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CITY OF SEATTLE
MAYOR'S OFFICE

KING COUNTY SUPERIOR COURT

IRENE WALL and ROBERT MORGAN,

Petitioners,

v.

CITY OF SEATTLE, a Washington
Municipal Corporation; 70th &
GREENWOOD AVE, LLC and OJD, LLC,
Washington limited liability companies,

Respondents

No.

LAND USE PETITION
(Ch. 36.70C RCW)

Pursuant to the Land Use Petition Act, Chapter 36.70C RCW, and Article IV,
Section 6 of the Washington State Constitution, Irene Wall and Robert Morgan bring this
action and allege as follows:

1. NAME AND MAILING ADDRESSES OF PETITIONERS

Irene Wall
207 N. 60th Street
Seattle, WA 98103

Robert Morgan
559 N. 74th Street
Seattle, WA 98103

1 **2. NAME AND MAILING ADDRESS OF PETITIONERS' ATTORNEYS**

2 Jeffrey M. Eustis
3 ARAMBURU & EUSTIS, LLP
4 720 Third Avenue, Suite 2000
 Seattle, Washington 98104

5 **3. NAME AND MAILING ADDRESS OF LOCAL JURISDICTION WHOSE**
6 **LAND USE DECISION IS AT ISSUE**

7 City of Seattle
8 600 Fourth Avenue
 Seattle, Washington 98104

9 **4. THE DECISION-MAKING OFFICERS AND DECISIONS APPEALED**

10 4.1 The decision-making officers reaching the appealed decision are:

11 City of Seattle City Council ("Council")
12 Bruce Harrell, President
 600 Fourth Avenue
 Seattle, Washington 98104

13 4.2 On August 6, 2018, The Seattle City Council, acting in its quasi-judicial
14 capacity pursuant to SMC 23.76.056, approved a contract rezone for two commercial
15 parcels at 7009 Greenwood Avenue North that upzoned those lots to NC2-55(M) (fifty-
16 five foot height limit) from their current zoning of NC2-40 (forty foot height limit) and
17 authorized the construction of a five story building right on the shared property line with
18 the adjacent single family zone along the rear boundary, with only a minimal setback on
19 the fifth floor. The Clerk File for this project is # 314356 entitled "Application of 70th &
20 Greenwood Ave LLC to rezone an approximately 12,188 square foot site located at
21 7009 Greenwood Avenue North from Neighborhood Commercial 2 with a 40-foot height
22 limit (NC2-40) to Neighborhood Commercial 2 with a 55-foot height limit and Mandatory
23 Housing Affordability suffix (NC2-55(M)) (Project No. 3023260; Type IV)."

1 4.3 To implement that decision, the Council adopted Findings and
2 Conclusions and passed Council Bill ("CB") 119323, along with a Property Use and
3 Development Agreement ("PUDA"). The formal title is "An Ordinance relating to land
4 use and zoning; amending Chapter 23.32 of the Seattle Municipal Code at page 39 of
5 the Official Land Use Map to rezone property located at 7009 Greenwood Avenue North
6 from Neighborhood Commercial 2 with a 40-foot height limit to Neighborhood
7 Commercial 2 with a 55-foot height limit and mandatory housing affordability suffix, and
8 accepting a Property Use and Development Agreement as a condition of rezone
9 approval. (Petition by 70th & Greenwood Ave LLC, C.F. 314356, SDCI Project
10 3023260)."

11 4.4 A copy of the Council's Findings and Conclusions is set forth at Appendix
12 A to this Petition. Copies of the Ordinance and the associated Property Use and
13 Development Agreement ("PUDA") and related documents are set forth at Appendix B
14 to this Petition.

15 **5. IDENTIFICATION OF PERSONS TO BE MADE PARTIES UNDER RCW**
16 **36.70C.040(2)(B) THROUGH (D)**

17 5.1 The local jurisdiction is:

18 City of Seattle
19 600 Fourth Avenue
20 Seattle, Washington 98104

21 5.2 Upon information and belief, the owner of the Property is 70th &
22 Greenwood, LLC. The mailing address for this entity, according to the records at the
23 Seattle Department of Construction and Inspections ("SDCI") that processed this
application, is:

1 Chad Dale, Registered Agent and Governor
2 70th & Greenwood LLC
3 3621 Stone Way N Unit #E
4 Seattle, WA 98103

5 5.3 The Property Use and Development Agreement, which must be executed
6 by the legal or beneficial owner of the property to be rezoned (SMC 23.34.004), was
7 executed by 70th & Greenwood LLC, and signed by its manager OJD LLC and its
8 Manager Chad Dale. Upon information and belief, the address for OJD LLC, according
9 to the Secretary of State corporate office is:

10 OJD LLC
11 7511 Greenwood Ave N, #710
12 Seattle, WA 98103

13 5.4 The Application was filed by David Fuchs, the architect for and
14 representative of the contract rezone applicant, 70th & Greenwood LLC To the extent
15 necessary for the just adjudication of this Petition, David Fuchs and/or his architectural
16 firm, shall be promptly joined as named parties to this Petition. Upon information and
17 belief, the mailing address for the David Fuchs is set forth below, at which he is being
18 served with a copy of this petition:

19 David Fuchs, Architect
20 Johnston Architects
21 100 NE Northlake Way, Suite 200
22 Seattle, WA 98105

23 5.5 At all times in proceedings, the owner and applicant have been
represented by counsel, who is listed as a party of record in the Hearing Examiner
proceedings. Upon information and belief, the mailing address for Applicant's counsel
is:

Jessica Clawson
McCullough Hill Leary PS
Columbia Center
701 5th Avenue, Suite 6600
Seattle, WA 98104

5.6 Pursuant to RCW 36.70C.050, Petitioners will join any additional parties identified to them as necessary for the just adjudication of this Petition.

6. FACTS DEMONSTRATING STANDING PURSUANT TO RCW 36.70C.060

6.1 Petitioners Irene Wall and Robert Morgan are longtime residents of the Phinney Ridge neighborhood in Seattle where the project at issue is located. Ms. Wall is a board member and former president of the Phinney Ridge Community Council. Mr. Morgan is a retired member of Seattle City Council Central Staff. Ms. Wall and Mr. Morgan provided comments during the various public processes that were required for this project and appealed the Hearing Examiner's Recommendation to the City Council pursuant to SMC 23.76.054.

6.2 Petitioners are aggrieved, adversely affected and prejudiced or likely to be prejudiced by the Decision challenged in this Petition. The approved rezone, and the project approved through the Council's action, would directly and adversely affect the Petitioners because: it allows development of a structure that would exceed the height and scale allowed in the unambiguous provisions of the City's Land Use Code; it produces a scale of development incompatible with the surrounding neighborhood; it unlawfully opens the door to Code application and zoning decisions based on property ownership instead of established Land Use Maps and Code requirements; it risks exposing all of the Phinney Ridge Urban Village in this area (and elsewhere in the City)

1 to similar outsized and unlawful buildings that would diminish residents' access to light,
2 view and air and the required separation between buildings in commercial zones and
3 abutting single family residence zones, all of which impact petitioners by increasing
4 traffic congestion and diminishing their aesthetic enjoyment of the Phinney Ridge
5 neighborhood. The Council's action also adversely affects the Petitioners procedurally
6 because the Council knowingly violated the law to approve this project, admitted as
7 much in the approving Ordinance, and such action undermines the Petitioners' ability to
8 rely on the function and purpose of a Land Use Code that is intended to shape
9 development of all areas of Seattle.

10 6.3 The interests of Ms. Wall and Mr. Morgan are among those that the local
11 jurisdiction was required to consider when it made the land use decision. When SDCI
12 wrote its Recommendation on the Rezone, it was required to (but failed to) respond to
13 public comments. Petitioners had submitted comments to SDCI. The Hearing
14 Examiner was required to consider the public comments received by SDCI in addition to
15 comments and public testimony received at the open record hearing on this project.

16 6.4 Ms. Wall and Mr. Morgan were qualified appellants in their appeal to the
17 City Council because they had submitted comments to SDCI regarding this project and
18 Ms. Wall also testified at the public hearing before the Hearing Examiner on April 30,
19 2018, and their appeal was timely. SMC 23.76.054.A. The City Council was required to
20 consider the Record before issuing its decision. The issues raised on appeal by Ms.
21 Wall and Mr. Morgan mirrored the legal issues that had been raised before – but
22 ignored by – SDCI and the Examiner in their recommendations to upzone and approve
23 this project.

1 6.5 Among other purposes, the Seattle Land Use Code sets forth regulations
2 and procedures for the use of land that are consistent with and implement the City's
3 Comprehensive Plan, classify land within the City into various land use zones in order to
4 regulate uses and structures, and include provisions designed to provide adequate light,
5 air, access, and open space, and maintain a compatible scale within an area. SMC
6 23.02.020. The Land Use Code dictates specific requirements that must be met before
7 a property is upzoned through a site-specific contract rezone, SMC 23.34.007-009, and
8 criteria for each zone, e.g., SMC 23.34.010 - .128. The Land Use Code also requires,
9 through various Code provisions and in its mandatory rezone criteria, setbacks and
10 transitions between commercial and residential properties that apply citywide,
11 regardless of building height. The Council's approval of the 7009 contract rezone
12 defeats those purposes because: it allows for construction of a five story building right
13 on the property line shared with the single family zone (except for a minimal setback on
14 the fifth floor) when the Code requires a gradual transition between zones and specifies
15 substantially greater setbacks; it conflicts with the uniform zoning that has always been
16 in place in the immediate vicinity of the project; it creates a structure out of scale with
17 the surrounding neighborhood that conflicts with the requirements of the City's Land
18 Use Code; and it effectively rezones a vacant single family lot without following proper
19 procedures by removing that lot from future use for a single family dwelling, but instead
20 incorporating it into a multi-family development for use as a buffer to the single-family
21 zone and to provide pedestrian access for retail uses on the abutting commercial lots.

22 6.6 A judgment in favor of Ms. Wall and Mr. Morgan would eliminate the
23 prejudice caused or likely to be caused by the Decision because, without the Council

1 approval of this project, the Project in its current form could not be built under the Land
2 Use Code. A ruling that the Council Decision is unlawful and the proposed construction
3 impermissible would also confirm that the Council, acting in its quasi-judicial capacity, is
4 bound by existing legislative standards and may not knowingly acknowledge that a
5 proposal is untethered to any law, definition, or City policy but authorize that project
6 regardless of those legal deficiencies.

7 6.7 Ms. Wall and Mr. Morgan have exhausted their administrative remedies to
8 the extent that such remedies exist. Ms. Wall and/or Mr. Morgan submitted numerous
9 comments to SDCI regarding this project since the project was first proposed in August
10 2016; they testified at the Hearing Examiner open record hearing on April 30, 2018; they
11 submitted written comments to the Hearing Examiner; and they timely appealed the
12 Hearing Examiner's Recommendation to the Seattle City Council pursuant to SMC
13 23.76.054 (Council consideration of Hearing Examiner recommendation on Type IV
14 Council land use decisions).

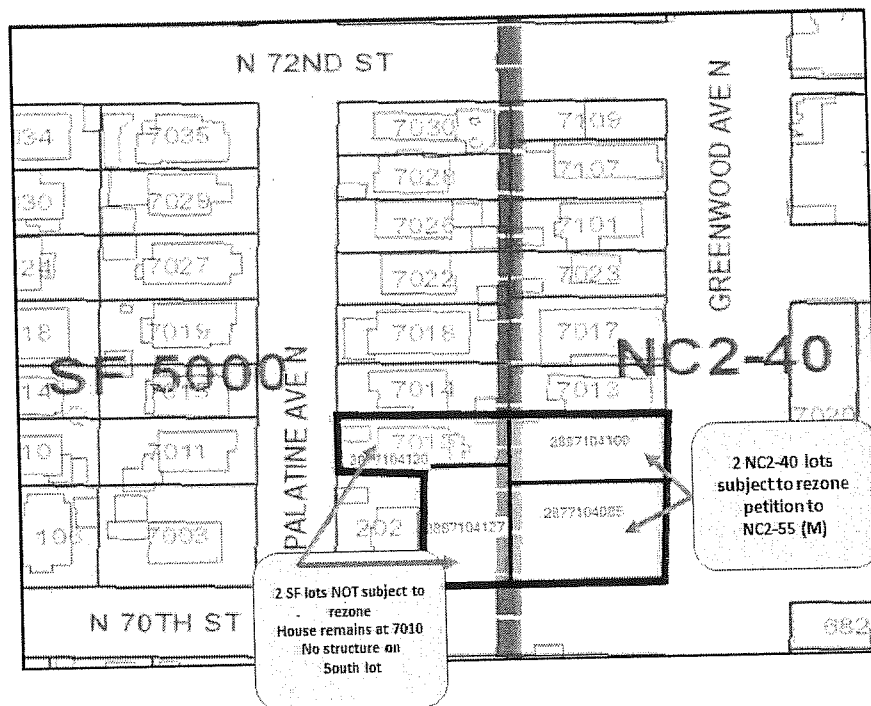
15 7. STATEMENTS OF ERROR AND SUPPORTING FACTS

16 7.1 The Rezone is unlawful because it violates the one and only
17 mandatory directive for contract rezones in the Land Use Code that "[a] gradual
18 transition in height and scale and level of activity between zones shall be
19 provided unless major physical buffers . . . are provided." SMC 23.34.009.D.2.

20 7.1.1 The appealed action involves four adjacent lots at the northwest
21 corner of Greenwood Avenue North and North 70th Street in the Phinney Ridge
22 neighborhood, all owned by the Applicant. Two commercial lots totalling approximately
23 12,000 square feet front on Greenwood Avenue North in the "Phinney Tail" of the
Greenwood Phinney Urban Village. The two single family lots abut the entire west

1 boundary of the commercial lots where the property line separating the lots is the same
2 as the zoning line for the whole block that separates the commercial lots on the east
3 from the abutting single family lots to the west. One single family lot is a vacant, mid-
4 block lot. The other, at 7010 Palatine Avenue North, is developed with a house, garage,
5 and rear deck.

6 7.1.2 The Applicant applied for a contract rezone of the two commercial
7 lots facing Greenwood Avenue North and expressly excluded the two single family lots
8 from the application. SMC 23.34.004. The original application sought a rezone from
9 NC2-40 to NC2-65, self-limited to 55 feet in height. In February 2018, the Applicant
10 withdrew the original application and resubmitted a revised application that sought a
11 rezone to NC2-55(M), the new proposed fifty-foot height limit that is part of proposed
12 legislation but has not been implemented citywide, and does not exist in the Phinney
13 Ridge neighborhood. The revised application did not materially change the proposed
14 building or its location, scale, or height. The map below shows the four lots at issue:



7.1.3 The proposed five-story building would contain commercial uses on the ground floor and residential units on the four upper floors; it would rise four stories directly on the shared property line with the adjacent single family-zoned lots along the rear boundary, with the fifth floor setting back approximately six feet from the zoning boundary. The building would be topped with a massive greenhouse structure with a twelve foot high roof, along with a massive solar array, raising the effective height of the building to almost seventy feet. In several public meetings, the owner representative, Chad Dale, explained that a group of friends would own the building and live in the units on the top two floors, and the lower two floors would be rentals available to the public.

1 7.1.4 The 7009 Greenwood site is located in the middle of the one-mile
2 long, one-street wide "Phinney Tail" of the Greenwood Phinney Ridge Urban Village. All
3 of the lots along Greenwood Avenue North are now zoned NC2-40 (forty foot height
4 limit). This stretch of Greenwood has historically been consistently and uniformly zoned
5 to the same height limit. The nearest lot at a height greater than 40 feet is almost one
6 mile away in the Greenwood Town Center area. Petitioners are not aware of any other
7 contract rezone that was approved where there were no other lots of a higher height in
8 the immediate area.

9 7.1.5 Although this area is listed among the areas proposed for upzoning
10 to NC2-55 in the proposed Mandatory Housing and Affordability (MHA) legislation, and
11 the Examiner made frequent reference to that potential area-wide upzone, that
12 legislation is still in draft form that has not enacted by the Council, and has not even
13 been formally presented. The EIS for this proposed legislation is currently in litigation
14 and as a result, the Council may not lawfully act on any MHA legislation until that
15 litigation is resolved.

16 7.1.6 Contract rezones are Type IV quasi-judicial decisions made by the
17 City Council. In a Type IV proceeding the Hearing Examiner conducts an open record
18 hearing to establish a Decision Record, and issues a Recommendation along with
19 Findings and Conclusions for the Council's review.

20 7.1.7 The Land Use Code identifies the criteria necessary to grant a
21 contract rezone. SMC 23.34.007-009. "No single criterion or group of criteria shall be
22 applied as an absolute requirement or test of the appropriateness of a zone designation,
23 nor is there a hierarchy or priority of rezone considerations, unless a provision indicated

1 the intent to constitute a requirement . . . “ SMC 23.34.007.B (emphasis added). But
2 when a contract rezone involves a height increase, as in the case of the challenged
3 development, SMC 23.34.009.D.2 mandates that “[a] gradual transition in height and
4 scale and level of activity between zones shall be provided unless major physical
5 buffers, . . . are present.” (Emphasis added).

6 7.1.8 But in the case at hand, despite substantial evidence to the
7 contrary, the Examiner recommended approval of the rezone. The Examiner’s Findings
8 and Conclusions are set forth at Appendix C. The Examiner, citing only to a site-plan
9 drawing provided by the Applicant, claimed that “[a] gradual transition between zoning
10 categories would occur between the mid-portion of the project and the SF 5000 zoned
11 properties to the west, as a private open space area will be landscaped to provide some
12 separation between the five story building and the single family zone.” (Examiner
13 Conclusion #7 (emphasis added). The referenced map, however, reveals that the
14 vacant lot that the Examiner claimed provided a “gradual transition between zoning
15 categories” is wholly within the single family zone itself and it is not an open space
16 separating zoning categories. Moreover, even if it could be considered a qualifying
17 open space, it occupies only two thirds of the rear boundary line. There is no “open
18 space” in the northern third of the property line. That area is the small backyard of the
19 single family lot at 7010 Palatine. And there is no open space separating the northwest
20 corner of the commercial building from the single family house and yard on Palatine
21 Avenue that abuts the northwest corner of the commercial lot with the five story building.

22 7.1.9 At oral argument to the Council Planning, Land Use, and Zoning
23 Committee (“PLUZ Committee”) on August 1, 2018, Petitioners presented – and the

1 Committee accepted and considered – an illustrative exhibit that showed, using the
2 same site plan drawing that the Examiner had relied on and that Council Central Staff
3 had incorporated into his presentation, that the vacant single family lot referenced by
4 the Examiner was in the single family zone, not an open space between zones as the
5 Code required. A copy of the illustrative exhibit that was presented to – and accepted
6 and considered by -- the PLUZ Committee and made available to all Council members
7 is set forth at Appendix D. The illustrative exhibit summarized several key arguments
8 raised on appeal and in Petitioners' briefing to the Council.

9 7.1.10 The Council's decision on a Type IV land use decision including a
10 contract rezone is required to be based on applicable law and supported by substantial
11 evidence in the record. SMC 23.76.056. The appellant bears the burden of proving the
12 Hearing Examiner's recommendation should be rejected or modified. *Id.* Although the
13 Council recited this standard in its Findings and Conclusions, it simply adopted the
14 Examiner's Findings and Conclusions without question and without any changes.

15 7.1.11 The Council's decision to approve the Rezone was an erroneous
16 interpretation and application of the law, even after allowing for such deference as is
17 due the construction of law by a local jurisdiction with expertise. RCW 36.70C.130(b).
18 The Council was provided specific legal and factual analysis that demonstrated the fatal
19 error in the Examiner's Recommendation to grant the Rezone.

20 7.1.12 For the reasons noted above, the Council's Decision was not
21 supported by evidence that is substantial when viewed in light of the whole record
22 before the court, RCW 36.70.130(c), and was a clearly erroneous application of the law
23 to the facts. RCW 36.70C.130(d).

1 **7.2 The Council Action was unlawful because it violated additional**
2 **mandatory rezone criteria for height increases in SMC 23.34.009.**

3 7.2.1 The facts alleged at §7.1.1 to 7.1.12 are re-alleged here.

4 7.2.2 Where here, a rezone request involves a height increase, SMC
5 23.34.009.A states that "Height limits shall be consistent with the type and scale of
6 development intended for each zone classification." As noted above, the 7009
7 Greenwood site is in the middle of the one-mile long, one-street wide "Phinney Tail" of
8 the Greenwood Phinney Ridge Urban Village, where all commercial lots are zoned
9 uniformly to NC2-40, and the nearest zone of greater height is almost one mile away.

10 7.2.3 SMC 23.34.009.B states that "the likelihood of view blockage shall
11 be considered." (Emphasis added.). The Examiner failed to evaluate the impact of this
12 project on views of the Olympic Mountains that are specifically protected in SMC
13 23.47A.1.c, despite uncontroverted photographic evidence in the Record that proved
14 that construction of a 55+ foot building on this site would block Olympic Mountain views
15 from the commercial lots to the east, and written and oral testimony that such
16 construction would be prohibited if proposed in the existing NC2-40-zone pursuant to
17 SMC 23.47A.012.A.1.c.

18 7.2.4 SMC 23.34.009.C.1 requires that height limits established by
19 current zoning in the area shall be given consideration. In the area of the 7009 project,
20 the commercial stretch of Greenwood Avenue is zoned uniformly at NC2-40. Every
21 commercial lot shares a rear boundary with a single family lot in the abutting single
22 family zones on both the east and west sides of Greenwood Avenue North. SMC
23 23.34.009.C.2 requires that "permitted height limits shall be compatible with the

1 predominant height and scale of existing development” and SMC 23.34.009.D.1
2 requires that height limits for an area shall be compatible with actual and zoned heights
3 in surrounding areas.

4 7.2.5 The Council’s decision to upzone an isolated parcel in a uniformly
5 zoned area is not supported by substantial evidence in the record and represents a
6 clearly erroneous application of the law to the facts. RCW 36.70C.130(c)&(d).

7 7.2.6 The Council’s decision to allow a 55+ foot building on a site where
8 the substantial and uncontroverted evidence proves it would block views of the Olympic
9 Mountains from commercial lots in the NC zone is not supported by substantial
10 evidence in the record and represents a clearly erroneous application of the law to the
11 facts. RCW 36.70C.130(c)&(d).

12 7.2.7 The Council’s decision to allow a 55+ foot building, with an effective
13 height of almost 70 feet given the rooftop greenhouse and solar panels, in an area that
14 is zoned uniformly at NC2-40 on the commercial street and uniformly at SF-5000 along
15 the rear boundaries of every commercial lot is not supported by substantial evidence in
16 the record and represents a clearly erroneous application of the law to the facts. RCW
17 36.70C.130(c)&(d).

18 **7.3 The Council Action was issued in violation of Land Use Code**
19 **because it violates provisions of the General Rezone Criteria in SMC 23.34.008.**

20 7.3.1 The facts alleged at §7.1.1 to 7.2.7 are re-alleged here.

21 7.3.2 SMC 23.34.008 specifies general rezone criteria that must be
22 considered before a contract rezone is granted.
23

1 7.3.3 As alleged in Petitioners' appeal to the Council, the Hearing
2 Examiner's Findings and Conclusions, which the Council adopted in full without any
3 changes, reflected an incorrect understanding of the project, the lots involved in the
4 project, and the development in the surrounding area.

5 7.3.4 The Council decision is an erroneous interpretation of the law and a
6 clearly erroneous application of the law to the facts because it ignores the numerous
7 short-comings and mischaracterizations in the Examiner's decision.

8 7.3.5 The Council decision is not supported by substantial evidence
9 because it adopted the Examiner's Findings and Conclusions despite numerous
10 evidentiary and legal errors identified by Petitioners in their appeal.

11 **7.4 The Council Action that allowed construction of a five-story building**
12 **rising several stories right on the shared boundary line dividing the commercial**
13 **lots from the adjacent single family lots was unlawful because the Council**
14 **knowingly authorized a building that violated various Land Use Code provisions**
15 **governing setbacks between commercial and residential zones, and access**
16 **across zones, and the Council admitted that the rationale SDCI had used to allow**
17 **this building to evade Land Use Code requirements had no basis in the Land Use**
18 **Code regulations or definitions or in Council policy.**

19 7.4.1 The facts alleged at §7.1.1 to 7.3.5 are re-alleged here.

20 7.4.2 After the original Application had been submitted, and in response
21 to a SDCI Correction Notice that required the proposed building to comply with setback
22 requirements in SMC 23.47A.014, the project applicant drew an imaginary line around
23 its four separate legal lots and deemed the area a "development site," a term undefined
in the Land Use Code. With the approval of a complicit SDCI, a Hearing Examiner that
ignored this issue entirely, and a Council that knowingly looked the other way, the
Applicant then claimed that numerous unambiguous Code requirements did not apply

1 because the so-called "development site" had, in effect, erased all legal lot lines
2 separating its four legally separate lots, even though each lot had a separate tax parcel
3 number and only the two commercial lots were included in its contract rezone
4 application. The net result is approval of a building substantially larger than the Code
5 allows, that consumes the light and air corridor that should have separated this building
6 from the adjacent single family zone, and that relies on unlawful access across the
7 single family zone for entry and egress for commercial uses.

8 7.4.3 SMC 23.47A.014 mandates three discrete setback requirements for
9 mixed use buildings when the commercial lot abuts a lot in a single family zone: (1)
10 SMC 23.47A.014.B.1 mandates a fifteen-foot, no-build triangle at the corner of a
11 commercial lot that abuts a side lot line of a residential lot; (2) SMC 23.47A.0154B.3
12 requires a fifteen-foot setback for all floors above the first floor when a commercial lot
13 abuts a lot in a single family zone, and an additional setback of two feet per ten feet of
14 additional height above forty feet; and (3) SMC 23.47A.014.B.5 prohibits windows and
15 doors on a commercial building within five feet of the lot line. In addition, the proposed
16 MHA legislation recommends an additional setback for all heights above 40 feet to
17 preserve the light and air corridor for the adjacent single family zone. The approved
18 building at 7009 Greenwood violates all of these provisions because SDCI deemed all
19 four parcels a so-called "development site" even though that term is undefined in the
20 Land Use Code and this project did not comply with SDCI's own guidance on how to
21 establish a "development site."

22 7.4.4 The image below, from the Applicant's material in the record, shows the
23 rear (west) side of the building rising right on the property line at the walkway and

1 grassy area on the left side. Based on scaled drawings, all portions of the approved
2 building above the first floor, approximately back through the first window on the side
3 facing right, are unlawful, as are the entire corner of the building at the driveway and the
4 first floor itself, because it is five feet too close to the west side property line.



14 A looking NE to project from N 70th St with upper
15 floor setback and mid-block modulation

16 7.4.5. SMC 23.42.030.A (Access to Uses) prohibits a single family lot
17 from providing pedestrian access to a commercial use in a commercial zone because
18 commercial uses are not allowed in single family zones. But the 7009 Greenwood
19 building, with its retail doors right on the zoning boundary line, relies on a pedestrian
20 walkway across the single family zone to access the retail use in that area. See e.g.,
21 Illustrative Exhibit at Appendix D. Because SDCI called all four lots a "development
22 site," it allowed this unlawful access.

1 7.4.6 The Council rejected Findings and Conclusions that would have
2 upzoned the commercial lots as requested but would have required compliance with
3 these Code provisions. Instead the Council admitted that SDCI's so-called
4 "development site" had no basis in law, and then allowed the Code violations anyway.

5 7.4.7 In CB119323 that upzoned the 7009 property and approved the
6 proposed building, the Council specifically stated that "the Council has not yet made a
7 policy decision reflected in regulations or definitions in the Land Use Code about the
8 implications of development sites when a project is proposed for a site that includes a
9 single family zone designation and another more intensive zone designation."

10 (Emphasis added). The Council did not discuss or pronounce a new policy or Code
11 changes at that time; it left that decision for another day, stating that it "intends to
12 address policy issues related to 'development sites,'" but with no additional clarification
13 about the substance or timing of that issue. *Id.*

14 7.4.8 The Council engaged in unlawful procedure and acted outside its
15 authority when it upzoned 7009 Greenwood and knowingly authorized a building that
16 violated the Land Use Code when it admitted that SDCI's rationale for ignoring
17 unambiguous Code requirements was unfounded in Land Use Code regulations or
18 definitions or City policy. The Council's Decision was classified as a Type IV Decision
19 under the Land Use Code. "Type IV decisions are quasi-judicial decisions made by the
20 Council pursuant to existing legislative standards and based upon the Hearing
21 Examiner's record and recommendation." SMC 23.76.004.C (emphasis added). As the
22 Council admitted in CB 119323, there are no legislative standards that allow a so-called
23 "development site" to be used to erase legal lot lines between lots in different zones and

1 allow an Applicant to evade compliance with unambiguous Code provisions that apply
2 to those lots.

3 7.4.9 The Council decision is an erroneous interpretation and application of the
4 law because it admits there to be no basis for the 7009 project to evade unambiguous
5 Code requirements, and accordingly no deference is due to SDCI's construction of the
6 law because the Council specifically found there to be no regulations, definitions, or
7 policy to support SDCI's determination.

8 7.4.10 The Council decision is not supported by substantial evidence because,
9 apart from the pure legal issues involved here, the record contains numerous comment
10 letters, testimony, and briefing showing these obvious errors and proving that, to the
11 extent "development site" has been used at all, SDCI ignored its own guidelines when it
12 relied on a "development site" here; the Hearing Examiner ignored this issue entirely;
13 and the Council considered it, recognized the problems with the proposed building, and
14 chose to ignore the evidence.

15 7.4.11 The Council decision is a clearly erroneous application of the law to the
16 facts for the reasons given above. RCW 36.70C.130(b),(c)&(d).

17 **7.5 The Council Action was unlawful because it, in effect, rezoned the**
18 **vacant single family lot in violation of the proper procedures, and without any**
19 **findings and conclusions on that matter, even though: (1) such action was not**
20 **among the findings and conclusions of the Hearing Examiner; (2) it was not part**
21 **of SDCI's Recommendation; (3) it was not requested by the Applicant; and (4) it**
22 **affected a lot that Applicant had specifically excluded from its rezone application.**

23 7.5.1 The facts alleged at §7.1.1 to 7.4.11 are re-alleged here.

7.5.2 At the full Council meeting on August 6, 2018, the Council decided
for the first time, without any advance notice or input from Petitioners (the Appellants

1 below), that it would require that the vacant single family lot be permanently maintained
2 as landscaped open space. The Council made no separate Findings or Conclusions on
3 that decision. It simply added it as a "Rezone Condition" and included it in the PUDA.
4 The Hearing Examiner's Findings and Conclusions do not reference, discuss, or require
5 a permanent landscaped open space on that lot. The Rezone Application did not
6 mention any permanent open space in that area, and to the contrary, the Applicant had
7 specifically excluded that lot from the Rezone Application. See also SMC 23.34.004
8 (PUDA applies to parcels to be rezoned). There was no record created on whether the
9 vacant single family lot should be permanently removed from future residential
10 development.

11 7.5.3 The Council's decision to maintain permanent landscaped open
12 space on a vacant single family lot effectively rezoned that lot in violation of proper
13 procedure and in violation of the substantive rezone criteria that should have been
14 applied. SMC 23.34.010, SMC 23.34.011, SMC 23.34.007-009. The Council's action
15 permanently removed that lot from housing stock in a highly desirable neighborhood.
16 Instead of preserving that lot for housing of other single-family uses as required for lots
17 zoned single family, the Council unlawfully converted that lot to commercial and multi-
18 family uses by permitting otherwise unlawful uses on that lot, namely the use of the
19 single family zone to access commercial uses in a commercial zone in violation of SMC
20 23.42.030.

21 7.5.4 The Council engaged in unlawful procedure when it effectively
22 rezoned the vacant single family lot without following the prescribed process for
23

1 rezones, which error was not harmless because it determined the use of that single
2 family lot to be other than single family development.

3 7.5.5 The Council decision is an erroneous interpretation and application
4 of the law to the facts because mandating that a single family lot in a single family zone
5 serve as a buffer for an adjacent mixed-use multi-family and commercial development
6 does not cure the fatal flaw of allowing a five story building right on the zoning boundary
7 line when the Code requires a "gradual transition between zones." (Emphasis supplied.)

8 7.5.6 The Council decision is not supported by substantial evidence
9 because it was presented specific information that the Examiner had misinterpreted the
10 specific site plan map on which he had relied and there was no evidence in the record
11 that supported or even mentioned permanent landscaped open space for the
12 application under consideration.

13 **7.6 The contract rezone was unlawfully enacted as a spot zone.**

14 7.6.1 The facts alleged at §7.1.1 to 7.5.6 are re-alleged here.

15 7.6.2 By singling out the 70th & Greenwood ownership from the larger
16 Phinney Ridge Urban Village and creating for that ownership a special zoning
17 classification existing nowhere else within the Phinney Ridge Urban Village whose
18 requirements, including those for building height and setbacks, are different from and
19 inconsistent with the requirements for other properties in the vicinity, and by abruptly
20 changing long-established provisions for transition between single-family and the
21 neighborhood commercial zone and view protection to serve one particular landowner,
22 the City Council, through the approval of the contract rezone, has acted arbitrarily and
23 unreasonably by bestowing special favors upon an individual property owner, by failing

1 to act in the interest of the public at large, by enacting spot zoning in violation of Article
2 I, Section 3 of the Washington Constitution and the rezone should be invalidated under
3 RCW 36.70C.130(f).

4 **8. REQUESTED RELIEF**

5 Petitioners request that the Court grant the following relief:

6 8.1 Grant a stay of the Council's Rezone approval pending judicial review
7 pursuant to RCW 36.70C.100 because: (a) petitioners are likely to prevail on the merits;
8 (b) without a stay, the developer is likely to begin construction immediately, which will
9 cause irreparable harm to Petitioners and the entire Phinney Ridge neighborhood if the
10 presently paved lots are excavated and Petitioners prevail and the Rezone is then
11 denied; (c) a grant of a stay will not substantially harm the other parties to the
12 proceedings because (1) this project has already been pending for two years, (2) the
13 Applicant voluntarily caused a two month delay in the open record hearing when it
14 voluntarily withdrew its application just days before the originally scheduled hearing and
15 resubmitted a virtually identical proposal shortly afterwards, and (3) the Applicant did
16 not have a reasonable expectation of a Council Decision at this time because the
17 Council issued its decision months before its required deadline of 120 days after the
18 Hearing Examiner Decision (SMC 23.76.005.D.3.1.3); and (d) the request for the stay is
19 timely in light of the circumstances because the Applicant has indicated its intent to
20 begin construction this fall after it receives required approvals.

21 8.2 Find and conclude that the Council engaged in unlawful procedure and
22 acted outside its authority by approving a project that did not comply with Land Use
23

1 Code criteria or City Policy and was instead based on rationale that had no basis in
2 regulations, definitions, or City Policy.

3 8.3 Find and conclude that the challenged Decision authorizing the Rezone
4 and proposed building is an erroneous interpretation of the law, is not supported by
5 substantial evidence, is a clearly erroneous application of the law to the facts, and
6 constitutes an unlawful spot zone.

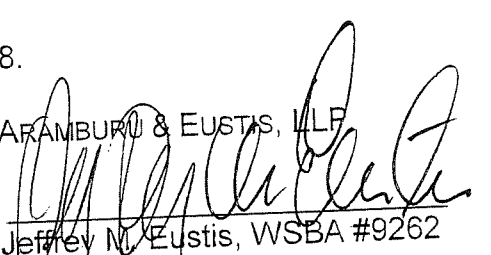
7 8.4 Reverse the Council's approval of the Rezone and deny the Rezone;

8 8.5 Award Petitioners their allowable costs and attorney fees; and

9 8.6 Grant such other and further relief as the Court may deem appropriate.

10 Dated this 27th day of August 2018.

11 ARAMBURU & EUSTIS, LLP

12 
13 Jeffrey M. Eustis, WSBA #9262
14 Attorney for Petitioners

Appendix A

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

In the matter of the Petition of)
70th & Greenwood, L.L.C. 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 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.)

C.F. 314356
SDCI Project 3023260
FINDINGS, CONCLUSIONS
AND DECISION

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:

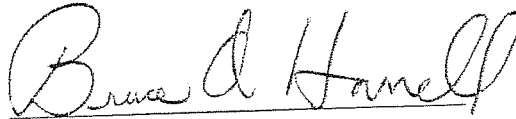
Rezone Conditions

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. This includes maintaining as landscaped open space the area identified on Attachment A as Assessor's Parcel Number 287710-4127. 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:

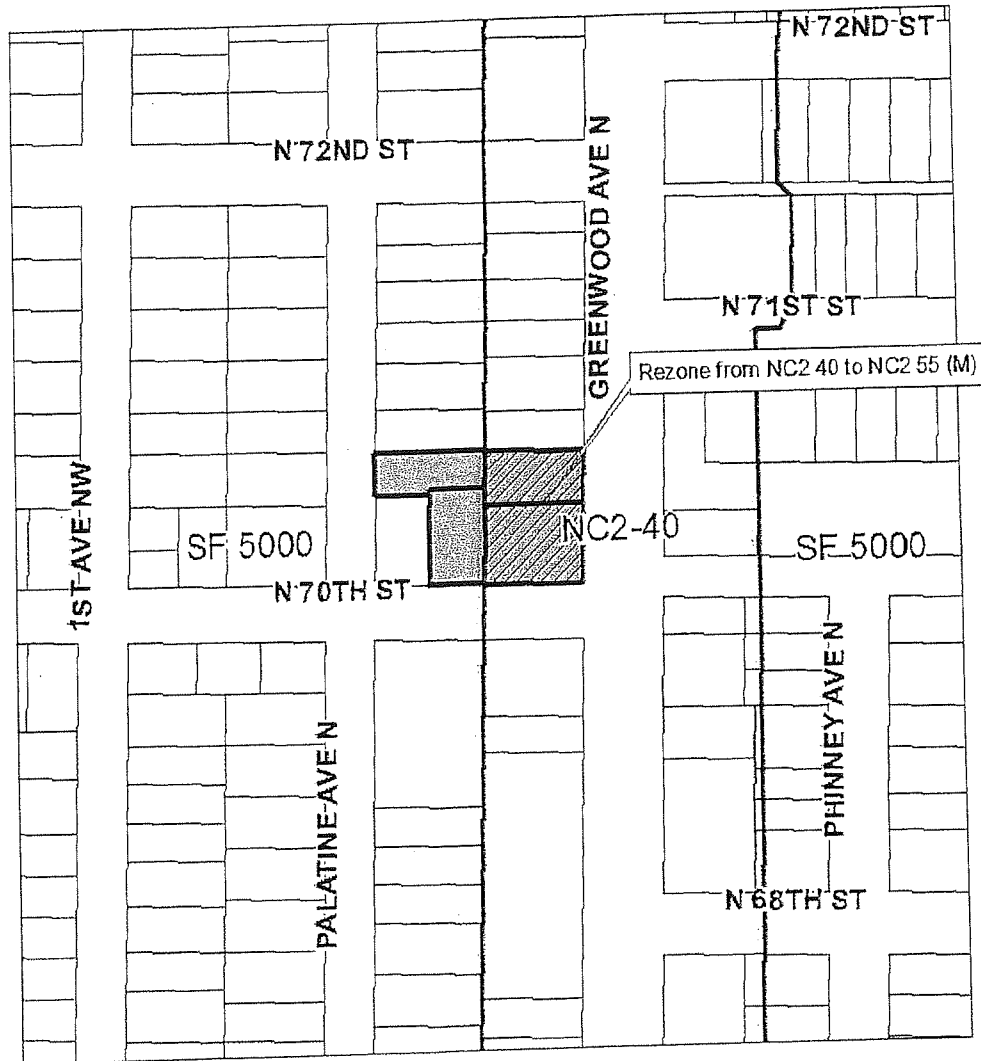
- For Chapter 23.58B, 5% per square foot for the performance option or \$7.00 per square foot for the payment option; and
- For Chapter 23.58C, 6% of units for the performance option or \$13.25 per square foot for the payment option.

Dated this 6th day of August, 2018.



A handwritten signature in cursive script, reading "Bruce D. Hamell". The signature is written in dark ink and is positioned above a horizontal line.

City Council President

Exhibit A



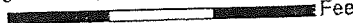
Rezone
 Clerk File 314356
 SDCI Project No. 3023260
 7009 Greenwood Ave N.

 Rezone Area
 Area Subject To PUDA



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 City of Seattle. Prepared July 6, 2018
 by Council Central Staff.

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Appendix B



CITY OF SEATTLE

OFFICE OF THE CITY CLERK



[Welcome!](#)
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[Meetings](#)
[Council Committees](#)
[Resources](#)
[City Council](#)

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Record No: CB 119323 **Version:** [2](#) **Council Bill No:** CB 119323
Type: Ordinance (Ord) **Status:** Passed
Current Controlling Legislative Body: City Clerk
Ordinance No: Ord 125640

Title: AN ORDINANCE relating to land use and zoning; amending Chapter 23.32 of the Seattle Municipal Code at page 39 of the Official Land Use Map to rezone property located at 7009 Greenwood Avenue North from Neighborhood Commercial 2 with a 40-foot height limit to Neighborhood Commercial 2 with a 55-foot height limit and mandatory housing affordability suffix, and accepting a Property Use and Development Agreement as a condition of rezone approval. (Petition by 70th & Greenwood Ave, LLC, C.F. 314356, SDCI Project 3023260)

Sponsors: Rob Johnson

Attachments: 1. [Exhibit A – Legal Description](#), 2. [Exhibit B – Rezone Map](#), 3. [Exhibit C – Property Use and Development Agreement v2](#), 4. [Exhibit C – Property Use and Development Agreement v1](#)

Supporting documents: 1. [Summary and Fiscal Note](#), 2. [Proposed Substitute \(added 8/7/18\)](#), 3. [Amendment 2 \(added 8/7/18\)](#)

Related files: [CF 314356](#)

[History \(6\)](#)
[Text](#)

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

title

AN ORDINANCE relating to land use and zoning; amending Chapter 23.32 of the Seattle Municipal Code at page 39 of the Official Land Use Map to rezone property located at 7009 Greenwood Avenue North from Neighborhood Commercial 2 with a 40-foot height limit to Neighborhood Commercial 2 with a 55-foot height limit and mandatory housing affordability suffix, and accepting a Property Use and Development Agreement as a condition of rezone approval. (Petition by 70th & Greenwood Ave, LLC, C.F. 314356, SDCI Project 3023260)

body

WHEREAS, the Council received an appeal by Bob Morgan and Irene Wall of the Hearing Examiner's recommendation to conditionally approve the rezone;

WHEREAS, the Council determined that the Hearing Examiner did not err in his recommendation to conditionally approve the rezone;

WHEREAS, the appeal raised issues related to an administrative decision by the Seattle Department of Construction and Inspections to establish as a "development site," for the purposes of the application of development standards, the rezone area and two adjacent single-family parcels;

WHEREAS, the Council has not yet made a policy decision reflected in regulations or definitions in the Land Use Code about the implications of "development sites" when a project is proposed for a site that includes a single-family zone designation and another more intensive zone designation;

WHEREAS, the Council intends to address policy issues related to "development sites;" and

WHEREAS, Council decisions related to contract rezone applications have no precedential effect; NOW THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. This ordinance rezones a portion of the property commonly known as 7009 Greenwood Avenue North ("Property"), which is legally described in Exhibit A to this ordinance.

Section 2. Page 39 of the Official Land Use Map, Seattle Municipal Code Section 23.32.016, is amended to rezone a portion of the Property described in Section 1 of this ordinance, and shown in Exhibit B to this ordinance, from Neighborhood Commercial 2 with a 40-foot height limit (NC2 40) to Neighborhood Commercial 2 with a 55-foot height limit and mandatory housing affordability suffix (NC2 55 (M)). Approval of this rezone is conditioned upon complying with the Property Use and Development Agreement (PUDA) approved in Section 3 of this ordinance.

Section 3. The PUDA attached to this ordinance as Exhibit C is approved and accepted.

Section 4. The City Clerk is authorized and directed to take the following actions: (1) file the PUDA approved in Section 3 of this ordinance with the King County Recorder's Office; (2) upon return of the recorded PUDA from the King County Recorder's Office, file the original PUDA along with this ordinance at the City Clerk's Office; and (3) deliver copies of the PUDA and this ordinance to the Director of the Seattle Department of Construction and Inspections and to the King County Assessor's Office.

Section 5. This ordinance, effectuating a quasi-judicial decision of the City Council and not subject to mayoral approval or disapproval, shall take effect 30 days from its approval by the City Council.

Passed by the City Council the _____ day of _____, 2018, and signed by me in open session in authentication of its passage this _____ day of _____, 2018.

President _____ of the City Council

Filed by me this _____ day of _____, 2018.

Monica Martinez Simmons, City Clerk

(Seal)

Attachments:

Exhibit A - Legal Description

Exhibit B - Rezone Map

Exhibit C - Property Use and Development Agreement

18 AUG - 11:27
CITY CLERK

Property Use and Development Agreement

<i>When Recorded, Return to:</i>	
THE CITY CLERK 600 Fourth Avenue, Floor 3 PO Box 94728 Seattle, Washington 98124-4728	

PROPERTY USE AND DEVELOPMENT AGREEMENT

Grantor(s):	(1)	70 th & Greenwood Ave, LLC	(2)	
<input type="checkbox"/> Additional grantors on page _____				
Grantee:	(1)	The City of Seattle		
<input type="checkbox"/> Additional on page _____				
Legal Description (abbreviated if necessary):		See Attachment A		
<input type="checkbox"/> Additional legal description on page: _____				
Assessor's Tax Parcel ID #:		287710-4100, 287710-4085, 287710-4127, 287710-4120		
Reference Nos. of Documents Released or Assigned:				

THIS PROPERTY USE AND DEVELOPMENT AGREEMENT (the "Agreement") is executed this ____ day of August, 2018, in favor of the CITY OF SEATTLE (the "City"), a Washington municipal corporation, by 70th & Greenwood Ave, LLC (the "Owner").

RECITALS

A. 70th & Greenwood Ave, LLC is the owner of that certain real property (the "Property") in the City of Seattle zoned Single Family 5000 (SF 5000) and Neighborhood Commercial 2 with a 40-foot height limit (NC2 40), which is legally described in Attachment A.

B. In December 2016, the Owner submitted to the City of Seattle an application under Master Use Permit (MUP) No. 3023260 for a rezone of the commercially-zoned portion of the Property. In February of 2018, the Owner revised the application to seek a rezone from NC2 40 to Neighborhood Commercial 2 with a 55-foot height limit and M suffix (NC2 55 (M)). The purpose of the application is to develop the commercially-zoned portion of the property with a 35 unit mixed-use building with approximately 6,000 square feet of retail space and below-grade parking for 26 vehicles. A single-family house and detached structure on the SF 5000 portion of the Property would remain. The Property and rezone area are shown on Attachment B.

C. Seattle Municipal Code Section 23.34.004 allows the City to approve a rezone subject to "self-imposed restrictions upon the use and development of the property in order to ameliorate adverse impacts that could occur from unrestricted use and development permitted by development regulations otherwise applicable after the rezone" and restrictions applying the provisions of Chapters 23.58B and 23.58C to the Property.

NOW, THEREFORE, in consideration of the mutual agreements contained herein, the parties agree as follows:

AGREEMENT

Section 1. Agreement. Pursuant to Seattle Municipal Code Section ("SMC") 23.34.004, the Owner hereby covenants, bargains and agrees, on behalf of itself and its successors and assigns, that it will comply with the following conditions in consideration of the rezone of a portion of the Property from NC2 40 to NC2 55 (M):

- (a) 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. This includes maintaining as landscaped open space the area identified on Attachment A as Assessor's Parcel Number 287710-4127. 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.

(b) 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.

Section 2. Agreement Runs With the Land. This Agreement shall be recorded in the records of King County by the City Clerk. The covenants hereof shall be deemed to attach to and run with the land and shall be binding upon the Owner, its heirs, successors and assigns, and shall apply to after-acquired title of the owners of the property.

Section 3. Termination of Zoning Designation.

The new zoning designation shall expire according to SMC 23.76.060.C, or if the rezone is revoked pursuant to SMC 23.34.004.

Section 4. Termination of Conditions.

The conditions listed in Section 1 of this agreement shall expire at such time as the rezone expires or is revoked pursuant to Section 3 of this Agreement. If the rezone does not expire and is not revoked, these conditions shall remain in effect until the conditions are amended or repealed.

Section 5. Amendment. This Agreement may be amended or modified by agreement between the Owner and the City; provided, such amendments are approved by the City Council by ordinance.

Section 6. Exercise of Police Power. Nothing in this Agreement shall prevent the City Council from making such further amendments to the Seattle Municipal Code or Land Use Code as it may deem necessary in the public interest.

Section 7. No Precedent. The conditions contained in this Agreement are based on the unique circumstances applicable to this property and this Agreement is not intended to establish precedent for other rezones in the surrounding area.

Section 8. Repeal as Additional Remedy. Owner acknowledges that compliance with the conditions of this Agreement is a condition of the subject rezone and that if the Owner avails itself of the benefits of this rezone but then fails to comply with the conditions of this Agreement with the City, in addition to pursuing any other remedy, the City may:

- a. revoke the rezone by ordinance and require the use of the Rezone Site to conform to the requirements of the previous NC2 40 zoning designation or some other zoning designation imposed by the City Council; and/or

b. pursue specific performance of this Agreement.

SIGNED this 6th day of August, 2018.

70th & Greenwood Ave. LLC.

a Washington limited liability company

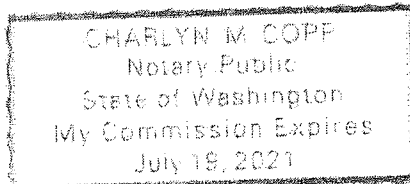
By: OJD LLC, its Manager

By: [Signature]

Chad Dale, its Manager

On this day personally appeared before me Chad Dale, to me known to be the Manager of OJD LLC, the Manager of 70th & Greenwood Ave LLC, a Washington limited liability company that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such limited liability company, for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 6th day of August, 2018.

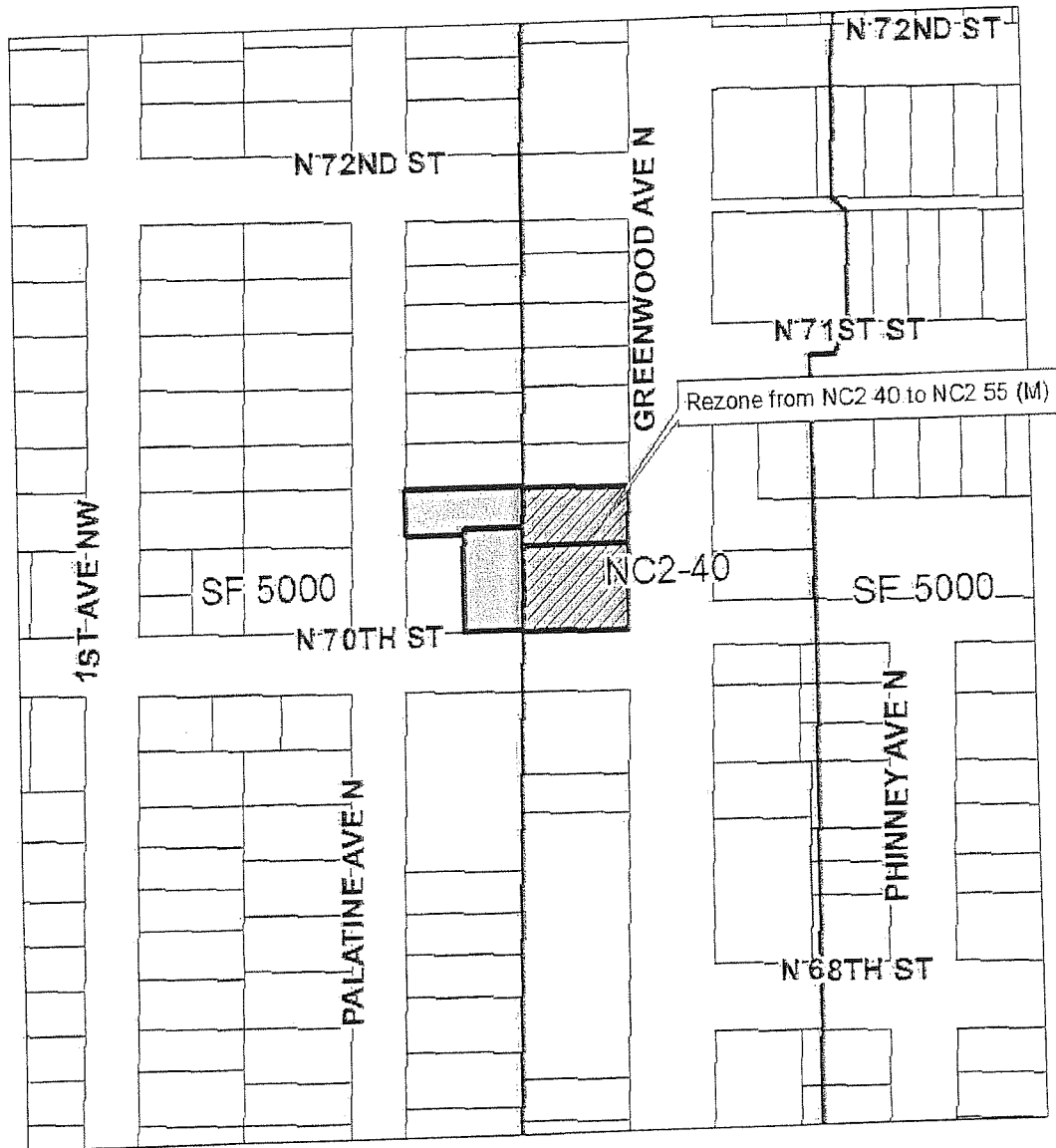


<u>Charlyn M. Copp</u>		Printed Name <u>Charlyn M. Copp</u>
		NOTARY PUBLIC in and for the State of Washington, residing at <u>Seattle</u>
		My Commission Expires <u>7/19/21</u>
STATE OF WASHINGTON	}	SS.
COUNTY OF KING		



ATTACHMENT A

Assessor's Parcel Number	Legal Description
287710-4100 And 287710-4085	<p>LOTS 1, 2, 3, 4, AND 5, IN BLOCK 23 OF GREENLAKE CIRCLE RAILROAD ADDITION TO THE CITY OF SEATTLE, AS PER PLAT RECORDED IN VOLUME 2 OF PLATS ON PAGE 170, RECORDS OF KING COUNTY, WASHINGTON.</p> <p>EXCEPT FOR THE EAST 10 FEET THEREOF CONDEMNED FOR GREENWOOD AVENUE IN THE SUPERIOR COURT OF KING COUNTY CAUSE NO. 65489, UNDER PROVISIONS OF ORDINANCE NO. 19334.</p>
287710-4127	<p>THE SOUTH 15 FEET OF THE EAST 53 FEET OF LOT 9 AND THE EAST 53 FEET OF LOTS 10, 11, AND 12, IN BLOCK 23 OF GREENLAKE CIRCLE RAILROAD ADDITION TO THE CITY OF SEATTLE, AS PER RECORDED VOLUME 2 OF PLATS ON PAGE 170, RECORDS OF KING COUNTY, WASHINGTON.</p> <p>SITUATE IN THE CITY OF SEATTLE, COUNTY OF KING, STATE OF WASHINGTON.</p>
287710-4120	<p>LOTS 8 AND 9, BLOCK 23, GREEN LAKE CIRCLE RAILROAD ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 2 OF PLATS, PAGE 170, RECORDS OF KING COUNTY, WASHINGTON;</p> <p>EXCEPT THE SOUTH 13.5 FEET OF THE EAST 53 FEET OF LOT 9;</p> <p>AND EXCEPT THE SOUTH 10 FEET OF THE WEST 54.5 FEET OF LOT 9.</p>

ATTACHMENT B



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

-  Rezoned Area
-  Area Subject To PUDA



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 City of Seattle. Prepared July 6, 2018
 by Council Central Staff.

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Appendix C

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

In the Matter of the Application of

CF 314356

DAVID FUCHS

Department Reference:
3023260

for approval of a rezone of property
located at 7009 Greenwood Avenue North

Introduction

David Fuchs applied for a contract rezone of property 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 a mandatory housing affordability suffix of "M" ("NC2-55(M)"). The Director of the Department of Construction and Inspections ("Director") issued a report recommending approval of the rezone. The Director's report included a State Environmental Policy Act ("SEPA") Determination of Non-Significance with recommended conditions and design review approval, which were not appealed.

The public hearing on the rezone application was held on April 30, 2018 before the Hearing Examiner ("Examiner"). The Applicant was represented by Jessica Clawson, attorney-at-law, and the Director was represented by Lindsay King, Senior Land Use Planner at the Department of Construction and Inspections ("Department"). The Examiner visited the site on May 17, 2018.

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 file and visited 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 20,799 square feet, addressed as 7009 Greenwood North, and consists of four tax parcels. The site fronts Greenwood Avenue North to the east, and is bound by North 70th Street to the south, Palatine Avenue North is to the west.
2. The property is L-shaped and is presently zoned NC2-40 and Single Family 5000 ("SF 5000"). The eastern half of the development site (the portion proposed for a rezone) is located within the Greenwood/Phinney Ridge Residential Urban Village. The site itself is generally flat with no critical areas and sits at the top of Phinney Ridge.

3. The development site is presently developed with a single-family residence, detached accessory garage and a paved vacant area. The surrounding existing development abutting the subject property's boundary lines are single family residences to the north and east. An existing religious institution is located across North 70th Street to the south of the subject property. The immediate surrounding area to the north, south, east and west of the subject site are relatively flat.
4. Greenwood Avenue North is a minor arterial and the primary commercial corridor running south/north, with commercial uses generally limited to neighborhood-related or eating establishments. The commercial uses on Greenwood Avenue North are primarily zoned NC2-40 and contains a mixture of older one and two-story commercial uses and newer four-story mixed-use buildings. Phinney Avenue North to the south has a more residential feel and has Lowrise-Residential Commercial ("LR3 RC") zoning.
5. Properties to the immediate north and south of the proposal along Greenwood Avenue North are zoned NC2-40. Properties east and west of the Greenwood corridor are existing single-family residences within single-family residential neighborhoods. Property to the west of the proposal is zoned SF 5000. Property to the east across Greenwood Avenue North is zoned NC2-40.
6. Greenwood Avenue North is a Metro bus corridor providing service to and from downtown Seattle, with express bus options at peak hour. The subject property is within a frequent transit service area.

Zoning History and Potential Zoning Changes

7. The zoning history for the portion of property subject to the rezone application is as follows:
 - a. 1947- Business District Area C with height limit of 65 feet
 - b. 1950- General Commercial Zone with height limit of 60 feet
 - c. 1988- Neighborhood Commercial 2 with height limit of 40 feet
 - d. 1994- Urban Village and Neighborhood Plan introduced
8. The Greenwood-Phinney Ridge Urban Village was established in 1994 and was zoned to its current zoning (NC2-40) in 1988.
9. The Housing Affordability and Livability Agenda ("HALA") Advisory Committee delivered a set of recommendations to the Mayor and City Council in 2015 that included mandatory housing affordability for residential ("MHA-R") and commercial ("MHA-C") development. MHA would require that commercial and multi-family residential developments either include affordable housing units in the building or pay into a fund to provide housing affordable to low-income households, in exchange for increases in development capacity.

10. The 2035 Seattle Comprehensive Plan, which became effective on November 16, 2016, did not change the underlying Comprehensive Plan designation of the project site. Policy LU G1 states:

Achieve a development pattern consistent with the urban village strategy, concentrating most new housing in urban centers and villages, while also allowing some infill development compatible with the established context in areas outside centers and villages.¹

As stated above, the proposal is located within the Greenwood/Phinney Residential Urban Village. LU 1.3 provides that a “low to moderate density and scale of development” is appropriate within a residential urban village.²

11. The City is currently considering area-wide zoning map changes, expansions of some urban village boundaries, modifications to development standards and other actions to implement Mandatory Housing Affordability (“MHA”) requirements for multi-family and commercial development in certain areas. The proposal includes a change to the zoning of the commercially zoned portion of the development site to NC2-55(M).

Neighborhood Plan

12. The portion of the development site proposed to be rezoned (the eastern half measured at 12,185 sq. ft. in area), is located within the Greenwood/Phinney Ridge Residential Urban Village with boundaries as established in the Comprehensive Plan. The remaining portion of the subject site (western half) is outside of the boundary for this urban village. The Council-adopted portions of the Greenwood/Phinney Ridge Neighborhood Plan do not identify any specific areas for rezone.
13. The estimated housing unit growth target for this Residential Urban Village in the Growth Strategy Appendix of the 2035 Comprehensive Plan is a density of 500 housing units at a growth rate of 30% between the years of 2015 to 2035. The established growth accommodation for residential urban villages in the 2035 Comprehensive Plan is zoning that permits at least 12 dwelling units per gross acre.

Proposal

14. The applicant seeks a rezone from NC2-40 to NC2-55(M), with a property use and development agreement (“PUDA”). The terms of the PUDA are not disclosed in the record before the Examiner. The applicant plans to construct a five-story multi-family building of 35 units, with approximately 6,000 square feet of above-ground retail, including 2-3 suites of micro-retail for small businesses. There will also be 26 below-ground parking spaces (a parking ratio of .74). Also planned is 2,100 square feet of publicly accessible open courtyard space with partial overhead weather

¹ Seattle Comprehensive Plan, November 2016, at 42.

² *Id.*

protection. The project will create a mix of housing units from studios to four-bedroom units, with 60% of the units being two bedrooms or larger.

15. Twenty percent of the units will be reserved as affordable using both the Multi-Family Tax Exemption and the MHA-R requirement. Those units will be priced at 60-80% of average mean income.
16. The proposal targets LEED Platinum certification, and the structure is intended to have a projected life span of 100 years.
17. The proposed rezone would allow for a single story of additional height and will increase the unit yield by 6 units.
18. The proposed site of the multi-family building is presently vacant; there are no structures to remove from the property. In the west portion of the site there are two concrete pads which are remnants from a historic environmental clean-up completed on the site.³ In the northwest corner of the site is an existing family home. That home will remain without any changes.
19. Existing vehicular access to the development property is via curb cuts along Greenwood Avenue North, North 70th Street and Palatine Avenue North. Greenwood Avenue North is an arterial street and a primary commercial corridor running north/south.
20. The design review packet submitted May 1, 2017 for the proposal was reviewed by the Northwest Design Review Board ("DRB"). The DRB considered shadow impacts from the proposal and examined massing options to minimize shadow impacts. In response, the applicant removed the sixth floor of the structure and made massing changes to provide an appropriate response to the zone transitions to the north, south, east, and west. The DRB supported the four-story brick base, strategic use of setbacks, and architectural detailing to visually distinguish the fifth floor from the lower four floors.⁴ It recommended approval of the subject design and departures subject to conditions.
21. A parking study was completed for the proposal.⁵ The proposal is projected to demand 1.07 vehicles per unit, or 37 vehicles for 35 apartments. Development and occupancy of the planned-mixed use project will create spillover parking demand ranging from 11 vehicles overnight to 29 vehicles in the early evening, and 15 vehicles during mid-day. The proposal provides 26 underground parking spaces, although it is not required to do so since it is in a designated frequent transit service area.

³ Ex. 39 (Washington State Department of Ecology issued a letter stating no further remedial action is required).

⁴ Ex. 30 & Ex. 1 at 9.

⁵ Exs. 28, 41.

22. A traffic study completed for the project by the Tilghman Group⁶ showed that the proposal would result in a net increase of 340 daily vehicle trips, including 28 PM peak hour trips. Truck trips would total approximately 20 per day, including 10 deliveries.
23. One tree on the site qualifies as exceptional. It is a multi-stem plum tree with three live stems growing from the base. Tree Solutions, Inc., arborists, opined that the tree is in declining health due to internal decay at the base.⁷ Presently, the tree is leaning on an existing fence, which will be removed as part of construction. Given removal of the fence, the arborist opines that the ongoing prognosis for tree to remain upright is poor. The opinion of the arborist is that the new buildings should not be modified to accommodate this tree.

Public Comment

24. Comments were received during the design review process for the proposal. They are summarized in the Director's Report, Exhibit 1, at 4-6, and 8-9. Comments received were in support of the project, and/or raised concerns related to height and bulk of the proposal, shadow impacts, potential new precedent for height in neighborhood, and compatibility with the neighborhood character and zoning.
25. Comments received by the Hearing Examiner both supported and opposed the proposed rezone. *See e.g.* Exhibit 48-49, 51, and 53-55. Supporters view the proposal as an asset to the community and developing in accordance with current zoning and development patterns. Opponents view the proposal as not conforming to existing zoning patterns, creating a precedent for greater heights and density, and lack of compatibility with the neighborhood character.

Director's Review

26. The Director's report, Exhibit 1, analyzes the proposed contract rezone and recommends that it be approved with conditions.
27. The Director also analyzed the proposal's potential long-term and short-term environmental impacts.

Applicable Law

28. 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

⁶ Exs. 17, 18, & 19.

⁷ Ex. 20.

changed circumstances; the presence of overlay districts or critical areas, and whether the area is within an incentive zoning suffix.

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 to make a recommendation to the City Council on the proposed contract rezone pursuant to SMC 23.76.052.
2. SMC 23.34.007 provides that the applicable sections of Chapter 23.34 SMC are to be weighed and balanced together to determine the most appropriate zone and height designation. "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 23.34.007B. The general rezone criteria, including "zoning principles," are set forth in SMC 23.34.008.

Effect on Zoned Capacity

3. SMC 23.34.008 requires that, within an urban center or urban village, the zoned capacity, taken as a 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 established growth strategy density target for the Greenwood/Phinney Ridge Residential Urban Village is 12 dwelling units per gross acre. Existing zoning would allow for four floors of residential units, approximately 29 similarly sized apartment units.⁸ The proposal, with five floors of residential units, will provide for 35 apartments, an increase capacity over existing zoning by six additional units. Therefore, the proposed rezone will increase zoned capacity and zoned density by allowing for additional building height and residential units. The proposed rezone is consistent with SMC 23.34.008.A.1 because the increase in zoned capacity does not reduce capacity below 125% of the 2035 Comprehensive Plan growth target. This rezone is also consistent with SMC 23.34.008.A.2 because the proposed change would not result in less density for this zone than the density established in the Urban Village Element (Growth Strategy) of the Comprehensive Plan.

Match Between Zone Criteria and Area Characteristics

4. In this case, the proposal does not seek a change in the existing NC2-zone designation. The NC2 zone criteria in SMC 23.34.076 continue to match the characteristics of the area better than any other zone designation. This site is within the primary business district of the Residential Urban Village on streets with good

⁸ Ex. 1 at 27.

capacity and transit service.⁹ The proposal does seek a change in height, which is addressed below.

Neighborhood Plan/Precedential Effect

5. The Council-adopted portions of the Greenwood/Phinney Ridge Neighborhood Plan do not identify any specific areas for rezone.
6. The current zoning allows for a maximum height of 40-feet with a floor area ratio of 3.25. The MHA recommended NC2-55(M) zone would allow a maximum height of 55-feet with a floor area ratio of 3.75. The proposal would match development expectations for the area when compared with the City's area wide up-zone proposal. To the degree that the proposal, if approved, might influence Council's consideration of the area wide up-zone, e.g. as an example of a property with a height approval above the existing 40-foot height limit, then the proposal could have a precedential effect of increasing zoned heights.

Zoning Principles

7. 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.

The predominant zoning pattern in this neighborhood is a commercial zone with a 40-foot height limit in the urban village overlay located adjacent to a single-family zone. There are some examples of a 40-foot height zone located adjacent to a 65-foot height zone and 40-foot and 65-foot height zones adjacent to the LR3 RC and single-family zones. In some instances, the transition includes buffers, such as a right-of-way street/alley, but in other instances the transition occurs along a shared property line.

The entire development site abuts three streets: Palatine Avenue North, North 70th Street and Greenwood Avenue North. The rezone portion of the development site is located at the intersection of North 70th Street and Greenwood Avenue North. The overall development pattern illustrates mainly a 40' height commercial zoning north and south along Greenwood Avenue North and a decrease in zoning intensity and height as properties continue east and west along North 70th Street.

The general development pattern along the east and west sides of Greenwood Avenue North shows similar zoning intensity and height to the north and south. Conversely, the development pattern along the north and south sides of North 70th Street decreases in zoning intensity and height as the properties continue east and west of the corner properties at Greenwood Avenue North. The proposed rezone of a portion of the

⁹ Ex. 1 at 27.

development site to NC2-55(M) would allow for a gradual transition between those properties zoned NC2-40 to the north, south, and east. A proposed full height modulation on the sides of the building along Greenwood Avenue North and North 70th Street will help to break down the mass of the buildings. A gradual transition between zoning categories would occur between the mid-portion of the project site and the SF 5000 zoned properties to the west, as a private open space area will be landscaped to provide some separation between the five-story building and the single-family zone.¹⁰ In addition, there will be a minimum four-foot setback on the upper floor on the west side to allow for a visual transition.¹¹

Impact Evaluation

8. The proposed rezone would positively impact the housing supply, as it would add 35 new residential units. The proposed rezone will add housing capacity to the neighborhood and locate additional housing in the Urban Village.
9. The proposal would create a minimal increase in the demand for public services. There is no evidence in the record that the demand would exceed service capacities. In particular, street access, transit service, and parking, 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 parking, height, bulk and scale, transportation and other environmental impacts, pursuant to SEPA, and has identified conditions to mitigate impacts that are not otherwise adequately addressed through existing regulations.
10. The approved design includes design strategies to minimize the appearance of height, bulk, and scale impacts.
11. 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

12. Changed circumstances are to be considered but are not required to demonstrate the appropriateness of a proposed rezone. There are no changed circumstances to be considered in reviewing the proposal. The rezone does not propose to change the property from the existing NC2 classification, but will allow a height increase and addition of an M suffix which are addressed under the review of other criteria.

Overlay Districts/ Critical Areas

¹⁰ Ex. 50 at 37.

¹¹ *Id.* at 25.

13. The subject property is not within an overlay district or critical area; therefore, these criteria do not apply.

Height Limits

14. 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 public and private view blockage; height and scale of the area; compatibility with the surrounding area; and neighborhood plans.
15. Function of the zone. Height limits are to be consistent with the type and scale of development intended for the zone classification. In addition, the demand for permitted goods and services and potential for displacement of preferred uses are to be considered. The proposed rezone lies within the boundaries of the Greenwood/Phinney Ridge Residential Urban Village and would allow increased density in this urban village. The proposal's multi-family residential uses with commercial elements would be consistent with the type and scale of development in the vicinity and the proposed NC2-55 zoning, and would not change the variety and size of commercial uses that are presently allowed. There will be no displacement of preferred uses. There is nothing in the adopted neighborhood plan policies that address heights.
16. 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. There is no likelihood of view blockage of protected public views, because there are no public views in the vicinity of the proposal. The proposed structure may impact territorial views from adjacent properties.
17. 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. Older one and two-story development in the area is not representative of the development potential for zoning in this area.

18. 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 55 feet, would be compatible with

most of the actual and potential zoned heights in the surrounding area, and would be consistent with the transition of zoned heights and scale of development in the area.

19. Weighing and balancing the applicable sections of Chapter 23.34 SMC together, the most appropriate zone designation for the subject site is NC2-55(M) with a PUDA.

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 with the following conditions:

Prior to Issuance of a Master Use Permit

1. The provisions of SMC 23.58B and/or 23.58C shall apply to the rezoned property.

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 3023260.

The Director has recommended the following SEPA conditions:

Prior to Issuance of 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>.

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

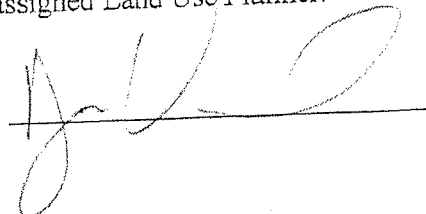
Prior to Certificate of Occupancy

1. The Land Use Planner shall inspect materials, colors, and design of the constructed project. All items shall be constructed and finished as shown at the design recommendation meeting and the subsequently updated Master Use Plan set. Any change to the proposed design, materials, or colors shall require prior approval by the Land Use Planner (Tami Garrett, tami.garrett@seattle.gov) or a Seattle DCI assigned Land Use Planner.

For the Life of the Project

2. 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 (Tami Garrett, tami.garrett@seattle.gov) or a Seattle DCI assigned Land Use Planner.

Entered this 5th day of June, 2018.



Ryan Vancil
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 Neighborhoods Committee
c/o Seattle City Clerk
600 Fourth Avenue, Floor 3
P.O. 94728
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 **David Fuchs Rezone Application**. Council File: **CF 314356** in the manner indicated.

Party	Method of Service
Applicant Legal Counsel Jessica Clawson Jessie@mhseattle.com David Fuchs dfuchs@johnstonarchitects.com	<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
Department Lindsay King SDCI Lindsay.king@seattle.gov Tami Garrett SDCI Tami.garrett@seattle.gov	<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
City Contacts Nathan Torgelson Director, SDCI Nathan.Torgelson@seattle.gov Roger Wynne City Attorney's Office Roger.Wynne@seattle.gov Ketil Freeman City Council Ketil.Freeman@seattle.gov Public Resource Center PRC@seattle.gov	<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>SCJ Routing Coordinator SCJ_Routing_Coordinator@seattle.gov</p> <p>Sue Putnam Sue.Putnam@seattle.gov</p>	
<p>E-mail</p> <p>Marc@streamre.com Emily@grouparch.com Kwalzak@nbbj.com DKutzero@gmail.com ivanarama@gmail.com john@sklarchitects.com jreibman@weberthompson.com iwall@serv.net ronrobl@aol.com henryava@comcast.net ebartfeld@comcast.net n.shay@msn.com janweldin60@gmail.com aandedarcy@comcast.net aaronocallaghan@msn.com aasmith6@fastmail.com aleenada@gmail.com aleigh64@yahoo.com alivn@allyn.org betsvc@windermere.com bmorgan@comcast.net bookmoose1@yahoo.com bovdm@hotmail.com Brian.gerich@gmail.com campkusa@hotmail.com jeffboutel@gmail.com dan.liebling@gmail.com danielle.mcarthur@gmail.com danswenson@comcast.net davidpsimons@gmail.com ddickstein@earthlink.net dduthweiler@comcast.net Ellen.bezona@gmail.com epsteinianet@comcast.net erichdarcy@comcast.net erinlevon@hotmail.com fifig13@msn.com Guentherc75@aol.com hadden.eric.a@gmail.com heidi.kandathil@gmail.com hemanthpai@gmail.com henryava@comcast.net hjleveque@comcast.net jreibman@weberthompson.com jumpforjoy2day@hotmail.com jwbto@ballardview.com katvvhanson@gmail.com kevescp@comcast.net kheintz@uw.edu anderson.kristink@gmail.com andrew.sang32@gmail.com andrews14@verizon.net anthony.r.marsh@gmail.com</p>	<p><input type="checkbox"/> U.S. First Class Mail, postage prepaid</p> <p><input type="checkbox"/> Inter-office Mail</p> <p><input checked="" type="checkbox"/> E-mail</p> <p><input type="checkbox"/> Fax</p> <p><input type="checkbox"/> Hand Delivery</p> <p><input type="checkbox"/> Legal Messenger</p>

aprvlwaldman@gmail.com
asapuntz@gmail.com
Carolh357@gmail.com
Cebaker1800@gmail.com
cherylmsykes@gmail.com
chris@hugginsandsons.com
chrisbcunningham@gmail.com
Christian.geismann@gmail.com
dhndlymore@aol.com
dinomarshalonis@gmail.com
dkamm844@gmail.com
dricamm@gmail.com
dstewart98109@icloud.com
duncangriffinarch@gmail.com
fryhlecb@plu.edu
Fstriegl@aol.com
fstriegl@carmelpartners.com
fstriegl1@gmail.com
g_zuhl@yahoo.com
galenward@gmail.com
iskra@iskradesign.com
iwall@serv.net
janweldin60@gmail.com
jeffboutel@gmail.com
jeffmixdorf@gmail.com
jhcross-whiter@comcast.net
kileyriffell@gmail.com
kkendall23@gmail.com
ktartist@hotmail.com
lara.sukol@shorelineschools.org
lawharton57@gmail.com
lcandres@earthlink.net
Gary.Kriedt@kingcountv.gov
SEPA@psc.state.wa.gov
separegister@ecy.wa.gov
Ramin.pazooki@wsdot.wa.gov
rad.cunningham@doh.wa.gov
kelly.cooper@doh.wa.gov
shirlee.tan@kingcountv.gov
asaxton@corollaryconsulting.net
barbarabentson@gmail.com
bardiess@msn.com
barry_kirkman@hotmail.com
bbkuster@hotmail.com
benpow@centurylink.net
christopherleebrown@gmail.com
ciwarner@comcast.net
ckseattle@gmail.com
claraburnettemail@gmail.com
creiner@settle-it.com
d.steen.d@gmail.com
eafried412@earthlink.net
earthun@hotmail.com
ebartfeld@comcast.net
elisabeth.woosley@hotmail.com
eliardmeyer@gmail.com
ellardterry@gmail.com
gmerritt783@yahoo.com
gmsodt@gmail.com
gordon@rgkennedy.com
grantcole@gmail.com
gregorythomsen@hotmail.com

jkeeler415@gmail.com
jo.fuller@gmail.com
john.jeffcott@outlook.com
johnsmith20@johnsmith20.com
jonathan.westerman@gmail.com
jordancarlson@gmail.com
lee@destinationtiki.com
lesliesacha@comcast.net
levasseur12@gmail.com
luf3lix@yahoo.com
lund.annette@gmail.com
lyngraves@comcast.net
mamasebek@yahoo.com
mannfried@gmail.com
margaret@boylemartin.com
mark.schiller@stanfordalumni.org
martin.thenell@gmail.com
marviny@yamarch.com
musae@earthlink.net
myquinters@gmail.com
myra1111@msn.com
n.shav@msn.com
nangohring@yahoo.com
ndsandvik@gmail.com
peter.krystad@gmail.com
peterfarnung@yahoo.com
philjody@q.com
physter@peak.org
phinneyridge.council@gmail.com
pickenien14@gmail.com
robertspooner@gmail.com
ronrobl@aol.com
RTW_141@hotmail.com
samantha4trees@gmail.com
sbenveniste@me.com
schaferc@gmail.com
swamp@blarg.net
tdonnelly727@gmail.com
teman@clarklinde.net
tilkay@comcast.net
timmins.pat@gmail.com
tkgazelle@gmail.com
beggars1002003@gmail.com
maryjoed@issaquahwa.gov
MaryMcCann@msn.com
maykut@serv.net
mcbell@seanet.com
mcurrey@shaw.ca
melindaelkin@yahoo.com
nfmiller17@comcast.net
nhorman@comcast.net
nielsencj50@comcast.net
noahwheid@gmail.com
nwbarcus@comcast.net
oliver@holmancahill.com
pmak2@msn.com
pneurath@icloud.com
pockle.lips.now@gmail.com
pooleykaren@yahoo.com
publiccomment@eric.aderhold.us
rask.swenson@gmail.com
shannon@fix-works.com

Shawn.m.baz@gmail.com
simpsonjvj@aol.com
smithem55@gmail.com
sokolows@q.com
soteriosap@aol.com
tonyroth@comcast.net
tracyp@ech-ps.com
westcoastcamms@gmail.com
youngreb@gmail.com
zcrumbo@mac.com
znhoward@gmail.com
mikelrich@msn.com
mikeveets@gmail.com
mkuszmaul@hotmail.com
mojoemo@msn.com
mreid2@zagmail.gonzaga.edu
mssfrankfurt@yahoo.com
organicmaze@gmail.com
p_lipping@comcast.net
pateggers@hotmail.com
Patutie1@comcast.net
Peggy.Moloney@microsoft.com
pegmandtomr@gmail.com
rebedale@hotmail.com
reviessecard@gmail.com
rhondasable@gmail.com
rhondathomsen@gmail.com
rlandy@comcast.net
roberta.zook.2014@gmail.com
sp88ky1@aol.com
spanishwithteresa@yahoo.com
srflash32@gmail.com
steven.bullock@gmail.com
Sueholis63@gmail.com
susanfwagner@yahoo.com
jrudden@comcast.net
katy.mccormick_uk@yahoo.com
mikelrich@msn.com
smithem55@gmail.com

U.S. Mail

BRIGITTE GRAUPE
 342 N 71ST ST
 SEATTLE, WA 98103

MELDA FELIX
 516 N 65TH ST
 SEATTLE, WA 98103

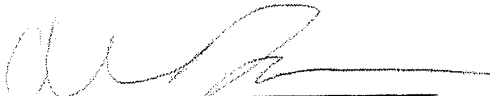
SUQUAMISH TRIBE
 PO BOX 498
 SUQUAMISH, WA 98392

DUWAMISH TRIBE
 4705 W MARGINAL WAY SW
 SEATTLE, WA 98106

- ☒ U.S. First Class Mail, postage prepaid
- ☐ Inter-office Mail
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<p>KAREN WALTER WATERSHEDS AND LAND USE TEAM LEADER MUCKLESHOOT INDIAN TRIBE FISHERIES DIVISION HABITAT PROGRAM 39015 172ND AVE SE AUBURN, WA 98092</p>	
<p>Inter-office Mail Public Review Documents Quick Information Center Seattle Public Library LB-03-01</p>	<p><input type="checkbox"/> U.S. First Class Mail, postage prepaid <input checked="" type="checkbox"/> Inter-office Mail <input type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger</p>

Dated: June 5, 2018



Alayna Johnson
Legal Assistant

Appendix D

Mandatory Rezone

Criteria:

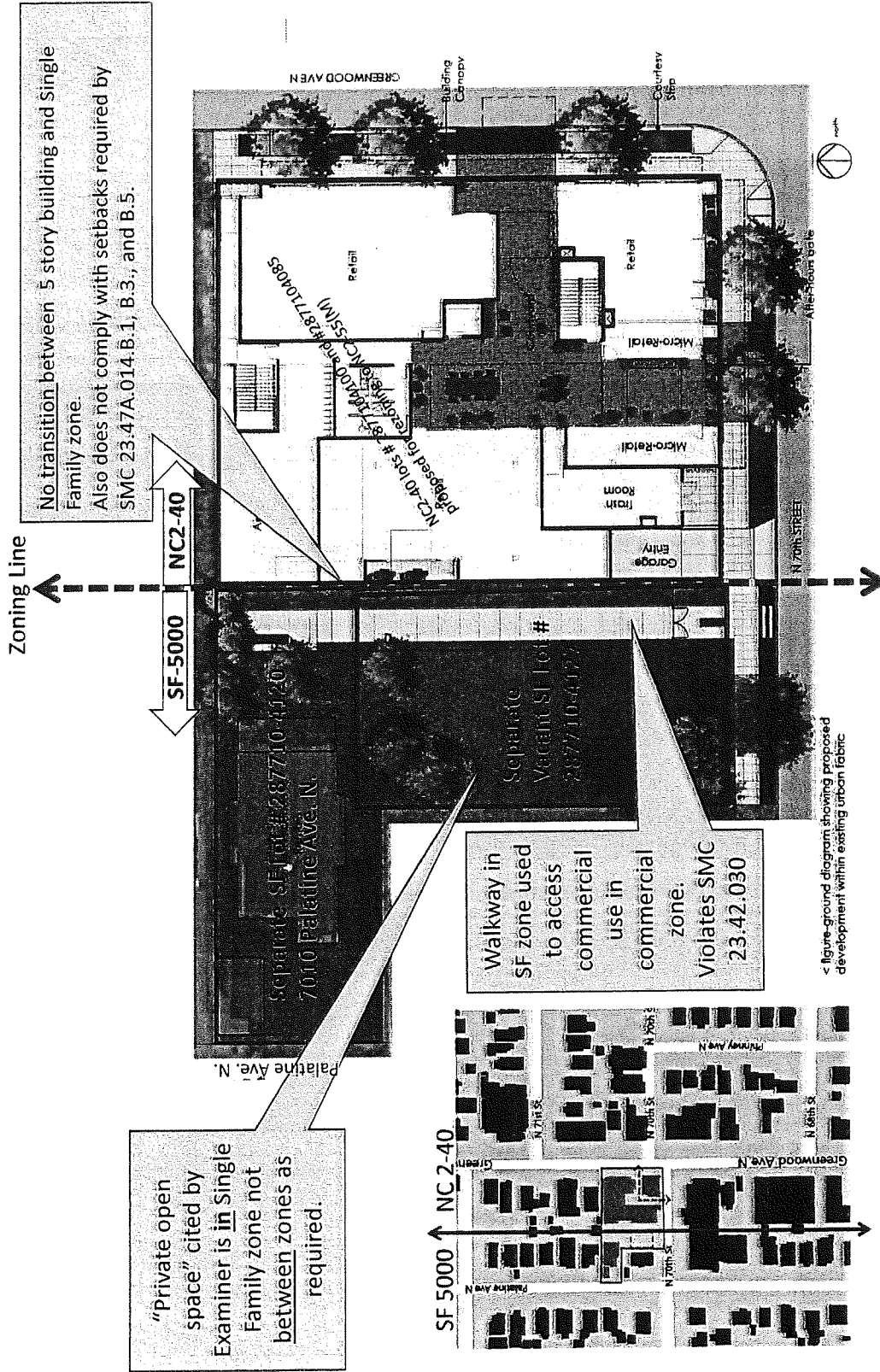
SMC 23.34.009.D.2 – "A gradual transition in height and scale and level of activity between zones shall be provided unless major physical buffers... are provided."

Examiner's Fatal Flaw:

The Examiner counted the vacant lot within the Single Family zone (characterized as "private open space") as the buffer required between zones.

See Conc. #7 at p8: "A

gradual transition between zoning categories would occur between the mid-portion of the project and the SF 5000 zoned properties to the west, as a *private open space area will be landscaped to provide some separation between the five story building and the single family zone.*"



Appellant's Illustrative Exhibit for PLUZ Committee Hearing July 18, 2018

(Based on Appellant's Architectural Concept Drawing Included in Council Central Staff Presentation for July 18, 2018 Meeting)