

March 16, 2023

MEMORANDUM

To: Land Use Committee
From: Ketil Freeman, Analyst
Subject: Clerk File 314470 and Council Bill 120533 – Contract Rezone, 2501 NW Market Street

On March 22, the Land Use Committee (Committee) will have a briefing and may make a recommendation to City Council on [Clerk File \(CF\) 314470](#), which is an application by J. Selig Real Estate, LLC for a contract rezone of a site located in the Ballard urban village and addressed as 2501 NW Market Street, and Council Bill (CB) 120533, which would implement the rezone if approved by Council.

This memorandum: (1) provides an overview of the rezone application contained in CF 314470; (2) describes the contents of Council decision documents, which would grant the rezone application, including a summary of CB 120533, 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; and (3) describes next steps.

Overview of Rezone Application

J. Selig Real Estate, LLC (Applicant) has applied for a contract rezone for the western portion of a split-zoned site from Industrial Commercial with a 65-foot height limit and M Mandatory Housing Affordability (MHA) suffix (IC 65 (M)) to Neighborhood Commercial 3 with a 75-foot height limit, pedestrian designation and M MHA suffix (NC3P 75 (M)). The proposal site is approximately half an acre in size. The proposed rezone would apply to the western 15,934 square feet of the property.

The applications includes a Master Use Permit to redevelop the site with a mixed use building with 107 apartment units, retail on Market Street, and three live-work units. The Applicant intends to satisfy MHA program requirements through on-site performance.

On January 5, 2023, the Seattle Department of Construction and Inspections (SDCI) issued an affirmative recommendation to conditionally approve the application. On January 31, 2023, the Deputy Hearing Examiner held an open-record public hearing on the proposed rezone. On February 8, 2023, the Deputy Hearing Examiner recommended conditional approval. That recommendation was subsequently clarified and reissued on February 16, 2023.

Hearing Examiner recommended conditions are:

DESIGN REVIEW

For the Life of the Project

1. 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.

RECOMMENDED CONDITIONS – REZONE

Prior to Issuance of a Building Permit

2. Plans for development of the rezoned property shall be in substantial conformance, as determined by the Director, with the approved plans for Master Use Permit number 3037590-LU.

For the Life of the Project

3. Non-residential uses shall be maintained on the ground-floor of the south facade in the location of the three proposed live-work units.

DEPARTMENT IMPOSED CONDITIONS – SEPA

Prior to Issuance of Master Use Permit

4. The owner and/or responsible parties shall provide SDCI with a statement that the contract documents for their general, excavation, and other subcontractors will include reference to regulations regarding archaeological resources (Chapters 27.34, 27.53, 27.44, 79.01, and 79.90 RCW, and Chapter 25.48 WAC as applicable) and that construction crews will be required to comply with those regulations.

Prior to Issuance of Demolition, Grading, or Construction Permit

5. 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.

6. Provide an archaeological monitoring and discovery plan prepared by a qualified professional; the plan shall be consistent with the recommendations in the Archaeological Resource Report (Historical Research Associates, Inc., March 8, 2022) on file and include statement that the Duwamish Tribe shall be notified in the event of archaeological work.

During Construction

7. Archaeological monitoring shall occur consistent with the archaeological monitoring and discovery plan submitted in response to condition 6.

8. If resources of potential archaeological significance are encountered during construction or excavation, the owner and/or responsible parties shall:

- Stop work immediately and notify the SDCI Land Use Planner and the Washington State Archaeologist at the State Department of Archaeology and Historic Preservation (DAHP). The procedures outlined in Appendix A of Director's Rule 2-98 for assessment and/or protection of potentially significant archeological resources shall be followed.
- Abide by all regulations pertaining to discovery and excavation of archaeological resources, including but not limited to Chapters 27.34, 27.53, 27.44, 79.01 and 79.90 RCW and Chapter 25.48 WAC, as applicable, or their successors.

Type of Action

A Council decision on the rezone application is quasi-judicial.¹ Quasi-judicial decisions are subject to the Appearance of Fairness Doctrine prohibiting ex-parte communication and are governed by the Council's Quasi-judicial Rules.²

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.

Audio recordings of the approximately 40 minute hearing can be accessed through the Hearing Examiner's website.³ Excerpts from the record, including the early design guidance outreach packet, the SDCI recommendation, other public comments letters, and an analysis by the Applicant of how the proposed rezone meets the rezone criteria in [SMC Chapter 23.34](#) are contained in the Legistar record for CF 314470.

Committee Decision Documents

To approve a contract rezone the Committee must make recommendations to the City 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.

CF 314470 - Findings, Conclusions and Decision

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

- Adopts the Hearing Examiner's findings and conclusions and

¹ [Seattle Municipal Code \(SMC\) Section 23.76.036](#).

² Adopted by [Resolution 31602](#) (2015).

³ [Case Details for CF-314470 \(seattle.gov\)](#).

- Adopts the remaining prior-to-Master-Use-Permit-Issuance conditions recommended by the Hearing Examiner.

CB 120533 – Rezone Bill

CB 120275 would amend the Official Land Use Map to rezone the sites and approve and accept the executed PUDA.

Next Steps

The rezone application will be considered by the Committee for a potential recommendation to City Council on March 22. Depending on Committee action, a City Council vote would occur no earlier than March 28.

cc: Yolanda Ho, Supervising Analyst