

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

In the Matter of the Application of

CF 314349

CAPITOL HILL HOUSING

for approval of a contract rezone for
property located at 2320 East Union Street

Department Reference:
3018178

Introduction

Capitol Hill Housing applied for a contract rezone of property from Neighborhood Commercial 2 with a Pedestrian Overlay and a 40-foot height limit ("NC2P-40") and Neighborhood Commercial 2 with a 40-foot height limit ("NC2-40") to Neighborhood Commercial 2 with a Pedestrian Overlay and a 65-foot height limit ("NC2P-65"). The Director of the Department of Construction and Inspections ("Director") submitted a report recommending that the rezone be approved subject to a property use and development agreement. The Director's report included a SEPA Determination of Non-significance and design review approval, neither of which was appealed.

A public hearing on the rezone application was held before the Hearing Examiner ("Examiner") on May 8, 2017. The Applicant was represented by David Van Skike, Land Use Planner, and the Director was represented by Tami Garrett, Senior Land Use Planner. The Examiner reviewed the property on May 13, 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 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 addressed as 2320 E. Union Street, and is composed of three parcels of land that total approximately 21,177 square feet and are located at the northwest corner of 24th Avenue E. and E. Union Street, in Seattle's Central District. It is located within the 23rd & Union-Jackson Residential Urban Village. It contains no environmentally critical areas and is relatively flat with the exception of the north and west boundary lines, where the grade is 10 feet above the existing grade.
2. The site is zoned "NC2P-40" and "NC2-40. It is presently vacant and being used for temporary storage associated with the 23rd Avenue street improvement project.

3. As shown on Exhibit 5, zoning to the north, south, and west of the site is NC2-40. Development to the north includes a single-family residence constructed on property that is significantly higher than the grade of the subject site. A rock wall on the south side of the property holds the soil where the apparent cut was made for the bank and parking lot on the subject site. Other development to the north is a mix of single-family and multifamily residential. To the south, across E. Union Street, and to the west are commercial uses. A religious institution, Mount Calvary Church, is also located to the west of the site. Zoning to the east, across 24th Avenue E., is a mix of Lowrise 2, NC2-40 and NC2P-40, and developed with a mix of single-family and multi-family uses. The overall development pattern is more intense zoning and greater heights near the intersection of 24th Avenue E. and E. Union Street, and reduced zoning intensity and heights in all directions from the intersection.

4. East Union Street is a two-lane, east-west, minor arterial with curbs, gutters, and sidewalks on both sides. Twenty-Fourth Avenue East is a two-lane, north-south, local access street with curbs, gutters, and sidewalks on both sides. Twenty-Third Avenue East is under construction and is being reduced from a four-lane street to a three-lane street (one lane in each direction with a center two-way left turn lane). King County Metro Transit stops are located on E. Union Street and 23rd Avenue E, and bicycle lanes and sharrows are available on E. Union Street.

5. The site is the former location of Liberty Bank, recognized as the first African-American-owned bank west of the Mississippi River, which was founded in 1968 as a community response to redlining and disinvestment in Central Seattle. It closed in 1988 but was reopened as Emerald City Bank and later purchased by Key Bank. The Liberty Bank Building was nominated for landmark status, but the Landmarks Preservation Board denied the request. *See Exhibit 8.*

Zoning History and Potential Zoning Changes

6. The subject site was zoned Commercial Business in 1980 and rezoned to NC2-40 and NC2P-40 in 2006. In 2008, the property located at 2203 E. Union Street received approval for a contract rezone from NC2P-40 to NC2P-65, and the approved six-story apartment building with ground level commercial space was completed in 2016. More recently, a contract rezone from NC2-40 and NC2P-40 to NC2-65 and NC2P-65 was approved for the property at 2220 E. Union Street. The approved six-story mixed use building is under construction.

7. Potential zoning changes for the site and surrounding area have been under consideration since 2013. In June of 2015, the Director released information on proposed rezones and amendments to the Land Use Code to implement the Central Area Neighborhood Planning Element and the 23rd Avenue Action Plan and Urban Design Framework (“Action Plan”). The Director anticipates that the proposed legislation will be forwarded to the City Council this year.

Proposal

8. Capitol Hill Housing, the applicant, acquired the site for a future affordable housing development. In 2014, the applicant convened an advisory board, comprised of the Liberty Bank founders' relatives, former bank employees, community members, and Central Area leadership organizations, which developed a set of recommendations to inform building design. The applicant also salvaged artifacts from the bank building that will be used in the structure proposed for the site. *See Exhibit 7 at 48 and 51.* The applicant is working with three community partners: The Africatown-Central District Preservation and Development Association; the Black Community Impact Alliance; and Centerstone. The community partners executed a memorandum of understanding to guide development of the project, the "Liberty Bank Building," and facilitate the ultimate acquisition of the building by Centerstone. Exhibit 36.
9. As noted, the Applicant seeks a rezone of the property from NC 2-40 and NC2P-40 to NC 2P-65 with a property use and development agreement ("PUDA"). The proposal is to construct a six-story structure with 114 low income apartment units (a mix of studio and one- and two bedroom units) plus one unit for on-site management staff. Below the residences, there would be 3,264 square feet of ground floor commercial space that fronts on E. Union Street and wraps around to 24th Avenue E., and parking for 18 vehicles. The rezone would allow construction of 46 residential units more than could be built under current zoning. Eighteen units will be affordable to those earning less than 30 percent of the average median income, 10 units will be affordable to those earning less than 50 percent of the average median income, and 86 units will be affordable to those earning less than 60 percent of the average median income.
10. A nonconforming residence is located immediately north of the site. As noted, the proposal went through the design review process, and the Design Review Board ("Board") addressed the transitions along this north property line, including requesting building sections, a window study, shadow studies, elevation/perspective views, and design details, such as landscaping, screening, fenestration and lighting. Exhibit 1 at 5 and 7. *See Exhibit 7 at 37, 44-45.* The owner of the residence submitted a letter of support for the proposal, indicating he was satisfied with the design team's response to his concerns. Exhibit 3.
11. At its recommendation meeting, the Board unanimously agreed that the proposed design met the Design Review Guidelines identified by the Board and recommended that it be approved, including three requested development standard departures, and subject to one condition related to the project's color palette. Exhibit 1 at 15.
12. A transportation impact study for the proposal, prepared by Transportation Engineering NorthWest, showed that the proposal would result in a net increase of 427 daily vehicle trips, including 33 AM peak hour trips and 43 PM peak hour trips. Exhibit 16 at 12. The study does not state the number of trips that could be generated by development of the site to current zoning limits. The stop-controlled intersection of 24th Avenue E. and E. Union Street is projected to operate at level of service ("LOS") C or better in 2018 both with, and without the project except for the stop controlled northbound movement, which is expected to operate at LOS F during the weekday PM peak hour with the project. The study indicates that upon completion of the 23rd Avenue Corridor Improvements, "traffic volumes on E. Union Street in the vicinity of 24th Avenue

are anticipated to decrease, which would improve the LOS for the northbound stop-controlled movement [at the intersection of 24th Avenue E. and E. Union Street].” Exhibit 16 at 17. The study evaluated transportation currency for the project under the guidelines in Director’s Rule 2009-5 and determined that all screenlines would operate below the concurrency threshold with the project, so no concurrency mitigation was warranted. Exhibit 16 at 18-19.

13. The transportation study also included a parking demand analysis, which concluded that there would be a parking spillover of 22 vehicles onto neighborhood streets during evening hours. After adjusting for future planned developments in the area, the study estimated that parking utilization within an 800-foot walking distance of the proposed project would be 80 percent during the evening peak hour, thereby accommodating the additional 22 vehicles. Exhibit 16 at 19-20.

14. The Applicant has secured a Water Availability Certificate for the proposal from Seattle Public Utilities. Exhibit 11.

15. The requirements of Chapter 23.58C, “Mandatory Housing Affordability for Residential Development,” may be applied through the terms of a contract rezone. However, SMC 23.58C.025.C provides that development is exempt from the requirements of this chapter

if it receives public funding and/or an allocation of federal low-income housing tax credits, and is subject to a regulatory agreement, covenant or other legal instrument recorded on the property title and enforceable by The City of Seattle, Washington State Housing Finance Commission, State of Washington, King County, U.S. Department of Housing and Urban Development, or other similar entity, as approved by the Director of Housing, which restricts at least 40 percent of the units to occupancy by households earning no greater than 60 percent of median income, and controls the rents that may be charged, for a minimum period of 40 years.

16. The applicant responded to a correction notice concerning mandatory housing affordability as follows:

100% OF THE UNITS WILL HAVE RENTS AFFORDABLE TO HOUSEHOLDS EARNING LESS THAN 60 PERCENT OF THE AREA MEDIAN INCOME. THE PROJECT RECEIVES \$9.1 MILLION IN FEDERAL LOW-INCOME TAX CREDITS (ALLOCATED BY THE WASHINGTON STATE HOUSING FINANCE COMMISSION); \$12.2 MILLION FROM THE CITY OF SEATTLE’S HOUSING LEVY PROGRAM (ADMINISTERED BY THE OFFICE OF HOUSING); AND \$1 MILLION FROM THE STATE OF WASHINGTON’S HOUSING TRUST FUND. USE OF THE PROPERTY AS AFFORDABLE HOUSING IS A REQUIREMENT OF REGULATORY AGREEMENTS ESTABLISHED WITH EACH OF THESE FUNDING AGENCIES; AND COVENANTS ARE RECORDED AGAINST THE PROPERTY ENSURING THAT THE AFFORDABLE HOUSING REQUIREMENTS OF EACH FUNDING SOURCE CONTINUE AT THE PROPERTY FOR A MINIMUM OF 50 YEARS.

Exhibit 23. Similar language is incorporated into the project plans at page G2.01.

Neighborhood Plan

17. Neighborhood policies for the Central Area were adopted as part of the 2005 Comprehensive Plan update and revised in 2014 and again in 2015. The Neighborhood Plan does not include policies to guide future rezones, but it includes several policies that are relevant to the proposed rezone. CA-P2 states that the historical importance of the Central Area's existing housing stock, institutional buildings and commercial structures should be recognized as community resources and their elements incorporated into building design. CA-P6 calls for creating an appealing environment that enhances the area's historic character while providing opportunities for existing and new development to grow and serve the area's needs. CA-P7 provides that a vibrant commercial district should be created, "encouraging dense urban development in the commercial areas and encouraging housing supportive of the community through land use tools, such as rezones, design guidelines and incentives."

18. The Neighborhood Plan includes several housing policies supportive of the present rezone application. CA-P28 calls for ameliorating "the potential impacts of gentrification and displacement of existing residents through a variety of affordable housing programs including ... producing new affordable housing." (This policy is carried over into the Action Plan.) CA-P29 is similar, stating that affordable housing should be created and maintained to retain a range of housing prices and unit sizes, including affordable family-sized units. CA-P31 encourages affordable housing "in close proximity or with easy access to community assets and amenities."

19. The draft Action Plan, although not yet implemented through legislation, recommends an increase in height from 40 feet to 65 feet within the "Union Core," which includes the subject site. Exhibit 34 at 37. A height increase is also shown in the March, 2017 draft of the Urban Design Framework for the area. Exhibit 35 at 25.

Public Comment

20. The Director received ten written comments on the proposal. Four commenters expressed support for the rezone, one had no objection to the project but was concerned about parking impacts due to the small number of parking spaces being provided, four others expressed similar concerns about parking, and two expressed concern with the size and height of the proposed structure and transitions to single-family residential areas. Exhibit 3.

21. The Examiner received no written public comments on the proposal, and the only member of the public to testify at the hearing represented one of the applicant's community partners and spoke in favor of the proposed rezone.

Director's Review

22. The Director reviewed the Board's recommendations and accepted them, approving the proposed design and departures with conditions. Exhibit 1 at 16-17.

23. The Director also analyzed the proposal's potential long-term and short-term environmental impacts, including parking and transportation impacts, and recommended a condition to mitigate construction-related impacts. Exhibit 1 at 34-39.

24. The Director's report analyzes the proposed contract rezone and recommends that it be approved subject to a PUDA. Exhibit 1 at 34.

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 general rezone criteria, including "zoning principles," are set forth in SMC 23.34.008. The most appropriate zone designation is the one "for which the provisions for designation of the zone type and the locational criteria for the specific zone match the characteristics of the area to be rezoned better than any other zone designation." SMC 23.34.008.B.
4. Compliance with the requirements of Chapter 23.34 SMC constitutes consistency with the Comprehensive Plan for purposes of reviewing proposed rezones. SMC 23.34.007.C. Therefore, Plan goals and policies are not separately reviewed.

Effect On Zoned Capacity

5. SMC 23.34.008.A 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 adopted growth target for the 23rd Avenue @ South Jackson-Union Residential Urban Village is 1,600 additional dwelling units with a target density of 12 households per acre by 2024. The proposed rezone would increase both zoned capacity and zoned density and thus, meets the requirements of SMC 23.34.008.A.

Match Between Zone Criteria and Area Characteristics

6. In this case, the proposal does not seek a change in the existing NC2-zone designation. The site continues to match the NC2 function and locational criteria, in that it is located within the primary business district of the Residential Urban Village, on streets with good capacity and transit service, and would accommodate a pedestrian-oriented shopping area with a wide-range of commercial uses and housing. The proposal does seek a Pedestrian designation for the northern portion of the project site and an increase in height, both of which are addressed below.

Neighborhood Plan/Precedential Effect

7. The proposal would implement policies CA-P28, CA-P29, and CA-P31 in the existing Neighborhood Plan, as it would provide affordable housing in a range of unit sizes near community amenities. It would also be consistent with CA-P2, CA-P6, and CA-P7 in recognizing the historical importance of the Liberty Bank Building and incorporating elements from it into the new structure, creating an appealing environment that enhances the historic character of the area, and contributing to a revitalizing commercial district with a structure that has been found to meet the area's design guidelines. The proposal would also be consistent with the draft Action Plan, which recommends an upzone from 40 feet to 65 feet for 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. The site borders NC2-40 zoning on three sides. The 23rd and Union community core includes numerous transitions in zoning intensity, including adjacent 40 foot and 65-foot height zones, with and without buffers between them. In this instance, a 65-foot height transitioning to 40 foot heights on three sides constitutes a gradual transition between zoning categories. As noted, the increase in height afforded by the proposed rezone has the potential to significantly impact the nonconforming residence immediately north of the subject property, but the issue was addressed during the design review process, and the owner of the residence is satisfied with the result. Adjacencies between commercial and residential zoning are also found in the area. In this case, part of the proposed rezone site is adjacent to LR 2 zoning. However, 24th Avenue E. separates the two zones, which would mitigate the impact of the requested 65-foot height on the LR2 zone.

Impact Evaluation

10. The proposed rezone would positively impact the housing supply. It would not displace existing housing and would add 114 new affordable residential units. The proposal is exempt from mandatory housing affordability requirements under SMC23.58C.025.C

11. Although the proposal would increase the demand for public services, the record shows that public service capacity is available for the new units.

12. As noted above, environmental factors were addressed through the SEPA process, and the proposal was not found to result in significant adverse environmental impacts. The proposed development will create some additional shadows, and these impacts, as well as the impacts of height, bulk and scale, were reviewed and addressed in the design review process.

13. The proposal should enhance pedestrian safety by reducing the number of curb cuts associated with existing development in the area, much of which is auto-oriented. The proposed retail facilities may provide an increase in employment opportunities.

14. There are no designated landmark structures or historic districts in the immediate vicinity, and because the topography of the area is relatively flat, there are no shoreline views.

15. The Director evaluated the Applicant's transportation impact study and the proposal's transportation impacts pursuant to SEPA and determined that it is not expected to create a significant adverse impact to the site or the adjacent street network. Thus, no traffic or parking mitigation was identified.

Changed Circumstances

16. Changed circumstances are to be considered but are not required to demonstrate the appropriateness of a proposed rezone. As noted above, since adoption of the most recent zoning change in the neighborhood in 2006, property southwest of the project site, at 24th Avenue and E. Union Street, has been rezoned to NC2P-65 and now contains a six-story, mixed-use structure. The property at 220 E. Union Street has also been rezoned to NC2-65 and NC2P-65. Further, the Action Plan has been developed, and legislation to implement it is expected to be submitted to the Council this year. That legislation would increase height limits within the area centered on 23rd Avenue E. and E. Union Street, including the subject site, which would be rezoned to a 65-foot height limit.

Overlay Districts and Critical Areas.

17. The proposed rezone is not located within any of the overlay districts included in the Land Use Code in Chapters 23.60 A through 23.74, nor is it located in or adjacent to a designated critical area.

Incentive Provisions

18. The subject site is not located within a zone that currently includes an incentive zoning suffix.

Height Limits

19. 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; the height and scale of the area; compatibility with the surrounding area; and neighborhood plans.

20. 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. NC2 zones are intended to "support or encourage a pedestrian-oriented shopping area that provides a full range of household and personal

goods and services, including convenience and specialty goods, to the surrounding neighborhoods, and that accommodates other uses that are compatible with the retail character of the area, such as housing or offices” SMC 23.34.076.A. The proposed rezone to NC2P-65 would increase the capacity for multifamily residential uses, and slightly increase the variety and scale of commercial uses allowed at this intersection. The proposal would not displace any preferred uses on the property.

21. 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. Because the topography of the site and surrounding area is relatively flat, topographic conditions would not affect the impacts of a height increase on the surrounding areas. Private territorial views of neighborhoods to the east would be blocked by development built to either the existing, or the proposed zoning.

22. 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: As noted, the predominant height limit at the 24th Avenue E. and E. Union intersection is presently 40 feet, with some 30-foot zoning to the east, and recent 65-foot zoning to the west. Most existing development in the area is not built to the 40-foot or 30-foot height limits under current zoning. Although some of the older, lower structures add charm to the area, the 65-foot mixed-use structures at 23rd Avenue E. and E. Union Street are more representative of the area’s overall development potential.

23. 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 requested height limit of 65 feet would match the height of the new mixed-use structures one-half block to the west and, as noted, would be consistent with the height recommended for the area in the Action Plan. It would provide a gradual transition in height and scale to the surrounding NC2-40 zoning, and 24th Avenue E would provide a buffer between the proposed 65-foot height and the L2 zoning to the east.

24. Neighborhood plans. “Particular attention” is to “be given to height recommendations in” adopted neighborhood plans. The adopted Neighborhood Plan does not recommend specific height limits. As noted, it does include a policy that encourages dense urban development in the commercial areas and housing supportive of the community. Further, the proposed legislation to implement the Action Plan would rezone the property in this area, including the subject site, to encourage the type of development called for in the existing Neighborhood Plan.

Pedestrian Designation

25. The function of a pedestrian designation is “to preserve or encourage an intensely retail and pedestrian-oriented shopping district where non-auto modes of transportation to and within the district are strongly favored,” and it is possible to achieve: a “variety of retail/service activities along the street front; a [l]arge number of shops and services per block; [c]ommercial frontage

uninterrupted by housing or auto-oriented uses; [p]edestrian interest and activity; and [m]inimal pedestrian-auto conflicts.” SMC 23.34.080.A.

26. Properties on the northwest and southwest corners of the intersection of 23rd and E. Union Street, one-half block from the subject site, include a pedestrian designation, which also covers the southern part of the subject site and the properties along E. Union Street across the street from the site. The proposed rezone would extend the Pedestrian Overlay designation to cover approximately the north one-third of the subject site. See Exhibit 5.

27. The existing pattern of commercial frontages along E. Union Street includes some auto-oriented uses and curb cuts for those uses, as well as a few remaining residences. However, churches and a variety of commercial uses, such as retail, restaurants, offices, and a movie theater, are located along E. Union Street, north and south of E. Union on 23rd Avenue NE, and at the corners of the north/south streets to the east and west of 23rd Avenue East. The proposal would provide additional commercial opportunities along E. Union Street and onto 24th Avenue E., reinforcing the commercial/residential developments along the street, as well as residential density to further support the surrounding commercial district. The proposal would also reduce the number of curb cuts along the two streets.

28. SMC 23.34.086.B states that the pedestrian designation is appropriate for property that is part of a commercial node in an urban village where there are NC-zoned areas on both sides of an arterial, and excellent pedestrian, transit, and bicycle access. The subject property is located one-half block east of the Community node at 23rd Avenue E. and E. Union Street, which is described in the Comprehensive Plan as a “medium-sized community-serving node with mixed-use developments ... locally owned businesses and institutions ... It is a neighborhood-scale destination that ... draws customers from the larger neighborhood.” As noted above, the predominant zoning along both sides of E. Union Street and 24th Avenue E. in the vicinity of the project site is NC. In addition, the site is located within a frequent transit corridor with bicycle facilities available nearby.

29. The site meets the function and locational criteria for a pedestrian designation.

30. Weighing and balancing the applicable sections of Chapter 23.34 SMC together, the most appropriate zone designation for the subject site is NC2P-65 with a PUDA.

31. The Director has recommended that the following condition be imposed pursuant to SEPA:

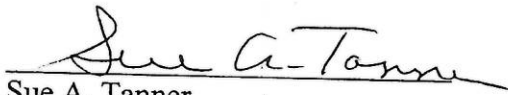
Prior to Building Permit Issuance

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>.

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 that was approved through the design review process, documentation of the proposal's exemption from the requirements of Chapter 23.58C SMC, and the Director's recommended SEPA condition.

Entered this 15th day of May, 2017.


Sue A. Tanner
Hearing Examiner

Concerning Further Review

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

Pursuant to SMC 23.76.054, any person who submitted a written comment to the Director, or provided a written or oral comment to the Hearing Examiner, may submit an appeal of the Hearing Examiner's recommendation to the Council. The appeal must be in writing, clearly identify specific objections to the Hearing Examiner's recommendation, and specify the relief sought. The appeal must be filed with the City Clerk by 5 p.m. of the 14th calendar day following the date the Hearing Examiner's recommendation was issued. When the last day of the appeal period so computed is a Saturday, Sunday, or federal or City holiday, the appeal period runs until 5 p.m. on the next day that is not a Saturday, Sunday, or federal or City holiday. The appeal shall clearly identify specific objections to the Hearing Examiner's recommendation and specify the relief sought.