

July 30, 2018

MEMORANDUM

To: Planning, Land Use and Zoning Committee
From: Ketil Freeman, Council Central Staff
Subject: Clerk File (CF) 314356 – Contract Rezone Application and Appeal for 7009 Greenwood Ave North

On August 1, 2018, the Planning, Land Use, and Zoning Committee (Committee) will consider an application by 70th & Greenwood Ave, LLC (Applicant) to rezone a property located at 7009 Greenwood Avenue North (Property) from Neighborhood Commercial 2 with a 40-foot height limit (NC2 40) to Neighborhood Commercial 2 with a 55-foot height limit and M Mandatory Housing Affordability (MHA) suffix (NC2 55 (M)) and an appeal of that application by Irene Wall and Bob Morgan (Appellants). The Committee heard oral argument on appeal issues on July 18, 2018.

To allow the option for an affirmative Committee recommendation on August 1, 2018, staff has drafted Council Bill (CB) 119323 approving the rezone and accepting a Property Use and Development Agreement (PUDA). Any recommendation by the Committee to conditionally approve the rezone, with or without modifications to the Hearing Examiner's recommended conditions, requires a bill. A recommendation to deny the rezone does not require a bill.

This memorandum (1) provides an overview of the application to rezone the Property; (2) sets out procedural standards, such as the type of action, standard of review, and burden of proof that apply to the Council's decision; (3) summarizes issues on appeal; and (4) sets out two options for Committee consideration.

Overview

The Applicant has applied for a Mater Use Permit (MUP), including a contract rezone, for an approximately 21,000 square foot site located at 7009 Greenwood Avenue North. The Property has two zone designations: the western half of the Property is zoned NC2 40 and the eastern half of the Property is zoned Single Family 5000 (SF 5000). The Applicant is seeking to rezone the NC2 40 portion of the Property to NC2 55 (M). No rezone is proposed for the SF 5000 portion of the Property. The NC2 40-zoned portion of the Property is cleared; part of the SF-5000 zoned portion is currently developed with a single-family house and detached garage.

The Applicant plans to redevelop the Property with a 35-unit apartment building with approximately 6,000 square feet of retail space surrounding an interior courtyard. The Applicant proposes to participate in the multi-family tax exemption program, which would require that 20 percent of units be affordable to households at 60 to 80 percent of area median income. Sixty percent of the units are proposed to have two or more bedrooms. The building would have below-grade parking for 26 vehicles. The proposed structure would be approximately five stories tall with a deck, solar array, and greenhouse located on the roof.

The Applicant filed a rezone application in December 2016. That original application contemplated a rezone to a zone designation with a 65-foot height limit. The Applicant revised the application in February 2018 to seek a 55-foot height limit. On April 9, 2018, 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 April 30, 2018. Eight people testified at the hearing, with testimony both for and against the proposal. On June 5, 2018, the Hearing Examiner issued a recommendation to Council to approve the rezone subject to conditions in a Property Use and Development Agreement (PUDA). On June 19, 2018, the Appellants filed an appeal with the City Clerk.

In addition to the testimony at the hearing, the record for the application contains well over 100 individual pieces of public comment related to the project. This includes comments received by SDCI¹ and the Hearing Examiner².

Procedural Matters

Type of Action and Materials in the Record

A Council decision on a contract rezone is a quasi-judicial action. A quasi-judicial action is, “an action of the City Council that determines the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding.”³ Quasi-judicial actions are subject to the state Appearance of Fairness Doctrine prohibiting *ex-parte* communication. Council decisions must be made on the record established by the Hearing Examiner. The Hearing Examiner establishes the record at an open-record hearing. The record contains the substance of the testimony provided at the Hearing Examiner’s open-record hearing and the exhibits entered into the record at that hearing.

The entire record is available for review in my office at Councilmembers’ convenience. SDCI’s recommendation; the Hearing Examiner’s exhibit list; minutes of the hearing; a full plan set; other, but not all, exhibits; and the Hearing Examiner’s recommendation are available in [CF 314356](#). An audio recording of the hearing is also available through the Hearing Examiner at [HE File Number CF-314356](#).⁴

Pursuant to the Seattle Municipal Code, when the Hearing Examiner’s recommendation is appealed, the Council must issue its decision within 120 days of receiving the Hearing Examiner’s recommendation, meaning the Council must act by October 4, 2018.⁵

Standard of Review and Burden of Proof

In making its decision on a quasi-judicial rezone application, the Council applies the *substantial evidence standard of review*. This means that the Council’s decision to approve, approve with conditions, or deny

¹ Hearing Examiner’s Exhibit 54, available at <https://seattle.legistar.com/LegislationDetail.aspx?ID=2818084&GUID=EAC1BA09-5631-4BB3-B250-D358930231DE&Options=Advanced&Search>

² Hearing Examiner’s Exhibit 53, available at <https://seattle.legistar.com/LegislationDetail.aspx?ID=2818084&GUID=EAC1BA09-5631-4BB3-B250-D358930231DE&Options=Advanced&Search>

³ [Council Quasi-judicial Rules II.I.](#)

⁴ <https://web6.seattle.gov/Examiner/case/CF-314356>

⁵ [Seattle Municipal Code \(SMC\) 23.76.005.D.3.](#)

the recommendation must be supported by substantial evidence in the record. The Appellant bears the burden of proving that the Hearing Examiner's recommendation should be rejected or modified.⁶

Amended Clerk File Title

CF 314356 contains the application to rezone the Property. The original CF title does not accurately reflect the proposal as it was revised in February. The title should be revised as follows:

Application of 70th & Greenwood Ave, LLC to rezone an approximately 12,188 square foot site located at 7009 Greenwood Avenue North from Neighborhood Commercial 2 with a 40 foot height limit (NC2 40) to Neighborhood Commercial 2 with a ~~65~~ 55 foot height limit and M Mandatory Housing Affordability suffix (NC2-65 NC2 55 (M)) (Project No. 3023260; Type IV).

With these revisions, the CF title would accurately reflect the requested zoning designation and the addition of the MHA suffix to reflect the inclusionary zoning requirement.

Issues on Appeal

Issues on appeal are briefly summarized below. This summary is not intended to be exhaustive. Full copies of the appeal, responses to the appeal by the Applicant and SDCl, and a reply by the Appellants are contained in Clerk File 314356.

Issues

The Appellants assert that the Hearing Examiner's recommendation contains multiple errors. Among others, issues raised by the Appellants include:

- Whether the Hearing Examiner erred by recommending a rezone to the NC2 55 (M) zone designation;
- Whether the Hearing Examiner's findings of fact and conclusions related to application of rezone criteria are in error; and
- Whether the Hearing Examiner's recommended conditions related to rooftop features and affordable housing are sufficient.

Relief sought by the Appellants includes denying the application to rezone the Property or, alternatively, including conditions in the PUDA requiring setbacks from the adjacent single-family zone and reduced height of rooftop features.

Options

This memorandum sets out two mutually exclusive options for Committee consideration: (1) affirming the Hearing Examiner's recommendation to conditionally grant the application or (2) modifying the Hearing Examiner's recommendation to require setbacks above the first level at the boundary between the SF 5000 and proposed NC2 55 (M) zones.

⁶ [SMC 23.76.056.A.](#)

Affirm

The option to affirm would adopt the Hearing Examiner's findings and conclusions and conditionally grant the rezone. Rezone conditions would include a requirement that the developed project comply with the final approved plans and would establish MHA performance and payment requirements. A draft Findings, Conclusions, and Decision affirming the Hearing Examiner's recommendation is provided on Attachment 1.

Modify

The option to modify the Hearing Examiner's recommendation would adopt the Hearing Examiner's findings and would replace a conclusion related to the zone transition at the west side of the mixed-use building between the SF 5000 and the proposed NC2 55 (M) zones. Rezone conditions would be the same as the affirm option, with an additional condition that the project be redesigned to include upper level setbacks and a triangular setback along North 70th Street where the SF 5000 and NC2 55 (M) zones abut each other. A draft Findings, Conclusions, and Decision modifying the Hearing Examiner's recommendation is provided on Attachment 2.

If the Committee recommends this option, the Committee should also make corresponding amendments to the PUDA attached to CB 119323.

Attachments

1. Draft Findings, Conclusions, and Decision – Affirm
2. Draft Findings, Conclusions, and Decision – Modify

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

In the matter of the Petition of)	C.F. 314356
)	SDCI Project 3023260
70 th & Greenwood, L.L.C. to)	FINDINGS, CONCLUSIONS
rezone an approximately)	AND DECISION
12,188 square foot site located)	
at 7009 Greenwood Avenue)	
North from Neighborhood)	
Commercial 2 with a 40 foot)	
height limit (NC2 40) to)	
Neighborhood Commercial 2)	
with a 55 foot height limit and)	
M Mandatory Housing)	
Affordability suffix (NC2 55)	
(M)) (Project No. 3023260;)	
Type IV).)	
)	
The Appeal by)	
)	
Irene Wall and Bob Morgan)	
)	
)	
Of a Recommendation by the)	
City Hearing Examiner on the)	
rezone petition.)	

Introduction

This matter involves the petition of 70th & Greenwood, L.L.C. (the Applicant) to rezone a site located at 7009 Greenwood Avenue North (the Property). The eastern part of the Property is zoned Neighborhood Commercial 2 with a 40-foot height limit (NC2 40) and the western part of the Property is zoned Single Family 5000 (SF 5000). The Applicant proposes to rezone the NC2 40 portion of the property to Neighborhood Commercial 2 with a 55-foot height limit and M Mandatory Housing Affordability (MHA) suffix (NC2 55 (M)), as shown on Exhibit A.

The Applicant proposes to develop the Property with a 35-unit apartment building with approximately 6,000 square feet of retail space surrounding an interior courtyard. The building would have below-grade parking for 26 vehicles. The proposed building would be approximately five stories tall with a deck, solar array, and greenhouse located on the roof. An existing single-family house and detached structure, which are located on the SF-5000 zoned portion of the Property are proposed to remain.

On April 9, 2018, the Director of the Seattle Department of Construction and Inspections (SDCI) recommended approval of the proposed rezone subject to 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 April 30, 2018. On June 5, 2018, the Hearing Examiner recommended that the Council conditionally approve the rezone petition. On June 19, 2018, Irene Wall and Bob Morgan appealed the Hearing Examiner's recommendation to the Council. In meetings on July 18 and August 1, 2018, the Planning, Land Use and Zoning Committee heard oral argument on the appeal and made a recommendation to the 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 June 5, 2018, and the following additional findings of fact:

1. The Council applies a substantial evidence standard of review when reviewing the Hearing Examiner's recommendation. Seattle Municipal Code (SMC) 23.76.056.A.

2. The Appellant bears the burden of proof in demonstrating that the Hearing Examiner erred in his recommendation. SMC 23.76.056.A.

Conclusions

The Council hereby adopts the Hearing Examiner's Conclusions as stated in the Findings and Recommendation of the Hearing Examiner dated June 5, 2018.

Decision

The Hearing Examiner's recommendation to conditionally approve the rezone is *affirmed and the rezone is granted* contingent on execution by the owner of the Property of a Property Use and Development Agreement (PUDA) containing those rezone conditions set out below.

In addition to the SEPA and design review conditions from the Hearing Examiner's recommendation, which are incorporated herein by reference, the rezone is subject to the following conditions:

Rezone Conditions

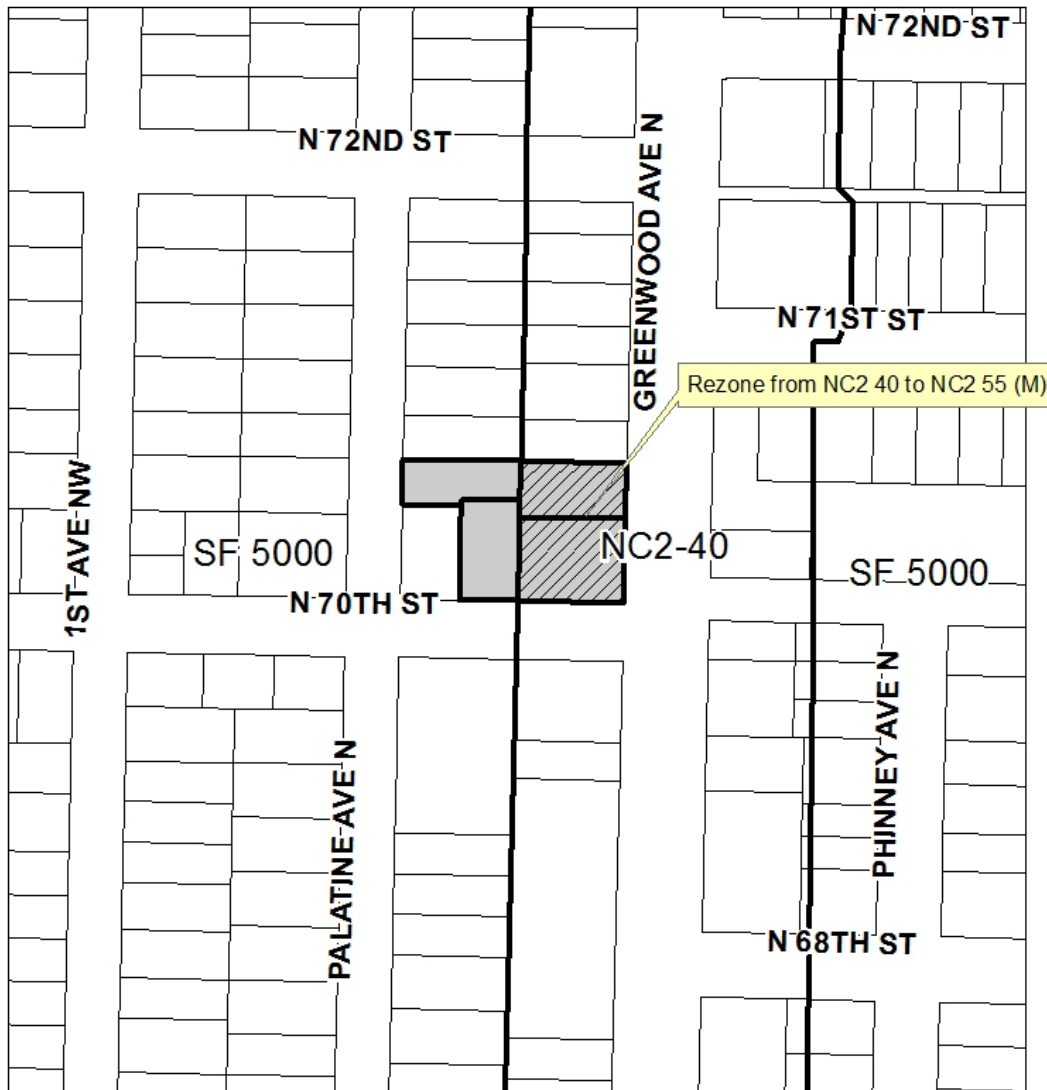
1. Future development of the Property, including the single-family-zoned portion, is restricted to a project that complies with Master Use Permit (MUP) No. 3023260, once the Seattle Department of Construction and Inspections (SDCI) issues that MUP. Prior to issuing the MUP, SDCI must confirm that the 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 rezoned portion of Property. For purposes of application of those Chapters, future development of the rezoned portion of the Property shall be subject to the following performance or payment requirements:

- For Chapter 23.58B, 5% per square foot for the performance option or \$7.00 per square foot for the payment option; and
- For Chapter 23.58C, 6% of units for the performance option or \$13.25 per square foot for the payment option.



Dated this _____ day of _____, 2018.

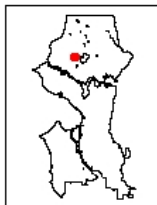
City Council President

Exhibit A

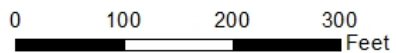


Rezone
Clerk File 314356
SDCI Project No. 3023260
7009 Greenwood Ave N.

-  Rezone Area
-  Area Subject To PUDA



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

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On April 9, 2018, the Director of the Seattle Department of Construction and Inspections (SDCI) recommended approval of the proposed rezone subject to 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 April 30, 2018. On June 5, 2018, the Hearing Examiner recommended that the Council conditionally approve the rezone petition. On June 19, 2018, Irene Wall and Bob Morgan appealed the Hearing Examiner's recommendation to the Council. In meetings on July 18 and August 1, 2018, the Planning, Land Use and Zoning Committee heard oral argument on the appeal and made a recommendation to the Council.

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The Council hereby adopts the Hearing Examiner's Findings of Fact as stated in the Findings and Recommendation of the Hearing Examiner dated June 5, 2018, and the following additional findings of fact:

1. The Council applies a substantial evidence standard of review when reviewing the Hearing Examiner's recommendation. Seattle Municipal Code (SMC) 23.76.056.A.

2. The Appellant bears the burden of proof in demonstrating that the Hearing Examiner erred in his recommendation. SMC 23.76.056.A.

Conclusions

The Council hereby adopts the Hearing Examiner's Conclusions as stated in the Findings and Recommendation of the Hearing Examiner dated June 5, 2018, with the exception of conclusion 7, which is not adopted. The Council adopts the following additional conclusions:

1. The zoning and height principles listed in SMC 23.34.008.E and 23.34.009.D 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 a separation between different uses and intensities of development.

The predominant zoning pattern in this neighborhood is a commercial zone with a 40-foot height limit in the urban village adjacent to a single-family zone. In some instances, zone transitions include buffers such as rights-of-way, but in other instances zone transitions occur along shared property lines.

The entire site abuts three streets: Palatine Avenue North, North 70th Street, and Greenwood Avenue North. The overall development pattern illustrates mainly a 40-foot height commercial zoning north and south along Greenwood Avenue North and a decrease in zoning intensity and height to the east and west along North 70th Street.

The rezone of a portion of the site to NC2 55 (M) would allow a gradual transition to the properties to the north, south, and east. The proposed full height modulation will help break down the mass of the building. The transition to the west of the site is less gradual. Most of the lower four floors of the project would be built to the zone boundary for the length of the site with a four-foot setback provided at only the upper floor. A more gradual transition between zones would be achieved by providing a greater setback above the ground floor.

Decision

The Hearing Examiner's recommendation to conditionally approve the rezone is *modified and the rezone is granted* contingent on execution by the owner of the Property of a Property Use and Development Agreement (PUDA) containing those rezone conditions set out below.

In addition to the SEPA and design review conditions from the Hearing Examiner's recommendation, which are incorporated herein by reference, the rezone is subject to the following conditions:

Rezone Conditions

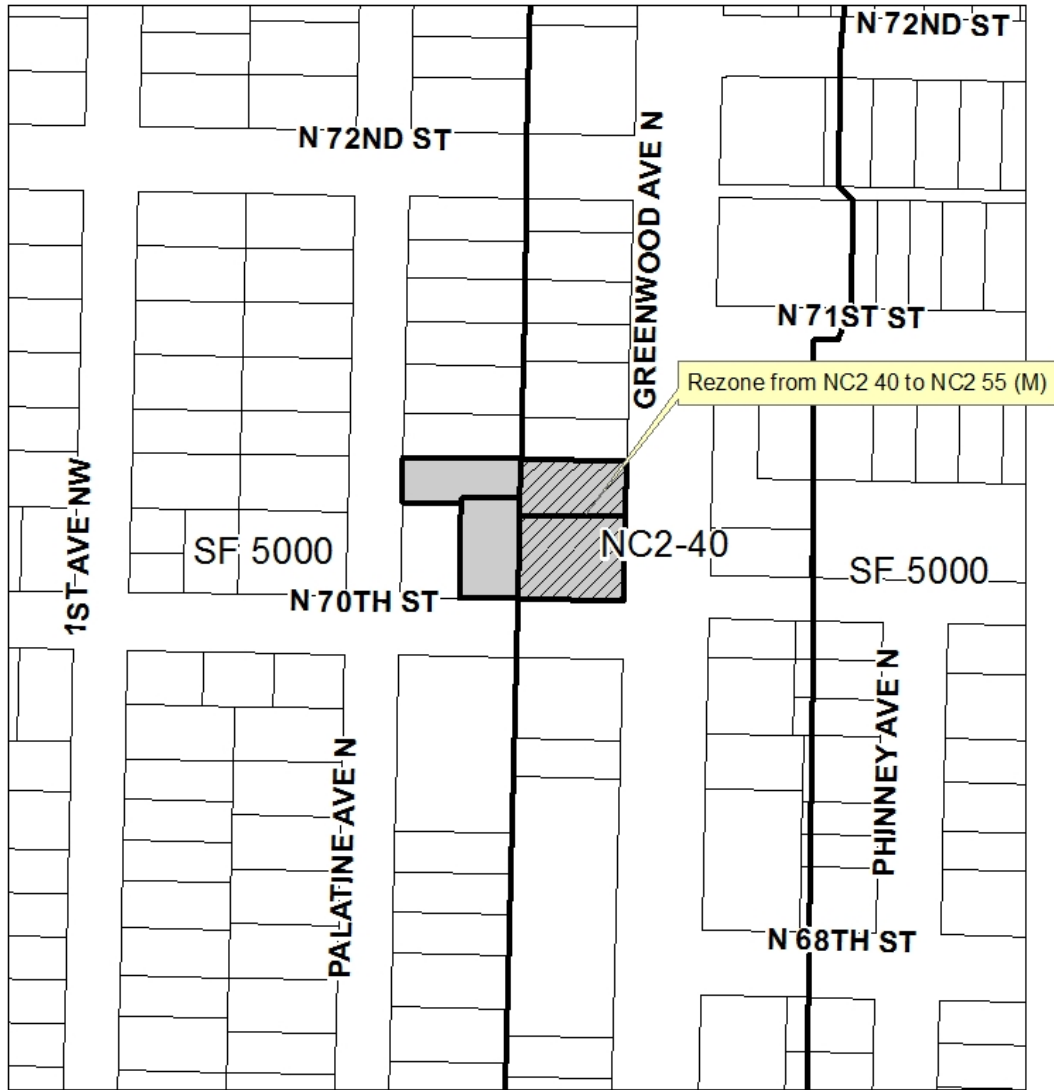
1. Prior to issuance of a Master Use Permit (MUP), the Applicant must revise the plans to provide setbacks from the zone boundary at the western edge of the building that meet the requirements of SMC 23.47A.014.B.
2. Future development of the Property, including the single-family-zoned portion, is restricted to a project that complies with MUP No. 3023260, after that application has been revised to comply with condition 1 and once SDCI issues that MUP.

3. The provisions of Seattle Municipal Code Chapters 23.58B and 23.58C shall apply to the rezoned portion of Property. For purposes of application of those Chapters, future development of the rezoned portion of the Property shall be subject to the following performance or payment requirements:
- For Chapter 23.58B, 5% per square foot for the performance option or \$7.00 per square foot for the payment option; and
 - For Chapter 23.58C, 6% of units for the performance option or \$13.25 per square foot for the payment option.



Dated this _____ day of _____, 2018.

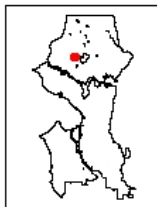
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Exhibit A



Rezone
Clerk File 314356
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7009 Greenwood Ave N.

-  Rezone Area
-  Area Subject To PUDA



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