

August 11, 2017

MEMORANDUM

To: Planning, Land Use and Zoning Committee
From: Ketil Freeman, Council Central Staff
Subject: Clerk's File 314310 and Council Bill 119059 – 1203 E Spruce St, Contract Rezone

This memorandum: (1) provides an overview of the rezone application contained in Clerk File (CF) 314310; (2) describes the contents of Council decision documents, which would grant the rezone application; and (3) summarizes Council Bill (CB) 119059, which would amend the Official Land Use Map, also known as the zoning map, to effectuate the rezone, and accept a Property Use and Development Agreement (PUDA) limiting future development.

Overview

Capitol Hill Development, LLC (the Applicant), has applied for a contract rezone, which would apply to approximately 62,000 square feet of a larger development site located at 1203 E. Spruce Street (the Property). The rezone would change the zone designation of a portion of the site from Lowrise 3 (LR3) to Neighborhood Commercial 3 with a 65-foot height limit (NC3 65).

The Applicant plans to redevelop the site with 369 residential units, 18 live-work units, and approximately 9,000 square feet of commercial space, all of which would be in three 6-story buildings. The project would include ground level open space with an interior courtyard, a mid-block crossing, and parking for 310 vehicles.

Development of the Property is subject to the Mandatory Housing Affordability Program, which is codified in Seattle Municipal Code Chapters 23.58B, Mandatory Housing Affordability – Commercial (MHA-C), and 23.58.C, Mandatory Housing Affordability – Residential (MHA-R). Payment and performance amounts for program participation in MHA-R are established by Director's Rule 14-2016. The Applicant also proposes to provide additional affordable units and apply for a property tax exemption on the residential improvement value of the project pursuant to the Multifamily Tax Exemption (MFTE) Program. The Applicant has indicated that unless units provided through the MHA Program also count as affordable units for the MFTE Program, the project may not provide a high enough return for a lender to underwrite a construction loan.¹

The Applicant filed a rezone petition in January 2016. On April 13, 2017, the Seattle Department of Construction and Inspections (SDCI) issued an affirmative rezone recommendation, State Environmental Policy Act decision, and design review decision. The Hearing Examiner held an open record hearing on the rezone recommendation on May 23,

¹ Hearing Examiner's Exhibit 24.

2017. On July 5, 2017, the Hearing Examiner issued a recommendation to Council to approve the rezone subject to a PUDA.

Type of Action and Materials

This rezone petition is a quasi-judicial action. Quasi-judicial rezones are subject to the Appearance of Fairness Doctrine prohibiting *ex-parte* communication. Council decisions must be made on the record established by the Hearing Examiner.²

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 audio recordings of the hearing, are available for review in my office.

Attachments to this memo include:

- Proposed Council Findings, Conclusions and Decision
- The Hearing Examiner's recommendation to approve the rezone;
- The Applicant's financial analysis of the impact of MHA and MFTE requirements; and
- Drawings and other images excerpted from the Applicant's Design Review Packet.³

Committee Decision Documents

To approve a contract rezone the Council must make recommendations to the Full Council on two pieces of legislation: (1) a Council Findings, Conclusions and Decision that grants the rezone application and (2) a bill amending the zoning map and approving a PUDA.

1. CF 314310 - Findings, Conclusions and Decision

The CF for this rezone contains the Hearing Examiner's record for the proposal. Based on changes to the proposal since the CF was introduced, the Committee should amend the title of CF 314310 to correctly identify the zones. An amendment is shown below.

Application of Capitol Hill Development, LLC for approval of a contract rezone of approximately ~~74,000~~62,000 square feet of a property located at 1203 E. Spruce Street from ~~Neighborhood Commercial 3 with a 65 foot height limit and a pedestrian overlay (NC3P-65) and~~ Lowrise 3 (LR3) multifamily residential to Neighborhood Commercial 3 with a 65 foot height limit (NC3 65) (Project No. 3018576; Type IV).

Council staff has drafted a proposed Council Findings, Conclusions and Decision, which:

- Adopts the Hearing Examiner's findings and conclusions;
- Makes additional findings related to applicability of the MHA Program to the decision;

² Seattle Municipal Code Section 23.76.056.

³ Hearing Examiner's Exhibit 5.

- Approves the proposed rezone subject to a condition that the Applicant execute a PUDA limiting development to the project shown on final approved plans; and
- Sets out MHA-C and MHA-R performance and payment amounts.

2. CB 119059 – Rezone Bill

CB 119059 would amend the Official Land Use Map to rezone the Property and approve and accept the executed PUDA.

Next Steps

The rezone application will be considered by PLUZ for a potential recommendation to Full Council on August 15. Depending on Committee action, a Full Council vote would occur no earlier than September 5.

cc: Kirstan Arestad, Central Staff Director

FINDINGS, CONCLUSIONS, AND DECISION
OF THE CITY COUNCIL OF THE CITY OF SEATTLE

In the matter of the Petition:)	Clerk File 314310
Capitol Hill Development, LLC)	FINDINGS, CONCLUSIONS,
)	AND DECISION
For approval of a rezone of property)	
located at 1203 East Spruce Street)	

Introduction

This matter involves a petition by Capitol Hill Development, LLC (the Applicant), to rezone a portion of an approximately 62,000 square foot development site located at 1203 East Spruce Street (the Property) from Lowrise 3 (LR3) to Neighborhood Commercial 3 with a 65-foot height limit (NC3 65). Attachment A shows the area to be rezoned (the Rezone Area).

On April 13, 2017, the Director of the Seattle Department of Construction and Inspections (SDCI) recommended approval of the proposed rezone, with conditions. SDCI also issued a State Environmental Policy Act (SEPA) decision and design review decision.

The Hearing Examiner held an open record hearing on the rezone recommendation on May 23, 2017. On July 5, 2017, the Hearing Examiner issued findings and conclusions and recommended approval of the rezone, subject to conditions. On August 15, 2017, the Planning, Land Use and Zoning Committee of the Council reviewed the record and the recommendations by SDCI and the Hearing Examiner and recommended approval of the contract rezone to the Full Council.

Findings of Fact

The Council hereby adopts the Hearing Examiner's Findings of Fact as stated in the Findings and Recommendation of the Hearing Examiner dated July 5, 2017. In addition, the Council adopts the following Findings of Fact:

1. The Rezone Area is an area where increased residential development will assist in achieving local growth management and housing policies.
2. Approval of the rezone provides substantially increased residential development capacity in the Rezone Area.

Conclusions

The Council hereby adopts the Hearing Examiner's Conclusions as stated in the Findings and Recommendation of the Hearing Examiner dated July 5, 2017.

Decision

The Council hereby **GRANTS** a rezone of the Property from LR3 to NC3 65, as shown in Exhibit A. Development of the Property must comply with SEPA and Design Review conditions as stated in the Findings and Recommendation of the Hearing Examiner. Development of the Property is also subject to the following rezone conditions related to application of the Mandatory Housing Affordability program, which is codified in Seattle Municipal Code Chapters 23.58B and 23.58C. The following conditions replace condition one in the Findings and Recommendation of the Hearing Examiner and must be incorporated into an executed Property Use and Development Agreement:

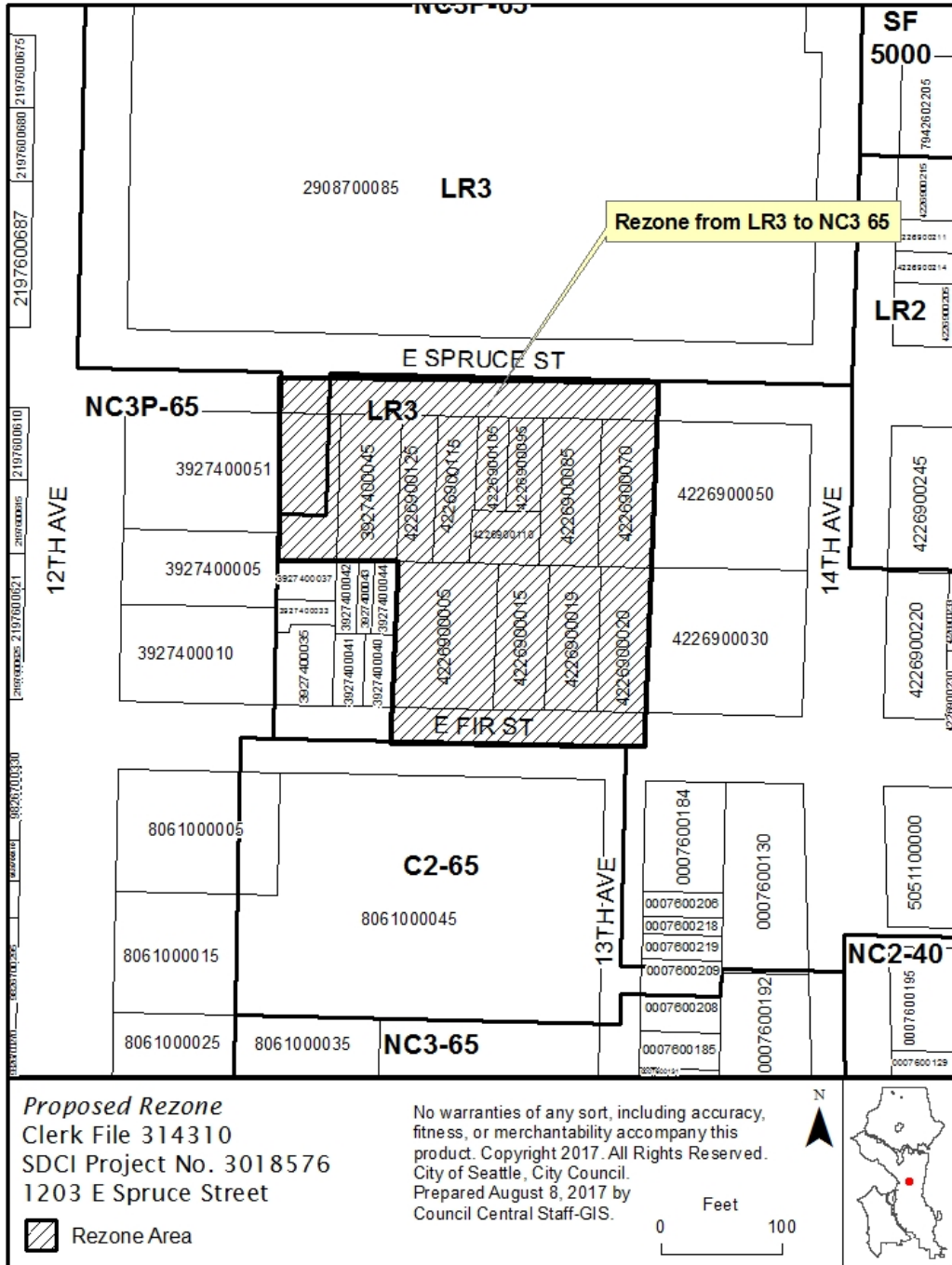
1. Future development of the Property is restricted to a project that complies with Master Use Permit (MUP) #3018576, once the Seattle Department of Construction and Inspections (SDCI) issues that MUP. Prior to issuing the MUP, SDCI must confirm that the drawings substantially comply with the conditions established during the design review process, including the structure design and location on the site, structure height, building materials, landscaping, street improvements, parking design, signage and site lighting.
2. The provisions of Seattle Municipal Code Chapters 23.58B and 23.58C shall apply to the Property. For purposes of application of those Chapters, future development of the Property shall be subject to the following performance or payment requirements:
 - For Chapter 23.58B, 8% per square foot for the performance option or \$12.75 per square foot for the payment option; and
 - For Chapter 23.58C, 10% of units for the performance option or \$29.75 per square foot for the payment option.

The agreement shall be recorded on the title of the Property. The agreement shall be enforceable by the City in Superior Court.

Dated this _____ day of _____, 2017.

City Council President

ATTACHMENT A



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

In the Matter of the Application of

CF 314310

BRADLEY KHOURI, B9 ARCHITECTS

Department Reference:
3018576

for a contract rezone for property located
at 1203 East Spruce Street

Introduction

Bradley Khouri, B9 Architects, applied for a rezone of property located at 1203 East Spruce St from Lowrise Three ("LR3") to Neighborhood Commercial Three with a 65 foot height limit ("NC3-65"). The Director of the Department of Construction and Inspections ("Director") submitted a report recommending that the rezone be approved. The Director's report included a SEPA Determination of Non-significance with recommended conditions and design review approval, which were not appealed.

A hearing on the rezone application was held before the Hearing Examiner on May 23, 2017. The Applicant was represented by Courtney Flora attorney-at-law, and the Director was represented by Holly Godard, Senior Land Use Planner. Following the Hearing Examiner's site visit, and submission of additional comments by the Department, the record closed on June 7, 2017.

For purposes of this recommendation, all section numbers refer to the Seattle Municipal Code ("SMC" or "Code") unless otherwise indicated. Having considered the evidence in the record and reviewed the site, the Hearing Examiner enters the following findings of fact, conclusions and recommendation on the rezone application.

Findings of Fact

Site and Vicinity

1. The subject site is located at the southeast corner of the intersection of 12th Avenue and East Spruce Street. The site contains 13 parcels with a mix of uses including a church, four single and multi-family structures, a parking lot and vacant lots. The parcels that comprise the area addressed by the rezone proposal collectively total 62,471.8 square feet. The King County Juvenile Detention Center is located to the north of the site, across East Spruce Street. To the south of the site, across East Fir Street, is the King County Archives building. Lots to the west are occupied by commercial uses or vacant. To the east of the site are residential apartments to the northeast, and the historic Washington Hall to the south east. The Washington Hall was built in 1908, is a landmark, and serves as a home for community arts, heritage, and cultural organizations and as a performance and community event location. To the southwest of the site, bounded by 12th Avenue to the west and East Fir Street to the south, are commercial uses along 12th Avenue, and an apartment complex

accessed from East Fir Street, that is located on property that will remain in LR3 zoning. Access to the site is available from 12th Avenue, East Spruce Street, and East Fir Street. *See Exhibit 28.*

2. The subject site is located in the 12th Avenue Urban Center Village, and is zoned Lowrise Three (“LR3”) and Neighborhood Commercial Three Pedestrian with a 65 foot height limit (“NC3P-65”). Properties to the north are zoned NC3P-65 and LR3. Properties to the east are zoned LR3. Lots to the south are zoned Commercial Two with a 65 foot height limit (“C2-65”) and NC3P-65. Lots to the west are zoned Midrise (“MR”) and NC3P-65. Zoning along 12th Avenue is predominantly NC3P-65. Property to the north, across East Spruce Street, is owned by King County, which currently has plans to surplus a portion of the property as part of future development and a likely rezone.
3. The site slopes down approximately 14 feet from west to east along East Spruce Street, and also slopes down approximately 10 feet from East Spruce Street to East Fir Street. Due to the topography of the subject site and surrounding parcels, the site is situated in a valley between the high points of Boren Avenue to the west and 20th Avenue to the east. There is approximately 90 feet of rise from the subject parcels to the surrounding high points. The predominant views in this area are to the southeast towards Mount Rainier. To the north, there is a gradual climb to Capitol Hill and to the south is a gradual descent down to the intersection of the International District/Beacon Hill neighborhoods.
4. The current height limit for the site is 44 feet (for apartments with a partially below grade story). The current height limit on residential and commercial properties to the west and south is between 60 feet (MR zoning) and 65 feet (NC3-65 zoning). The current height limit on multifamily properties to the north and east is 44 feet.
5. The site was granted relief on steep slope development by the Department. The steep slope Environmentally Critical Area on the site is associated with a legally graded retaining wall. Therefore, SMC 25.09.180.B.2.a’s criteria for relief from the prohibition on development in steep slopes and their buffers applies.
6. Although areas to the north, south, and east, have seen few parcels developed in the last 20 years, the immediate area has recently seen an increase in proposals for mixed use projects and development. One block to the south a five story, 120-unit mixed use building, is proposed. Similarly, one block to the northwest a seven story, 85-unit residential building, is proposed. Eleven new apartment and townhouse projects are proposed within a three-block radius of the project.
7. Twelfth Avenue is a minor arterial and a frequent transit corridor with bike lanes. East Spruce Street and East Fir Street are access streets. Fourteenth Avenue is designated as a collector arterial.

Zoning History and Potential Zoning Changes

8. In 1923, the project site was designated a Commercial District/Second Residence District, and the subject parcels had a height limit of 65 feet. In 1973, the property was zoned General Commercial/Multiple Residence Low Density. By 1988, the project site had been designated

NC3-65 along 12th Avenue and a portion of East Spruce Street, and LR3 along East Spruce Street and East Fir Street. In 2015, the commercial zones across the City were updated to add a Pedestrian designation to 12th Avenue.

9. The Director reports that there are no City initiated zoning changes proposed for the neighborhood, or sites surrounding the subject property.

Neighborhood Plan

10. The proposed rezone property is located within the Central Area, and is covered by the adopted portions of the 12th Avenue Urban Center Village. The growth target listed for this Urban Center Village in the Comprehensive Plan is 700 additional dwelling units between 2005 and 2024. The established density target for the Urban Center Village is a density of 13 dwelling units per acre by 2024. In 2004, the Urban Village was listed at 9 dwelling units per acre. 613 new units were built in the 12th Avenue Urban Center Village between 2004 and the last quarter of 2015, and 374 units had been permitted for that area by the end of 2015.
11. The Seattle Comprehensive Plan Central Area Neighborhood Plan ("Central Area Plan") Policy CA-P7 states that land use tools such as rezones shall be used to help create a vibrant commercial district that encourages dense urban development in commercial areas, and encourages housing supportive of the community.

Other sections of the Central Area Plan include policies for future development that are related to design and zoning regulations. CA-P2 seeks recognition of the historical importance and significance of the Central Area's existing institutional buildings as community resources and seeks incorporation of their elements into building design. CA-P29 and CA-P31 seek to maintain and create affordable housing and encourage affordable housing with easy access to community assets and amenities. CA-P59 and CA-P61 seek opportunities to create open space for community gathering and promoting greening and beautification for the neighborhood through local participation.

Proposal

12. The Applicant seeks to have a portion of the property rezoned from LR3 to NC3P-65 with a property use and development agreement ("PUDA"). The terms of the PUDA are not disclosed in the record before the Hearing Examiner. The Applicant proposes to construct three six-story apartment buildings with a total of 369 units. The proposal includes 18 live-work units, and 8,777 square feet of retail and restaurant use located at grade. The project will include parking for 310 vehicles in a shared, below grade garage. *See* Exhibit 28. The PUDA will ensure that the provisions of Chapters 23.58B SMC and 23.58C SMC will apply to the project proposal. The project will replace five exiting single family residences (and will comply with the City of Seattle Tenant Relocation Assistance Ordinance), and other structures with new apartments. Seventy-seven will rent at 65%-85% of median income.
13. The proposed rezone would extend existing NC3-65 zoning along 12th Avenue west to the remainder of the site, which is currently zoned LR3. This would result in an expansion of the

NC3-65 zoning that characterizes 12th Avenue. A small “island” of LR3 zoned property would remain to the southwest of the project site that is not a part of the proposal.

14. The proposal was reviewed by the East Design Review Board ("DRB"). The DRB recommended a design with specific strategies to reduce the impacts of additional height, bulk, and scale to the adjacent sites. The DRB unanimously recommended approval of the proposal, including requested development standard departures.
15. At all transitions between the proposal and adjacent LR3 properties, the proposed project provides significant setbacks - 21 feet to the LR3 zone at the west along East Fir Street, and 30 feet to the LR3 zone to the east along East Fir Street and East Spruce Street. The proposed increase to a 65 foot height limit is being requested to create a 100 foot by 100 foot, privately managed and publicly accessible courtyard. It is situated at the intersection of multiple Urban Center Villages and Urban Villages where there is a need for more quality park and open space.
16. The Applicant engaged in extensive public outreach prior to and during the application process. The outreach included meetings and design discussions with the 12th Avenue Stewards, Historic Central Area Arts and Cultural District, Historic Seattle, and Washington Hall tenants. Through this process the Applicant and the community identified a number of proposed design measures for the project including: the creation of a \$1 million fund for public open space and/or physical or cultural improvements; include family-sized units near the proposed central plaza; local artist involvement in the project; provide a mid-block pedestrian connection through the site; and design features receptive to the location of the Washington Hall such as removal of residential spaces planned immediately adjacent to the Hall to reduce conflicting uses, providing a 30 foot wide landscaped setback, including a simple building façade for aesthetic deference to the historic Hall and possibly establishing space within the project to complement the Hall uses.
17. The proposal creates two open spaces at the center of the block, an 11,312 square foot Central Plaza for open green space, and a 3,701 square foot Event Plaza that provides a natural buffer to adjacent uses to the west.
18. The site lies within a frequent transit corridor. The project would increase ridership but will not impede transit service to the area. The Applicant's parking study determined that residential parking demand will be met by on-site parking, and that parking demand for the commercial activity will be absorbed by the available on-street parking capacity, and on-site garage parking. Exhibit 15.
19. The Applicant performed a study of the shadow impacts of potential build-out under NC3P-65 zoning. Exhibit 3. The study shows that shadow impacts are nearly the same between build-out under existing zoning, and for the proposal under NC3P-65 zoning.
20. The Applicant's analysis found that due to the topographical features of the site, and the predominant view being Mount Rainier to the southeast development under the proposed zoning would not significantly impact views any more than would development under the current zoning. No SEPA-protected views would be impacted by the proposal. See Exhibit 21.

Public Comment

21. Comments were received during the design review process for the proposal. They are summarized in the Director's Report, Exhibit 28, at 5-6. The Director also received additional public comments favoring the proposed rezone from 12th Avenue Stewards, Historic Central Area Arts and Cultural District, and Historic Seattle. *See* Exhibit 28.
22. Many of the issues raised in early comments were addressed by the Applicant during, and following the design review process.
23. The issues raised in comments received following the design review process were related to parking volume, traffic, impacts on infrastructure, neighborhood character, and density.

Director's Review

24. The Director reviewed the East Design Review Board's recommendations and agreed that the proposed project results "in a design that best meets the intent of the Design Review Guidelines," and accepted the Board's recommendations. The Director approved the design. Exhibit 28 at 12-13.
25. The Director also analyzed the proposal's potential long-term and short-term environmental impacts, and recommended conditions to mitigate construction-related impacts.
26. The Director's report, Exhibit 28, analyzes the proposed contract rezone and recommends that it be approved with conditions.

Applicable Law

27. SMC 23.34.008 provides 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 and 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.
28. When, as in this case, a rezone includes consideration of height limits in commercial or industrial zones, SMC 23.34.009 prescribes additional criteria to be considered, including the function of the zone, topography of the area and surroundings, height and scale of the area, compatibility with the surrounding area, and neighborhood plans.
29. SMC 23.34.007.C provides that compliance with the requirements of Chapter 23.34 SMC constitutes consistency with the Comprehensive Plan for purposes of reviewing proposed rezones, but the Comprehensive Plan may be considered where appropriate.

Conclusions

1. The Hearing Examiner has jurisdiction over this matter pursuant to SMC 23.76.052, and makes a recommendation on the proposed rezone to the City Council.
2. SMC 23.34.007 provides that the applicable sections of Chapter 23.34 SMC on rezones are to be weighed and balanced together to determine the most appropriate zone and height designation. In addition, the zone function statements are to be used "to assess the likelihood that the area proposed to be rezoned would function as intended." SMC 23.34.007.A. "No single criterion ... shall be applied as an absolute requirement or test of the appropriateness of a zone designation ... unless a provision indicates the intent to constitute a requirement" SMC 23.34.007.B.
3. The most appropriate zone designation is the one "for which the provisions for designation of the zone type and the locational criteria for the specific zone match the characteristics of the area to be rezoned better than any other zone designation." SMC 23.34.008.B.

Effect on Zoned Capacity

4. SMC 23.34.008 requires that, within an urban center or urban village, the zoned capacity, taken as whole, is to be no less than 125 percent of the applicable adopted growth target, and not less than the density established in the Comprehensive Plan. The proposed rezone would increase both zoned capacity and zoned density and thus, meets the requirements of SMC 23.34.008.

Match Between Zone Criteria and Area Characteristics

5. The most appropriate zone designation is the one "for which the provisions for designation of the zone type and the locational criteria for the specific zone match the characteristics of the area to be rezoned better than any other zone designation." SMC 23.34.008.B. In this case, a portion of the site is already zoned NC3, and the rezone would expand that zoning designation. The proposed rezone would be consistent with the adjacent zoning to the south and west. Currently, the site and its relation to adjacent zoning matches the NC3 zone function and locational criteria, found in SMC 23.34.078,¹ so the designation is appropriate.

¹ 23.34.078 - Neighborhood Commercial 3 (NC3) zones, function and locational criteria.

A. Function. To support or encourage a pedestrian-oriented shopping district that serves the surrounding neighborhood and a larger community, citywide, or regional clientele; that provides comparison shopping for a wide range of retail goods and services; that incorporates offices, business support services, and residences that are compatible with the retail character of the area; and where the following characteristics can be achieved:

1. A variety of sizes and types of retail and other commercial businesses at street level;
2. Continuous storefronts or residences built to the front lot line;
3. Intense pedestrian activity;
4. Shoppers can drive to the area, but walk around from store to store;
5. Transit is an important means of access.

B. Locational Criteria. A Neighborhood Commercial 3 zone designation is most appropriate on land that is generally characterized by the following conditions:

1. The primary business district in an urban center or hub urban village;
2. Served by principal arterial;
3. Separated from low-density residential areas by physical edges, less-intense commercial areas or more-intense

Neighborhood Plan/Precedential Effect

30. As indicated above, the subject parcels are located in the 12th Avenue Urban Center Village. One of the strategies of the neighborhood plan is to encourage the development of denser housing near the 12th Avenue corridor. The proposed rezone would increase housing density on the subject parcels when compared to current zoning.
31. The development is consistent with the portions of the Central Area Plan listed in Finding 11 above. In particular, the proposal is consistent with: CA-P7 because the rezone will encourage dense urban development in commercial areas, and encourages housing supportive of the community; CA-P2 because the proposal recognizes the historical importance and significance of the Washington Hall; CA-P29 and CA-P31 because the proposal seeks to maintain and create affordable housing and encourage affordable housing with easy access to community assets and amenities; and CA-P59 and CA-P61 because the proposal will create open space for community gathering and promote greening and beautification for the neighborhood through local participation.
6. There are no adopted goals or policies that specifically address height in the Central Area Plan.
7. It is not clear that the proposal would have a precedential effect. Instead, the proposal is part of an ongoing pattern of diverse development heights and uses in the neighborhood, and is consistent with existing zoning patterns in the area.

Zoning Principles

8. The zoning principles listed in SMC 23.34.008.E are generally aimed at minimizing the impact of more intensive zones on less intensive zones, if possible. They express a preference for a gradual transition between zoning designations, including height limits, if possible, and potential physical buffers to provide an effective separation between different uses and intensities of development.
9. There is some effective separation between the proposal and adjacent and nearby properties provided by topographic changes, and adjacent streets to the north, west and south. In addition, wide open space transition areas are provided for between the proposal and adjacent LR3 zoned properties.
10. The rezone has been reviewed by the Director who concluded the proposed building would cause additional height to be visible above that currently allowed by the LR3 zoning, but it does not appear to significantly affect sightlines from public rights-of-way.
11. The proposed rezone would maintain the existing pattern of commercially zoned properties facing commercially zoned properties across the street on 12th Avenue. East Spruce Street commercial uses (general commercial and live work uses) would face the LR3 zoned King County Juvenile

residential areas;

4. Excellent transit service.

Detention property across East Spruce Street. Live work commercial uses will face the C2-65 zone across East Fir Street to the south.

12. The proposed 65 foot height limit is consistent with the site's location within the 12th Avenue Urban Center Village.

Impact Evaluation

13. The proposed rezone would positively impact the housing supply, as it would add 369 new residential units.
14. Although the proposal would increase the demand for public services, the increase would be minimal. There is no evidence in the record that the demand would exceed service capacities. In particular, street access, street capacity, transit service and parking capacity were shown to be sufficient to serve the additional units that would be allowed by the rezone. The Director has evaluated impacts on public services and service capacities, as well as noise, air, water, historic preservation, transportation and other environmental impacts, pursuant to SEPA, and has identified conditions to mitigate impacts that are not otherwise adequately addressed through existing regulations. As noted, height, bulk and scale impacts, including shadow impacts, were reviewed and addressed through the design review process.
15. The proposal will have a positive impact on the supply of housing in the area. The proposed rezone will add housing capacity to the neighborhood and locate additional housing in the Urban Center Village.
16. The site does not lie within a shoreline district, no public access is being impacted or removed with this proposal and no existing recreational areas are being impacted or removed.

Changed Circumstances

17. Changed circumstances are to be considered but are not required to demonstrate the appropriateness of a proposed rezone. The immediate neighborhood has witnessed an increase in the number of mixed use projects being permitted. In general, several new buildings have been built along 12th Avenue in the last ten years and increased density is a trend that is expected to continue.

Overlay Districts

18. The west portion of the site along 12th Avenue is within a Pedestrian overlay district. The overlay will not change with this rezone proposal.

Critical Areas

19. As noted above, it was determined that the steep slope on the property had been created through previous legal grading, and the Director determined that the proposal qualified for a limited Relief for Prohibition on Development in Steep Slopes and their Buffers. *See Exhibit 21.*

Height Limits

20. The proposed rezone would allow an additional 25 feet in zoned height. SMC 23.34.009 addresses the designation of height limits for proposed rezones. The issues to be considered include the function of the zone; the topography of the area and its surroundings, including view blockage; height and scale of the area; compatibility with the surrounding area; and neighborhood plans.
21. Function of the zone. Height limits are to be consistent with the type and scale of development intended for the zone classification, and the demand for permitted goods and services and potential for displacement of preferred uses are to be considered. The proposed mixed-use project is consistent with the type and scale of development intended for the NC3-65 zone in urban centers, as discussed above. There will be no displacement of preferred uses.
22. Topography of the area. Heights are to “reinforce the natural topography of the area and its surroundings, and the likelihood of view blockage” is to be considered. Due to the site’s location in an area wide topographic depression, it is not expected that the rezone will have a significant impact on views from surrounding parcels.
23. Height and scale of the area. The height limits established by current zoning in the area are to be considered. In general, permitted height limits are to “be compatible with the predominant height and scale of existing development, particularly where existing development is a good measure of the area’s overall development potential.” SMC 23.34.009.C.

The proposed development would be consistent with the predominant height and scale of nearby newer development, which is representative of the area’s overall development potential. Since 2013, multiple projects have been proposed in the MR and NC zoning to the west of the subject parcels. There are several examples of similar scale development in the proposal’s immediate vicinity.

24. Compatibility with surrounding area. Height limits are to be compatible with actual and zoned heights in surrounding areas. In addition, a gradual transition in height and scale and level of activity between zones is to be provided unless major physical buffers are present. The applicant has provided physical buffers (setbacks from the LR3 zones) on site to serve as effective separation between different uses and intensity of development. The requested height limit of 65 feet would be compatible with the actual and zoned heights in the surrounding area, and consistent with the transition of zoned heights and scale of development in the area.
25. Weighing and balancing the applicable sections of Chapter 23.34 SMC together, the most appropriate zone designation for the subject site is NC3P-65 with a PUDA.

Compliance with Mandatory Housing Affordability

26. The Applicant requested the Hearing Examiner to modify or “impose a clarification to Condition #4” to the Department’s recommendation. Exhibit 23 at 1. The Condition reads as follows:

Development of the rezoned property shall be subject to the requirements of SMC 23.58.B. and/or 23.58.C. The PUDA shall specify the payment and performance calculation amounts for purposes of applying SMC 23.58.C.

The Applicant argues that the Hearing Examiner does not have jurisdiction to recommend compliance with SMC 23.58C in its entirety, because SMC 23.58C is not a code section included in a narrow list of code sections identified by the Applicant as lying within the Hearing Examiner's jurisdiction for consideration in a rezone. However, the Applicant cites no authority for this limited list of code sections, or for the principle that the Hearing Examiner cannot consider a Director's Rule. For rezone public hearings the Hearing Examiner is directed to consider in part "the Director's report, including an evaluation of the project **based on applicable City ordinances and policies** and the Director's recommendation." SMC 23.76.052.E (emphasis added). SMC 23.58C.015 provides "This Chapter 23.58C contains requirements that apply only where provisions of the zone refer to this Chapter 23.58C, **or through the terms of a contract rezone** according to Section 23.34.004." (Emphasis added). Thus, SMC 23.58C is a City ordinance that is applicable to a contract rezone, and within the Hearing Examiner's scope of review.

Finally, the heart of the Applicant's argument is that Director's Rule 14-2016 exceeds the Director's authority, and is therefore not valid. This issue, which is not raised in the context of an appeal, is not within the Hearing Examiner's jurisdiction to consider as part of a rezone application review.

Recommendation

The Hearing Examiner recommends that the City Council **APPROVE** the requested rezone subject to a PUDA that incorporates the final approved Master Use Permit drawings for the proposal and the following conditions:

Prior to Issuance of a Master Use Permit

1. Development of the rezoned property shall be subject to the requirements of SMC 23.58.B. and/or 23.58.C. The PUDA shall specify the payment and performance calculation amounts for purposes of applying SMC 23.58.C.

Prior to Issuance of a Building Permit

2. Development of the rezoned property shall be in substantial conformance with the approved plans for Master Use Permit number 3018576.

The Director has recommended the following SEPA conditions:

Prior to Issuance of Demolition, Excavation/Shoring, or Construction Permit

1. Provide a Construction Management Plan that has been approved by SDOT. The submittal information and review process for Construction Management Plans are described on the SDOT website at: <http://www.seattle.gov/transportation/cmp.htm>.

During Construction

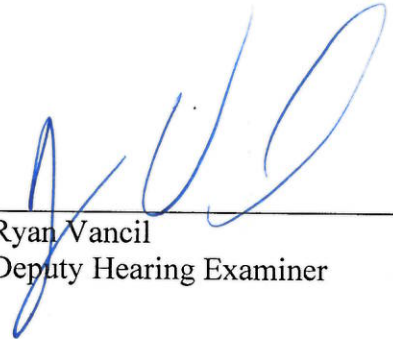
2. Construction activities (including but not limited to demolition, grading, deliveries, framing, roofing, and painting) shall be limited to non-holiday weekdays from 7am to 6pm. Interior work that involves mechanical equipment, including compressors and generators, may be allowed on Saturdays between 9am and 6pm once the shell of the structure is completely enclosed, provided windows and doors remain closed. Non-noisy activities, such as site security, monitoring, weather protection shall not be limited by this condition. This condition may be modified through a Construction Noise Management Plan, required prior to issuance of a building permit as noted in condition 1 above.

The Director has imposed the following design review condition on the proposal:

For the Life of the Project

The building and landscape design shall be substantially consistent with the materials represented at the Recommendation meeting and in the materials submitted after the Recommendation meeting, before the MUP issuance. Any change to the proposed design, including materials or colors, shall require prior approval by the Land Use Planner (Holly Godard at holly.godard@seattle.gov).

Entered this 5th day of July 2017.



Ryan Vancil
Deputy Hearing Examiner

Concerning Further Review

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

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

Seattle City Council
Planning, Land Use and Sustainability Committee
c/o Seattle City Clerk
600 Fourth Avenue, Floor 3 (physical address)
P.O. 94728 (mailing address)
Seattle, WA 98124-4728

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

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Findings and Recommendation** to each person listed below, or on the attached mailing list, in the matter of **Bradley Khouri Rezone Application**. Council File: **CF 314310** in the manner indicated.

Party	Method of Service
<p><u>Applicant</u></p> <p>Bradley Khouri b9 Architects bgk@b9architects.com</p> <p>Courtney Flora McCullough Hill Leary PS cflora@mhseattle.com</p>	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
<p><u>Department</u></p> <p>Holly Godard SDCI Holly.Godard@seattle.gov</p>	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
<p><u>City Contacts</u></p> <p>Nathan Torgelson Director, SDCI Nathan.Torgelson@seattle.gov</p> <p>Roger Wynne City Attorney's Office Roger.Wynne@seattle.gov</p> <p>Ketil Freeman City Council Ketil.Freeman@seattle.gov</p>	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger

<p>Public Resource Center PRC@seattle.gov</p> <p>SCI Routing Coordinator SCI_Routing_Coordinator@seattle.gov</p> <p>Sue Putnam Sue.Putnam@seattle.gov</p>	
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KAREN WALTER
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- U.S. First Class Mail, postage prepaid
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- E-mail
- Fax
- Hand Delivery
- Legal Messenger

Inter-office Mail

Public Review Documents
Quick Information Center
Seattle Public Library
LB-03-01

- U.S. First Class Mail, postage prepaid
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- E-mail
- Fax
- Hand Delivery
- Legal Messenger

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Dated: July 5, 2017

TK

Tiffany Ku
Legal Assistant

Hearing Examiner's Exhibit 24

To: Seattle Hearing Examiner
Fr: William Justen
Date: May 23, 2017
Re: MHA/MFTE Analysis

Project/MHA History:

- July 25, 2014: the properties were assembled and purchased by the developer
- September 2014: the architects started the design process
- January 13, 2015: the outreach to community groups in the neighborhood began
- January 13, 2015 until May 2017 there have been 25 meetings with five different neighborhood groups
- August 12, 2015: the project design review EDG meeting
- January 15, 2016: MUP application was accepted by SDCI
- August 17, 2016 Mayor signs ordinance 125108 to apply Mandatory Housing Affordability for Residential Development (MHA-R) in contract rezones
- August 24, 2016: project design review Recommendation meeting
- Fall 2016: Draft Director's Rule 14-2016 MHA-R for contract rezones suggested that this would be a "High Area" with M1 requiring a 10% performance or \$29.75 fee, but Phased Implementation would allow projects with complete MUP application submitted before the Director's Rule to provide 6% performance or pay a \$13.25 fee
- March 16, 2017: Director's Rule published (effective date April 6, 2017), which changed the date for Phased Implementation for projects when "complete MUP application was submitted before January 1, 2016." This moved the vesting opportunity for the phasing back 16 months.
- April 13, 2017: SDCI published Decision: Analysis and Recommendation of the Director for the 1203 E Spruce St project

Affordable housing planning for the Project:

- Since the very beginning of the project concept the developer has planned to participate in the MFTE program for affordable housing and provide 77 MFTE units, which when rounding up the different unit types equals 21% of all the housing units in the project.
- June 9, 2015 the developer agreed with the 12th Avenue Stewards to provide: \$1M towards off-site neighborhood improvements, significant amount of open space on the project site open to the public and 20% of the units as affordable housing.
- July 13, 2015: the Mayor and Council adopted the Statement of Intent for Basic Framework, Mandatory Inclusionary Housing and Commercial Linkage Fee— from this document the developer assumed: (a) MHA program would not go into effect until adoption of implementing rezones for each zone and (b) an affordable unit may be used to satisfy requirements of both the MHA program and MFTE (i.e. programs may overlap on the same unit).
- November 2016: The project team first became aware that some MHA housing might be required for the contract rezone, but early reports indicated that the Central Area, Rainier Valley and similar areas of the City would have lower Linkage fees (and 3%-5% performance) than other parts of the City.
- February 2017: Project team learned that a new MHA map revised the Project site and placed it into MHA "High Area" increasing the performance requirement to 10% and fee to \$29.75 PSF.

Project financing/impact allowing or not allowing MFTE/MHA merger:

This project is providing 77 units of affordable housing under the MFTE program. 33 of those units comply with MHA affordability requirements, consistent with Director's Rule 14-2016. If this project is not allowed to include the MHA units in the MFTE units, the project is not financeable.

The financing required by lenders must have a factor of safety on the financing, to hedge the risk of making a loan if problems occur: construction loan amount will be a maximum of 60% of total project cost. The remaining source of funds will be equity. Total Project Cost= \$111,000,000

Loan/Total Project Cost= 60%, Loan=\$67,000,000

Equity necessary= 40% = \$44,000,000

To secure the Equity the Project it must have a projected financial return with a ratio of net operating income (NOI) to total project cost of at least 6%. However, it is very beneficial to obtain financing when the return is closer to 6.5% when more lenders are interested and with more favorable terms.

Project unit counts to calculate rental units for MHA and MFTE programs:

Total Project Apartment units=369 (Basis for 20% MFTE) rounded up = 77 Apartment (21%) MFTE units

Total Project Live Work units=16

Total Project Apartment plus Live/Work Units=385

Total Apartment units in rezone area=301

Total Live Work units in rezone area=16

Total rezone units subject to MHA=301+16=317 (Basis for 10% MHA) rounded up = 33 units (10.4%) with 2 L/W and 31 Apartments

Project Financial Returns: Net Operating Income/Total Project Cost, ratio as percent:

With 10% MHA plus 20% MFTE (33 units plus 77 units=110 lower rent units), Project Return= 5.81% (project annual NOI reduction from lower rents= \$71,000 per year, represents a 3.2% shortfall in minimum annual net income to qualify for financing. This income shortfall also reduces the Project value at a 4.25% cap rate by \$1.7M)

With 10% MHA plus 10% MFTE (77 units total, with rounding up unit types results in 21% MFTE qualifying the units), Return= 6.0% (merging the MFTE and MHA for a total of 77 units will just meet the minimum financing requirement), however the projected project costs are subject to erratic escalation with Seattle recently ranked as the 6th most expensive city in the world for construction, so the Project budget is extremely tight.

See attached pro forma information

Community Benefits:

- This project is not displacing existing housing
- The project is providing 369 apartments, 16 Live/Work units and approximately 9,000 square feet of new commercial space on a site of mostly vacant land
- The project is providing nearly one half an acre of public open space on the project site
- The project is supporting other important neighborhood goals, including:
 - Financial support for neighborhood public open space improvements
 - Financial support for neighborhood physical and cultural improvements
 - Incorporating neighborhood historical cultural physical references in the public areas of the Project.
 - Financial support for new neighborhood commercial tenants that will lease the Project's commercial spaces
 - Providing extra off street parking, beyond what is needed by the Project's tenants, to support neighborhood business and event parking for the historic Washington Hall.
 - Designed with wide separation to respect the historic Washington Hall and minimize impacts between it and the Project.
 - Providing a continuous straight pedestrian walkway, as an extension of the 13th Avenue corridor, connecting E Fir Street with E Spruce Street
- The project has overwhelming community support, as indicated by the letters in the record

	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Row 1	Market Rents No MHA No MFTE	0	0	0	77	77	44	Percent of affordable units in Project
Row 2	Number of MFTE Units (Multi Family Tax Exemption)	0	0	0	77	77	44	11.9% of total apartments
Row 3	Number of MHA Units (Mandatory Housing Affordability)	0	0	0	33	33	33	10.4% of total rezone units
Row 4	Total Reduction in Project Gross Revenue Compared to "Market Rents"	\$ -	\$ -	\$ (420,741)	\$ (301,450)	\$ (692,403)	\$ (525,211)	
Row 5	Total change in Project Expenses Compared to Market Rents*	\$ -	\$ -	\$ (669,600)	\$ (61,325)	\$ (621,425)	\$ (668,100)	
Row 6	Delta in Project Net Operation Income per year	\$ -	\$ -	\$ 248,959	\$ (240,165)	\$ (70,978)	\$ 142,889	
Row 7	Delta in Project Net Operation Income per year	\$ -	\$ 0.0%	\$ 3.7%	\$ -3.8%	\$ -1.1%	\$ 2.1%	
Row 8	Value Delta from less Income at 4.5% Cap Rate	\$ -	\$ -	\$ 5,530,200	\$ (5,337,000)	\$ (1,577,289)	\$ 9,175,311	

* Expenses is changing due to Tax Abatement, Utilities for MHA and MFTE units and management fees

Total Project Cost	\$ 111,052,230	\$ 118,363,183	\$ 118,363,183	\$ 111,052,230	\$ 111,052,230	\$ 111,052,230	\$ 111,052,230	\$ 111,052,230
Gross Income	\$ 9,707,724	\$ 9,707,724	\$ 9,296,983	\$ 9,406,234	\$ 9,015,321	\$ 9,182,513	\$ 9,182,513	\$ 9,220,926
Expenses	\$ 3,185,875	\$ 3,185,875	\$ 2,516,275	\$ 3,124,550	\$ 2,564,450	\$ 2,517,775	\$ 2,517,775	\$ 2,517,775
Expenses per unit annually	\$ 8,275	\$ 8,275	\$ 6,596	\$ 8,116	\$ 6,661	\$ 6,539.68	\$ 6,539.68	\$ 6,539.68
NOI	\$ 6,521,849	\$ 6,521,849	\$ 6,770,708	\$ 6,281,684	\$ 6,450,871	\$ 6,664,738	\$ 6,705,151	\$ 6,705,151
NOI/Total Cost	5.87%	5.51%	5.72%	5.66%	5.81%	6.00%	6.04%	6.04%

Fee in lieu

Utilities (Elec, Gas, Water/Sewer)	\$2,949,238	\$ 13.25	\$ 222,584	Total SF
Property Tax	\$6,631,874	\$ 29.75	\$ 222,584	

	Market Rate	MHA Rents (Including utilities)	MFTE Rents (Including Utilities)
Studios	\$ 1,600	\$ 1,008	\$ 1,092
1 Bedroom	\$ 1,850	\$ 1,152	\$ 1,440
2 Bedroom	\$ 2,705	\$ 1,296	\$ 1,836

Monthly Expenses per Unit:

Utilities (Elec, Gas, Water/Sewer)	\$ 117	\$125 Utility bills to be paid for the studio and 1 bedroom MFTE/MHA units. (\$175 for 2 bedrooms)
Property Tax	\$ 225	Will be reduced to \$37 per month by using MFTE (to cover Land and Commercial Space property tax)
Management Fees	\$ 73	
Advertising/Promotion	\$ 21	
Janitorial, Cleaning, Turn Over	\$ 21	
Repairs & Maintenance	\$ 33	
Administrative & Payroll Costs	\$ 83	
Security	\$ 8	
Mechanical Maintenance/Elevator	\$ 17	
Insurance	\$ 23	
Fire & Life Safety	\$ 8	
Landscaping	\$ 18	
Capital Reserves	\$ 42	
Total Expenses per Unit/Month	\$ 690	
Total Expenses per Unit/Year	\$ 8,279	

Case A

Case B

Case C

	MHA Rents (6% of Project) No MFTE	MFTE (20% of Project) Plus MHA (6% of Project)	MFTE (14% of Project) Plus MHA (6% of Project)
	0	77	56
	21	21	21
\$	(177,769)	(599,137)	(486,798)
\$	(85,325)	(633,425)	(668,100)
\$	(92,444)	34,288	181,302
\$	-1.4%	0.5%	2.7%
\$	(2,054,911)	761,956	4,028,999

\$	111,052,230	\$ 111,052,230	\$ 111,052,230
\$	9,529,955	\$ 9,108,587	\$ 9,220,926
\$	3,100,550	\$ 2,552,450	\$ 2,517,775
\$	8,053	\$ 6,630	\$ 6,539.68
\$	6,425,405	\$ 6,556,137	\$ 6,705,151
\$	5.79%	5.90%	6.04%

Total Units in Project	369
Total L/W	16
Total Project Units	385
Total Apartment in Rezone area	301
Total L/W in Rezone	16
Total Rezone Units	317

MFE Basis for 20%

Total Apartment in Rezone area

MHA basis for 10%