/

Thank you,
PRC Staff

Department of Planning and Development
Public Resource Center
700 Fifth Avenue, Ste. 2000
P. O. Box 34019
Seattle, WA 98124-4019

PRC@seattle.gov
Tel: 206-684-8467 (message line)
Fax: 206-233-7901

Hours of Operation:
Public Resource Center
M/ W/ F: 8:00am – 4:00pm
Tu/ Th: 10:30am - 4:00pm

Microfilm Library
M/ W/ F: 8:00am - 4:00pm
Tu/ Th: 10:30am - 4:00pm
DPD_microfilm@seattle.gov

Tel: 206-233-5180 (message line)

From: alma khasawnih [mailto:almakhasawnih@gmail.com]
Sent: Monday, May 06, 2013 8:07 PM

Harris, Johnny

From: Ron Stephens [stephensrw@gmail.com]
Sent: Tuesday, May 07, 2013 4:27 PM
To: PRC
Cc: Steve Tucker; Pastor Olsen; Glenn Adams; Annie Lamb
Subject: Master project #3005931

Dear Seattle Department of Planning and Development,

Regarding Master Project #3005931, located at 2301 E. Union, we the property owners and congregation of The Lutheran Church Of The Good Shepherd located at 2116 E. Union, are hereby requesting an extension of the public comment period until May 22, 2013 in order to allow more time for discussion within the community regarding the impacts of the proposed project.

Thank you for your consideration.

Sincerely,

Ron Stephens
Congregation President
The Lutheran Church Of The Good Shepherd
206-325-2733

Clowe, Michael

From: Steve Orser [steve.orser@lennar.com]
Sent: Sunday, April 28, 2013 6:33 AM
To: PRC
Subject: Project #3005931

Please include me on any information for this project. Thank you.

LENNAR

Steve Orser
Lennar Multifamily Investors
1191 Second Avenue, Suite 1570
Seattle, WA 98101
206.816.1578

EARL'S CUTS & STYLES
1162 23ND Avenue
Seattle, Washington 98122
(206) 322-2687

City of Seattle Hearing Examiner
700 Fifth Avenue – Suite 4000
Seattle, Washington 98104

2301 East Union Rezone
Seattle, Washington 98122
Project No. 3005931

Dear Ms. Hearing Examiner:

My name is Earl Lancaster and I was born in Seattle's Central Area in 1968. I have worked as a barber at 23rd & East Union for more than 25 years and have been a tenant business owner at the MidTown Center for more than 21 years. I am also President of the Union Street Business Association (USBA) and work closely with students from Seattle University's Albers School of Business and Economics to address the many challenges and opportunities that arise when a neighborhood is redeveloped. I have personally witnessed the comings and goings of many local businesses and Earl's Cuts & Styles has weathered many an economic storm.

I support this rezone because it returns needed jobs, density and retail shops ... making 23rd & East Union resilient and once again a thriving neighborhood. I remember going to Mayrand's Pharmacy, Tradewell and Safeway grocery stores, Liberty Bank, Ms. Helen's Soul Food, Herb's Hardware Store and many other small businesses that have occupied this key corner. They are all gone now!

This neighborhood would benefit significantly from the requested rezone. Tom and the Bangasser family have been strong supporters of this neighborhood and my business through both good and hard times and I know that they will continue to work with me as this property is redeveloped. I look forward to remaining a member of this great neighborhood and request that you approve this rezone to 65 feet.

Sincerely,
Earl Lancaster

Earl Lancaster

PS: I have enclosed a copy of Seattle University's recent Fall Magazine containing a relevant article about my business and the Union Street 98122 initiatives --- "Neighbor Helping Neighbor"

City of Seattle Hearing Examiner
EXHIBIT
Applicant ✓
Department ___ ADMITTED ✓
Public ___ DENIED ___
FILE # CF-312973

11

City of Seattle Hearing Examiner
EXHIBIT
Applicant ___
Department ___ ADMITTED ✓
Public ✓ DENIED ___
FILE # CF-312973

12

CENTRAL AREA
LAND USE
REVIEW
COMMITTEE

Central Area Neighborhoods District Council

December 9, 2013

City of Seattle – Hearing Examiner
700th 5th Ave, Suite 4000
P.O. Box 94729
Seattle, WA 98124 – 4729

Subject: **DPD Project No. 3005931**
Hugh Bangasser Rezone Application for 2301 E Union St, Seattle WA 98122

Madam Hearing Examiner:

The Central Area Land Use Review Committee (CA LURC) is the land use committee of the Central Area Neighborhoods District Council which represents the community councils and business and service organizations of Seattle's Central Area. Our eleven committee members have diverse and strong professional and academic credentials in urban planning and architecture, as well as experience and reputation as community leaders, organizers and activists within the Central Area. Our committee members have actively participated in the previous neighborhood planning cycles for the Central Area as well as with the City's current neighborhood planning process for the area that encompasses the subject site and has resulted in the Draft Urban Design Proposal and the 23rd Ave Action Plan.

Our comments are supported by majority vote of the Central Area Neighborhoods District Council.

The CA LURC and the Central District Council strongly support the City's current neighborhood planning and Legislative Rezone process which is well underway. This planning process includes the subject site and will recommend zoning changes to the property – along with conditioning that will make this site operate within the immediate vicinity and the wider area as a whole. The careful and definitive legislative rezoning process should not be disrupted by individual site rezone requests. We fundamentally believe that the rezone should be denied because it does not satisfy the rezone criteria of SMC 23.34, and because this rezone, without a specific project in plan, operates independently of the current legislative process and puts at risk the greater plan which should take precedence.

BACKGROUND ON DPD LEGISLATIVE REZONE FOR SITE

DPD in their Recommendation fails to elaborate on the currently active and Council supported neighborhood planning and rezoning efforts for the area. Without fully considering this work, DPD errs in its recommendation[1]. Also, failure to present this information misleads the Hearing Examiner in their work to prepare a Recommendation.

In early 2013 Seattle's Department of Planning and Development (DPD) and Department of Neighborhoods (DON) began a neighborhood planning effort that has involved broad analysis of the area along 23rd Ave[2], the immediate vicinity around the subject site, and the subject site itself. This will result in updates to the Comprehensive Plan's Neighborhood Plan for the 23rd Union-Jackson element and the Future Land Use Map for the area, as well as broader changes to the Official Land Use Map for the City. This planning process has been robust in its outreach and community participation, including that of the applicant (attachment 1).

There has been strong community support for this comprehensive and iterative planning process (called the *23rd Ave Action Plan*) and this neighborhood planning process is welcomed because the current adopted Neighborhood Plan is considered by the community as obsolete (written in 1992 and last updated 15 years ago in 1998).

It is clearly City Council's intent to adopt the revised Neighborhood Plan language from this process into the 2014 update to the Comprehensive Plan (attachment 2) along with corresponding updates to the Future Land Use map for the Central Area. These are scheduled for adoption in early 2014.

The work underway in this planning process includes an Urban Design Study, DPD's mechanism for expressing zoning that would condition the Legislative Rezone and help achieve urban planning and built environment objectives for the area. Draft recommendations for zoning of sites in the area have already been prepared (released publicly on 9/21/13) and are currently being reviewed by the public and we will likely see iterations in the zoning recommendations that are finally put forward as DPD engages the community and refines its recommendation to Council.

The subject rezone, requested after this planning process had started and before it is complete, circumvents the DPD's ability to fully consider proper conditioning necessary to achieve a complete and comprehensive plan for the site in the context of the immediate area, and could even jeopardize the cohesiveness of the Legislative Rezone.

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[1] The bulk of the Rezone analysis material was submitted by the Applicant, and reflects the narrowed bias to ignore the DPD planning analysis and recommendations for the site, except when it is convenient to support their argument.

[2] DPD's planning process is focused on the three main commercial nodes of the Central Area along 23rd Ave - at Jackson, Cherry and Union Streets and the areas around these nodes. This is being done in conjunction with a major SDOT planning and implementation project to repave and re-channel 23rd Ave. (attachment 3)

DPD will also prepare an Urban Design Framework, its vehicle for describing design guidelines and other conditioning on development in order to address specific streetscape and other zoning and design requirements such as building setbacks that provide consistency of characteristic to the area. These will be part of the legislative package as well to update the Official Zoning Map.

This rezone is also unlike the prior contract rezone for the property across 23rd Ave, south of Union, 2203 E Union (Hearing Examiner File: CF 308565, July 1, 2008) cited by the DPD as *"mirrors the recent similar site specific rezone on the parcel directly west across 23rd Avenue at 2203 East Union"*[3]. In that rezone there was a specific project proposal and MUP "where the Applicant and Director agreed at hearing that a PUDA would limit the use of the property to that depicted in the final approved MUP drawings" [CF 308565].

Further, Hearing Examiner states in their recommendation: *"5. There have been no precedential effects identified as likely to occur as a result of the proposed change in the height designation for the site."*, yet DPD now uses that rezone to justify the rezone of a site 6.5 times the size of the 2203 E Union site without any project proposed or site conditions.

The subject rezone, without a specific project, makes identifying use restrictions for the site difficult - and even unpredictable. In fact, in their Recommendation, DPD specifies no restrictions or conditioning that could become the basis of a PUDA[4] should the Hearing Examiner or Council wish to place restrictions on the property.

The Legislative Rezone process however will yield zoning conditions consistent with the area through the community and property owner vetted Urban Design Framework process. The proposed rezone will avoid any such conditioning.

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[3] DPD Recommendation, page 3

[4] The Recommendation does state, on page 16:

> *"The Director also recommends for consideration the following: Should a broader, area-wide rezone of the 23rd Avenue and E. Union Street intersection be contemplated by City Council in the near future, and should that broader rezone be made subject to an "incentive zoning suffix" complying with subchapter 23.58A of the Land Use Code, at such a time the subject site should be made subject to the same suffix."*

This however does not satisfy PUDA conditioning as required by 23.34. The ineffectiveness of this suggestion is addressed later.

ERRORS IN DPD REZONE ANALYSIS AND RECOMMENDATION

CA LURC has carefully reviewed the Director's Recommendation dated November 7, 2013, and we believe the Recommendation fails to effectively evaluate the rezone as required by SMC 23.34 because of reasons of omission, failure to accurately describe conditions, conclusory statements without substantiation, and failure to properly identify conditions that could become use restrictions to mitigate impacts of the rezone.

Additionally, DPD does not include *"written recommendations or comments of any affected City departments and other governmental agencies having an interest in the application or request"*. As mentioned above, the neighborhood planning work that DPD is doing for the overall area rezone affecting the subject property and its immediate vicinity should have been presented.

We also believe that the parallel planning that SDOT is undergoing to improve and re-channel 23rd Ave, including focusing on transit priority, is highly relevant and would have some bearing on the full block frontage of 23rd Ave between Spring Street and Union Street. This effort is called the *23rd Ave Corridor Improvement Project*, and Phase 1 which is along the subject site is scheduled for construction in mid 2014 (attachment 4).

Additionally, SDOT is considering a bicycle greenway along 24th Ave as part of its *23rd Ave Neighborhood Greenway* effort. Greenways are meant to be low traffic and traffic calmed streets to ensure pedestrian and bicyclist safety (attachment 5).

Comments and recommendations from these departments should have been sought.

In this following section we are going to present rezone evaluation criteria of SMC23.34 in the same sequence as DPD did in its recommendation.

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 one hundred twenty-five percent (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.

- Regarding A.2, DPD erroneously presents Comprehensive Plan growth data that is 10 years out of date. Attachment 6 from DPD's "Urban Center/Village Residential Growth Report" dated October 3, 2013, clearly shows that the 23rd Jackson/Union RUV is at 154% of its 2024 growth targets and is not at 60% as DPD asserts. Additional density at this site is not required for the RUV to meet its density and growth targets. These are not rezone criteria that should be considered as having bearing on the recommendation.

B. Match Between Zone 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.

- The underlying zone type is NC2. The rezone application is only to add additional height not change zone designation (which also gives additional FAR, i.e. development potential). However the 23rd Ave Action Plan "Urban Design Study" (attachment 7) addresses the subject site and indicates that while NC2-65 is the base designation it is contemplating the portions of the site along Spring St and 24th Ave as a "*multi-family in transition zone*" and "*consider modulating height*". This implies a different zone and height designations for part of the property, and therefore the issue is moot.

- DPD states on page 5 of its Recommendation: *"The locational criteria for NC2, are consistent with the property because* ***it is the primary business district for the 23rd RUV,*** *is served by two arterials (Union and 23rd),* ***can be buffered from less intense residential areas,*** *is served by excellent transit service and is, as described below, sited at a designated business node of the applicable Urban Village* ***where mixed use buildings of greater than 40' in height are encouraged.****"*

  DPD misrepresents the 23rd/Union node as the "primary business district" when in fact 23rd/Jackson is the primary district for the RUV. It is already zoned NC3-65, and the various plans identify it as such (e.g. CAAPII refers to 23rd/Jackson as "the Central Area's shopping focal point"). The Comprehensive Plan identifies *"23rd and Jackson Node - Shopping Center: the Central Area's shopping focal point, and a true "urban village."*

  Perhaps the site can be buffered from the SF5000 residential zones immediately across the narrow residential Spring Street to the south and 24th Street to the east, but nowhere does DPD describe what buffering restrictions would accomplish that.

  DPD's assertion that buildings of greater height are "encouraged" is unsubstantiated and false.

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

- DPD errs in not describing here the "potential zoning changes" that would occur as part of the legislative rezone currently underway, and this results in a crucial error in assessing the precedential effects of this rezone request. The legislative rezone process underway is consistent with the Growth Management Act, and City growth and transit policy.

- Application 30005931 is for a rezone without a Master Use Permit or any specific project in plan. Immediate processing of this rezone is not necessary to address some specific development needs. The applicant has not indicated any desire to develop the subject

property themselves and has instead been looking to sell the property. This speculative intent primarily serving a private interest is a prime indicator of spot zoning, since it accommodates the owner's private interest and bears no rational relationship to promoting legitimate public interest as we see with the more comprehensive planning and the Legislative Rezone underway.

- In the Contract Rezone of 2203 E Union across the street, the Hearing Examiner states in their Conclusion (CF 308565):

  The proposed rezone is consistent with the zoning principles stated in SMC 23.34.008E. It does not change the boundary between commercial and residentially- zoned property. Commercial uses will face away from the residential zone southwest of the site and toward other commercial uses across East Union Street and 23rd Avenue. The proposed increase in height is located within an urban village ***and is surrounded on three sides by rights-of-way that would buffer property zoned NC2-40, which in turn, would provide a gradual transition in height.*** *The proposal's design responds appropriately to the single family zone and development located to the southwest, and the proposal's location at the north end of the block results in shadows being cast primarily onto East Union Street and adjacent commercial development, rather than onto single-family-zoned properties.*

  The "proposal's design" referred to by the Hearing Examiner in the Mueller decision above, is a design for townhouse-style ground-related housing on the boundary of the NC zone across from the residential zone with enhanced landscaping, and for increased setbacks beyond that which NC zone would otherwise allow. The subject rezone does not include any measures intended to provide an appropriate buffer between the NC zone and the adjacent residential zone.

  Furthermore, the subject rezone is now using the 2203 E Union up-zone as a rationale for their up-zone, and in doing so would **remove** the buffer that the Hearing Examiner found necessary to support the previous rezone in the Mueller application across 23rd Avenue to the west.

  Such piecemealing of property rezones is not beneficial to the broader community, and the area wide legislative rezone process should take precedent.

- While the financial issues the property owner faces with the loss of their current tenant are problematic and unfortunate, rezoning to help with solvency is not something that DPD, the Hearing Examiner or Council should be encouraging. This rezone should not give this applicant favorable treatment over other property owners in the area that may too be facing leasing issues.

  Further, the rezone of this site independent of the concurrent area analysis undercuts the legislative rezoning process and sets a bad precedent. How would the City respond in a situation where property owners affected by an area legislative rezone chose instead to individually apply for rezone of their property independent of the compressive planning process?

Finally, this property owner and site should not be exempted from zoning constraints that the legislative rezone process may identify and then impose on other properties in the area. They should not receive a benefit not afforded to other property owners and projects.

The precedential effects of this rezone are substantive and will encourage future use of this method to circumvent the deliberative and very public planning done by the legislative rezoning process.

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.
2. Council adopted neighborhood plans that apply to the area proposed for rezone shall be taken into consideration.
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.
4. If it is intended that rezones of particular sites or areas identified in a Council adopted neighborhood plan are to be required, then the rezones shall be approved simultaneously with the approval of the pertinent parts of the neighborhood plan.

- The current neighborhood planning process has identified many specific policies and goals for the 23rd/Union commercial district. While these changes to the Comprehensive Plan have not yet been adopted, they will be the docket for adoption by Council in 2014.

  These goals and policies indicate that the community wishes for whatever development is to occur at 23rd & Union, that the neighborhood and small scale feel of the vicinity be preserved. It is likely that these would lead to conditions and zoning requirements to the subject property and the surrounding properties as part of the legislative process.

  From the 23rd Ave Action Plan Summary (attachment 8):
  - "The **small scale neighborhood feel** is important for Union and Cherry. Need pedestrian friendly development that serves diverse community".
  - "**Small neighborhood businesses** at Union core"

  From the workshop boards (attachment 9):
  - "23rd and Union - Business/Restaurant Center: A **small scale** commercial hub serving the neighborhood, providing a range of residential housing types"
  - "Encourage new pedestrian friendly mixed use development at 23rd and Union that includes **neighborhood serving shops and services**, opportunities for startup businesses, affordable housing and live/work housing while respecting the **small scale and historic character** of this node."

From the Urban Design Study (attachment 10):

- "23rd and Union: This is a **neighborhood scaled** destination with housing above businesses that draw customers from the larger neighborhood. It builds on what it already has: a cinema, churches and a major foundation. Plans are already underway on two key properties. This vision creates a cohesive fabric of buildings and uses by incorporating those two proposals to create a node that reads as a place – a place that draws people in – a destination."
- "What is desired: A vibrant **neighborhood scaled commercial district that respects the history and historic character**"

- The DPD Recommendation does not consider the likely impact development of this site would have on shaping the character of the 23rd & Union node. While the Central Area is eager to embrace a pedestrian friendly environment with a robust commercial base, it is crucial that any future development within this particular 'hub' should respectfully foster its cultural heritage as an ethnically and economically diverse community. Very large commercial spaces are typically "destination" retailers intentionally trying to draw from a larger catchment (the NC2 designation allows for some store sizes up to 50,000 sq ft). DPD describes in its recommendation the possibility of a single project for the 100K square foot site. Historically and currently there has been virtually no presence of national chains in the Central Area. Consideration of conditions to ensure the neighborhood serving character and function, and to reduce automobile traffic in the area were not considered by DPD. From the Comprehensive Plan: *CA-G6 Distinct but mutually supportive primary business districts along the 23rd Avenue Corridor: 23rd and Union Node - Business/Restaurant Center: A small scale commercial hub serving the neighborhood, providing a range of residential housing types.*

- The general plan for the 23rd Ave Action Plan is to expand the commercial district up Union St. This creates a significant amount of retail capacity in the area. In order to ensure that other sites develop, the net total retail capacity of the area should have been considered by DPD. *CA-G5 Central Area as one business district offering a series of successful economic niche neighborhoods within the overall community.*

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.

- DPD does not accurately describe the conditions around the site:
  - *"The property to the west has an NC2-65 designation, with an approved master use permit which allows development as a ground-floor retail and 96-unit residential project."* In fact, that property and height only correlates with the northern-most 25% of the subject property. The rest of the block to the south contains the much shorter Casey Family building and its surface parking lot, and single family scaled buildings.
  - In the Matter of the Application of Jim Mueller (CF 308565, 7/1/08), the property at 2203 E Union was conditioned to minimize the impacts of this 65 foot building on the

less intensive SF zones across 22nd Ave. The Hearing Examiner noted of the rezone proposal:

> *"7. On the west side of the building, across 22nd Avenue from existing single-family residential development, the design calls for townhouse-style apartments with related ground entrances and landscaping. The facade on this side is set back two feet, nine inches from the property line for the first two levels, six feet, nine inches at the third and fourth level, and to 12 feet, nine inches at the fifth and sixth levels."*

The extent of the impact of the proposed 65 feet on adjacent properties along 24th Ave and Spring Street does not have any height transition to mitigate the impacts of the 65 foot project directly across the residential street. There is a 40 foot height difference between the low intensity residential zones and the subject site's rezone request. NC-65 will allow a 7-story building normally. This is not the preferred "gradual transition".

- Attachment 11 shows the scale of a 65 foot project (the "Safeway" at 23rd & Madison) across <u>an arterial</u> from a lowrise zone (30 ft). Comparison should be made to attachment 12 with the subject site at 40 feet and attachment 13 with the subject site at 65 feet, both across the <u>residential</u> street 24th Ave. The value of the buffer by transitioning height is apparent.

- The Hearing Examiner in C.F. 309848 (in the matter of Robert Burkheimer) for a rezone in Uptown at 1st and Republican from NC40 to NC65, was concerned about the height increase would worsen the impact of a more intense zone on a lesser one. This is the same situation we have with the NC2-40 opposite the SF5000 along Spring St and 24th Ave. Increasing the height only worsens the situation (eg more traffic, more intense commercial development likely).

> *9. The proposal is not consistent with zoning principle 1, which states that the impact of more intensive on less intensive zones is to be minimized by use of transitions or buffers, and that "a gradual transition between zoning categories, including height limits, is preferred." SMC 23.34.008 E.1. Rezoning the parcel adjacent to the Bagley Wright Theater from NC3-40 to NC3- 65 would provide a gradual transition between the NC3-85 zoning to the east and NC3P-40 zoning to the west and reduce the impact of the more intensive zone on the less intensive one. The same cannot be said of the proposed rezone of the parcels along 1st Avenue North from NC3P40 to NC3P65. The rezone would increase the zoned height limit by 25 feet along most of one side of a key block within the Heart of Uptown Character Area and thus, would actually create impacts from a more intensive zone on a less intensive one. The proposed three-foot building setback and three-foot upper-level setback along the block would not effectively temper these impacts.*

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.

- DPD merely states *"The subject property is bordered on all four sides by public rights of way. No other physical buffers exist between the proposed height increase and the existing, surrounding zones."* But 24th Ave and Spring Streets are <u>not</u> major traffic arterials – they are residential streets. Spring Street has a 25 ft right of way curb to curb, and 24th Ave is 30 feet. As will be described below, DPD is considering a multifamily zoned buffer within the subject site to alleviate this impact.

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.
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.

- DPD merely states the rezone request *"will not change the currently existing boundaries between the commercially and residentially zoned areas."*

  However, DPD ignores the findings of its Land Use Analysis of the Urban Design Study of the 23rd Avenue Action Plan (attachment 7). There is recommended *"multi-family in transition zone"* along the lengths of 24th Ave and Spring Streets. This change in zoning recommendation as part of the legislative rezone for the site should have been considered by DPD in its Recommendation. The subject site has lot line platting that could support a less intensive multi-family residential along Spring Street (such as LR-3).

  Neither 24th Ave or Spring St are major traffic arterials. They are residential streets according to SDOT. There is no natural feature or other physical buffer between the parcel in question and the SF residential properties to the east and south. In a similar situation nearby, the Hearing Examiner's decision to rezone the 2203 E Union site (Muehler) produced agreement for a building with ground-related townhouse entrances on 22nd Avenue and greater than otherwise required upper level setbacks in order to provide an adequate transition between the NC development and the residential zone on 22nd Avenue. Furthermore, that rezone was tied to a particular development which had been reviewed and approved by the Design Review Board. In the subject rezone, there is no specific proposal, no review by the Design Review Board, no agreement for increased upper level setbacks. In fact, it's possible that any future building on this site could avoid the Design Review Process since the DR process does not apply to non-residential, non-commercial developments, such as social service institutions which are common in the Central Area.

- Attachment 16 demonstrates the character of commercial garage entrances (the 23rd Ave Safeway garage entrance). With commercial facing the residential as it is today, the zoning standard is violated. Conditioning or buffer zoning is required.

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;
b. Public services;
c. Environmental factors, such as noise, air and water quality, terrestrial and aquatic flora and fauna, glare, odor, shadows, and energy conservation;
d. Pedestrian safety;
e. Manufacturing activity;
f. Employment activity;
g. Character of areas recognized for architectural or historic value;
h. Shoreline view, public access and recreation.

- The legislative rezone process will consider the application of incentive zoning to the site not afforded by the subject rezone. Council may require at the time of a legislative rezone that some level of affordable housing be part of the project through provisions of RCW 36.70A.540 The adopted Neighborhood Plan and 23rd Ave Action Plan indicate the objective of affordable housing. The Comprehensive Plan suggests ***CA-P21*** *Ameliorate the potential impacts of gentrification through a variety of affordable housing programs and techniques.*

  The city crisis in housing has placed housing cost pressures on the Central Area because of overflow demand from Capitol Hill. Currently this area is already being marketed as "Lower Capitol Hill" and commanding higher housing prices. The 2203 E Union project, with 92 market rate units, reflects the demand for housing at market rates within the immediate area and upward price pressures.

  The incentive zoning suggested by DPD that could be added as a condition is not likely to be applicable since the site would already be zoned to 65' so no incentive can be taken. If the site zoning were to stay at 40 feet, and an incentive offered to 65 feet, the affordable housing incentive would make sense.

- Currently the site has a large pedestrian plaza, and although on private land, it is used freely by the public. It includes a significant fountain of historical importance created by the Central Area sculptor James Washington. There is limited public open space in the area and the loss of this open space/public plaza was not considered.

- The potential impacts to other business districts because any future development at the site were not considered by DPD. For example, within a mile of the site are at least 5 major grocery stores (Safeway, Trader Joes, Grocery Outlet, Red Apple, Madison Market) and numerous small bodegas. Since the Central Area does not want to have its business

districts in direct competition and instead working cooperatively to serve the area (as stated in Comp Plan Goal: *CA-G5 Central Area as one business district offering a series of successful economic niche neighborhoods within the overall community.*) limiting of the type of grocery retailer should be considered.

- Attachments 14 and 15 show the comparative shadow impacts between structures compliant to both an NC2P-40 and NC2P-65 zoning designations. It is important to note that the subject site, due to being bounded on all sides by right-of-way, does not qualify for setbacks afforded parcels which abut residential zones along a side or rear lot line (SMC 23.47A.014). As such, no setbacks are required along the 24th Street or Spring Street frontages, thereby allowing any future development to maintain its full height at the south and east property lines. The impacts from the shadows cast by a building lacking such setbacks are demonstrated in the 3 pm solar study during the fall equinox. Unlike the NC2P-40 designation, the structure associated with an NC2P-65 designation will cast a shadow into the first 30 feet of the single family parcels along 24th Ave.

- The Comp Plan seeks mitigation: ***UVG39** Enhance the urban village strategy through the provision of: 3.* ***Mitigation of the impacts of large scale development.*** No mitigation is presented in the DPD Recommendation.

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 designations in this chapter.

- DPD states that the loss of the applicant's Post Office tenant and closures of some unnamed businesses in the area, *"taken together, <u>could</u> lead to additional vacant storefronts and neighborhood decay."* DPD's hypothesizing of this outcome does not correspond to the fact that new businesses are opening in the area (two new businesses north of the subject site) and existing properties continue to be improved (to the north of the site). DPD continues: *"According to the applicant, <u>the rezone is important as a catalyst to encourage redevelopment of the property</u> for residential and commercial purposes as envisioned in the City's Comprehensive Plan, the existing neighborhood plan, and current neighborhood planning which envision this locale as a site that will serve as a neighborhood hub and gathering place and serve as a demonstration of the community's resilience."* No evidence is presented to support this claim.

- The 23rd and Union area is the only part of the Central Area which is eligible to support marijuana retail outlets per new "pot" laws. While some are opposed to this occurring in the Central Area, this is a unique business opportunity that will encourage additional businesses and development at this node, and a countervailing argument to the applicant's concern about leasing in the area.

CONCLUSION

The DPD recommendation does not fully consider the several concurrent and related planning activities that are relevant to the rezone application including the legislative rezoning process underway, the SDOT 23rd Ave Corridor work and the 23rd Ave Greenways efforts – all having relevance to the subject site.

DPD asserts without substantiation: *"It is the applicant's stated belief that an accommodation of two additional residential floors, a move that will encourage greater density at the site, and one that mirrors the recent similar site specific rezone on the parcel directly west across 23rd Avenue at 2203 East Union, will allow for a more vital and economically sustainable neighborhood."* DPD erred in its citation as precedent the rezone of the Muehler site across 23rd Ave by referring to it as a "mirror" of the proposed application, while neglecting to mention its application was to a specific project; that there was a PUDA with numerous development conditions attached to it; that the rezone was for a site 15% the size of the subject site; that the additional height for that project was granted because of 40 foot heights in the area served as buffer (including the subject site); and that the Muehler rezone would not be a precedent (yet now DPD wants to use it as a precedent). There in no evidence presented that the development of this site would occur as claimed with a rezone, nor is there is any project proposal to substantiate the claims that development would "allow for a more vital and economically sustainable neighborhood".

DPD erred in its analysis of the rezone criteria stated in SMC 23.34. It fails to meet these criteria:

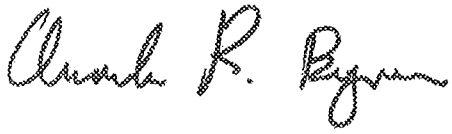
- Precedential effects are numerous
- Zone match not consistent with DPD planning efforts
- Potential to disrupt neighborhood plan without conditioning
- Inadequate zone and height transitions
- Inadequate impact analysis and mitigating conditions

The rezone should be denied because the financial and zoning benefits to the subject property are not afforded to other nearby properties.

The rezone should be denied because the precedent of granting spot zoning to avoid a legislative rezone should not be established.

The rezone should be denied because inadequate conditioning has been defined to address the numerous impacts that would result.

Thank you for your attention and consideration of our comments.



Amanda Bryan
Chair
Central Area Land Use Review Committee

CA LURC Members

Amanda Bryan (Chair)
Jeff Floor (Vice-Chair)
Meg Konkol (Secretary)
Bill Bradburd
Bill Zosel
Eddie Hill
Jonathan Konkol
Mike Moedritzer
Paul Crane
Ryan Simmons

Central Area Neighborhoods District Council

Squire Park Community Council
Leschi Community Council
Madrona Community Council
Jackson Place Community Council
Judkins Park Community Council
Garfield Community Council
East Precinct Police Advisory Council
Central Area Chamber of Commerce
Central District Association
12th Ave Neighborhood Plan Stewardship Committee

Attachments

1. Public participation in DPD 23rd Ave Action Plan
2. Resolution 31458 – adopt Central Area Neighborhood Plan & FLUM Comp Plan changes
3. DPD 23rd Ave Action Plan Overview
4. SDOT 23rd Ave Corridor Improvements Project
5. SDOT 23rd Ave Corridor Neighborhood Greenway Project
6. Urban Center / Village Residential Growth Report, Oct 2013
7. DPD Urban Design Study for 23rd Ave Action Plan
8. 23rd Ave Action Plan Summary
9. 23rd Ave Action Plan "Community Boards"
10. 23rd Ave Action Plan Urban Design Proposal
11. 23rd Ave Safeway project streetscape
12. 24th Ave with NC40 building
13. 24th Ave with NC65 building
14. Solar / shadow study NC2-40
15. Solar / shadow study NC2-65
16. Safeway project garage entrance

Vee, Linda

From: Watanabe, Anne
Sent: Monday, December 09, 2013 2:13 PM
To: Vee, Linda
Subject: FW: #3005931 Bangasser

Linda,
Could you print & add to the file as an exhibit. Thanks.

-----Original Message-----
From: Paul Byron Crane ASLA Landscape Architect [mailto:pbcrane@earthlink.net]
Sent: Monday, December 09, 2013 1:58 PM
To: Watanabe, Anne
Subject: #3005931 Bangasser

Ms. Watanabe

I understand a presentation and letter from the CD LURC was presented concerning the referenced Land Use Action. I am a member of the CD LURC. The membership was polled prior to the direction the committee would take concerning commenting on this Landuse Action. The full committee did not agree with going forward but a majority did, hence the letter. I as several, did not want to take this stance. I would personally like to go on record to say I support the rezone without conditions. There was a list of CD organizations listed. I only know of one that has supported the letter that was presented. I suggest that unless individual letters of support form each organization is attached there was no position offically taken by that organization. Honesty, clarity and integrity is paramont in any written material presented in these matters.

Thank you for your attention and consideration.

Cordially

Paul Byron Crane ASLA
Landscape Architect
910 Davis Place South
Seattle, Washington 98144
206-852-5080 / pbcrane@earthlink.net

Paul Byron Crane ASLA,BLA, MA
Landscape Architect

City of Seattle Hearing Examiner
EXHIBIT
Applicant ___
Department ___ ADMITTED ✓
Public ✓ DENIED
FILE # CF 312973

14

December 9, 2013

Hearing Examiner
City of Seattle
700th 5th Ave, Suite 4000
P.O. Box 94729
Seattle, WA 98124 – 4729

Subject: Rezone at 2301 E Union St
DPD Project No. 3005931

We are neighbors (residents and property owners) adjacent to the subject property that is being considered for a rezone to 65 feet.

We are very concerned that the City has not adequately considered the impacts to our homes which are across 24th Ave and Spring Street from the site.

The additional height will make this property loom over our homes, and will block sunlight to the homes across 24th Ave, and could result in delivery trucks, much more additional commercial traffic on our streets. In addition we could be faced with large-scale commercial buildings with blank walls and/or garbage disposal areas.

The City is already studying this site and other parts of our neighborhood and we support this comprehensive planning approach to our neighborhood.

Please deny the rezone so that this other process may move forward unencumbered.

Sincerely,

Heather Jean Garrick
944 23rd Ave
Seattle, WA. 98122

Josh Chambers
2319 E Spring St
Seattle, WA 98112

gordon Mito
944 23rd Ave
Seattle, WA.
98122

Fisher [illegible]
2321 E Spring St 98122

City of Seattle Hearing Examiner
EXHIBIT
Applicant ___
Department ___ ADMITTED ✓
Public ✓ DENIED ___
FILE # CF-312973

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12/09/2013 17:18 2062522951 LESCHI ELEM PAGE 01/01

To: City of Seattle Hearing Examiner
700 5th Avenue, Suite 4000
P.O. Box 94729
Seattle, WA 98124-4729

Date: December 8, 2013

Regarding: C. F. Number: 312973

The City of Seattle Hearing Examiner is conducting a public hearing on the recommendation of the Director of the Department of Planning and Development (DPD) to rezone property from NC2-40 and NC2P-40 to NC2-65.

Project: 3005931
Address: 2301 E Union St

I am submitting written comments, as I have to be at work at the time of the hearing.

I have comments regarding three items pertaining to the recommendation of the Department of Planning and Development
http://www.seattle.gov/dpd/LUIB/AttachmentProject3005931ID54853005931.pdf

1. The 23rd Ave Action Plan is working on Urban Design for that intersection, among others, at this time. It seems that this rezone is ill timed given that an inclusive community process, which would enrich or condition the property, is currently assessing the overall design of that intersection. This action concerns multiple properties that together comprise a full city block, so to have it rezoned by council quasi-judicial action is inappropriate.

2. On page 4 last paragraph "According to the latest available progress report on growth, under Seattle's comprehensive plan the residential urban village has achieved 60% of the targeted growth (Monitoring Our Progress: Seattle's Comprehensive Plan, 2003)."

   The measures used are 10 years old and by definition inaccurate. Here it clearly states that 23rd Ave Union-Jackson Urban Village is at 154% of targets and if including permitted is at 177% of targets.
   http://www.seattle.gov/dpd/cs/groups/pan/@pan/documents/web_informational/dpdd017580.pdf

3. The description of conditions regarding properties to the south and south west of the properties on page 8 paragraph 2 is totally inadequate. It ignores the material fact that the southwest corner property has been a single family property with a huge yard so the people across the street in no way have been 'adjacent to commercial' uses for decades.

City of Seattle Hearing Examiner
EXHIBIT
Applicant ___
Department ___ ADMITTED ✓
Public ✓ DENIED ___
FILE # CF-312973
16

Based on the above, I find the application to be incomplete and inappropriate for council action at this time. Rather the property should be zoned in the context of the inclusive community process that is establishing Future Land Use Map modifications based on Urban Design and Design Guidelines as part of the current 23rd Avenue Planning process.

I would appreciate receiving a copy of the Hearing Examiner's recommendation in this matter.

Kathryn Keller
1821 – 27th Ave
Seattle, WA 98122
ktkeller@earthlink.net

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

In the Matter of the Application of

CF 312973

HUGH BANGASSER, for MidTown Limited Partnership

for a rezone of property addressed as 2301 E. Union Street

DPD Project No. 3005931

Introduction

The applicant, Hugh Bangasser, seeks a rezone of property addressed as 2301 E. Union Street, from NC2-40 and NC2P-40, to NC2-65. The Director of the Department of Planning and Development (DPD) recommends approval.

The public hearing on this application was held on December 9, 2013, before the undersigned Deputy Hearing Examiner. The Director's SEPA determination on the proposal was not appealed. Represented at the hearing were the Director, by Michael Dorsey, Senior Land Use Planner; and the applicant, Hugh Bangasser, by G. Richard Hill, attorney at law. The record was held open after the hearing through close of business on December 9, 2013, for receipt of public comments and was also held open for purposes of the Examiner's inspection of the site on December 15, 2013.

For purposes of this recommendation, all section numbers refer to the Seattle Municipal Code ("SMC" or "Code"), as amended, unless otherwise indicated. After due consideration of the evidence elicited during the hearing, the following shall constitute the findings of fact, conclusions and recommendation of the Hearing Examiner on this application.

Findings of Fact

Site and Vicinity

1. The site, also known as the "MidTown Center" property, is addressed as 2301 E. Union Street and is in the Central District. The site is the entire block which is bounded by 23rd Avenue to the west, 24th Avenue to the east, E. Union Street to the north, and E. Spring Street to the south.

2. The site is approximately 106,289 square feet in size, and consists of nine tax parcels. Five of the parcels are developed with structures, while the remaining four consist of surface parking areas.

3. The site is zoned Neighborhood Commercial 2 (NC2) and NC2-Pedestrian (NC2P) with a 40-foot height limit, as shown on Exhibit 1. Zoning in the vicinity is

shown at Ex. 2. Zoning to the north across E. Union is NC2-40, zoning to the south across E. Spring Street is SF 5000; zoning to the west across 23rd Avenue, is NC2-40 and NC2P-65; and zoning to the east across 24th Avenue is SF 5000, NC2-40 and LR2. The zoning map shows the area of NC2 and LR zones which run along E. Union Street near this location, with SF 5000 zoning surrounding these areas. The site and surrounding neighborhood are within the 23rd Avenue@South Jackson-Union Residential Urban Village (23rd RUV). The most recent growth targets for this RUV which have been adopted in the Comprehensive Plan are from 2005, and set a growth target of 650 households and a density target of nine households per acre by 2024.

4. 23rd Avenue and E. Union are designated as principal and minor arterials, respectively, at this location.

5. Development on the site consists of the MidTown Center, which has housed a state liquor store, a US Postal Service branch, and other tenants, including Earl's Cuts & Styles, which has been a tenant at this site for over 21 years. Businesses in the vicinity of the site include small retail businesses. Across 24th Avenue from the site, as well south of the site across E. Spring Street, are single homes which are part of the larger SF 5000 zones.

6. The Bangasser family has owned this property since 1941. The applicant, Mr. Bangasser, and his family, have a long history of civic activism in this neighborhood. During the family's ownership of the site, businesses have come and gone from the area. Last July, the Washington State Liquor Control Board closed its state run liquor store on the site, and in January 2013, the US Postal Service notified the property owner that it will be terminating its tenancy at the MidTown site. The intersection of 23rd and E. Union has seen a number of businesses close or leave during the past decades. The Key Bank across the street from the site has closed.

7. In 2008, a contract rezone from NC2P-40 to NC2P-65 was granted for a site addressed as 2203 E. Union, located west across 23rd Avenue from the subject site. The 16,185-square foot parcel was proposed to be developed with mixed-used project that had been granted design review approval. The Hearing Examiner's recommendation for this contract rezone noted that the 2203 E. Union site was surrounded on three sides by rights-of-way that would buffer property zoned NC2-40 from it and that this would create a gradual transition in height. The Examiner's recommendation also noted that the project's design responded appropriately to the single family zone and development to the southwest of the site; *In the Matter of the Application of Jim Mueller, CF 308565.*

8. The 2203 E. Union site sat idle for several years following the rezone, and some of the public comments referred to the property as an eyesore. However, other comments at the public hearing suggested that development of the site is moving forward.

9. The applicant proposes to rezone the block to NC2P-65. The original rezone application proposed to rezone the property to NC3-65, but the property owner revised

his request after submission of the application and now seeks only to change the height limit to 65 feet. The applicant asserts that a rezone to a 65-foot height limit would encourage economic redevelopment of the 23rd and Union business core, by accommodating two additional residential floors on the site to allow "for a more vital and economically sustainable neighborhood" which would mirror "the recent similar site specific rezone on the parcel directly west across 23rd Avenue at 2203 East Union." Ex. 13, page 1.

10. The applicant has indicated that it expects that projects developed at this site would go through design review. However, the applicant/property owner is not a developer, and does not plan to develop the property. Presumably the property would be transferred to others who would develop the site. No project application has been submitted to DPD for the site.

Zoning history

11. The Central Area Action Plan II (CAAPII) was adopted by the City Council in 1998 as the Central Area's Neighborhood Plan. In 2005, additional neighborhood policies for the Central Area were adopted as part of the Comprehensive Plan update. The Director's analysis, at pages 6-8, lists goals and policies that address 23rd and Union and the Central Area in general.

> CA-G6 Distinct but mutually supportive primary business districts along the 23rd Avenue Corridor:
>
> • 23rd and Madison Node - Destination/Entertainment Center: the Central Area's northern commercial anchor.
> • 23rd and Jackson Node - Shopping Center: the Central Area's shopping focal point, and a true "urban village."
> • 23rd and Union Node - Business/Restaurant Center: A small scale commercial hub serving the neighborhood, providing a range of residential housing types
>
> CA-P28 Encourage the preservation and conversion of homes south of Union on 23rd to live workstructures to increase the viability of the existing housing stock and enhance the pedestrian feel of 23rd Avenue

12. Resolution 31458, adopted by the City Council in January 2013, identifies amendments to the Comprehensive Plan to be considered in 2014, including amendments to the Central Area Neighborhood Plan: *"Amend the Land Use Map and goals and policies for this neighborhood plan to update the neighborhood's goals and policies to reflect the current aspirations of the neighborhood's residents and business owners, including potential Future Land Use map and zoning changes at the key nodes of 23rd at East Union Street, East Cherry Street, and East Jackson Street."*

13. Since early 2013, DPD and Department of Neighborhoods have been engaged in a neighborhood planning process for the 23rd RUV. A draft set of recommendations were issued in September 2013 for public review. It is not known exactly when draft Action Plan would be acted upon by City Council, although commenters at hearing suggested that this would happen sometime in 2014. The draft Action Plan identifies the intersections at 23rd and Union, 23rd and Cherry, and 23rd and Jackson as key nodes and identifies design proposals for each of them. The draft "Union Urban Design Proposal" is shown at Ex. 8, and shows NC2P-65 for properties surrounding the intersection of 23rd and Union, including the subject site. Portions of the subject site along E. Spring Street and most of 24th Avenue, are denoted as "multi-family in transition zone consider modulating height." The draft plan states that it "recommends a height limit of 65' around the intersection [at 23rd and Union] to create a unified identity at this important intersection with transitions to lower zones at the edges."

DPD review

14. DPD reviewed the proposed rezone, and recommends approval. No conditions were recommended except that DPD's report recommends that *"Should a broader, area-wide rezone of the 23rd Avenue and E. Union Street intersection be contemplated by City Council in the near future, and should that broader rezone be made subject to an "incentive zoning suffix" complying with subchapter 23.58A of the Land Use Code, at such a time the subject site should be made subject to the same suffix."* Ex. 10, page 16.

15. DPD issued a Determination of Nonsignificance (DNS) for the proposed rezone. The DNS was not appealed.

Public Comments

16. DPD and the Hearing Examiner received comments supporting and opposing the proposed rezone. Some of the comments expressed support for the rezone as a means of encouraging economic revitalization of an area that has seen businesses depart, and as means of encouraging denser, pedestrian-friendly development. The applicant and other commenters favor the rezone as furthering a mixed-use, pedestrian-friendly residential urban village. Some who commented expressed a sense of urgency, and a desire to see some tangible step taken in the direction of higher density, even if the rezone is not associated with any project proposal at this time.

17. Other comments opposed the increased height. Public comments also expressed concerns that this site-specific rezone was being proposed in advance of the legislative adoption of the 23rd Avenue Union-Cherry-Jackson Action Plan. Some comments did not object to the rezone, but expressed the desire to retain current businesses and the support of businesses owned by persons of color.

Codes

18. SMC 23.34.007 provides that "*In evaluating proposed rezones, the provisions of this chapter shall be weighed and balanced together to determine which zone or height designation best meets those provisions.*" The section also states that "*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.*

19. SMC 23.34.008 states the general rezone criteria. The criteria address the zoned capacity and density for urban villages; the match between the zone criteria and area characteristics; the zoning history and precedential effect of the rezone; neighborhood plans that apply; zoning principles that address relative intensities of zones, buffers, boundaries; impacts of the rezone, both positive and negative; any relevant changed circumstances; the presence of overlay districts or critical areas, and whether the area is within an incentive zoning suffix.

20. SMC 23.34.009 addresses the designation of height limits in a commercial or industrial zone. Under this section, the factors to be considered are the function of the zone; the topography of the area and its surroundings; height and scale of the area; compatibility with the surrounding area; and neighborhood plans.

Conclusions

1. The Hearing Examiner has jurisdiction to make a recommendation on the proposed rezone to City Council, pursuant to SMC 23.76.052.

2. Under SMC 23.34.007, the rezone provisions are to be weighed and balanced to determine the appropriate zone designation. No single criterion or group of criteria are to be applied as an absolute requirement or test of appropriateness of a zone designation, nor is there a hierarchy or priority of rezone considerations unless specified by the Code.

3. The subject site is in the 23rd and Union-Jackson Residential Urban Village, and is therefore subject to the provisions of Chapter 23.34 SMC that apply to urban centers and villages. The proposal is not a shoreline environment redesignation and is not a correction of a mapping area, so the provisions of SMC 23.34.007 which apply to such actions, do not apply to this application.

General rezone criteria

4. Effect on zoned capacity. SMC 23.34.008.A requires that, within the urban center or urban village, the zoned capacity taken as a whole shall be no less than 125 percent of the applicable adopted growth target, and within the density ranges established in the Comprehensive Plan. The adopted growth targets in the current Comprehensive Plan are

for 650 additional households, and the target density of nine households per acre by 2024. The proposed rezone would not reduce the zoned capacity below 125% of the Plan growth target, and is within the density ranges established in the Plan. The proposal would therefore meet these standards.

5. Match between zone criteria and area characteristics. The most appropriate zone designation is 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 designation. In this case, the NC2 designation would not change, except that all NC2 portions not currently having a P-suffix would be designated as NC2P. The NC2P zone criteria match the characteristics of the area better than any other zone designation. The criteria for designation of commercial zones and NC2 zones, as well as the criteria related to pedestrian designation, are consistent with this proposal as well, as described in DPD's report at page 14. The proposed change to the height designation is discussed below.

6. Zoning history and precedential effect. Under this criterion, previous and potential zoning changes, both in and around the proposal site, are to be examined. The site has been zoned NC2-40 since the City's commercial zoning code (Chapter 23.47) was adopted. The 2203 East Union Street site, west across 23rd Avenue, was rezoned to NC2-65 in 2008, as a result of a contract rezone, as noted above. The history of the zoning at this site shows that it has long been zoned NC2-40. Potential zoning changes of primary consideration in this case are those that would be driven by the 23rd Avenue Union-Cherry-Jackson Action Plan, which has been drafted but which has not yet been adopted by City Council. The Plan designates the site and other properties at this intersection as NC2P-65 with transitions to lower zones at the edges. Both previous and potential zoning changes are generally consistent with a 65-foot height limit. As for precedential effect, while difficult to predict, rezoning this property to a 65-foot height limit might have encourage rezoning of other NC2-40 properties along the 23rd Avenue corridor since the properties may have similar potential for redevelopment.

7. Neighborhood Plans. The Code rezone criteria direct that adopted neighborhood plans be considered. The CAAP II was adopted in 1998. The 23rd Avenue Action Plan, as noted above, has not yet been adopted as part of the Comprehensive Plan. The 1998 CAAP II includes goals and policies that generally support a mixture of commercial, retail and residential development in higher densities at this location; Director's report at pages 6-8. The proposed Action Plan also identifies this site as primarily being at a 65-foot height limit with appropriate transitions to the lower density zones adjacent to the NC2 zones. It is not clear how the 65-foot height limit would affect the relationship of the business districts and nodes along the 23rd Avenue Corridor (e.g., as referenced in CA-G5 or CA-G6) in the absence of a specified project, but there is nothing about the 65-foot height limit that would inherently conflict with these goals. The proposal for a 65-foot height limit is generally consistent with the adopted Plans.

8. Zoning principles. Zoning principles are to be considered. 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 transition or buffers, if possible. A gradual transition between zoning categories, including height limits, is preferred.

9. The site is surrounded on all sides by streets. There are no other physical buffers between the site, which occupies an entire block, and surrounding areas, including the SF 5000 zones south of E. Spring Street and east of 24th Avenue. However, in the Mueller rezone action for the nearby property at 2203 E. Union, the rights-of-way were deemed adequate buffering between that site and NC2-40 properties. The same can be said here; the streets provide sufficient separation between other NC2 properties. In the 2203 E. Union rezone, the project's design was examined and was found to provide appropriate transition to the SF 5000 properties. No project has yet been proposed for this site, so there is no design that identifies features, e.g., ground level or upper level setbacks, modulation or other design components that might provide appropriate transition where the property faces the SF 5000 properties across 24th Avenue or Spring Street. The proposed height change would not be consistent with the zoning principles addressing impacts and buffers zones.

10. The proposed zoning boundaries are the existing block boundaries. Although one of the zoning principles establishes a preference for commercial uses to face each other and away from residential area, the existing NC2-40 zone already faces the adjacent SF 5000 zones across 24th Avenue and E. Spring Street. The proposal does not alter the existing location of commercial and residential zones and is consistent with this zoning principle. Another zoning principle calls for height limits greater than 40 feet to be limited to urban villages; the rezone site is within an urban village, so the proposed 65-foot height limit greater would be consistent with this principle.

11. Impact evaluation. Under this criterion, negative and positive impacts on the site and its surroundings are to be considered. The proposal would create the opportunity for increased housing density at the site, but additional housing, including low-income housing, is not proposed at this time. Impacts on public services are not a factor in this rezone. As to environmental factors, DPD issued a DNS for the proposal, which was not appealed and is therefore final as to those impacts which were evaluated. The shadow studies comparing the 40-foot height and 65-foot height limits indicate increased shadow impacts on the properties to the south and east.

12. Pedestrian safety is not directly affected by this rezone, and the area is currently developed with sidewalks, street lights and crosswalks that would serve new uses at this site. The proposal includes a "pedestrian" designation on all lots facing Union and 23rd Avenue, and future site development would need to respond to this designation.

13. Manufacturing activity, architectural/historic values, and shoreline views, access, recreation, and navigation, are not factors relevant to this application.

14. Employment activity may be positively affected, depending on development of the site. Several public comments expressed support for the 65-foot height limit on this site as a way to address the area's need for economic development and revitalization.

15. Utility and service capacities. Street access, street capacity, transit service, and parking capacity do not appear to be factors in the rezone. Future development at the site may be required to provide improvements to address project-specific impacts, or to contribute to facility upgrades, e.g., Seattle Public Utilities upgrades regarding area-wide sewer, water and flooding issues.

16. Changed circumstances. Changed circumstances are to be taken into account, but are not required to demonstrate whether a proposed rezone is appropriate. The Director's report concludes that the reduction of the US Postal Service presence at the property is part of a series of business closures in the area which constitute changing circumstances favoring this rezone. It is not clear that the loss of tenants at a particular site, or even within a larger area, constitutes changed circumstances under SMC 23.34.008. However, changed circumstances are not necessary in order to show that a rezone is appropriate, so the proposal does not conflict with this criterion.

17. Overlay districts and environmentally critical areas. The site is not located within an overlay district and does not contain any environmentally critical areas.

18. Incentive provisions. The site is not located within a zone with an incentive zoning suffix.

Height Limits

19. Under SMC 23.34.009, several factors are to be examined in a rezone to a different height limit. The proposed height limits are to be consistent with the type and scale of development intended for the zone classification. A 65-foot height limit would be consistent with the type and scale of development intended for the NC2 zone classification. The NC2 zone is intended to encourage a pedestrian-oriented shopping area together and other compatible uses such as housing or offices, and is appropriate in areas that are primary business districts in residential urban villages.

20. The topography of the area and its surroundings are also to be considered. The site is relatively flat; the surrounding area is also relatively flat, although there are some small changes in elevation on the site and between the site and its surroundings; Ex. 17. There appear to be no major topographic conditions that would lessen or increase the impacts of a height increase on the surrounding areas.

21. The height and scale of the area are to be considered, and the compatibility of the proposed height limit with existing development is to be considered, particularly where the existing development is a good measure of the area's development potential. The existing zoning along 23rd Avenue near the site is for a 40-foot height limit, except for the

site which was rezoned in 2008 to 65 feet. The existing commercial development in this area is older, and generally not built to the 40-foot height limit; there appear to be a number of vacant spaces. It appears therefore not to be a good measure of the area's development potential. The existing single family development in the area is older as well, but appears representative of SF 5000 residential development.

22. Compatibility with surrounding area. This criterion calls for height limits to be "compatible with actual and zoned heights in surroundings areas." It also provides that a "gradual transition in height and scale and level of activity between zones shall be provided unless major physical buffers...are present."

23. The proposed 65-foot height limit would not match the existing height in the surrounding area, but depending on what kind of development occurs on this site, the height limit could be compatible both with actual and zoned heights in the surrounding area. Similarly, although no major physical buffers are present, the design of future development at the site could provide gradual transition in height and scale and level of activity between the commercial and residential zones. But at this time, as noted by DPD, there are a number of different development scenarios that could occur on this large site, including individual development on the separate lots within the site; Ex. 10, p. 15. Even if it is presumed that design review will apply to future development of this site, it is not known what the outcome of that process would be in terms of project design or conditions. The future compatibility of a 65-foot height limit, or the gradual transition in height, scale and activity between zones, cannot be assumed on the basis of what is in this record.

24. Neighborhood Plans. The adopted neighborhood plans do not specify future height limits. The characteristics identified in the adopted goals and plans tend to support a 65-foot height limit to encourage new mixed-used, pedestrian-friendly development. It is not clear whether the extra development capacity created by the rezone would frustrate other goals and policies in the immediate area, e.g., encouragement of business at other nodes along 23rd Avenue.

25. There are competing factors both for and against this rezone, when examined according to the Code's rezone criteria. A rezone to a 65-foot height limit is generally compatible with the adopted policies for the neighborhood, although it may not be entirely consistent with the draft Action Plan that is apparently awaiting legislative approval in 2014. However, the site's large size and potential at this time for varying development scenarios that are not defined, in combination with the absence of significant physical buffers separating it from the residential zones to the east and south, and the lack of any other conditions or project design features identifying appropriate transition to those nearby zones, are significant factors against the proposed rezone. The Examiner would therefore recommend denial of the proposal.

Recommendation

The Hearing Examiner recommends denial of the proposed rezone.

Entered this 18th day of December, 2013.

Anne Watanabe
Deputy Hearing Examiner

CONCERNING FURTHER REVIEW

NOTE: It is the responsibility of the person seeking further review 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 Hearing Examiner's recommendation to the City Council. The appeal must be submitted within fourteen (14) calendar days following the date of the issuance of the Hearing Examiner's recommendation, and be addressed to: Seattle City Council Planning, Land Use and Sustainability Committee, c/o Seattle City Clerk, 600 Fourth Avenue, Floor 3, P.O. Box 94728. Seattle, WA 98124-4728. The appeal shall clearly identify specific objections to the Hearing Examiner's recommendation and specify the relief sought.

BEFORE THE CITY COUNCIL
FOR THE CITY OF SEATTLE

In the Matter of the Application of **HUGH BANGASSER, for MidTown Limited Partnership** for a rezone of property addressed at 2301 E. Union Street	**CF 312973** DPD Project No. 3005931 **Applicant's Appeal of Hearing Examiner Recommendation**

INTRODUCTION

The Bangasser family has owned the city block at 2301 East Union (the "Property") for more than 70 years and has asked the City to rezone it from NC2P-40[1] to NC2P-65 – an increase of two residential floors ("Rezone Request"). The purpose of the Rezone Request is to encourage mixed-use economic redevelopment, including the creation of new jobs and housing, at this key Central Area intersection, particularly in light of the recent and continuing loss of numerous key neighborhood businesses including the local post office and bank. DPD recommends approval of the Rezone Request.

As the undisputed expert testimony at the hearing showed, a rezone to NC2P-65 is critical to the ability to attract expertise, developers and capital to this key intersection. The two

[1] A small portion of the block is currently zoned NC2 without the pedestrian suffix. The Rezone Request will correct that anomaly by assuring the entire block includes the pedestrian suffix designation.

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additional floors of housing that the 65' height limit allows provide the building efficiencies and residential density that are necessary to justify the significant economic investment required to redevelop the Property.

The undisputed testimony at the hearing also showed that approval of the rezone request is urgent. This site was identified by unrebutted expert and neighborhood testimony as the anchor for subsequent successful development around this crossroad. Doing nothing at this time and delaying initiatives to attract needed development at this crossroad threatens to contribute to the inertia of ever-increasing vacancies, job losses and the risk of community decay. Approving the Rezone Request enhances the likelihood of timely and inclusive neighborhood redevelopment, job creation, and community vitalization, and lays the foundation for future urban development around this "gateway to the Central Area," as recommended by the City's Comprehensive Plan.

Seattle's Department of Planning and Development ("DPD") reviewed and recommended approval of the Rezone Request. As the Council knows, SMC 23.34 authorizes two types of site-specific rezone requests: (1) a rezone request without an accompanying project; and (2) a rezone request that includes a proposed accompanying project (the more common but not exclusive approach). The Bangasser family has invested in this site and the welfare of the Central Area over the course of 72 years. However, the family members are not professional developers and therefore do not propose a specific project in their rezone request. Any future specific project for the property will be considered through the City's Master Use Permit and Design Review processes.

DPD reviewed and recommended approval of the Rezone Request under the City's applicable rezone criteria, SMC 23.34.007, .008, .009, .072, and .086 and found that the

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Bangasser Rezone Request is consistent with all of these criteria. DPD noted further that the proposed rezone is also consistent with the most recent recommendations of DPD's Office of Long Range Planning in its 23rd Ave Action Plan.

The Hearing Examiner agreed with DPD's analysis of the City's applicable rezone criteria as to SMC 23.34.007, .008.A, .008.B, .008.C, .008.D, .008E.3 and 4, .008.F, .008.G, .008.H, .008.I, .008.J, .009.A, .009.B, .009.E, .072, and .086. The Hearing Examiner found no inconsistency of the Rezone Request with any of these rezone criteria.

Despite the Hearing Examiner's acknowledgment of the Rezone Request's compliance with all of these rezone criteria, she nonetheless recommended denial. Her recommendation was based on her stated concern that the ultimately developed property might not adequately provide a transition to the less intensive zones to the east and south even though the property block has been zoned NC2-40 for over two decades. Her recommendation relies on SMC 23.34.008.E and SMC 23.34.009.C and D. In error, she appears to demand that there be a specific project proposed before a rezone can be approved. With all due respect, she is wrong on both counts and therefore her recommendation should not be followed. Her recommendation is contrary to law. The City Council does not defer to the Hearing Examiner's legal conclusions, but must independently determine whether they are consistent with applicable law. *See Council Rules for Quasi-Judicial Proceedings, Section VI.C.5.*

This appeal, then, hinges on whether the City Council's recently adopted 2013 Design Guidelines ("Design Guidelines") are sufficiently specific to assure that future development on the property is "compatible with actual and zoned heights in surrounding areas," and that it will provide for a "gradual transition in height and scale and level of activity between zones..." SMC 23.34.008.E, or whether, instead, this Code provision requires that a specific project must be

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proposed before a rezone can be approved.

DPD recommended approval of the Rezone Request, on the understanding that these Guidelines are sufficiently specific to address any "complement/transition" issues associated with a future NC2P-65 project on the property. DPD made it clear that the Code authorizes approval of site-specific rezones without including an associated construction project. In a non-project site-specific rezone such as this, DPD will require future construction projects to undergo review under SEPA, Design Review, and Zoning. "Complement/transition" issues will be considered under the City's SEPA and Design Review authority. DPD Recommendation at 8, 15-16.

The Hearing Examiner nevertheless recommended disapproval of the rezone, on the basis that she felt these Guidelines were not sufficiently specific – she felt that it was necessary to have a specific design scenario before her in order to be assured that this criterion is met, even though the Code specifically authorizes rezone approval without a specific project proposal.

As this Appeal demonstrates, the City's Design Guidelines are more than sufficiently specific to assure that any future development on the property is compatible with and appropriately complements/transitions to neighboring properties. There is neither a need nor a legal requirement for a rezone application to be accompanied by a specific project approval request. Accordingly, the recommendation of DPD should be adopted, the recommendation of the Hearing Examiner should be rejected, and the Rezone should be approved.

SPECIFIC OBJECTIONS

SMC 23.76.054 requires an appellant to clearly identify specific objections to the Hearing Examiner's recommendations. The appellant's specific objections follow:

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Conclusion 9: The Hearing Examiner properly concluded that "no project has been proposed for this site," and that therefore no transitional design had been identified to address a transition to the SF 5000 properties across a southeast portion of 24th Avenue or the south side across Spring Street. However, the Hearing Examiner improperly concludes from this statement that "the proposed height change would not be consistent with the zoning principles addressing impacts and buffer changes." This is because the Hearing Examiner fails to acknowledge that Seattle Design Guideline CS 2 (D), which specifically regulates zone transition issues, fully addresses all of her zoning compatibility concerns.

Conclusion 11: The Hearing Examiner refers to "shadow studies" indicating increased shadow impacts on properties to the south and east. There are no such "shadow studies" that have been prepared or reviewed by either the Applicant or by DPD. There are two pages of undocumented print-outs of unknown provenance that were attached to a comment letter that appear to depict shadows. The purported "shadow studies" were not made available to or seen by the Applicant or DPD until after the hearing. They do not constitute evidence. Conclusion 11 should be stricken.

Conclusion 23: The Hearing Examiner correctly concludes that "depending on what kind of development occurs on this site, the [increased two floors in height] could be compatible both with actual and zoned heights in the surrounding area." The Hearing Examiner also correctly concludes that "although no major physical buffers are present, the design of future development at the site could provide gradual transition in height and scale and level of activity between the commercial and residential zones." As explained below, that is precisely what the City's Design Guidelines will guarantee. However, the Hearing Examiner is incorrect when she concludes that based on the record before her, that transition criterion "cannot be assumed." In

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fact, it can be assumed. That is what the City Council guaranteed when it adopted the Seattle Design Guidelines.

Conclusion 24: The Hearing Examiner correctly concluded that "the adopted goals and plans tend to support a 65-foot height limit to encourage new mixed-use, pedestrian-friendly development." However, the Hearing Examiner is wrong when she speculates that "the extra development capacity" created by the rezone would "frustrate" the "encouragement of business at other nodes along 23rd Avenue." There is no evidence in the record to support that speculation. Indeed, the Rezone Request will result in no increased commercial capacity on the site. The site is zoned NC2P now, and would continue to be zoned NC2P after the rezone. Moreover, there is no basis for the Hearing Examiner to suggest that this crossroad should not gain the business resources intended for this intersection, which is designated in all currently adopted City plans as part of a Residential Urban Village, to be developed as a thriving neighborhood commercial node with urban residential density capable of supporting local neighborhood businesses.

Conclusion 25: This is the Hearing Examiner's summary. She acknowledges that the proposal is generally compatible with the adopted policies for the neighborhood. This, of course, is customarily sufficient for a rezone to be approved. However, she recommends denial because of the site's "large size" and because the Bangasser family has not defined a specific development which identifies "appropriate transition to those nearby zones." This Conclusion is unsound because the "large size" of the site is not relevant to any rezone criterion. In addition, the Code does not require an applicant to propose a specific development as a condition for a site-specific rezone. Finally, as described below, the Design Guidelines adopted by the City Council fully address the Hearing Examiner's transition concerns.

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DISCUSSION

As stated above, this appeal hinges on whether the City's Design Guidelines are able to satisfactorily address the applicable Land Use Code zoning principle directing the City to address the possible impact of more intensive zones on less intensive zones, and to consider an appropriate complement or transition between zoning categories. As indicated, DPD in its recommendation found that the Design Guidelines are able to address this principle. At 8. The Hearing Examiner, in her recommendation, found that they are not. Conclusion 23.

A review of the City's Design Guidelines clearly answers the question. They more than adequately address the "complement/transition" principle. The most pertinent guidelines are the "Height, Bulk and Scale" provisions. They are reproduced below:

D. HEIGHT, BULK, AND SCALE

> ***1. Existing Development and Zoning:*** *Review the height, bulk, and scale of neighboring buildings as well as the scale of development anticipated by zoning for the area to determine an appropriate complement and/or transition. Note that existing buildings may or may not reflect the density allowed by zoning or anticipated by applicable policies.*

This guideline specifically requires any future development to address the very issue identified by the Examiner, and to address complement/transition in building design.

> ***2. Existing Site Features:*** *Use changes in topography, site shape, and vegetation or structures to help make a successful fit with adjacent properties; for example siting the greatest mass of the building on the lower part of the site or using an existing stand of trees to buffer building height from a smaller neighboring building.*

As with Guideline D.1, this guideline directs any future development to "make a successful fit" with neighboring properties. This guideline recommends the use of site features to make this accommodation.

> ***3. Zone Transitions:*** *For projects located at the edge of different zones, provide an appropriate transition or complement to the adjacent zone(s).*

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Projects should create a step in perceived height, bulk and scale between the anticipated development potential of the adjacent zone and the proposed development. Factors to consider:
a. Distance to the edge of a less (or more) intensive zone;
b. Differences in development standards between abutting zones;
c. The type of separation from adjacent properties (e.g. separation by property line only, by an alley or street or open space, or by physical features such as grade change);
d. Adjacencies to different neighborhoods or districts; adjacencies to parks, open spaces, significant buildings or view corridors; and
e. Shading to or from neighboring properties.

This guideline most specifically addresses the Hearing Examiner's stated interest. The Hearing Examiner wanted to be assured that there would be consideration of features such as the new upper level setbacks, modulation or other design components that might provide appropriate transition. Conclusions 9 and 23. These considerations are addressed specifically in Guideline D.3 which assesses possible provision of an "appropriate transition" to the adjacent zone; creation of "a step in perceived height, bulk or scale" and consideration of distance between the zones, types of separation, adjacencies and shading.

4. Massing Choices: *Strive for a successful transition between zones where a project abuts a less intense zone. In some areas, the best approach may be to lower the building height, break up the mass of the building, and/or match the scale of adjacent properties in building detailing. It may be appropriate in other areas to differ from the scale of adjacent buildings but preserve natural systems or existing features, enable better solar exposure or site orientation, and/or make for interesting urban form.*

This guideline elaborates on additional design factors to assure a "successful transition between zones."

These guidelines together more than address all of the issues and concerns identified by the Hearing Examiner.

Since any development of the property will be subject to these Design Guidelines, the concerns expressed by the Hearing Examiner have no merit. The City Council should adopt the

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recommendation of DPD, rather than the recommendation of the Examiner, and approve the proposed Rezone so that the long delayed redevelopment of this anchor of the Union Street crossroad with attendant jobs and housing can be expedited through attraction of development expertise, investors, new residents and services, and retention of its neighborhood merchants.

RELIEF REQUESTED

The Applicant respectfully asks the City Council for leave to submit a memorandum to set forth the key facts contained in the record and to present argument as to the key legal issues pertaining to the appeal. The Applicant asks the Council to identify a date by which the memorandum should be submitted.

As to the merits, the Applicant respectfully asks the City Council to approve the proposed Rezone. The 2013 Seattle Design Guidelines will assure that all concerns about transition and compatibility will be addressed in the design review process when a specific project is proposed for approval.

If the Council is concerned that there may be projects proposed on the property that are exempt from design review, the Applicant suggests that the Council condition its approval of the rezone upon a condition that any project developed on the property will be subject to the City's design review process.

Finally, if the Council determines that the City's existing design guidelines are insufficient to address transition concerns, the Applicant respectfully requests that the Council remand this matter to DPD to identify complement/transition-related considerations, for recommendation to the Council.

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Dated this 30th day of December, 2013.

Respectfully submitted,

McCULLOUGH HILL LEARY, P.S.

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RESPONSE OF DIRECTOR

TO APPEAL OF HEARING EXAMINER RECOMMENDATION

CLERK FILE 312973: APPLICATION OF MIDTOWN LIMITED PARTNERSHIP

The Director of the Department of Planning and Development recommends approval of the proposed rezone of land located at 2301 East Union Street from NC2P-40 to NC2P-65. The NC2P zoning classification itself would not be changed. The only change would be in the height limit, from 40' to 65'. The Department conducted a thorough review of the application under SMC 23.34, as set forth in the Director's recommendation to the Hearing Examiner. The application meets all the rezone criteria set forth in the Land Use Code (a copy of pertinent portions of SMC 23.34 and the Director's analysis of each is attached to this response).

The Hearing Examiner acknowledged that it is consistent with virtually all of the City's rezone criteria as set forth in SMC 23.34. In addition, the new Design Guidelines adopted by the City Council in December 2013 will be applied to any construction on this site and those Design Guidelines and the review to be conducted by the Design Review Board are fully adequate to ensure an appropriate transition.

<u>The Rezone Proposal and the Land Use Code Criteria.</u>

The applicant has applied for a contract rezone to change the current zoning of the property from NC2P 40 mixed use zoning to NC2P 65 mixed use zoning. The only change being requested is to permit two possible additional floors of residential units.

As explained in the Director's recommendation, the applicant for this rezone proposal is a family partnership that has owned the property for over 70 years. The applicant has informed the Department that the family partnership members are not developers, and for that reason, they have not put forth a specific development proposal with a request for approval of a master use permit. Under SMC 23.34, applicants are allowed to submit a site-specific rezone application in this manner, i.e., without a specific project proposal.

Reviewing the rezone proposal, the Department determined that the application meets all the rezone criteria set forth in the Land Use Code for a rezone of the property to NC2P 65. Accordingly, the Department supported approval of the rezone application. Indeed, in the Hearing Examiner recommendation, the Hearing Examiner acknowledges that the rezone proposal meets the following applicable criteria:

- The proposed rezone meets the "effect on zoned capacity" criterion. Conclusion 4.
- NC2 is the most appropriate zone designation for the property. Conclusion 5.

- Both previous and potential zoning changes are generally consistent with a 65-foot height limit. Conclusion 6.

- The rezone proposal for a 65-foot height limit from the current 40-foot height limit is generally consistent with adopted Neighborhood Plans. Conclusion 7.

- The proposed rezone is within an urban village, so the proposed 65-foot height limit is consistent with applicable zoning principles. Conclusion 10.

- As to environmental factors, the Department issued a DNS on the rezone proposal, which is final. Conclusion 11.

- Employment activity will be positively affected as the site is developed. The Hearing Examiner acknowledged that several public comments expressed support for the rezone proposal as a way to address the area's need for economic development and revitalization. Conclusion 14.

- The rezone proposal does not conflict with the changed circumstances criterion. Conclusion 16.

- A 65-foot height limit would be consistent with the type and scale of development intended for the NC2 zone classification. Conclusion 19.

- There appear to be no major topographic conditions that would lessen or increase the impacts of a height increase on the surrounding areas. Conclusion 20.

- The goals and policies of the Neighborhood Plans tend to support a 65-foot height limit to encourage new mixed-use, pedestrian-friendly development. Conclusion 24.

The Hearing Examiner also acknowledges that "depending on what development occurs on this site, the [65-foot] height limit could be compatible both with actual and zoned heights in the surrounding area," and that "the design of future development at the site could provide gradual transition in height and scale and level of activity between the commercial and residential zones." Conclusion 23. The Department agrees with all of these conclusions of the Hearing Examiner.

<u>The Hearing Examiner's Basis for Recommending Denial of the Rezone Proposal.</u>

Despite acknowledging that the rezone proposal satisfies the rezone criteria set forth above, the Hearing Examiner nonetheless recommended the rezone be denied. Her reasoning for the recommendation of a denial of the rezone request was that "[e]ven if it is presumed that design review will apply to future development of the site, it is not known what the outcome of that process would be in terms of project design or conditions." Conclusion 23. The Hearing Examiner was skeptical of design review to address project design or to condition future development on the property to address zone compatibility transition issues.

DPD Review of Transition Considerations in Rezone Applications.

DPD, as much as the Hearing Examiner, is concerned to assure that future development on the property addresses transitions involving residential zones to the east and south of the property. In its recommendation on this proposal, the Department indicated that the zone transition issues raised by this proposal will be conditioned during the City's design review process:

> Seattle's design review process, which is designed to address, among other issues, appropriate transitions with development on neighboring properties, will review and condition future project-specific development proposals on the property.

Director Recommendation at 8. In its recommendation, the Department did not go into detail as to how Seattle's design review process will address "appropriate transitions with development on neighboring properties" because DPD and design review will address that issue when a developer files a MUP application for development of the property. The City Council may find it helpful for the Department to provide some additional detail on assessment of transitions in the Design Guideline Process before DPD recommends approval of a MUP.

Transition issues are customarily considered as part of the design review process and the new 2013 Design Guidelines include further detail as to the consideration of transition issues.

It is DPD's current and longstanding policy to consider closely transition issues for projects that abut different zoning categories and to address zone transition issues to consider the design features of a new project for its compatibility with its neighbors. The 1998 Design Review Guidelines addressed transition issues, but while they had many strengths, they lacked specificity as to how to address zone transition issues:

> 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.

1998 Design Guidelines at 22. Despite that lack of specificity, the 1998 Design Guidelines have been applied by many Design Review Boards to successfully address transitions between zones.

Nonetheless, it became apparent over the years that greater specificity would be beneficial with respect to this and other Guidelines. Accordingly, over a period of several years, DPD reached out to stakeholders to solicit input on how to improve the Guidelines. This ultimately resulted in the 2013 Guidelines, which were adopted by Ordinance in December 2013 after having first been reviewed, approved, and recommended by this Committee.

A review of the 2013 Guidelines indicates that the issue of zone transitions is very specifically addressed, along with mechanisms that will result in successful transitions. In addition to repeating the guidance in the 1998 Guidelines to provide an appropriate transition or complement to the neighboring zone, the new Guidelines provide additional specific direction:

Massing Choices: Strive for a successful transition between zones where a project abuts a less intensive zone. In some areas, the best approach may be to lower the building height, break up the mass of the building, and/or match the scale of adjacent properties in building detailing. It may be appropriate in other areas to differ from the scale of adjacent buildings but preserve natural systems or existing features, enable better solar exposure or site orientation, and/or make for interesting urban form.

2013 Design Guidelines CS2.D.3. See also Guidelines CS2.C.3 (Full block sites); CS2.D.1 (Existing development and zoning); and CS2.D.4 (Massing choices).

In this light, the Department considered that it would be ineffective from a development conditioning perspective to recommend particular zone transition conditioning at this time. Rather, the Department has recommended that the rezone proposal be approved, subject to assurance that all development on the site will be subject to the Council's 2013 Design Guidelines Ordinance.

The Department suggests that it is through the design review process and the involvement and consideration of the Design Review Board that development on the property will be sited in a manner to effectively address the transition provisions of the 2013 Guidelines.

In this way, the Hearing Examiner's interest in assuring appropriate transition between zones can be fulfilled.

Conclusion.

The Department respectfully recommends to the Council that the rezone proposal be approved.

Dated this 10th day of February, 2014.

Michael Dorcy
Senior Land Use Planner,
for the Director

ATTACHMENT

Response of Director, Department of Planning and Development

To Appeal of Hearing Examiner Recommendation

Clerk File 312973: Application of Midtown Limited Partnership

current tenants, especially those businesses owned by persons of color. Some of the commenters also advocated for affordable housing and free parking on site.

ANALYSIS - REZONE

The applicable requirements for this rezone proposal are stated at 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 23.34.086 (Pedestrian designation, Suffix P, function & locational criteria). The zone function statements are to be used to assess the likelihood that the area proposed to be rezoned would function as intended.

The most reasonable order for analysis does not follow the section numbering. In the following analysis, SMC Section 23.34.008 (General rezone criteria) will be considered first. Then follows 23.34.009, which considers the compatibility of height considerations), 23.34.072 general commercial considerations, 23.34.086 (which considers the Pedestrian designation), and finally 23.34.007, which requires synthesis of all the foregoing analyses. The pattern below is to quote applicable portions of the rezone criteria in italics, which is then followed by analyses in regular typeface.

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 one hundred twenty-five percent (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 be within the density ranges established in Section A1 of the Land Use Element of the Comprehensive Plan.*

The subject site and surrounding neighborhood are within the 23rd and Union-Jackson Residential Urban Village (23rd RUV). The Urban Village Appendix to the Seattle Comprehensive Plan set a 650 household increase as the growth target for this Residential Urban Village. This target requires a density increase to nine households per acre (or 4,840 sq. ft. per household) from the existing seven households per acre (or 6,233 Sq. ft. per household). The subject site, as earlier noted is 106,189 sq. ft. in size. Development of additional residential units on this site would contribute to the desired residential density of the Residential Urban Village.

According to the latest available progress report on growth, under Seattle's comprehensive plan the residential urban village has achieved 60% of the targeted growth (*Monitoring Our Progress: Seattle's Comprehensive Plan,* 2003). The proposed rezone will increase zoned capacity by allowing additional building height and the resultant gross square footage (FAR) on the same area of land. The proposed rezone is consistent with SNC 23.34.008.A.1 because the increased in zoned capacity does not reduce capacity below 125% of the Comprehensive Plan growth target. The rezone is also consistent with SMC 23.34.008.A.2 because the increased density contributes to the attainment of densities established in the Comprehensive Plan.

B. *Match Between Zone 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.*

The proposal is to increase the height limit of a property currently designated Neighborhood Commercial 2-40 (NC2-40) to Neighborhood Commercial 2-65 (NC2-65). SMC 23.34.076 provides the Neighborhood Commercial 2 zone, function and locational criteria. The property at a minimum meets the SMC 23.34.076 zone criteria for the Neighborhood Commercial 2 zone (its current designation). It can accommodate a pedestrian-oriented shopping area that provides a full range of household and personal goods, including convenience and specialty goods, to the surrounding neighborhoods, and can include other uses that are compatible with the retail character of the area such as housing or offices. It is located in a primary business district in a residential urban village, on streets with good capacity and excellent transit service. Because of its size, its location and its traditional function as the community commercial hub, it can achieve the following characteristics: a variety of sizes and types of retail and other commercial businesses at street level; continuous store fronts to the front lot line; substantial pedestrian activity; shoppers can drive to the area, but walk around from store to store; and the excellent transit provides for important means of access and egress for residents and the shoppers using the retail stores within it. The locational criteria for NC2, are consistent with the property because it is the primary business district for the 23rd RUV, is served by two arterials (Union and 23rd), can be buffered from less intense residential areas, is served by excellent transit service and is, as described below, sited at a designated business node of the applicable Urban Village where mixed use buildings of greater than 40' in height are encouraged.

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

The subject property was zoned Community Business (BC) in 1980 and was re-zoned to NC2-40 under the City's prior commercial zoning code (Chapter 23.47) and remained NC2-40 under the most recent commercial zoning code (Chapter 23.47A), enacted in 2006. The zoning history of the surrounding area that includes NC, single-family and low-rise multifamily zones has remained relatively consistent. The property immediately to the west across 23rd Avenue (2203 East Union Street) was re-designated to NC2-65 pursuant to a contract rezone in 2008 (CF 308565).

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.*
2. *Council adopted neighborhood plans that apply to the area proposed for rezone shall be taken into consideration.*
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 Central Area Action Plan II ("CAAP II") is a community-based document, adopted in 1998 as the Central Area's Neighborhood Plan and it encompasses the 23rd RUV. Updated neighborhood policies for the Central Area were also adopted as part of Seattle's Comprehensive Plan update in January 2005. Both CAAP II and the Comprehensive Plan support the rezone proposal. The Comprehensive Plan, as described below, specifically recommends heights greater than 40 feet in Urban Village business nodes such as the subject property. CAAP II contains the following goals, policies, and action plan components that are germane to consideration of the proposed rezone at this location:

- The 23rd and Union neighborhood is "defined as the crossroads of the Central Area, with more activity and better district layout that makes use of the width and potential of East Union. [Development should] rearrange parking on the street and off to make better use of it, and emphasize the district as a convenience shopping area for local residents and workers." (page 4)

- "23rd and Union has long been considered the hub of the Central Area. Its smaller scale lends itself to less residential and commercial density. The vision for the neighborhood focuses on maintaining the cultural and ethnic diversity of the community. In the future, changes will be made thoughtfully, with respect for the past, pride in the present and careful regard for sustainable development in the future. East Union Street will be the focus, both in terms of transportations systems and in becoming the gathering place for the community. To support this vision, an integration of streetscape, street improvement, land use and zoning changes and open space elements will need to come together." (page 9-10)

- "Establish a Pedestrian 2 Overlay at the business core of 23rd and Union." (pages 23 and 28)

- "Create a sense of entry for the Central Area and individual neighborhoods by developing "community gateways" that go beyond placing a sign on a utility pole. Develop landscaped areas, public art pieces, banners, and/or signage at locations that include but may not be limited to… 23rd & Union (page 44)

- "23rd and Union Node – The Community's Business Center. Continue adding commercial office space and professional services. Encourage housing density in and around the commercial area…" (page 50)

  "Moderate Income Housing. Encourage development of market-rate housing affordable to families of modest or moderate incomes. (80% - 120% of median)." (page 66)

- "Through implementation of the comprehensive plan and/or neighborhood planning, designate Key Pedestrian Streets within the highest-density portions of urban villages and along logical connections between villages. Design and operate these streets to be safe and attractive for pedestrians, improve access to transit, encourage street-level activity, and facilitate social interaction. Integrate pedestrian facilities into street improvements on these streets.

Consider strategies such as curb bulbs, mid-block crosswalks, benches, street trees, wider sidewalks, lighting, special paving, overhead weather protection, and grade-separated pedestrian walkways over or under major obstacles to pedestrian movement." (page 72)

- "Union Street Improvements. Improve street landscaping and street furniture and provide lane modification on Union at 23rd Avenue to reduce pedestrian accidents, improve parking, improve safety for bicycles and enhance the business node." (page 82)

- "Union Streetscape and Urban Design. Promote a pedestrian environment along Union between 19th and Martin Luther King Jr. Way. Request Seattle Transportation, the Department of Neighborhoods, and Seattle City Light to work with neighborhood associations to establish streetscape features such as decorative street lighting, seating areas, intersection paving patterns, and community identity markers." (page 84)

The following 2005 Comprehensive Plan goals and policies are also relevant to analysis of this rezone application:

- Policy CA-P1: Enhance the sense of community and increase the feeling of pride among Central Area residents, business owners, employees, and visitors through excellent physical and social environments on main thoroughfares.

- Goal CA-G2: A community where residents, workers, students and visitors alike can choose from a variety of comfortable and competitively convenient modes of transportation including walking, bicycling, and transit and where our reliance on cars for basic transportation needs is minimized or eliminated.

- Goal CA-G3: A community that is served by a well-maintained infrastructure…

- Goal CA-G4: A stable community with a mix of housing types meeting the needs of a wide variety of households, where home ownership is an affordable option for many households.

- Policy CA-P7: Encourage use of travel modes such as transit, bicycles, walking and shared vehicles… and discourage commuting by single occupant vehicle…

- Policy CA-P24: Create a viable business base that will attract investment, focusing on neighborhood retail, professional and personal services, restaurants, and entertainment. Support the urban design element of the Central Area Neighborhood Plan that strengthens development and enhances the pedestrian nature of each area.

- Goal CA-G6: [Develop] distinct but mutually supportive primary business districts along the 23rd Avenue Corridor… 23rd and Union Node --

Business/Restaurant Center: A small scale commercial hub serving the neighborhood, providing a range of residential housing types.

This rezone proposal is consistent with these goals and policies. The neighborhood plan (CAAP II) specifically labels the 23rd and Union intersection as the "23rd and Union Node" and expressly encourages shopping, commercial and residential development with density at the core of that node.

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 shall be minimized by the use of transitions or buffers, if possible. A gradual transition between zoning categories, including height limits, is preferred.

The updated rezone proposal is solely for an increased height allowance from 40 to 65 feet (the next tallest level designated in the land use code). The existing "P-suffix" parcels along Union and 23rd will remain. Those that do not currently have a "P-suffix" overlay will be rezoned with the "P-suffix". The increased height allowance will result in more viable commercial and residential development on the property, consistent with the recommendation of the Comprehensive Plan and the DPD recommended "23rd Ave Union-Cherry-Jackson Action Plan".

The property to the west has an NC2-65 designation, with an approved master use permit which allows development as a ground-floor retail and 96-unit residential project. The properties to the northwest, north and northeast are currently designated NC2-40. (The DPD recommended "23rd Ave Union-Cherry-Jackson Action Plan indicates that these properties also are suitable for NC2-65 zoning designations.)

All properties on the subject block are currently zoned NC2-40. Properties to the east, across 24th, are zoned NC2-40 and SF 5000. Properties to the south, across Spring Street, are zoned SF 5000. The SF 5000 zoned properties are separated from the proposed rezone property by city streets, and have been adjacent to commercially zoned property for decades. In this light, a change from NC2-40 to NC3-65 will not significantly affect these SF 5000 zoned properties. In addition, Seattle's design review process, which is designed to address, among other issues, appropriate transitions with development on neighboring properties, will review and condition future project-specific development proposals on the property.

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 green spaces.

The subject property is bordered on all four sides by public rights of way. No other physical buffers exist between the proposed height increase and the existing, surrounding zones.

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.

   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.*

The proposed rezone will not change the currently existing boundaries between the commercially and residentially zoned areas.

4. *In general, height limits greater than forty (40) feet should be limited to urban villages. Height limits greater than forty feet (40) 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.*

The site is located within an urban village where heights greater than 40 feet are contemplated. The proposed rezone will increase the height limit from 40 to 65 feet.

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 proposed rezone will afford the property with the opportunity to be developed with housing at an increased density due to the 65 foot height limit.

b. Public services;

The proposed rezone will not of itself require public services, but subsequent development will.

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

The proposed rezone will allow two stories of additional height without changing the type of uses allowed on the subject property, which is currently developed as a retail commercial center. There will likely be no appreciable negative environmental impacts associated with allowing the proposed denser urban infill development compared to existing zoning.

d. Pedestrian safety;

The area currently has sidewalks, street lights and crosswalks; therefore the proposed rezone will not adversely impact pedestrian safety. New commercial and residential development on the site would increase "eyes on the street," which is assumed to enhance overall safety in the neighborhood. The property has, and will retain, the "pedestrian" designation, on all lots facing Union and 23rd, requiring a number of pedestrian-friendly design elements as part of any site development.

e. Manufacturing activity;

There is no manufacturing activity on the property or in the property's vicinity.

f. Employment activity;

The proposed rezone will result in the opportunity for substantial commercial development, which will provide additional employment opportunities in new retail facilities as well as in constructing and maintaining the commercial and residential development on the subject property.

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

The existing development on the subject property is not considered to have architectural or historic value. No adjacent properties have been identified as having historic value.

h. Shoreline view, public access and recreation.

The proposed rezone will not impact shoreline, public access or recreation uses.

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;

The additional development potential provided by the rezone is minimal in terms relative to street access in the project vicinity.

b. Street capacity in the area;

The additional development potential provided by the rezone will generate traffic which will use street capacity in the area. The street capacity of the area, however, can reasonably accommodate the traffic associated with that additional development potential.

c. Transit service;

The additional development potential provided by the rezone is negligible in terms relative to transit ridership for the project vicinity.

d. Parking capacity;

The area is in a pedestrian zone, with easy transit access both to downtown and to the University of Washington. New development will accommodate any City-required parking on site.

e. Utility and sewer capacity;

The proposed rezone is in an area that has experienced low water pressure, low sewer capacity and flooding issues. Seattle's Comprehensive Plan identifies how the City is addressing these issues: "The capacity of the wastewater system is limited in confined areas of the city, where there have been historic hydraulic and system backup problems. These problems are being addressed through developer-funded facility upgrades and by Seattle Public Utilities CIP." Additional residential density is of concern for existing sewer capacity, but the proposed height increase is not directly related to an increase in residential units on site and the limited local infrastructure is not directly burdened by the proposed rezone for additional height. The current proposal is for a rezone of the site only, Subsequent proposals for actual development on site may have to deal with issues of inadequate capacities and all future development on site will have to meet standards of approval set by Seattle Public Utilities.

f. Shoreline navigation.

The proposed rezone will not impact shoreline navigation.

A. 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 designations in this chapter.

The most significant changed circumstance is that the United States Postal Service has significantly downsized its presence in the existing MidTown Center on the property. Other adverse changes include the shuttering of a local branch of a bank, and the closure of some long-term business establishments. These changes, taken together, could lead to additional vacant storefronts and neighborhood decay. According to the applicant, the rezone is important as a catalyst to encourage redevelopment of the property for residential and commercial purposes as envisioned in the City's Comprehensive Plan, the existing neighborhood plan, and current neighborhood planning which envision this locale as a site that will serve as a neighborhood hub and gathering place and serve as a demonstration of the community's resilience.

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

The proposed rezone is not located in an Overlay district; thus this criterion does not apply.

C. 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.

The subject site does not contain any environmentally critical areas.

SMC 23.34.009 - Height limits of the proposed rezone.

Where a decision to designate height limits in 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.*

This rezone seeks only to increase the proposed height limit of parcels zoned NC2 from 40 to 65 feet to accommodate increased housing density and, in order to allow more viable retail development. These two changes are consistent with the type and scale of development intended for the NC2 zones in a residential urban village, as discussed above with regard to the comprehensive and neighborhood plans. In particular, the creation of new commercial development and residential apartments will add density and vitality to the desired pedestrian character of the residential urban village.

The proposed rezone's location at the 23rd and Union intersection, long recognized as a central community hub for the neighborhood, will provide density at the center of the urban village and is expected to encourage redevelopment, particularly with the current use of the MidTown Center property confronted with the loss of the USPS facility and the threat of empty storefronts. The applicant believes that redevelopment authorized by the proposed rezone will bring a substantial number of new residents to the neighborhood, plus the jobs provided by the commercial development on site. As intended with urban villages, this will draw more pedestrian traffic from the surrounding residential neighborhoods to the urban village node, increasing use of local merchants while reducing dependence on automobiles. The rezone is likely to meet demands for permitted goods and services by providing housing and commercial opportunities on the current MidTown Center site.

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.*

The immediate vicinity of the proposal site is relatively flat. The site sits halfway on the western slope of a valley that begins on 18th Avenue and slopes downward to Martin Luther King Jr. Way. It then rises from that point to the Madrona neighborhood. The proposal site enjoys easterly views. Because surrounding properties to the site are currently zoned for higher, the same, or lower heights (65 feet, 40 feet, 30 feet, or single family), surrounding properties would generally not be subject to worse view blockage from the proposed 65-foot limit than would currently exist.

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.*

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 D2, are present.*

The subject site and lots along 23rd Avenue, under the current zoning, have a maximum height limit of 40 feet, with the exception of the site immediately to the west, which has a maximum height limit of 65 feet. The existing buildings within this zone, however, generally do not extend to this maximum height.

Existing development in the area is not a good general measure of the area's overall development potential as there remains sufficient additional capacity for more retail and residential development. The goals and policies that apply to the 23rd RUV would be met by the re-development of MidTown into a mixed-use, pedestrian friendly element of the village. Changing the height designation from 40-feet to 65-feet creates a continuous central focal point (combined with the approved project directly to the west across 23rd Avenue) for the 23rd and Union Node, one that intended as an anchor to redevelopment of 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.*

There are no specific discussions of applicable height limits in CAAP II or the Central Area policies in the Seattle Comprehensive Plan, although they do speak to the importance of establishing commercial and residential density in this key community node. The Land Use Element of the Comprehensive Plan contemplates that heights greater than 40 feet may be needed in urban villages. LU120 states: *"Assign heights to commercial areas independently of the commercial zone designations. Allow different areas within a zone to be assigned different height limits based on the appropriate height to: further the urban village strategy's goals of focusing growth in urban villages; accommodate the desired functions and intensity of development....* See also CAAP II, p. 50

SMC 23.34.072 - Designation of commercial zones.

This proposal does not seek to change the commercial zoning of the property and assumes the functional and locational validity of the current Neighborhood Commercial 2 zoning (SMC 23.34.076). The property will continue to meet the designation of the commercial zones criteria that emphasize edge transitions and concentrated commercial uses. The proposed rezone takes cognizance of the criterion that states that "the preservation and improvement of existing commercial areas shall be preferred to the creation of new business districts" (SMC 23.34.072. E.).

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

The proposal does not seek to change the NC2 zoning designation of the property. The property continues to meet the locational criteria of the NC2 zone as the primary business district in the 23rd Residential Urban Village. The site is located on a principal arterial (23rd Avenue) and a minor arterial (Union Street), which have good capacity but are not major transportation corridors. The rezone site and its adjacent NC2 parcels are small to medium in size, with the rezone site as one of the larger properties in the area at 106,189 square feet.

The functional criteria of the NC2 zone can be more adequately achieved with future redevelopment of the site.

SMC 23.34.086 - Pedestrian designation (suffix P), function and locational criteria.

The subject property currently has the Pedestrian ("P") designation as a substantial part of its zoning on site, and the proposed rezone does not seek to remove that designation. Appealing to the principle that zoning histories that have resulted in a kind of gerrymandered zoning map are less than desirable from the standpoint of applying and administering uniform development standards to development sites, and therefore do not serve the public interests well, the Director recommends that the two non-contiguous areas within the block that are currently zoned *NC2-40* (and not NC2***P***-40) be zoned NC2P-65 as well. The NC2-40 applies to properties that comprise only 17.3% of the total site. The entire property site continues to meet the locational criteria of the Pedestrian designation as a commercial node in an urban village, zoned NC on both sides of the arterials with excellent pedestrian, bike, and transit access. The proposed additional height will not detract from the pedestrian character of the site and, by providing additional density, it is very likely to promote additional pedestrian and bicycle activity plus transit frequency and accessibility.

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 those 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.

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.

C. *Overlay districts established pursuant to neighborhood plans adopted by the City Council may be modified only pursuant to amendments to neighborhood plans adopted or amended by the City Council after January 1, 1995.*

D. *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 re-designations as provided in SMC Subsection 23.60.060 B3.*

E. *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. This subsection does not apply to the provisions of other chapters including, but not limited to, those which establish regulations, policies, or other requirements for commercial/mixed use areas inside or outside of urban centers/villages as shown on the Future Land Use Map.*

F. *The procedures and locational criteria for shoreline environment re-designations are located in Sections 23.60.060 and 23.60.220 respectively.*

G. *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 above analysis has considered the foregoing criteria and complies with the individual valuations where applicable.

Lacking any development proposals accompanying the rezone application, actual development on the existing parcels could follow a variety of scenarios. There could be no immediate major changes in the current commercial structures on site. The current zoning would allow changes of use on the existing parcels and within the existing commercial structures where some or all of the commercial space would be converted to new commercial uses. New development of single-purpose commercial structures might also take place on individual lots or on lots combined for development. The subject sites are not located in any mapped Environmentally Critical Area (ECA) where restrictions might curtail the full build-out of the sites. The residential portion of a mixed-use structure, however, allowable under a NC2P-65 zoning designation, should exceed the density of structures which might be built under the current NC2P-40 zoning, especially if some of the individual subject sites were to be combined for development purposes.

Given the circumstances of the subject properties, the history of zoning, and the goals of neighborhood planning, as well as the applicable locational and functional criteria in Chapter 23.34 of the Land Use Code, the Neighborhood Commercial 2P zone, with an allowable 65-foot height limit, would appear to be as suitable a zoning designation for the property as is the existing NC2P-40 zone and one that provides more potential for desired residential density. . Although there is unused development potential within existing NC2P-40 zoned property in the 23rd Avenue and E, Union Business District, recent interest in neighborhood development in the area and a longer term perspective would indicate that the an additional 106,189 sq. ft. of Neighborhood 2 -zoned property with a 65 foot height limit would not constitute a surfeit of property so zoned.

RECOMMENDATION - REZONE

This site and surrounding neighborhood are within the adopted boundaries of the 23rd and Union-Jackson Residential Urban Village. The proposed rezone also meets the general rezone criteria, where applicable. Regarding the neighborhood plan criteria of 23.34.008.D, the adopted neighborhood plan unfortunately gives little specific direction on this rezone question.

The contract rezone proposal will create the opportunity for a development containing a mix of commercial and residential uses that will be compatible with the existing neighborhood context, and preferable to other approvable configurations under the current zoning. The Director recommends **APPROVAL** of this rezone request. The Director also recommends for consideration the following: Should a broader, area-wide rezone of the 23rd Avenue and E. Union Street intersection be contemplated by City Council in the near future, and should that broader rezone be made subject to an "incentive zoning suffix" complying with subchapter 23.58A of the Land Use Code, at such a time the subject site should be made subject to the same suffix.

ANALYSIS – SEPA

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant dated March 27, 2013 and annotated by the Department. The information in the checklist, supplemental information provided by the applicant, (soils report), project plans, 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.

Short-term Impacts

As a non-project action, the proposed amendments will not have any short-term impacts on the environment. Future development affected by this legislation and subject to SEPA will be required to address short-term and long-term impacts on the environment.

Long-term Impacts

The proposal to rezone the subject parcels from NC2-40 and NC2P-40 to NC2P-65 is expected to generate various impacts, but while these impacts may be adverse, they are not expected to be significant. As an incentive for development the rezone could foreseeably add to traffic congestion and provide for other impacts. It is expected that these impacts would be well within the range of impacts expected for this kind of urban development; while significant, such impacts would not be expected to be adverse and generally they would be addressed by existing Land Use and Construction Codes.

The added height allowance should act as an incentive for mixed-use development and an increase in the development of residential units in the area. Residential development, however, would not be required of the site and actual development proposals could diminish the potential for realizing the general residential goals set forth in the Seattle Comprehensive Plan.

BEFORE THE SEATTLE CITY COUNCIL

APPEAL OF MIDTOWN LIMITED PARTNERSHIP

CLERK FILE 312973

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CITY CLERK

I, Michael Dorcy, under penalty of perjury under the laws of the State of Washington, declare as follows:

I am a Senior Land Use Planner with the City of Seattle Department of Planning and Development. On the date indicated below, I caused a copy of the Department's Response to Appeal and this Certificate of Service to be served via email transmission on Rich Hill, legal counsel for Hugh Bangasser, Applicant.

Dated this 10th day of February, 2014, at Seattle, Washington.

Michael Dorcy

Michael Dorcy

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FEB 18 2014
City of Seattle
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BEFORE THE CITY COUNCIL
FOR THE CITY OF SEATTLE

In the Matter of the Application of **HUGH BANGASSER, for MidTown Limited Partnership** for a rezone of property addressed at 2301 E. Union Street	**CF 312973** DPD Project No. 3005931 **APPLICANT'S REPLY MEMORANDUM**

INTRODUCTION

The Applicant fully supports the analysis of the Director of the Department of Planning and Development, Diane Sugimura, in favor of the requested rezone from N2P-40 to N2P-65 as set forth in her Response to the Appeal ("Response"). As the Director explained, the Appeal should be granted, and the proposed rezone should be approved. The City's Design Guidelines as adopted by the City Council provide ample authority to assure complementary transition between zones and, as contemplated by the zoning ordinance and the 2013 Design Guidelines, the design review process will provide the opportunity for interested parties including community groups to provide input on all design issues including transition issues relating to the site proposal for consideration by the design review board.

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The 23rd and E. Union business node is an area that the Applicant, the City of Seattle and the Hearing Examiner all agree needs economic development and revitalization. Yet, the on-going loss of businesses and jobs there have been followed by a deteriorating situation. While the record in this case indicates that DPD is in the process of proposing a legislative rezone for the area, the time frame for adoption is at least a year, and more likely two to three years, in the future. The deteriorating situation at 23rd and E. Union cannot wait for the highly uncertain timing of a future legislative rezone and the subsequent MUP process that would follow the enactment of the legislative rezone.

Recent Seattle Police Department ("SPD") statistics reveal that the intersection is confronting ever increasing criminal and gang activity and attendant crime (e.g., from arson, to firearm discharges, to robberies) that make for even greater challenges to the area and the urgency of prompt redevelopment, revitalization, and the creation of job opportunities there. (The Council is respectfully requested to take official notice of the attached Exhibit A, Seattle Police Department 2013 – 14 Police Report for just the one-block area surrounding 23rd and East Union). The situation worsens for 2014 with gang shootings and graffiti on the subject site. The USPS plans to vacate their current location in April.

Not part of official record - do not consider

This Reply will address two of the issues noted in the Director's Response. First, the proposed rezone will encourage needed economic redevelopment of the site. Economic redevelopment is needed, because, as can be tracked from the police statistics on Exhibit A, with the departure of several major tenants, this site has experienced significant criminal activity, property and personal crimes and a deteriorating commercial neighborhood environment. The area is quickly reverting again to the SPD "Hot Spot" designation that had been previously assigned to it. Redevelopment of what is undisputedly characterized as the "anchor property" for

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the intersection will reverse that very troubling trend. Second, the Director's Response noted that several public comments -- from neighborhood minority merchants, residents and landowners -- expressed support for the rezone proposal to speed the development process and address the area's need for jobs, economic development and revitalization and for a safe and vibrant community.

To address these issues, this Reply will briefly summarize the information from the SPD and pertinent testimony before the Hearing Examiner by area minority residents, merchants and property owners and others who support this rezone application as referred to in the DPD Response.[1]

DISCUSSION

Thomas Bangasser.

Tom Bangasser testified in support of the application. He is the General Partner of the family limited partnership that owns the property and is the Secretary/Treasurer of the Union Street Business Association, a nonprofit community advocacy organization for neighborhood businesses. He has managed MidTown Center for more than 25 years.

He testified that this corner – 23rd and East Union – has been a community service business node for decades. But now, with the loss of the Post Office, Key Bank, Med-Mix and other service providers, the business viability of this corner is seriously threatened. The proposed rezone now can expedite the reversal of that trend. The height limit increase to allow two floors of additional housing units is essential to attract the necessary capital to support economically sustainable development and to achieve needed jobs growth in the neighborhood,

[1] No transcript of the hearing before the Hearing Examiner has been prepared. These summaries of pertinent witness testimony are therefore prepared from notes. They are as accurate as possible in this context.

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housing density, commercial/retail services and the pedestrian/bicycle/transit friendly environment recommended by the Comprehensive Plan.

Earl Lancaster.

Earl Lancaster, an African-American who was raised a block from 23rd and Union, has owned and operated Earl's Cuts & Styles Shop on the 23rd and Union property for over twenty years. Mr. Lancaster is President of the Union Street Business Association. He testified that he supports the rezone application and he believes that raising the height limit from 40' to 65' will allow new housing and new retail shops and services that will benefit the community.

Savior Knowledge.

Savior Knowledge, an African-American resident of the Central District, is Vice President of the Union Street Business Association. In that capacity, he testified he works on almost a daily basis with many of the merchants and business people in and around the 23rd and Union intersection. He is very familiar with the challenges these businesses face, and has observed the negative consequences of the closing of several significant businesses including the Post Office, the Bank, and Med Mix. Mr. Knowledge testified that development at the height proposed by the rezone will bring new customers to the neighborhood to support existing businesses, and attract new ones, as well as new employment opportunities in the neighborhood.

Ezra Teshome.

Ezra Teshome immigrated to the United States from Ethiopia and is now a United States citizen. He is a local businessman and civic leader who has been on the Board of Trustees of Seattle University and the local head of the Rotary chapters in this region. He plays a leadership role in Seattle's Ethiopian community which has opened several businesses in the Central Area. Over the years, he has purchased properties in the Central Area including property on East Union

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between 22nd and 21st Avenues. He is very familiar with the challenges facing merchants and property owners along the 23rd and Union Corridor and the benefits and economics of developing the Applicant's site as a mixed use site at 65' with both residential and commercial uses.

Mr. Teshome testified in support of the proposed rezone to increase the height on the Bangasser property from 40' to 65'. He identified the benefits of the proposal as ensuring the redevelopment of the site; revitalization of the business core at this intersection; as the addition of needed residential density; attraction of investment capital necessary to the development of that site and adjoining sites; the increase in the number of shoppers to patronize neighborhood businesses; the increase in in needed employment opportunities; the improvement of public safety by bringing more "eyes on the street"; and the creation of a more attractive and welcoming gathering place at this intersection.

Monisha Harrell.

Monisha Harrell has had her office at 23rd and Union. In 2011-2012 she served as the Executive Director of the Central District Association and engaged in community outreach regarding the revitalization of this intersection. Over the past several months, she has also been highly involved in the City planning efforts for the 23rd Avenue Corridor.

Ms. Harrell testified that she has observed both the opportunities and challenges there resulting from the recent departures of key merchants and services. She testified that she supports the rezone request; that it is critical for the economic vitality and successful revitalization not only of this block but for the area as a whole; and that the rezone is fully consistent with the overall City planning efforts for 23rd and Union.

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John Teutsch.

John Teutsch who testified in support of the rezone application provides a range of real estate advisory services in the Seattle area and has engaged in mixed use commercial and multi-family residential development in Seattle for over 25 years. He lives on Capitol Hill and is very familiar with the 23rd and Union site.

He testified that increasing the height on the property from 40' to 65' will make all the difference from a real estate financial and marketing perspective. In today's market, he testified, the existing 40' height limit is not viable for commercial and multi-family development for a site such as this 23rd and Union site. The additional two floors of housing will provide sufficient density on the site to enable it to be developed and financed. The residential density from such a development can also assist in supporting a vital commercial level on the ground level. This, in turn, results in a friendly pedestrian business community environment and attracts residents.

For these reasons, he recommended to the Hearing Examiner that the proposed rezone from NC2P-40 to NC2P-65 be approved.

CONCLUSION

The Applicant appreciates the City Council's consideration of this appeal, and respectfully asks the City Council to grant the appeal and to approve the proposed rezone to allow two additional floors of housing at this key neighborhood commercial node at 23rd and East Union subject to design review for the entire site in accord with the 2013 Design Review Guidelines. Approval of the rezone will allow prompt redevelopment of the property following design review, create jobs, and successfully reverse the increasing problem of criminal activity in the area.

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Dated this 18th day of February, 2014.

Respectfully submitted,

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G. Richard Hill, WSBA 8806
Attorneys for Applicant

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EXHIBIT A

Removed because not part of official record

FILED
CITY OF SEATTLE

2014 FEB 18 PM 4: 41

CITY CLERK

Date: February 18, 2014

To: Planning, Land Use and Sustainability Committee
Seattle City Council

From: Land Use Review Committee of the Central Area Neighborhoods District Council

Subject: Motion to Intervene in Quasi-judicial Action, Clerk File (C.F.) 312973: Application of MidTown Limited Partnership to rezone land located at 2301 East Union Street

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The Central Area Neighborhood District Council (CANDC), through its Land Use Review Committee (LURC), seeks to intervene in this appeal and asks that the decision of the Hearing Examiner be upheld.

The LURC and the District Council have a strong interest in this action. The community councils and the residents of the Central Area that are represented by the District Council will be affected by the rezone of this site. At its regular meeting of February 13, the Central Neighborhoods District Council, by vote of its members, approved a motion authorizing the LURC to intervene in this appeal.

The parties of record do not adequately represent the community's interest. The intervention of the District Council Land Use Review Committee will not delay the proceeding nor will it prejudice the rights of any of the parties of record.

The Hearing Examiner declined to approve the rezone in a ruling of December 18th. Notice of the applicant's appeal of this decision was provided to LURC on January 30th, 2014.

The LURC, at the public hearing held by the Hearing Examiner, asked that the rezone, as requested, be denied. We believe that our presentation to the Hearing Examiner speaks for itself, and we urge that you review and consider the evidence and argument we submitted to the record. While we agree with the Hearing Examiner's ruling to deny the rezone because the proposal does not meet the rezone criteria, we believe that our arguments provide further support for a decision to deny the requested rezone.

1. The Hearing Examiner's Decision is Correct in Concluding that the Land Use Code Prevents the Requested Rezone Because of a Failure to Demonstrate Appropriate Transition between the NC 65 zone and the adjacent SF zone.

MidTown is requesting a rezone that would create a NC 65 foot zone adjacent to SF zoned property across non-arterial streets, 24th Avenue and E. Spring Street, on the east and south side of the Midtown Commons property. The Hearing Examiner concludes that it is *possible* that a future development following a rezone to NC 65 *could* be compatible both with actual and zoned heights in the surrounding area, but, she states, "(e)ven if it is presumed that design review will apply to future development of this site, it is not known what the outcome of that process would be in terms of project design or conditions. The future compatibility of a 65-foot height limit, or the gradual transition in *height, scale and activity* between zones, cannot be assumed on the basis of what is in this record, (emphasis added.)

That conclusion of the Hearing Examiner is correct, and the City Council should decline to approve a rezone unless and until the necessary compatibility in height, scale and activity is demonstrated.

In the appeal it is repeatedly argued that the City's design review process is sufficient to mitigate any possible effects of the rezone[1], in particular the effects of additional heights along 24th Avenue and E. Spring Streets where there are single family zones across the street.

However, even if a future project on this site were to go through the design review process, that process could not compel the development to abide by development standards of a less intense zone along the portions of the site adjacent to 24th Avenue and E. Spring Street, the Single Family zoned properties.

A design review-approved development could still be too tall for the appropriate transition required by the Land Use Code. The "shadow studies" the appellant mentions in its appeal were prepared by LURC for the Hearing Examiner. Neither the applicant nor DPD presented shadow studies as part of their SEPA analysis. Those shadow studies provide an important tool to demonstrate the potential impact of the increased heights possible if the rezone is granted.

In addition to the impact of height, a design review-approved development could still contain uses with a level of activity incompatible with an appropriate transition to Single Family homes.

Also, it should be noted, that some large projects of significant impact, such as congregate housing, and so-called microhousing, as well as non-commercial developments such are those undertaken by social service agencies are not required to participate in the design review process.

The Hearing Examiner is correct in asserting that satisfaction of zone transition criteria "cannot be assumed" and her recommendation should be followed.

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[1] It should be noted that the appeal as the basis for this points to DPD's Recommendation (page 8) that says Design Review can address these issues. But it should be pointed out that the DPD's document was largely prepared from materials provided by the applicant. It is not clear how much original thinking or effort DPD exercised in its "recommendation".

2. The Proposed Rezone Should be Part of the Neighborhood-Wide Rezone that the Department of Planning and Development is Currently Completing.

The Appellant further argues that the purpose of the requested rezone is to create new housing and commercial opportunities for this vital neighborhood intersection. The LURC, as intervenors, is also concerned about those goals. However, as the record in this matter shows, and as the Hearing Examiner notes in Finding of Fact 13 and Conclusion 6, this area is subject to an ongoing public process which will result, most likely, in the rezone of this site and other sites near 23rd Avenue and E. Union St. As the Hearing Examiner states, the exact time of presentation of the plan to the City Council is not clear, but some evidence at the Hearing indicates the time could be in the year 2014.

As the Hearing Examiner notes, the draft version of the proposed legislative rezone for this site suggests the possibility of something less intense than a 65 foot NC zone for portions of the site bordering E. Spring Street and 24th Avenue, (see Exhibit 8). "Portions of the subject site along E. Spring Street and most of 24th Avenue, are denoted as "multi-family in transition zone consider modulating height," (Finding 13.)

Residential development on a portion of the subject site along E. Spring St. and 24th Avenue is not something that can be compelled by the design review process.

The LURC asks the City Council to respect the public process that has involved the good-faith participation by dozens, if not hundreds of neighborhood stakeholders. That process will present a product for your approval which will involve, not just the MidTown site, but the larger neighborhood with a plan calculated to foster the kind of growth and vitality that all want to see.

The Appellant argues that the Hearing Examiner mistakenly requires there to be a fully designed project in order to justify the requested rezone to 65 feet in this case. This is not correct. The Hearing Examiner states that *one way* to insure that there is the buffering and transition required by the Land Use Code is for there to be a designed project (as was the case with the nearby smaller site on the northwest corner of 23rd and E. Union --- 2203 E. Union. This case was discussed at the hearing and is cited by the Hearing Examiner in her decision as a favorable example.) However, that is not the *only way* to ensure adequate transition and buffering. Another way would be for lower height limits and for residential uses for the eastern and southern portions of the subject site bordering the Single Family zone. This sort of conditioning could be part of a rezone using a "contract rezone" and a PUDA (property use and development agreement). While the applicant MidTown declares its interest in there being an appropriate transition between its site and its neighbors, it is also the case, as the record shows, the applicant intends to sell its property. The next owner's desires and intentions are, of course, unknown.

Allowing individual site rezones while an area-wide legislative rezone process is underway would introduce a degree of chaos and disruption to the legislative planning process as well as to any sort of rational planning for an area.

The recommendation of the Hearing Examiner respects the good faith invested by the public who have participated in a process which is intended to result in a plan, including rezones, for the entire neighborhood.

We ask that LURC, on behalf of the Central Area Neighborhoods District Council, be allowed to intervene as a means to ensure that balanced information is made available to Council in determining this quasi-judicial action.

Thank you for your consideration of our motion.

Amanda R. Bryan

Amanda Bryan
Chair
Central Area Land Use Review Committee

CC: Martha Lester, City Council Central Staff

FILED
CITY OF SEATTLE
2014 MAR -7 AM 10: 04
CITY CLERK

BEFORE THE CITY COUNCIL
FOR THE CITY OF SEATTLE

In the Matter of the Application of **HUGH BANGASSER, for MidTown Limited Partnership** for a rezone of property addressed at 2301 E. Union Street	**CF 312973** DPD Project No. 3005931 **Applicant's Motion For Clarification and Renewed Offering of PUDA**

Applicant's Motion for Clarification and Offering PUDA

Both DPD and the Applicant point out in this appeal that the City's Design Guidelines will assure that any future development will be conditioned to guarantee appropriate complements/transitions to neighboring properties.

To assure that **all** potential development is subject to the design review process, the Applicant here repeats its offer – made first to the Hearing Examiner, and again to this Committee in Applicant's Appeal -- that a condition be imposed that guarantees it. Appeal, p. 9.

In her presentation to the Council on February 21, 2014, City Council Central Staff made no reference to this offer, and instead proceeded at length to list potential projects that would be exempt from design review. In fact, however, **all** of these projects **will** be subject to design review should Applicant's proposed condition be accepted.

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Applicant is concerned that Staff's presentation may have inadvertently misled the Council. Applicant respectfully asks the Council to correct the record with an acknowledgment that **all** development on the property **will** be subject to design review.

To resolve any ambiguity, Applicant attaches to this motion a proposed form of PUDA that incorporates the offer set forth in the Appeal.

The Applicant appreciates the Council's consideration of this motion.

Dated this 4th day of March, 2014.

Respectfully submitted,

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G. Richard Hill, WSBA 8806
Attorneys for Applicant

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When Recorded, Return to:
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First Floor, Municipal Building
600 4th Avenue
Seattle WA 98104

PROPERTY USE AND DEVELOPMENT AGREEMENT

GRANTOR	MIDTOWN LIMITED PARTNERSHIP
GRANTEE	CITY OF SEATTLE, a Washington municipal corporation
LEGAL DESCRIPTION:	See Attachment 1
ASSESSOR'S TAX PARCEL ID	
RELATED DOCUMENTS	Not Applicable

This Property Use and Development Agreement ("Agreement") is made and entered into this ___ day of _____, 2014 between MIDTOWN LIMITED PARTNERSHIP ("MidTown") and the CITY OF SEATTLE a Washington municipal corporation ("City").

RECITALS

A. MidTown has a fee simple interest in the property known as 2301 E. Union Street (the "Property"). The legal description of the Property is set forth as Attachment 1 to this Agreement.

B. MidTown has filed an application for a map amendment to rezone the Property from NC2-40 to NC3-65. This amendment will allow density and residential/commercial uses that are consistent with the goals and policies of the 2005 Comprehensive Plan for a vibrant, walkable neighborhood hub for this key crossroads of Seattle's Central Area at 23rd and East Union. In addition, the increased residential and commercial uses would enhance ridership of the available public transportation. The significant economic benefits to the neighborhood are reflected in the increase in business opportunities/ownership, neighborhood jobs and new retail services not currently present. The increased number of residents means more "eyes on the

street" resulting in a safer, cleaner and more welcoming neighborhood. The proposed increase in site capacity accomplishes objectives set by the 1998 Central Area Action Plan II as adopted in the Seattle Comprehensive Plan update of 2005.

C. Seattle Municipal Code (SMC) Section 23.34.004 allows the City to approve a map amendment subject to the execution, delivery and recording of a property use and development agreement containing 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.

D. On November 7, 2013, 2013, the Director of the Department of Planning and Development ("DPD") recommended that the rezone be granted, subject to conditions.

E. On December 18, 2013 the Hearing Examiner recommended that the rezone be granted, subject to conditions.

F. On _____, 2014, the City Council Planning, Land Use and Sustainability Committee voted to recommend to the full Council that the rezone be granted, subject to conditions.

AGREEMENT

Section 1. Pursuant to SMC 23.34.004, MidTown hereby covenants, bargains and agrees, on behalf of itself and its successors and assigns, that it will comply with the following limitations and conditions in consideration of the rezone of the Property from NC2-40 to NC3-65:

> All development on the Property will be subject to the City's design review processes as set forth in SMC 23.41. If any such development would not otherwise be subject to design review, it will undergo administrative design review as set forth in SMC 23.41.016.

Section 2. This Agreement shall be recorded in the records of King County by the City Clerk. The covenants hereof shall be deemed to attach to and run with the Property and shall be binding upon MidTown, its heirs, successors and assigns.

Section 3. This Agreement may be amended or modified by agreement between MidTown and the City; provided, such amendment agreement shall be approved by the City Council by ordinance. Nothing in this Agreement shall prevent the City Council from making such further amendments to the zoning ordinance and/or Land Use Code or exercising the City's police power, as it may deem necessary in the public interest. The conditions contained in this Agreement are based on the unique circumstances applicable to the Property, and this Agreement is not intended to establish precedent for other rezones in the surrounding area.

Section 4. This Agreement is made for the benefit of the City and the City may institute and prosecute any proceeding at law or in equity to enforce this Agreement.

Section 5. MidTown acknowledges that compliance with the conditions of this Agreement is a condition of the subject rezone and that if MidTown avails itself of the benefits of this rezone but then fails to comply with the conditions of this Agreement with the City, in addition to pursuing any other remedy, the City may revoke the rezone by ordinance and require any subsequently permitted buildings on the Property to conform to the requirements of the then applicable zoning designation of the Property or such other zoning designation as the City may then adopt.

Section 6. This Agreement binds and inures to the benefit of the parties' successors and assigns.

SIGNED as of the day and date first above written.

MIDTOWN LIMITED PARTNERSHIP

_____

By Thomas F. Bangasser Its General Partner

STATE OF WASHINGTON)
) ss
County of King)

On this day personally appeared before me, Thomas F. Bangasser, to me known to be the General Partner of MidTown Limited Partnership, and the party that executed the foregoing instrument and acknowledged such instrument to be the free and voluntary act and deed of such limited partnership, for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to executed such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this ___ day of _____, 2014.

_____

Name _____
Notary Public in and for the State of
Washington, Residing at _____
My Commission Expires: _____

CERTIFICATE OF THE CITY CLERK:

FILED
CITY OF SEATTLE
2014 DEC -1 AM 11: 28
CITY CLERK

Date: December 1, 2014

To: Planning, Land Use and Sustainability Committee of Seattle City Council
From: Land Use Review Committee of the Central Area Neighborhoods District Council

Subject: **CF 312973** (DPD Project No. 3005931)

Response of Intervenor, Land Use Review Committee of the Central Area Neighborhoods District Council to Applicant's Motions (1) for Clarification and Offering of PUDA, and (2) Requesting Judicial Notice

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1. **The motion denominated "Motion for Clarification and Renewed Offering of PUDA."**

The Land Use Review Committee (LURC) of the Central Area Neighborhoods District Council asks that this motion be denied.

The Applicant is asking that a PUDA be fashioned which addresses only one issue: the issue of the applicability of the Design Review process to any future development on the site. Following that, the Applicant seems to be preparing to argue that all of the criteria found in the Land Use Code for rezones may be satisfied through the Design Review process. This cannot be the case. There is no indication in the Seattle Municipal Code that the Land Use Code rezone criteria were intended to be satisfied by, or to defer to, the Design Review process,

The resolution of MidTown's request for a rezone requires addressing issues beyond those that might be addressed by the application of the City's Design Review process. While the Applicant's offer to bind itself, and future developers of its property, to participation in the Design Review process is laudable, it is not useful or efficient for the City to create one PUDA that addresses only a part of one set of issues leaving the rest to the future.

The Hearing Examiner correctly decided that the Land Use Code, based on this record, does not allow the granting of the rezone. *One* of the reasons the rezone cannot be approved is the lack of provision for appropriate and adequate transitions from the subject site to the adjacent Single Family-zoned sites to the south and east. The Hearing Examiner pointed out that the Design Review process does not apply to all potential projects. Furthermore, as the Hearing Examiner held: "(e)ven if it is presumed that design review will apply to future development of this site, it is not known what the outcome of that process would be in terms of project design or

conditions. The future compatibility of a 65-foot height limit, or the gradual transition in *height, scale and activity* between zones, cannot be assumed on the basis of what is in this record," (emphasis added.)

Through the mechanism of the City's Design Review process the Design Review Board (DRB) can "recommend" and the DPD Directory "may" condition approval on some or all of the Board's "recommendations". However, the Design Review process does not provide a mechanism where a developer can be compelled to observe height limits and setback requirements that are more stringent than those of the Land Use Code's development standards nor can Design Review limit activities (uses).

If the MidTown property were rezoned to NC2P-65 it would constitute an extremely rare example in the City of a significantly more intense zone adjacent to a Single Family (SF) zone. Furthermore, the SF-zoned property to the east and south of the MidTown site is not separated by significant natural or built features. Rather, the separation between the two zones is, in each case, a modest non-arterial street. These are conditions under which a rezone should not ordinarily be granted according the rezone criteria of the Land Use Code. More is required to ensure an adequate transition in height, bulk, scale, and activity, than a mere promise that the future owner and developer will be bound by the Design Review process.

It is possible that a rezone to N2P-65 *could* be accompanied by modifications of the development standards of the underlying zone that would guarantee appropriate transitions to the SF zone. There *could* be a PUDA that defines those development standards. An example is the case cited by the Hearing Examiner of a similar rezone of a site directly to the west of the MidTown site on 23rd Avenue. In that case, development standards more stringent than, and uses different from those set forth in the Land Use Code were part of the conditions allowing the approval of that rezone. That is not the case here.

The Design Review process is necessary but not sufficient. Furthermore, as the Hearing Examiner points out, in addition to reasons related to design standards, there are other reasons militating against a rezone. Notably, there is a pending rezone of the greater 23rd and Union area which is the subject of an ongoing public process. The Applicant's motions for a limited PUDA for only its property should be denied.

2. The Motion denominated "Motion Requesting Judicial Notice"

The Applicant mischaracterizes the type of evidence which a decision-maker is permitted to "judicially notice". The concept of "judicial notice" exists to allow a decision-maker to accept into evidence certain irrefutable facts without further demonstration or proof, for the purpose of efficiency and common sense. However, the concept of judicial notice should not be used to

allow what the Applicant attempts here --- the introduction of alleged evidence that could have been submitted before the record was closed, but was not.

The Applicant is asking that the record be opened to include a "Police Reported Incidents Document". Had the Applicant introduced the "Police Reported Incidents Document" at the time of the hearing, it might have been possible to examine the document and elicit or introduce evidence further exploring the alleged relationship between police reports and the current zoning of Applicant's property. If the Applicant is allowed to introduce the Police Reported Incidents Document at this time, there is apparently no opportunity for the decision maker to receive other evidence that might help understand its significance. Equally or more relevant to the issue Applicant is attempting to raise is, for example, whether or not other property owners near the intersection have moved forward with development projects without requesting or receiving a rezone to 65 feet --- something that could be indicated by the public records that are maintained by the Department of Planning and Development.

Is the Applicant attempting to argue that incidents of police activity at or near its property is a reason to immediately rezone his property to 65 feet? The issue here is the applicability of the Land Use Code rezone criteria to the requested rezone. The relationship between the Applicant's police map and any facts relevant to a decision in this hearing is tenuous at best. Compare, for example, State ex rel. Humiston v. Meyers, 780 Wn. 2d 772,779 (1963) in which the court, on appeal, was asked, but refused to take judicial notice of an alleged fact because, in the words of the Court, "assuming the facts claimed exist, the (argued) conclusion does not follow from the major and minor premises of the syllogism." That principal applies here.

When, some time in the near future, the City Council takes into consideration the rezone of the broader 23rd Avenue neighborhood, the effect of rezones on neighborhood vitality will, of course, be entitled to consideration. A Police Incidents Report Map is of no particular relevance in the case of the Applicant's request that its property, and its property alone, should be rezoned in advance of the area-wide rezone. The Motion to take Judicial Notice should be denied.

Respectfully submitted,

Amanda Bryan, Chair
Land Use Review Committee of the Central Area Neighborhoods District Council

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BEFORE THE CITY COUNCIL
FOR THE CITY OF SEATTLE

In the Matter of the Application of **HUGH BANGASSER, for MidTown Limited Partnership** for a rezone of property addressed at 2301 E. Union Street	**CF 312973** DPD Project No. 3005931 **Applicant's Reply Memoranda regarding Motion For Clarification and Offering PUDA and Motion Requesting Judicial Notice**

Applicant's Reply Regarding Motion for Clarification and Offering PUDA

In light of developments relating to this rezone application and to other developments in the neighborhood in the past nine months since the Motion for Clarification and Offering PUDA was filed (March 4, 2014), the Applicant agrees that the initial draft PUDA presently before the Committee would benefit by being broadened in scope. To that end, the Applicant suggests the preparation of an expanded PUDA that would include conditions that would address the Hearing Examiner's stated reservations regarding transitions (size, scale and scope) between the site and adjoining residential blocks to the immediate south and east as set forth in the Recommendations dated December 18, 2013 (the "Recommendation(s)"). As the Committee undoubtedly gleaned from our several requests for continuance, those transition issues have been the subject of ongoing and detailed discussions and ultimate "agreements" between the LURC on behalf of the

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Central Area Neighborhoods District Council (the "LURC") and Applicant.[1] See Attachment A, a LURC chart prepared in November 2014 detailing "agreements" on, among other issues, the size, scale and scope of transitions for development on the east and south sides of the site, the provision of smaller business & anchor tenant spaces and provisions for open spaces. Applicant proposes the development of a substitute PUDA in conjunction with City staff that addresses the "agreements" set forth in Attachment A on transitions, on smaller business and anchor tenant spaces, and on open spaces, as well as a provision applying the City design review process and the 2013 Design Guidelines to any project(s) for the site.

In light of these substantive provisions, the Applicant respectfully asks that the PLUS Committee of the City Council remand the Application to the Hearing Examiner for an expedited hearing that considers the views of the parties to the appeal (the Applicant, DPD, and the LURC) as to whether the substantive provisions of a substitute PUDA that deal with transitions (size, scale and scope) adequately address the Hearing Examiner's earlier reservation as set forth in the Recommendation and whether in light of those and other substantive provisions of a substitute PUDA the Hearing Examiner recommends an amendment of or revision to the present Recommendation to the City Council.

The Applicant appreciates the Council's consideration of this motion.

Applicant's Reply Regarding Motion for Judicial Notice

The Applicant withdraws its Motion for Judicial Notice.

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[1] Negotiations were thwarted, as Attachment A shows, not due to any conditions relating to transitions, but solely due to disagreement as to the form of Applicant's commitment to affordable housing.

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Dated this 8th day of December, 2014.

Respectfully submitted,

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ATTACHMENT A

The chart below represents an outline of community priorities which *could* be agreed to in exchange for the CANDC's support for a rezone proposal which would increase the height limit for the MidTown property from 40' to 65'. LURC & the property owner, however, presently do not concurn on the method for achieving affordable housing. **The ultimate decision rests with City Council at it's upcoming January hearing.**

MIDTOWN CENTER REZONE	
COMMUNITY PRIORITIES	AGREEMENT? YES/NO
Transitions to Single Family Houses (portions of 24th Ave & Spring St) ▷ setbacks: 10' to 35' height, further 10' above 35' height ▷ ground level residences accessible from sidewalk ▷ potential locations for garage & loading access	YES
Smaller Businesses & Anchor Tenant Spaces ▷ set aside of 5000 sq. ft for smaller retailers & other businesses ▷ anchor tenant size as allowed under applicable City code	YES
Provisions for Open Space ▷ set aside of 2500 sq. ft of open space ▷ 2 ft setback at ground level along 23rd Ave	YES
Affordable Housing Commitment ▷ LURC: adopt DPD's 50 yr affordable housing policy (**Incentive Zoning or Linkage Fee)** with the added potential for participation in MFTE program *vs.* ▷ BANGASSERS: buyer agrees to 12 yr participation in **MFTE program** *or* legislated Incentive Zoning requirements if project vests later than DPD's area-wide rezone	NO