

November 22, 2017

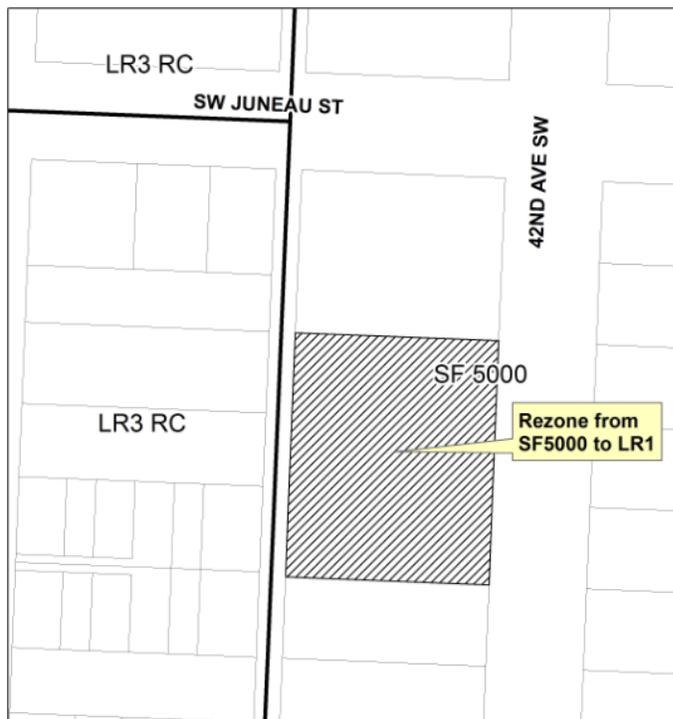
**MEMORANDUM**

**To:** Members of the Planning, Land Use and Zoning Committee (PLUZ)  
**From:** Eric McConaghy, Legislative Analyst  
**Subject:** Contract Rezone: Clerk File No. 314343 (SDCI Project 3016200)

On November 27, 2017, PLUZ will consider and may make a recommendation to the Full Council on a quasi-judicial rezone proposed for property addressed as 5911 42<sup>nd</sup> Avenue SW. David Neiman (Principal, Neiman Taber Architects) has applied for a contract rezone for a parcel of land measuring 18,681 square feet for the owner, West Seattle Church of the Nazarene (WSCN). The proposal is to rezone the site from Single Family 5000 (SF 5000) to Lowrise 1 (LR1).

This memorandum (1) provides an overview of the rezone application contained in Clerk File (CF) 314343; (2) describes the contents of a proposed Council decision document, which would grant the rezone application; and (3) describes the contents of a bill, that would amend the Official Land Use Map to effectuate the rezone, and would accept a Property Use and Development Agreement (PUDA) limiting future development. The Official Land Use Map is also known as the zoning map.

**Overview**



In 2015, the City Council adopted amendments to the Future Land Use Map (FLUM), including the Morgan Junction Neighborhood Plan, to support the goals of more flexibility within Urban Villages as well as providing more open space for this community. The FLUM was amended to re-designate property at the southwest corner of 42nd Ave SW and SW Juneau St (including the proposed rezone property) from single-family to multi-family (Ordinance 124887).

The proposed development (SDCI Project 3016200) that would take advantage of the proposed rezone would construct three townhouse structures with a total of six units, and

an open space area with amenities. The project would include parking for 12 vehicles within attached garages.

The proposed project would not utilize the entirety of the increased development capacity made possible through the proposed rezone from SF500 to LR1, instead clustering six townhouse units in the western portion of the rezone area and leaving open space in the eastern portion of the rezone area. See slide 3 of Attachment A.

The Applicant filed a rezone petition in August 2016. On July 24, 2017, the Director of Seattle's Department of Construction and Inspection (SDCI) issued the Director's Report (Attachment B) recommending approval of the contract rezone from SF 5000 to LR1 subject to the following conditions, to be contained in the PUDA:

- 1) Development of the rezoned property shall be subject to the requirements of Seattle Municipal Code (SMC) 23.58C. The PUDA shall specify the payment and performance calculation amounts for purposes of applying SMC 23.58C.
- 2) Development of the rezoned property shall be in substantial conformance with the approved plans for Master Use Permit number 3016200.

The SDCI Director issued a State Environmental Policy Act (SEPA) Determination of Non-significance on the proposal, per Revised Code of Washington (RCW) 43.21.C, in the same Report.

In August 2016, City Council passed Ordinance 125108 creating a new chapter in the SMC, Chapter 23.58C, Mandatory Housing Affordability for Residential Development (MHA-R). The purpose of Chapter 23.58C is to implement an affordable housing incentive program authorized by RCW 36.70A.540. Chapter 23.58C specifies a framework for providing affordable housing in new development, or an in-lieu payment to support affordable housing, in connection with increases in residential development capacity.

Council's intent was that MHA should apply through future legislative or quasi-judicial rezones (See SMC 23.58C.015). To accomplish this intent Council also established that MHA could be applied through the terms of a contract rezone (See SMC 23.34.004.B) and delegated rulemaking authority to SDCI to establish interim payment and performance amounts that could apply through contract rezones (also in SMC 23.34.004.B).

On August 14, 2017, the City of Seattle's Hearing Examiner (HE) held an open record hearing on the petition. During the hearing, the applicant testified that WSCN approached his firm seeking a way to develop its vacant property, the proposed rezone site, to acquire funds to pay for needed repairs to its church building. The applicant testified that WSCN wanted to develop the western portion of the property while maintaining the open space on the eastern portion.

The applicant also described outreach to build community support for the Comprehensive Plan amendments described above and noted the opportunity for public comment during streamlined design review and environmental review of the proposal. HE Exhibit 21 collects multiple letters from members of the Morgan Community Association stating support of the rezone proposal, beginning with support of the Comprehensive Plan amendments, and based on the proposal resulting in open space maintained by WSCN in perpetuity and opposing the imposition of MHA fees in exchange for the rezone.

In the same collection is an open letter from WSCN Pastor Emeritus Terry Mattson stating the purpose of collaborating with members of the Morgan Junction community to achieve the Comprehensive Plan amendments and the proposed rezone, namely (1) to maintain in perpetuity the “informal park as part of the neighborhood” and (2) to upgrade and repair WSCN facilities and land. The letter states that it was the mutual understanding of WSCN and members of the community that the “public benefit for the rezone of this property would be open space provided by WSCN. [The church] strongly support[s] this agreement as it stands and are opposed to MHA fees in exchange for the rezone.”

Public comment during the Streamlined Design Review Process (pursuant to SMC 23.41.018) on the proposal for the rezone property included concerns about shading impacts, parking and congestion, function of the alley and setbacks, and siting of townhouses as well as support for the proposal (HE Exhibit 12). Public comments on the rezone and associated development proposal noted in the Director’s Report (Attachment B) include concerns about impacts to the alley, parking and construction impacts.

The applicant objected during testimony to the application of MHA requirements. The record contains a copy of his email correspondence with SDCI staff that included this objection (Attachment C). Besides the applicant and Carly Guillory, Senior Land Use Planner, SDCI, only one other person offered testimony at the hearing. Deb Barker spoke in favor of the rezone and against the application of MHA requirements to the project and submitted a letter to the same effect (HE Exhibit 5.)

On September 26, 2017, the HE issued his Findings and Recommendations recommending approval of the rezone subject to a PUDA with conditions identical to those recommended by the SDCI Director. On the same day, Mr. Neiman wrote an email to the HE requesting that the HE’s Findings and Recommendation include his objection to the application of MHA requirements to the rezone proposal.

The HE issued his Amended Findings and Recommendation on the same day, September 26, 2017 (Attachment D) unchanged except for the addition of the following to the Findings of Fact: “At the hearing the Applicant raised arguments concerning the applicability of MHA requirements to the proposal.” There was no appeal of the HE’s Findings and Recommendations.

### **Type of Action and Materials**

This rezone petition is a quasi-judicial action. Quasi-judicial rezones are subject to the Appearance of Fairness Doctrine prohibiting ex-parte communication. Council decisions must be made on the record established by the HE.<sup>1</sup>

The HE establishes the record at an open-record hearing. The record contains the substance of the testimony provided at the HE's open record hearing and the exhibits entered into the record at that hearing. The entire record, including audio recordings of the HE's open record hearing, are available for review in my office.

### **Committee Decision Documents**

Before the PLUZ Committee are (1) a Council Findings, Conclusions and Decision that grants the rezone application and (2) a bill amending the zoning map and approving a PUDA.

### **Findings, Conclusions and Decision**

Council staff has drafted a Council Findings, Conclusions and Decision (FCD) document (Attachment E), via which Council would adopt the HE's Findings of Fact, Conclusions and Recommendation for CF 314343, dated September 26, 2017 and the following Findings of Fact:

1. The Rezone Area is an area where increased residential development will assist in achieving local growth management and housing policies.
2. Approval of the rezone provides substantially increased residential development capacity in the Rezone Area. In particular, under the City's Land Use Code, the LR1 zone allows greater density than does the SF 5000 zone.

Also, via the FCD, Council would grant a rezone of the Rezone Area from SF 5000 to LR1, subject to the conditions to be set forth in an executed Property Use and Development Agreement (PUDA) to be attached to the Council Bill approving the rezone, as follows:

1. Development of the Rezone Area is restricted to a project developed in substantial conformance with the final approved plans for Master Use Permit number 3016200.
2. The provisions of Seattle Municipal Code Chapter 23.58C shall apply to the Rezone Area. For purposes of application of Chapter 23.58C, development of the Rezone Area shall be subject to the following performance or payment requirements: 9% of units for the performance option or \$20.00 per square foot for the payment option.

### **Council Bill and the PUDA**

On November 27, 2017, Council will introduce and refer a Council Bill (CB) approving the proposed contract rezone to the Full Council (Attachment F). The CB would amend the Official

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<sup>1</sup> Seattle Municipal Code (S.M.C.) § 23.76.054.E.

Land Use Map to rezone the property located at 5911 42<sup>nd</sup> Avenue SW from Single Family 5000 (SF 5000) to Lowrise 1 (LR1) and accept a PUDA with the conditions listed above.

### **Next Steps**

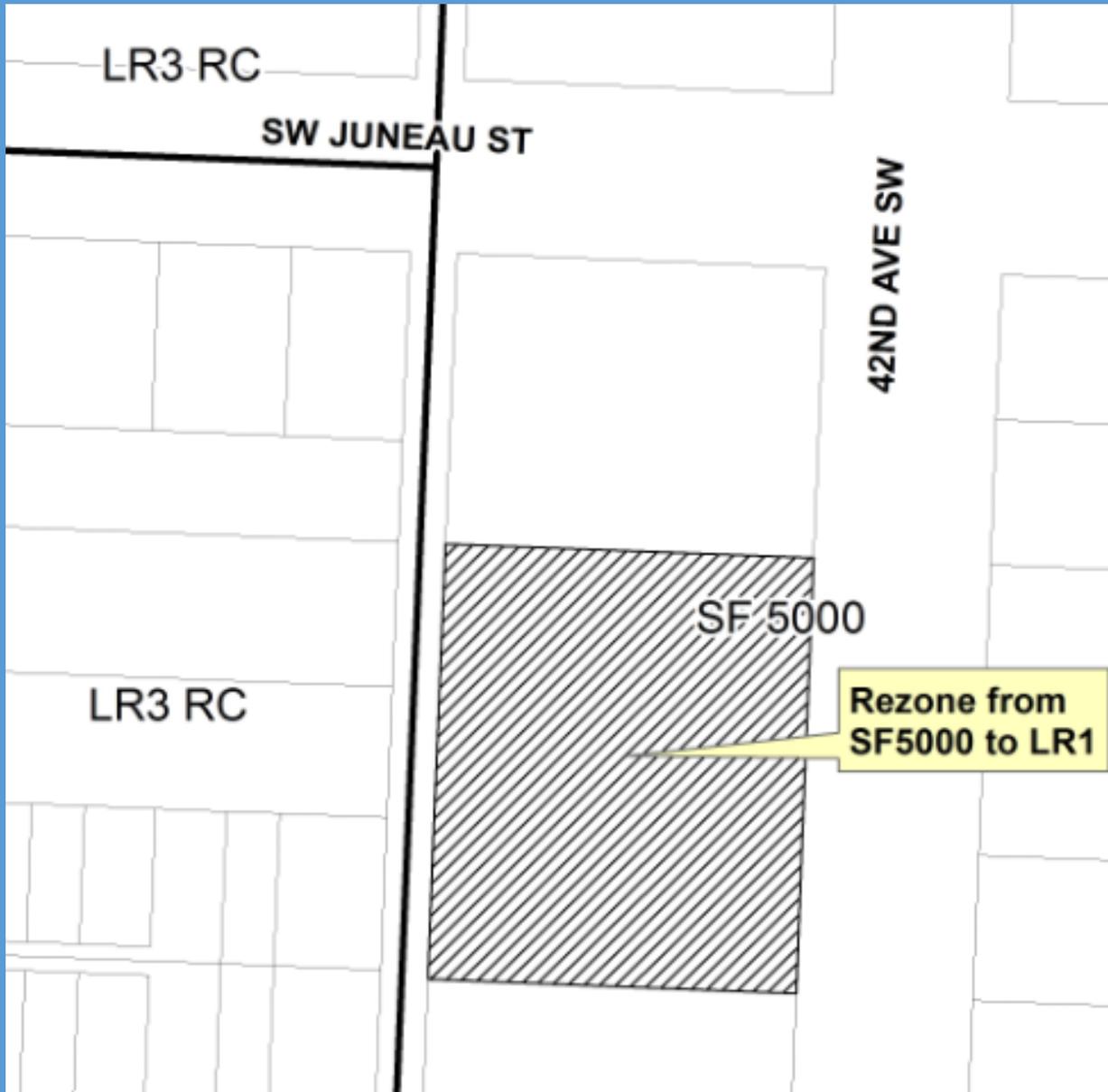
If PLUZ recommends approval of the proposed Findings, Conclusions and Decision to the Full Council on November 27, then the rezone application could be ready for Full Council action in tandem with Council action on the CB approving the rezone and accepting the PUDA as soon as December 4, 2017, depending upon the timing of the execution of the PUDA.

### **Attachments**

- A. Central Staff presentation slides
- B. SDCI Director's Report
- C. Amended Findings and Recommendations of the Hearing Examiner
- D. HE Exhibit 20
- E. Draft Council Findings, Conclusions and Decision
- F. Draft Council Bill and Property Use and Development Agreement (PUDA)

cc: Kirstan Arestad, Central Staff Executive Director  
Ketil Freeman, Supervising Analyst

# Planning, Land Use & Zoning Committee (PLUZ)



**Proposal:**  
Contract Rezone for  
5911 42<sup>nd</sup> Avenue SW

**PLUZ: 11/27/2017**

Attachment A:  
Central Staff Presentation Slides

Eric McConaghy  
Legislative Analyst



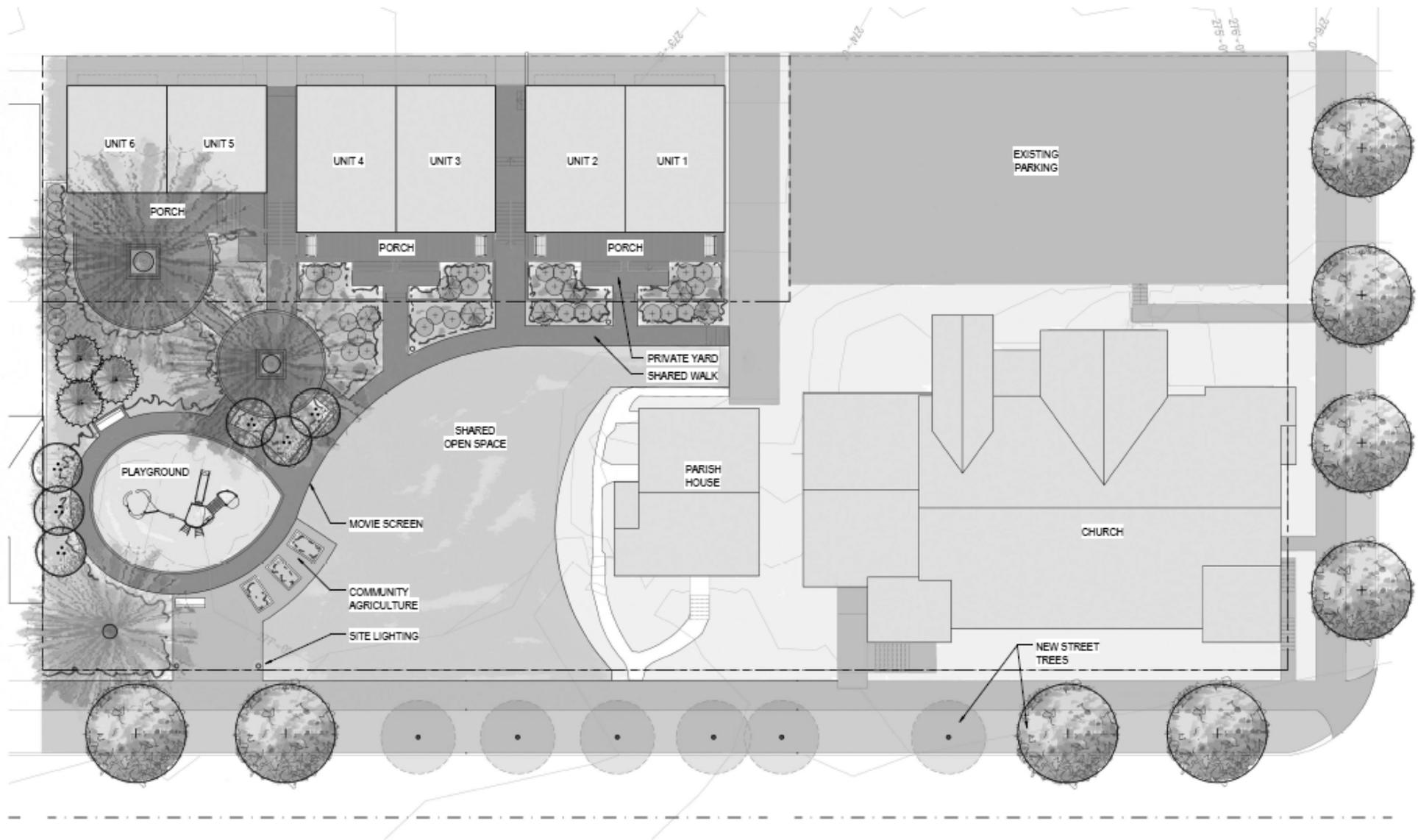
SEATTLE CITY COUNCIL  
**CENTRAL STAFF**

# Clerk File 314343

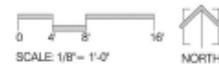
a proposal to rezone property located at  
5911 42nd Avenue SW  
from Single Family 5000 (SF 5000)  
to Lowrise 1 (LR1) multifamily residential  
(Project No. 3016200; Type IV)

## Excerpts from Hearing Examiner's (HE) Exhibits

- Detail from HE Exhibit 11, Landscape Plan, Sheet L1
- Detail from HE Exhibit 3, Cover Sheet, Sheet A00
- Detail from HE Exhibit 7, Existing Site Conditions Detail



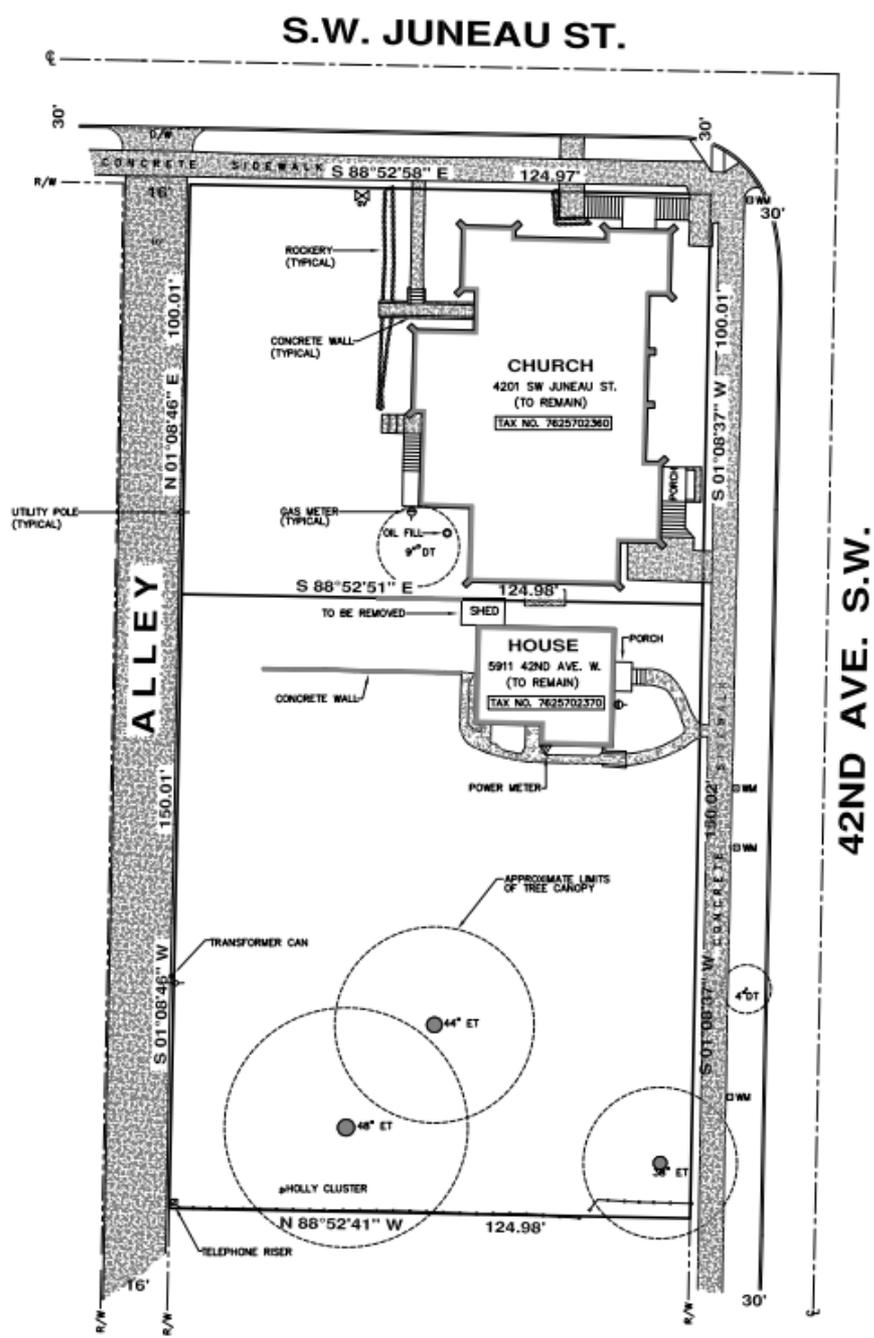
Detail from HE Exhibit 11, Landscape Plan, Sheet L1





Detail from HE Exhibit 3, Cover Sheet, Sheet A00

Detail from HE Exhibit 7,  
Existing Site Conditions Detail



**EXISTING SITE CONDITIONS DETAIL**

# Questions?



## City of Seattle

Edward B. Murray, Mayor

### Department of Construction and Inspections

Nathan Torgelson, Director

## CITY OF SEATTLE ANALYSIS, DECISION AND RECOMMENDATION OF THE DIRECTOR OF THE SEATTLE DEPARTMENT OF CONSTRUCTION AND INSPECTIONS

**Application Number:** 3016200  
**Council File Number:** 314343  
**Applicant Name:** David Neiman, Neiman Architects  
**Address of Proposal:** 5911 42<sup>nd</sup> Avenue Southwest

### **SUMMARY OF PROPOSED ACTION**

Council Land Use Action to rezone 18,681 sq. ft. of land from Single Family 5000 (SF5000) to Lowrise1 (LR1). Project includes three townhouse structures (six units total) and a new park. Parking for 12 vehicles to be provided within attached garages. Existing structure to remain. Environmental Review includes future unit lot subdivision.

The following approvals are required:

**Contract Rezone (SMC 23.34)** – from Single Family 5000 (SF5000) to Lowrise1 (LR1)

**SEPA - Environmental Determination (SMC 25.05)**

### **SEPA DETERMINATION:**

Determination of Non-significance

No mitigating conditions of approval are recommended.

### **BACKGROUND**

#### Mandatory Housing Affordability for Residential Development

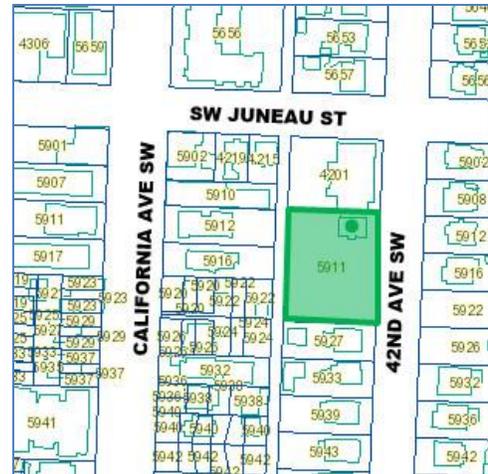
In August of 2016 City Council passed Ordinance 125108 creating a new Land Use Code Chapter 23.58C, *Mandatory Housing Affordability for Residential Development* (MHA-R). The purpose of Chapter 23.58C is to implement an affordable housing incentive program authorized by RCW 36.70A.540. Chapter 23.58C specifies a framework for providing affordable housing in

new development, or an in-lieu payment to support affordable housing, in connection with increases in residential development capacity.

Chapter 23.58C is applicable as follows: where the provisions of a zone specifically refer to Chapter 23.58C; or through the terms of a contract rezone in accordance with Section 23.34.004.

### Streamlined Design Review

In March 2016, the proposed design was reviewed via the Streamlined Design Review process (pursuant to SMC 23.41.018). At that time, the following two adjustments were requested and supported by SDCI.



1. **Setback, Rear (SMC 23.45.518.A):** The Code requires a rear setback of 5-foot minimum, 7-foot average. The applicant proposes a reduction in this requirement to 4-foot minimum, 4-foot, 4-inch average. The departure request applies to all six townhouse units. The garage level is setback from the west property line a minimum and average distance of 6-feet, 6-inches, while the upper levels project closer to the west property line and have a minimum setback of 4-feet and an average of 4-feet 4-inches. The width of the alley is 16-feet.

Staff supported the departure request finding that the ground level setback exceeds the minimum required setback, and provides the required vehicular backup distance, a concern expressed within the public comment. The reduction in upper level setback results in a cantilevering of the upper levels and thereby creates façade interest and reduces the perceived height, bulk, and scale of the structure.

2. **Separations (SMC 23.45.518.F.1):** The Code states that the minimum required separation between principal structures at any two points on different interior facades is 10 feet. The applicant proposes a reduction in this requirement to six-feet.

Staff supported the departure. The reduction in building separation provides three clustered structures that accommodate preservation of existing Exceptional trees on site and a larger shared public open space which contributes to the character and proportion of surrounding open spaces and adds to public life.

### Future Land Use Map

In 2015, the City Council adopted amendments to the Future Land Use Map (FLUM), including the Morgan Junction Neighborhood Plan to support the goals of more flexibility within Urban Villages as well as providing more open space for this community. The FLUM was amended to re-designate property at the southwest corner of 42<sup>nd</sup> Ave SW and SW Juneau St (including the subject site) from single-family to multi-family (Council Bill 118469, Ordinance 124887).

Zoning

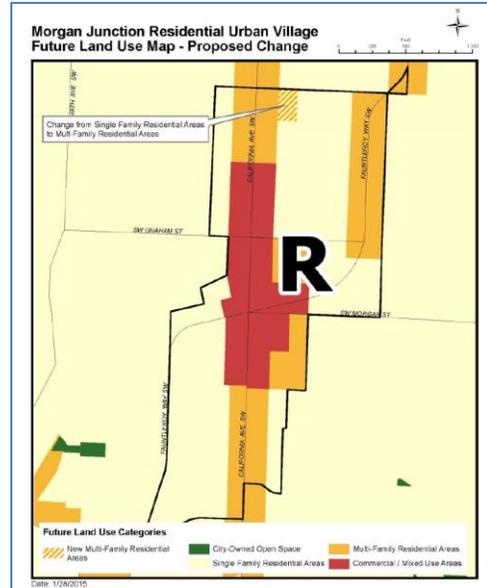
Site Zone: SF5000 with a contract rezone to LR1

Nearby Zones: (North) SF5000  
(East) SF5000  
(South) SF5000  
(West) LR3/Residential Commercial (RC)

Lot Area: 12,500 square feet

Environmentally Critical Areas

There are no mapped Environmentally Critical Areas on the site.



PUBLIC COMMENT

The public comment period ended on September 19, 2016. In addition to the comment received through the Streamlined Design Review process, other comments were received and carefully considered, to the extent that they raised issues within the scope of this review. These areas of public comment related to impacts to the alley, parking, and construction impacts. Comments were also received that are beyond the scope of this review and analysis.

CURRENT AND SURROUNDING DEVELOPMENT; NEIGHBORHOOD CHARACTER

The West Seattle Church of the Nazarene is located on the southwest corner of SW Juneau St and 42<sup>nd</sup> Ave SW. The proposed six new townhouse units are proposed on the lot abutting the church to the south. This lot currently contains the parish house and three Exceptional trees, to be preserved.

Development along 42<sup>nd</sup> Ave SW consists primarily of one- and two-story single-family structures with raised front yards, generous front porches, varied siding materials, and traditional roof forms. Development across the alley to the west (fronting on California Ave SW) consists of three- and four-story multiple-family structures and one- and two-story commercial structures.

**I. ANALYSIS – REZONE**

The applicable requirements for this rezone proposal are stated in SMC 23.34.004 (*Contract rezones*), 23.34.007 (*Rezone evaluation*), 23.34.008 (*General rezone criteria*)

Applicable portions of the rezone criteria are shown in *italics*, followed by analysis in regular typeface.

SMC 23.34.004 Contract Rezones

- A. *Property Use and Development Agreement. The Council may approve a map amendment subject to the execution, delivery, and recording of a property use and development agreement (PUDA) executed by the legal or beneficial owner of the property to be rezoned containing 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. All restrictions imposed by the PUDA shall be directly related to the impacts that may be expected to result from the rezone.*

A Property Use and Development Agreement (PUDA) will be executed and recorded as a condition of this contract rezone. The PUDA shall require that development of the rezoned property shall be in substantial conformance with the approved plans for Master Use Permit number 3016200.

- B. *Notwithstanding any contrary provision of subsection 23.34.004.A, the Council may approve a map amendment subject to execution, delivery, and recording of a property use and development agreement (PUDA) executed by the legal or beneficial owner of the property to be rezoned containing self-imposed restrictions applying the provisions of Chapter 23.58B or Chapter 23.58C to the property. The Director shall by rule establish payment and performance amounts for purposes of subsections 23.58C.040.A. and 23.58C.050.A that shall apply to a contract rezone until Chapter 23.58.C is amended to provide such payment and performance amounts for the zone designation resulting from a contract rezone.*

As noted above, in August of 2016 the City Council passed Ordinance 125108 creating a new Land Use Code Chapter 23.58C, *Mandatory Housing Affordability for Residential Development* (MHA-R). As described, SMC 23.58C is applicable through the terms of a contract rezone in accordance with SMC 23.34.004. A PUDA will be executed and recorded as a condition of the contract rezone and shall require that development of the rezoned property be subject to the requirements of SMC 23.58C. The PUDA shall specify the payment and performance calculation amounts for purposes of applying Chapter 23.58C in this case. A Director's Rule (*Application of Mandatory Housing Affordability for Residential Development (MHA-R) in contract rezones, DR 14-2016*) has been approved pursuant to SMC 23.34.004.B. The rule specifies how to determine the appropriate MHA-R suffix and the resulting payment and performance calculation amounts for purposes of Chapter 23.58C for a contract rezone.

The Director's Rule provides a phased implementation calculation for proposals with complete Master Use Permit applications submitted before January 1, 2016. The subject application was submitted after this date (Complete: August 31, 2016). The performance/payment calculation for the proposed contract rezone is, therefore, subject to the tiers (M, M1 or M2) and cost areas (Low, Medium, or High). Application of these factors indicates that the proposed rezone from SF5000 to LR1 would fall into tier M1, and the map included in the Rule shows that the site is located within a Medium cost area. Thus, the MHA-R payment and performance amounts are \$20/sf and 9% of units, respectively.

- C. *A contract rezone shall be conditioned on performance or compliance with the terms and conditions of the PUDA. Council may revoke a contract rezone or take other appropriate action allowed by law for failure to comply with a PUDA. The PUDA shall be approved as to form by the City Attorney, and shall not be construed as a relinquishment by the City of its discretionary powers.*

A PUDA will be executed and recorded as a condition of the contract rezone.

- D. *Waiver of Certain Requirements. The ordinance accepting the PUDA may waive specific bulk or off-street parking and loading requirements if the Council determines that the waivers are necessary under the agreement to achieve a better development than would otherwise result from the application of regulations of the zone. No waiver of requirements shall be granted that would be materially detrimental to the public welfare or injurious to property in the zone or vicinity in which the property is located.*

At the time of SDCI recommendation, no waivers to requirements were requested.

#### SMC 23.34.007 Rezone evaluation

- A. *The provisions of this chapter apply to all rezones except correction of mapping errors. In evaluating proposed rezones, the provisions of this chapter shall be weighed and balanced together to determine which zone or height designation best meets those provisions. In addition, the zone function statements, which describe the intended function of each zone designation, shall be used to assess the likelihood that the area proposed to be rezoned would function as intended.*

This rezone is not proposed to correct a mapping error; therefore, the provisions of this chapter apply. In evaluating the proposed rezone, the provisions of this chapter have been weighed and balanced together to determine which zone and height designation best meets the provisions of the chapter.

- B. *No single criterion or group of criteria shall be applied as an absolute requirement or test of the appropriateness of a zone designation, nor is there a hierarchy or priority of rezone considerations, unless a provision indicates the intent to constitute a requirement or sole criterion.*

This analysis evaluates the full range of criteria called for and outlined in Chapter 23.34, Amendments to Official Land Use Map (Rezones), as they apply to the subject rezone (listed at the beginning of this “Analysis” section).

- C. *Compliance with the provisions of this Chapter 23.34 shall constitute consistency with the Comprehensive Plan for the purpose of reviewing proposed rezones, except that Comprehensive Plan Shoreline Environment Policies shall be used in shoreline environment redesignations as provided in subsection 23.60A.042.C.*

The proposed rezone is not a shoreline environment redesignation; therefore, the Comprehensive Plan Shoreline Policies were not used in this analysis.

- D. *Provisions of this chapter that pertain to areas inside of urban centers or villages shall be effective only when a boundary for the subject center or village has been established in the Comprehensive Plan. Provisions of this chapter that pertain to areas outside of urban villages or outside of urban centers shall apply to all areas that are not within an adopted urban village or urban center boundary.*

The entire development site, including the parcels proposed for rezone, are located within the Morgan Junction Residential Urban Village. The provisions of this chapter that pertain to areas inside urban villages shall apply to the proposal.

- E. *The procedures and criteria for shoreline environment redesignations are located in Sections 23.60A.042, 23.60A.060 and 23.60A.220*

The subject rezone is not a redesignation of a shoreline environment, and is therefore not subject to Shoreline Area regulations.

- F. *Mapping errors due to cartographic or clerical mistakes may be corrected through process required for Type V Council land use decisions in SMC Chapter 23.76 and do not require the evaluation contemplated by the provisions of this chapter.*

The subject rezone is not a correction of a mapping error and so should not be evaluated as a Type V Council land use decision.

**SMC 23.34.007 Conclusion:** The proposed rezone meets the requirements of SMC 23.34.007, per the analysis above.

#### SMC 23.34.008 General Rezone Criteria

- A. *To be approved a rezone shall meet the following standards:*
- 1. In urban centers and urban villages the zoned capacity for the center or village taken as a whole shall be no less than one hundred twenty-five percent (125%) of the growth targets adopted in the Comprehensive Plan for that center or village.*
  - 2. For the area within the urban village boundary of hub urban villages and for residential urban villages taken as a whole the zoned capacity shall not be less than the densities established in the Urban Village Element of the Comprehensive Plan.*

The proposed rezone parcels are located within the Morgan Junction Residential Urban Village, as described in the response to SMC 23.34.007.D. The estimated housing unit growth target listed for this Urban Village is for 400 additional dwelling units between the year 2015 and the year 2035 (*Urban Village Element* of the Comprehensive Plan). The 2015 housing density for this Urban Village is 11.8 housing units/gross acre, and by 2035 the housing density would be 15.2 housing units/gross acre (*Urban Village Appendix A* of the Comprehensive Plan). The Comprehensive Plan does not contain specific growth targets for Residential Urban Villages.

The proposed rezone will slightly increase the zoned capacity of the Morgan Junction Residential Urban Village. Per the *Housing Appendix*, Table A-1, the residential

development capacity for *all* Residential Urban Villages is 39,386 housing units (18% of the total residential development capacity of the city (page 473).

The proposed rezone is consistent with SMC 23.34.008.A.2 since the site is located within a residential urban village and, the proposed rezone to a more intensive zone will not decrease the residential density in urban villages taken as a whole.

- B. Match Between Zone Criteria and Area Characteristics. The most appropriate zone designation shall be that for which the provisions for designation of the zone type and the locational criteria for the specific zone match the characteristics of the area to be rezoned better than any other zone designation.*

This rezone does include a change to the zone designation; therefore, an analysis of the zone type and locational criteria is required.

- C. Zoning History and Precedential Effect. Previous and potential zoning changes both in and around the area proposed for rezone shall be examined.*

The site has always been zoned Single Family.

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 multifamily 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.

The City is proposing requirements, 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 multifamily and commercial development in certain areas. The proposal includes a change to the zoning of the subject site, and the nearby SF5000-zoned blocks, to Residential Small Lot (RSL). The RSL zone allows small infill homes in the scale and character of a single-family area. The intent is to encourage small-scale, family-friendly housing, such as cottages, duplexes, and rowhouses and townhouses (*Principles for MHA Implementation*, HALA draft zone changes to implement Mandatory Housing Affordability [https://hala.consider.it/morgan\\_junction--the-residential-small-lot-rsl-zone-is-in-appropriate-places-to-implement?results=true](https://hala.consider.it/morgan_junction--the-residential-small-lot-rsl-zone-is-in-appropriate-places-to-implement?results=true)).

The current zoning requires a minimum lot size of 5,000 sq. ft. and would allow construction of 3 single family homes if the property were short-platted. The MHA-recommended RSL zone would require a minimum lot size of 2,500 sq. ft. and would allow construction of 7 single family homes, if the property were short-platted. The LR1 zone would allow approximately 11 residential units on the property. The proposal includes 6 new townhomes, retention of the existing single-family residence, and a large amount of open space to be preserved for neighborhood use. Although the proposal would limit development when compared with the City's area wide proposal, it does not preclude the City's proposed zoning if it is adopted. For these reasons, the proposed rezone is not expected to be precedential.

*D. Neighborhood Plans.*

1. *For the purposes of this title, the effect of a neighborhood plan, adopted or amended by the City Council after January 1, 1995, shall be as expressly established by the City Council for each such neighborhood plan.*

The applicable Morgan Junction Neighborhood Plan (adopted September 7, 1999, ordinance 119634) can be found in the City of Seattle Comprehensive Plan Neighborhood Plans, beginning on page 329. The adopted portions of the Plan include only one policy (MJ-P15) that specifically refers to future rezones, and addresses the rezoning of L3 to L4 inside urban villages. The proposed rezone does not include L3 or L4 zoning; therefore, this policy does not apply to the proposed rezone.

2. *Council adopted neighborhood plans that apply to the area proposed for rezone shall be taken into consideration.*

The adopted portions of the Morgan Junction Neighborhood Plan include only one policy (MJ-P15) that specifically refers to future rezones, and addresses the rezoning of L3 to L4 inside urban villages. The proposed rezone does not include L3 or L4 zoning; therefore, this policy does not apply to the proposed rezone.

3. *Where a neighborhood plan adopted or amended by the City Council after January 1, 1995 establishes policies expressly adopted for the purpose of guiding future rezones, but does not provide for rezones of particular sites or areas, rezones shall be in conformance with the rezone policies of such neighborhood plan.*

The adopted portions of the Morgan Junction Neighborhood Plan include the following goals and policy statements that may be appropriate for consideration of the rezone request:

*Parks and Open Space:*

*Goal MJ-G3: A community with an appealing nature, with attractive landscaping and pleasant parks and gathering places where walking and biking are easy and enjoyable.*

*Policy MJ-P4: Seek future open space opportunities and acquisitions to provide additional “breathing room” to the Morgan Junction neighborhood.*

*Policy MJ-P6: See opportunities, particularly within the business district, to provide additional open space and to create open space/plazas that serve as community gathering places.*

*Policy MJ-P7: Encourage the creation of open spaces in conjunction with pedestrian and bicycle linkages throughout the neighborhood.*

Housing and Land Use:

*Goal MJ-G5: A community with strong single-family neighborhoods and compatible multi-family buildings offering a wide range of housing types for all people*

*Policy MJ-P13: Maintain the character and integrity of the existing single-family zoned areas by maintaining current single-family zoning both inside and outside the urban village on properties meeting the locational criteria for single-family zones, except where, as part of a development proposal, a long-standing neighborhood institution is maintained and existing adjacent community gathering places are activated, helping to meet MJ-P6.*

*Policy MJ-P16: Strive to achieve adequate levels of parking for new commercial, mixed-use and multi-family buildings and use other parking management techniques that minimize spillover parking into residential areas.*

*Policy MJ-P25: Seek opportunities to develop public gathering spaces.*

*Policy MJ-P30: Promote the use of Crime Prevention Through Environmental Design (CPTED) techniques in the development of new open space sites, pedestrian trails and traffic improvements.*

The proposed development associated with the rezone request has completed the design review process, as described earlier in this document. Consistent with SMC 23.41, that process includes consideration of the pedestrian-oriented streetscape, open space, landscaping, design context and signage. This process is intended to meet similar goals as policies MJ-G3, MJ-P4, MF-P6, MF-P7, MJ-G5, MJ-13, MJ-P16, MJ-P25, AND MJ-P30. The proposal includes design strategies to provide open space opportunities for the neighborhood and a variety of housing types.

4. *If it is intended that rezones of particular sites or areas identified in a Council adopted neighborhood plan are to be required, then the rezones shall be approved simultaneously with the approval of the pertinent parts of the neighborhood plan.*

The Council-adopted portions of the Morgan Junction Neighborhood Plan do not identify any specific areas for rezone.

**SMC 23.34.008 D Conclusion:** There are no specific Land Use policies to guide rezones within the Morgan Junction neighborhood (except for Lowrise 3 and 4). The proposed rezone is consistent with the density anticipated in and around the Urban Village as contemplated in the Seattle Comprehensive Plan. The development is consistent with the adopted portions of the Morgan Junction Neighborhood Plan. The proposal will facilitate future development that will best accomplish the City's planning objectives.

*E. Zoning Principles. The following zoning principles shall be considered:*

1. *The impact of more intensive zones on less intensive zones or industrial and commercial zones on other zones shall be minimized by the use of transitions or buffers, if possible. A gradual transition between zoning categories, including height limits, is preferred.*

The proposed rezone would result in a unique zone and transition to other adjacent zones; properties to the west and northwest are zoned Lowrise 3/RC, and properties north east and south of the site are zoned SF 5000. The recommended MHA zoning changes would change the SF 5000 zoning in the urban village to RSL and LR2. If the MHA rezones are adopted, the proposal site would abut RSL-zoned properties to the immediate north and south, and across 42<sup>nd</sup> Ave. SW to the east.

Design review also considers height, bulk and scale transitions to lower adjacent zones and response to existing context. The proposed rezone includes a specific proposed development that has gone through the Streamlined Design Review process consistent with SMC 23.41. The design that has been approved by SDCI includes design strategies to minimize the appearance of height, bulk, and scale.

**SMC 23.32.008.E Summary:** The proposed design of the development, and the resulting transition between existing zoning in the area would be generally consistent with the criterion for, “A gradual transition between zoning categories, including height limits...” as cited under 23.34.008.E.1.

2. *Physical buffers may provide an effective separation between different uses and intensities of development. The following elements may be considered as buffers:*
  - a. *Natural features such as topographic breaks, lakes, rivers, streams, ravines and shorelines;*
  - b. *Freeways, expressways, other major traffic arterials, and railroad tracks;*
  - c. *Distinct change in street layout and block orientation;*
  - d. *Open space and greenspaces.*

With the exception of the 42<sup>nd</sup> Ave. SW right-of-way, there are no physical buffers providing a separation between the proposal site and existing less intensive single-family development. The proposed open space, together with the existing three large trees would provide some physical and visual buffering between the proposed townhouse development and adjacent single-family residences.

The proposed rezone includes a specific proposed development that has gone through the Streamlined Design Review process consistent with SMC 23.41. The design that has been recommended for approval by SDCI includes design strategies to minimize the appearance of height, bulk, and scale. The design review process also considered the transition to adjacent properties, to mitigate the impacts of the zone edge facing the neighboring properties.

*Zone Boundaries.*

- e. *In establishing boundaries the following elements shall be considered:*
  - (1) *Physical buffers as described in subsection E2 above;*
  - (2) *Platted lot lines.*

The proposed rezone would establish zoning boundaries with some physical buffers as described in response to subsection E2 above.

- f. Boundaries between commercial and residential areas shall generally be established so that commercial uses face each other across the street on which they are located, and face away from adjacent residential areas. An exception may be made when physical buffers can provide a more effective separation between uses.*

The proposal would not affect boundaries between commercial and residential areas.

- 3. In general, height limits greater than forty (40) feet should be limited to urban villages. Height limits greater than forty (40) feet may be considered outside of urban villages where higher height limits would be consistent with an adopted neighborhood plan, a major institution's adopted master plan, or where the designation would be consistent with the existing built character of the area.*

The proposed LR1 zone does not allow a height greater than 40 feet.

**SMC 23.34.008 E Summary:** There is some effective separation provided by existing Exceptional trees, setbacks, modulation, and adjacent streets/alley to the north, east, and west. The proposed rezone includes a specific proposed development that has gone through Streamlined Design Review per SMC 23.41. The Design Review process recommended a design with specific strategies to reduce the impacts of bulk and scale to the adjacent sites, including setbacks and modulation.

- F. Impact Evaluation. The evaluation of a proposed rezone shall consider the possible negative and positive impacts on the area proposed for rezone and its surroundings.*

- A. Factors to be examined include, but are not limited to, the following:*

- a. Housing, particularly low-income housing;*

The future project will have a positive impact on the supply of housing on the site and its surroundings by providing six new residential dwelling units. The PUDA will ensure that the provisions of Chapters 23.58C apply to the project proposal. Participation in the program under Chapter 23.58C will yield affordable housing within the project or an equivalent in lieu payment.

- b. Public services;*

Though demand for public services may be a marginal increase resulting from the potential for an increased density, the change is likely to be indiscernible.

- c. Environmental factors, such as noise, air and water quality, terrestrial and aquatic flora and fauna, glare, odor, shadows, and energy conservation;*

Noise – No significant impacts are anticipated from the change in zone. With development in the future, noise will be limited to that typically generated by residential activities.

Air quality – No noticeable change in impacts will result from a change in zoning to allow additional building mass and an additional five-foot height at this site. Future Air Quality measures will comply with applicable Federal, State, and City emission control requirements.

Water quality – No noticeable change in impacts will result from change in zoning. Stormwater runoff from future development will be conveyed to a city drainage system. The Stormwater Code includes requirements for Green Storm Water Infrastructure (GSI), which includes pervious concrete paving, rain gardens, and green roofs. Stormwater collection and management would be in conformance with City of Seattle standards. The proposed rezone would not create the potential for more impervious surface than would be possible under existing zoning.

Flora and fauna – No noticeable change in impacts will result from a change in zoning, with or without the rezone. Existing Exceptional trees are proposed for retention, and additional vegetation is proposed to comply with Land Use Code requirements. The change in zoning would not reduce the vegetation requirements for future development.

Glare – No noticeable change in impacts will result from a change in zoning. A lighting plan is contained on page A13 of the plan set and includes wall mounted, stake, and bollard lighting. All exterior lighting will be shielded and directed away from adjacent development.

Odor – No noticeable change in impacts will result from a change in zoning.

Shadows – The maximum height permitted in the LR1 zone is 30-feet, with allowances for encroachments such as shed roofs. This permitted height is the same as is permitted in the SF5000 zone. Proposed development may create additional shadow impacts due to the allowances for shed roofs above the maximum 30-foot height limit and the increased bulk on the site. The increased shadows that would result from the proposed design are relatively small compared to that massing permitted in a SF5000.

Energy – No noticeable change in impacts will result from a change in zoning. Development will be required to comply with the City of Seattle energy code.

*d. Pedestrian safety;*

No noticeable change in impacts will result from a change in zoning. The proposed development includes public right of way improvements for pedestrian safety.

*e. Manufacturing activity;*

Not applicable; not permitted by the existing or proposed zoning.

*f. Employment activity;*

The existing and proposed zoning would both allow residential uses at this site, no commercial activity will be permitted. No change will result from the change in zoning.

*g. Character of areas recognized for architectural or historic value;*

There are no historic landmarks or landmark districts in the vicinity of the project site.

*h. Shoreline view, public access and recreation.*

The proposed development and rezone are not located near the shoreline or public viewpoints, or near recreation sites.

The Land Use Code does not include criteria or requirements for protection of views from private property.

*B. Service Capacities. Development which can reasonably be anticipated based on the proposed development potential shall not exceed the service capacities which can reasonably be anticipated in the area, including:*

- a. Street access to the area;*
- b. Street capacity in the area;*
- c. Transit service;*
- d. Parking capacity;*

The proposed development fronts on 42<sup>nd</sup> Ave SW. In response to criteria (a) through (d), the street access, street capacity, and parking are discussed in the SEPA analysis below. Transit service is noted below in the response to SMC 23.34.008.G. and H.

*e. Utility and sewer capacity;*

Seattle Public Utilities (SPU) has indicated that the existing sewer and water utility systems in this area have capacity for the proposed development at this site. Any future development will go through city review and be required to meet/conform to city of Seattle standards, codes and/or ordinances.

*f. Shoreline navigation.*

The area of the rezone is not located within a shoreline environment; therefore, shoreline navigation is not applicable to this rezone.

*G. Changed Circumstances. Evidence of changed circumstances shall be taken into consideration in reviewing proposed rezones, but is not required to demonstrate the appropriateness of a proposed rezone. Consideration of changed circumstances shall be*

*limited to elements or conditions included in the criteria for the relevant zone and/or overlay designations in this chapter.*

Ordinance 124887, in part, modified the City's Future Land Use Map in June 2015 to change the designation of the subject site at the southwest corner of 42<sup>nd</sup> Ave. SW/SW Juneau St. from Single-Family to Multi-Family, and updated policies in the Morgan Junction Neighborhood Plan.

**SMC 23.34.008 G Summary:** The proposed rezone responds to changed circumstances for this area, including the intent for increased development in areas designated as Residential Urban Villages and the intent to maximize the benefits of transit and pedestrian investments in Residential Urban Villages.

*H. Overlay Districts. If the area is located in an overlay district, the purpose and boundaries of the overlay district shall be considered.*

The site is not located in any of the following Overlay Districts defined in the Land Use Code:

- Shoreline SMC (23.60A)
- Station Area Overlay SMC (23.61)
- Airport Height Overlay District (SMC 23.64)
- Special Review Districts SMC (23.66)
- Southeast Seattle Reinvestment Area (SMC 23.67)
- Major Institution Overlay (SMC 23.71)
- Northgate Overlay (SMC 23.71)
- Sand Point Overlay (SMC 23.72)
- Pike/Pine Conservation Overlay District (SMC 23.73)
- Stadium Transition Area Overlay District (SMC 23.74)

**SMC 23.34.008 H Summary:** This criterion is not applicable.

*I. Critical Areas. If the area is located in or adjacent to a critical area (SMC\_Chapter 25.09), the effect of the rezone on the critical area shall be considered.*

The site is not located in or adjacent to a critical area; therefore, this criterion does not apply.

*J. Incentive Provisions. If the area is located in a zone with an incentive zoning suffix a rezone shall be approved only if one of the following conditions are met*

- 1. The rezone includes incentive zoning provisions that would authorize the provision of affordable housing equal to or greater than the amount of affordable housing authorized by the existing zone; or*
- 2. If the rezone does not include incentive zoning provisions that would authorize the provision of affordable housing equal to or greater than the amount of affordable housing authorized by the existing zone, an adopted City housing policy or comprehensive plan provision identifies the area as not a priority area for affordable housing, or as having an adequate existing supply of affordable housing in the immediate vicinity of the area being rezoned.*

The proposal is not located in a zone with an incentive zoning suffix; therefore, this criterion does not apply.

**SMC 23.34.008 Conclusion:** The proposed structure is 30-feet in height, the same as permitted in the current zoning. The proposed development has been reviewed through Design Review, including strategies to ease the transition to less intensive adjacent zones. The proposed rezone meets all other requirements of SMC 23.34.008, per the analysis above.

- **SMC 23.34.010 Designation of Single-Family Zones**

A. *Except as provided in subsections B or C of Section 23.34.010, single-family zoned areas may be rezoned to zones more intense than Single-family 5000 only if the City Council determines that the area does not meet the criteria for single-family designation.*

The Future Land Use Map includes amendments that designates the area in which the site is located as a Multi-Family Residential. Further, as discussed below in Section B.1, Housing and Land Use policy language for the Morgan Junction Residential Urban Village provides the opportunity for specific consideration of a rezone in single family areas.

B. *Areas zoned single-family or RSL that meet the criteria for single-family zoning contained in subsection B of Section 23.34.011 and that are located within the adopted boundaries of an urban village may be rezoned to zones more intense than Single-family 5000 if all of the following conditions are met:*

1. *A neighborhood plan has designated the area as appropriate for the zone designation, including specification of the RSL/T, RSL/C, or RSL/TC suffix, if applicable;*

The site is located within the Morgan Junction Residential Urban Village. The City's recently adopted Comprehensive Plan includes the following policy that is applicable to the proposal (MJ-P13) which states: "Maintain the character and integrity of the existing single-family designated areas by maintaining current single-family zoning both inside and outside the urban village on properties meeting the locational criteria for single-family zones, except where, as part of a development proposal, a long-standing neighborhood institution is maintained and existing adjacent community gathering places are activated, helping to meet MJ-P6."

The adjacent, existing church is a long-standing neighborhood institution which will remain and is not proposed to be rezoned. The remainder of the church property (the subject site) will be developed with the townhouses if the rezone is approved, with approximately 9,800-square feet of the subject site maintained as common amenity area. Wayfinding signage is proposed at the street, and throughout the community park area. Amenities include a painted chess board, boardwalk play area, wood chip play area, sand box, and movie screen. As designed, the proposal would be consistent with the exception described in MJ-P13, and thus, consistent with criterion B.1.

2. *The rezone is:*

- a. *To a Residential Small Lot (RSL), Residential Small Lot-Tandem (RSL/T), Residential Small Lot-Cottage (RSL/C), Residential Small Lot-*

*Tandem/Cottage (RSL/TC), Lowrise 1 (LR1), Lowrise 1/Residential-Commercial (LR1/RC), or*

- b. Within the areas identified on Map P-1 of the adopted North Beacon Hill Neighborhood Plan, and the rezone is to any Lowrise zone, or to an NC1 zone or NC2 zone with a 30 foot or 40-foot height limit, or*
- c. Within the residential urban village west of Martin Luther King Junior Way South in the adopted Rainier Beach Neighborhood Plan, and the rezone is to a Lowrise 1 (LR1) or Lowrise 2 (LR2) zone, or*
- d. Within an urban village and the Comprehensive Plan Future Land Use Map designation is a designation other than Single Family.*

The proposed rezone to Lowrise 1 comports with criterion 2.a. Consideration for a rezone from Single Family must meet at least one of the three criteria in 2.a – c.

- C. Areas zoned single-family within the Northgate Overlay District, established pursuant to Chapter 23.71, that consist of one or more lots and meet the criteria for single-family zoning contained in subsection B of Section 23.34.011 may be rezoned through a contract rezone to a neighborhood commercial zone if the rezone is limited to blocks (defined for the purpose of this subsection C as areas bounded by street lot lines) in which more than 80 percent of that block is already designated as a neighborhood commercial zone.*

This criterion is not applicable as the site is not located within the Northgate Overlay District.

**SMC 23.34.010 Conclusion:** The proposal is consistent with Subsections B.1 and 2.a and, as a result, Subsection A need not be met. Therefore, the proposal is consistent with 23.34.010.

- **23.34.011 Single-family zones, function and locational criteria**

*A. Function. An area that provides predominantly detached single-family structures on lot sizes compatible with the existing pattern of development and the character of single-family neighborhoods.*

The area along the block face is primarily single-family homes with appropriate lot sizes for single family.

*B. Locational Criteria. A single-family zone designation is most appropriate in areas meeting the following criteria:*

- 1. Areas that consist of blocks with at least seventy (70) percent of the existing structures, not including detached accessory dwelling units, in single-family residential use; or*

All of the structures on the block, with the exception of the church, are single family homes (95%).

- 2. Areas that are designated by an adopted neighborhood plan as appropriate for single-family residential use; or*

The neighborhood plan and the future land use map do not designate the site as single-family. This is a change adopted by the City Council to facilitate this project.

3. Areas that consist of blocks with less than seventy (70) percent of the existing structures, not including detached accessory dwelling units, in single-family residential use but in which an increasing trend toward single-family residential use can be demonstrated; for example:

a. The construction of single-family structures, not including detached accessory dwelling units, in the last five (5) years has been increasing proportionately to the total number of constructions for new uses in the area, or

There has been little new construction in the single family zoned areas over the past five years. Per [seattleinprogress.com](http://seattleinprogress.com), there have been five projects proposed in the Morgan Junction Urban Village over the past five years. All of those projects have been multi-family townhouses or apartments.

b. The area shows an increasing number of improvements and rehabilitation efforts to single-family structures, not including detached accessory dwelling units, or

In areas within the Morgan Junction Residential Urban Village, existing structures on land that is zoned single family gets rehabilitated and improved. Existing structures on land that is zoned to allow multi-family construction generally get torn down for new multi-family development.

c. The number of existing single-family structures, not including detached accessory dwelling units, has been very stable or increasing in the last five (5) years, or

The number of single family structures has been relatively stable of the last 5 years; it has not been increasing.

d. The area's location is topographically and environmentally suitable for single-family residential developments.

The area is flat and highly suitable for single family development.

C. An area that meets at least one (1) of the locational criteria in subsection B above should also satisfy the following size criteria in order to be designated as a single-family zone:

1. The area proposed for rezone should comprise fifteen (15) contiguous acres or more, or should abut an existing single-family zone.

The area proposed for rezone is less than 15 acres.

2. If the area proposed for rezone contains less than fifteen (15) contiguous acres, and does not abut an existing single-family zone, then it should demonstrate strong or stable single-family residential use trends or potentials such as:

- a. That the construction of single-family structures, not including detached accessory dwelling units, in the last five (5) years has been increasing proportionately to the total number of constructions for new uses in the area, or*
- b. That the number of existing single-family structures, not including detached accessory dwelling units, has been very stable or increasing in the last five (5) years, or*
- c. That the area's location is topographically and environmentally suitable for single-family structures, or*
- d. That the area shows an increasing number of improvements or rehabilitation efforts to single-family structures, not including detached accessory dwelling units.*

The area proposed for rezone abuts a single-family home.

*D. Half-blocks at the edges of single-family zones which have more than fifty (50) percent single-family structures, not including detached accessory dwelling units, or portions of blocks on an arterial which have a majority of single-family structures, not including detached accessory dwelling units, shall generally be included. This shall be decided on a case-by-case basis, but the policy is to favor including them.*

Not applicable.

- **23.34.014 - Lowrise 1 (LR1) zone, function and locational criteria**

*A. Function. The function of the LR1 zone is to provide opportunities for low-density multifamily housing, primarily rowhouse and townhouse developments, through infill development that is compatible with single-family dwelling units, or through the conversion of existing single-family dwelling units to duplexes or triplexes.*

The rezone would permit the proposed development of an undeveloped site located south of an existing institution, resulting in six townhouse units and a park providing open space for the community. Townhouse development is low-density development and is considered to be compatible with single-family structures and uses.

*B. Locational Criteria. The LR1 zone is most appropriate in areas generally characterized by the following conditions:*

- 1. The area is similar in character to single-family zones;*

Development in the Single-Family zone is almost exclusively single-family homes.

- 2. The area is either:*

- a. located outside of an urban center, urban village, or Station Area Overlay District;*

*b. a limited area within an urban center, urban village, or Station Area Overlay District that would provide opportunities for a diversity of housing types within these denser environments; or*

*c. located on a collector or minor arterial;*

The site is not located outside of an urban center or Station Area Overlay, nor is it located on a minor arterial; the site is located within an urban village and the proposed townhouse development would provide the opportunity for a diversity of housing types in the area.

- 3. The area is characterized by a mix of single-family dwelling units, multifamily structures that are similar in scale to single-family dwelling units, such as rowhouse and townhouse developments, and single-family dwelling units that have been converted to multifamily residential use or are well-suited to conversion;*

Single family homes are the predominant type of uses within the Single Family zone, while the development in the adjacent Lowrise 3 zone to the east consists of townhouses and similar lower-density multi-family structures.

- 4. The area is characterized by local access and circulation that can accommodate low density multifamily development oriented to the ground level and the street, and/or by narrow roadways, lack of alleys, and/or irregular street patterns that make local access and circulation less suitable for higher density multifamily development;*

The streets in the vicinity generally provide local access and circulation to the low density residential development in the vicinity. The area is developed in a regular grid pattern, and the blocks include improved alley providing access to adjacent parking and public services such as recycle and trash collection.

- 5. The area would provide a gradual transition between single-family zoned areas and multifamily or neighborhood commercial zoned areas; and*

A neighborhood commercial area is located on California Ave. SW, about one block northwest of the site. Directly west of the site, across the alley, is a LR3 zone, and about 3 blocks to the east is a LR2 zoned area, developed with low density multifamily structures like those found in the LR3 zone.

- 6. The area is supported by existing or projected facilities and services used by residents, including retail sales and services, parks, and community centers.*

The Neighborhood Commercial 3 (NC3)-zoned area on California Ave. SW is an active commercial district developed with a variety of uses, including restaurants, wine shops, child care, clothing stores and numerous professional services serving residents in the area.

## **RECOMMENDATION – REZONE**

Based on the analysis undertaken in this report, the SEPA analysis of the rezone and project proposal, and the weighing and balancing of all the provisions in SMC 23.34, the Director recommends that the proposed rezone from Single Family 5000 to Lowrise 1(M1) be approved.

The Director recommend conditions to be included in the PUDA; these are listed following the SEPA Analysis.

## **II. ANALYSIS – SEPA**

Environmental review resulting in a Threshold Determination is required pursuant to the State Environmental Policy Act (SEPA), WAC 197-11, and the Seattle SEPA Ordinance (Seattle Municipal Code (SMC) Chapter 25.05).

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant dated [Click here to enter a date.](#). The Seattle Department of Construction and Inspections (SDCI) has annotated the environmental checklist submitted by the project applicant; reviewed the project plans and any additional information in the project file submitted by the applicant or agents; and any pertinent comments which may have been received regarding this proposed action have been considered. The information in the checklist, the supplemental information, and the experience of the lead agency with the review of similar projects form the basis for this analysis and decision.

The SEPA Overview Policy (SMC 25.05.665 D) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, and certain neighborhood plans and other policies explicitly referenced may serve as the basis for exercising substantive SEPA authority. The Overview Policy states in part: "*where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation*" subject to some limitations.

Under such limitations/circumstances, mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate.

### **Short Term Impacts**

Construction activities could result in the following adverse impacts: construction dust and storm water runoff, erosion, emissions from construction machinery and vehicles, increased particulate levels, increased noise levels, occasional disruption of adjacent vehicular and pedestrian traffic, a small increase in traffic and parking impacts due to construction related vehicles, and increases in greenhouse gas emissions. Several construction-related impacts are mitigated by existing City codes and ordinances applicable to the project such as: the Stormwater Code (SMC 22.800-808), the Grading Code (SMC 22.170), the Street Use Ordinance (SMC Title 15), the Seattle Building Code, and the Noise Control Ordinance (SMC 25.08). Puget Sound Clean Air Agency regulations require control of fugitive dust to protect air quality. The following analyzes greenhouse gas emissions, construction impacts, and earth/soils.

#### **Greenhouse Gas Emissions**

Construction activities including construction worker commutes, truck trips, the operation of construction equipment and machinery, and the manufacture of the construction materials

themselves result in increases in carbon dioxide and other greenhouse gas emissions which adversely impact air quality and contribute to climate change and global warming. While these impacts are adverse, no further mitigation is warranted pursuant to SMC 25.05.675.A.

### Construction Impacts - Noise

The project is expected to generate loud noise during demolition, grading and construction. The Seattle Noise Ordinance (SMC 25.08.425) permits increases in permissible sound levels associated with private development construction and equipment between the hours of 7:00 AM and 7:00 PM on weekdays and 9:00 AM and 7:00 PM on weekends and legal holidays.

If extended construction hours are desired, the applicant may seek approval from SDCI through a Noise Variance request. The applicant's environmental checklist does not indicate that extended hours are anticipated.

The limitations stipulated in the Noise Ordinance are sufficient to mitigate noise impacts; therefore, no additional SEPA conditioning is necessary to mitigation noise impacts per SMC 25.05.675.B.

### Earth / Soils

Excavation to construct the residential structures will be necessary. Excavation will remove an estimated 200 cubic yards of material from the development site and import 650 cubic yards. Soil, gravel and similar materials may be imported to or exported from the site. Transported soil is susceptible to being dropped, spilled or leaked onto City streets. The City's Traffic Code (SMC 11.74.150 and .160) provides that material hauled in trucks not be spilled during transport. The City requires that loads be either: 1) secured/covered; or 2) a minimum of six inches of "freeboard" (area from level of material to the top of the truck container). The regulation is intended to minimize the amount of spilled material and dust from the truck bed en route to or from a site. No further conditioning of the impacts associated with the grading/excavation impacts of the project is warranted pursuant to SEPA policies (SMC 25.05.675.D).

### Long Term Impacts

Long-term or use-related impacts are also anticipated as a result of approval of this proposal including: greenhouse gas emissions; parking; possible increased traffic in the area. Future activity, in addition to construction permits, will likely include a unit lot short plat to allow sale or lease of the individual residential units.

Compliance with applicable codes and ordinances is adequate to achieve sufficient mitigation of most long-term impacts and no further conditioning is warranted by SEPA policies. However, greenhouse gas, historic resources, and height bulk and scale warrant further analysis.

### Greenhouse Gas Emissions

Operational activities, primarily vehicular trips associated with the project construction and the project's energy consumption, are expected to result in increases in carbon dioxide and other greenhouse gas emissions which adversely impact air quality and contribute to climate change

and global warming. While these impacts are adverse, no further mitigation is warranted pursuant to SMC 25.05.675.A.

### Historic Preservation

The existing structure on site is more than 50 years old. Although this structure will be retained, it was reviewed for potential to meet historic landmark status. The Department of Neighborhoods reviewed the proposal for compliance with the Landmarks Preservation requirements of SMC 25.12 and indicated the structure on site is unlikely to qualify for historic landmark status (*Landmarks Preservation Board letter, LPB 130/16*, Department of Neighborhoods, February 29, 2016). Per the Overview policies in SMC 25.05.665.D, the existing City Codes and regulations to mitigate impacts to historic resources are presumed to be sufficient, and no further conditioning is warranted per SMC 25.05.675.H.

### Height, Bulk, and Scale

The proposal has gone through the Streamlined Design Review process described in SMC 23.41. Design review considers mitigation for height, bulk and scale through modulation, articulation, landscaping, and façade treatment.

Section 25.05.675.G.2.c of the Seattle SEPA Ordinance provides the following: “The Citywide Design Guidelines (and any Council-approved, neighborhood design guidelines) are intended to mitigate the same adverse height, bulk, and scale impacts addressed in these policies. A project that is approved pursuant to the Design Review Process shall be presumed to comply with these Height, Bulk, and Scale policies. This presumption may be rebutted only by clear and convincing evidence that height, bulk and scale impacts documented through environmental review have not been adequately mitigated. Any additional mitigation imposed by the decision maker pursuant to these height, bulk, and scale policies on projects that have undergone Design Review shall comply with design guidelines applicable to the project.”

The height, bulk and scale of the proposed development and relationship to nearby context have been addressed during the Streamlined Design Review process for any new project proposed on the site. Pursuant to the Overview policies in SMC 25.05.665.D, the existing City Codes and regulations to mitigate impacts to height bulk and scale are presumed to be sufficient, and additional mitigation is not warranted under SMC 25.05.675.G.

### **DECISION – SEPA**

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirement of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

- Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21.030(2) (c).

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030 (2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

This DNS is issued after using the optional DNS process in WAC 197-11-355 and Early review DNS process in SMC 25.05.355. There is no further comment period on the DNS.

### **RECOMMENDED CONDITIONS – REZONE**

The Director recommends approval of the contract rezone from Single Family 5000 to Lowrise 1(M1), subject to the following conditions, which shall be contained in the PUDA:

#### *Prior to Issuance of a Master Use Permit*

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

#### *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 3016200. (P)

### **RECOMMENDED CONDITIONS – SEPA**

None.

Carly Guillory, Senior Land Use Planner  
Seattle Department of Construction and Inspections

Date: July 24, 2017

CAG:rgc  
3016200.docx

### **IMPORTANT INFORMATION FOR ISSUANCE OF YOUR MASTER USE PERMIT**

#### Master Use Permit Expiration and Issuance

The appealable land use decision on your Master Use Permit (MUP) application has now been published. At the conclusion of the appeal period, your permit will be considered “approved for issuance”. (If your decision is appealed, your permit will be considered “approved for issuance” on the fourth day following the City Hearing Examiner’s decision.) Projects requiring a Council land use action shall be considered “approved for issuance” following the Council’s decision.

The “approved for issuance” date marks the beginning of the **three year life** of the MUP approval, whether or not there are outstanding corrections to be made or pre-issuance conditions to be met. The permit must be issued by SDCI within that three years or it will expire and be cancelled (SMC 23-76-028). (Projects with a shoreline component have a **two year life**. Additional information regarding the effective date of shoreline permits may be found at 23.60.074.)

All outstanding corrections must be made, any pre-issuance conditions met and all outstanding fees paid before the permit is issued. You will be notified when your permit has issued.

Questions regarding the issuance and expiration of your permit may be addressed to the Public Resource Center at [prc@seattle.gov](mailto:prc@seattle.gov) or to our message line at 206-684-8467.

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

In the Matter of the Application of

**CF 314343**

**DAVID NEIMAN, NEIMAN ARCHITECTS**

Department Reference:  
3016200

for a contract rezone for property located  
at 5911 42<sup>nd</sup> Avenue Southwest

**Introduction**

David Neiman, Neiman Architects, applied for a rezone of property located at 5911 42<sup>nd</sup> Avenue Southwest from Single Family 5000 (“SF5000”) to Lowrise 1 (“LR1”). The Director of the Department of Construction and Inspections (“Director”) submitted a report recommending that the rezone be approved. The Director’s report included a State Environmental Policy Act (“SEPA”) Determination of Non-significance with recommended conditions and design review approval, which were not appealed.

A hearing on the rezone application was held before the Hearing Examiner on August 14, 2017. The Applicant was represented by David Neiman, and the Director was represented by Carly Guillory, Senior Land Use Planner. Following the Hearing Examiner’s site visit, the record closed on August 29, 2017.

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

**Findings of Fact**

Site and Vicinity

1. The West Seattle Church of the Nazarene is located on the southwest corner of Southwest Juneau Street and 42<sup>nd</sup> Avenue Southwest. Its campus includes 13 parcels with a mix of uses including the church, four single and multi-family structures, a parking lot and vacant lots. The proposal will be located on the lot abutting the church to the south. The parcel that is the subject of the rezone proposal is 18,681 square feet. That lot currently contains the parish house and three exceptional trees, to be preserved. Access to the site is available from 42<sup>nd</sup> Avenue Southwest which fronts the property to the east, and an alley that bounds the property to the west. There are no environmentally critical areas on the site. *See* Exhibit 9.
2. The subject site is zoned SF5000. Properties to the south are zoned SF5000, and are developed with single family homes. Properties to the east across 42<sup>nd</sup> Avenue Southwest, are also zoned SF5000, and are developed with single family homes. Property to the north contains the church,

and is zoned SF5000. Property to the west, across the alley, is zoned Lowrise 3/Residential Commercial (“LR3/RC”), and is developed with three and four story multi-family structures, and one and two story commercial use structures.

3. The topography of the site, and related areas is relatively flat. The site slopes from the northeast corner to the southeast corner dropping approximately four feet.
4. 42<sup>nd</sup> Avenue Southwest, and Southwest Juneau Street to the north are access streets. California Avenue Southwest, a block west of the proposal, is a minor arterial.

#### Zoning History and Potential Zoning Changes

5. The site has been historically zoned Single Family. In 2015, the City adopted amendments to the Future Land Use Map (“FLUM”), including the Morgan Junction Neighborhood Plan, which includes the subject property, to support the goals of more development flexibility within Urban Villages, and providing more open space for the community. The FLUM was amended re-designating the property from single-family to multi-family.
6. The City is proposing 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 multifamily and commercial development in certain areas. This proposal includes a change of the zoning of the subject property, and the nearby SF5000 areas, to Residential Small Lot (“RSL”). The proposed RSL zone will allow small infill homes in the scale and character of a single-family area, and will encourage rowhouses and townhouses, and small-scale housing, such as cottages and duplexes.
7. There has been limited new construction in Morgan Junction Urban Village. There have been five multi-family townhouses or apartments over the past five years.

#### Neighborhood Plan

8. The proposed rezone property is located within the Morgan Junction Residential Urban Village. The growth target listed for this Urban Village in the Comprehensive Plan is for 400 additional dwelling units between 2015 and 2035. The 2015 housing density for this Urban Village was 11.8 housing units/gross acre, and by 2035 the housing density would be 15.2 housing units/gross acre. The Comprehensive Plan does not contain specific growth targets for this and other Residential Urban Villages.
9. As indicated above, the site is within the area of the Morgan Junction Neighborhood Plan. The adopted portions of the Plan include only one policy (MJ-P15) that specifically refers to future rezones. MJ-P15 addresses the rezoning of Lowrise 3 to Lowrise 4 inside urban villages. The proposed rezone does not include Lowrise 3 to Lowrise 4 zoning; therefore, this policy does not apply to the proposal.
10. The adopted portions of the Morgan Junction Neighborhood Plan include goals and policy statements that are applicable to the proposal. Goal MJ-G3 seeks for the community to have an

appealing nature “with attractive landscaping and pleasant parks and gathering places where walking and biking are easy and enjoyable.” Policy MJ-P4 calls for “future open space opportunities and acquisitions to provide additional ‘breathing room’ to the Morgan Junction neighborhood.” Policy MJ-P7 encourages “the creation of open spaces in conjunction with pedestrian and bicycle linkages throughout the neighborhood.” Goal MJ-G5 seeks to provide for community with strong single-family neighborhoods and compatible multi-family buildings “offering a wide range of housing types for all people.” Policy MJ-P13 calls for maintaining “the character and integrity of the existing single-family zoned areas by maintaining current single-family zoning both inside and outside the urban village on properties meeting the locational criteria for single-family zones, except where, as part of a development proposal, a long-standing neighborhood institution is maintained and existing adjacent community gathering places are activated, helping to meet MJ-P6.” Lastly, Policy MJ-P25 seeks “opportunities to develop public gathering spaces.”

#### Proposal

11. The Applicant seeks to have the property rezoned from SF5000 to LR1 with a property use and development agreement ("PUDA"). The terms of the PUDA are not disclosed in the record before the Hearing Examiner. The Applicant proposes to construct three townhouse structures with a total of six units, and an open space community park area with various amenities. The project will include parking for 12 vehicles within attached garages. *See* Exhibit 9. The PUDA will ensure that the provisions of Chapters 23.58B SMC and 23.58C SMC will apply to the project proposal. The existing parish house will remain. The property owner’s goal is to develop the project as a means of assisting with funds to rehabilitate the church to the north.
12. The proposed development was reviewed through the streamlined design review process consistent with SMC 23.41. The review process recommended a design with specific strategies to reduce the impacts of bulk and scale to the adjacent sites, including setbacks and modulation.

#### Public Comment

13. Comments were received during the streamlined design review process for the proposal. They are summarized in the Director's Report, Exhibit 12, at 2. Comments received were in support of the project, and/or raised concerns related to shadow impacts, parking, and traffic access.
14. Comments received by the Hearing Examiner supported the proposed rezone. *See* Exhibit 21.
15. At the hearing the Applicant raised arguments concerning the applicability of MHA requirements to the proposal.

#### Director's Review

16. The Director also analyzed the proposal's potential long-term and short-term environmental impacts.

17. The Director's report, Exhibit 9, analyzes the proposed contract rezone and recommends that it be approved with conditions.

#### Applicable Law

18. SMC 23.34.008 provides the general rezone criteria. The criteria address the zoned capacity and density for urban villages; the match between the zone criteria and area characteristics; the zoning history and precedential effect of the rezone; neighborhood plans that apply; zoning principles that address relative intensities of zones, buffers and boundaries; impacts of the rezone, both positive and negative; any relevant changed circumstances; the presence of overlay districts or critical areas, and whether the area is within an incentive zoning suffix.
19. SMC 23.34.007.C provides that compliance with the requirements of Chapter 23.34 SMC constitutes consistency with the Comprehensive Plan for purposes of reviewing proposed rezones, but the Comprehensive Plan may be considered where appropriate.

#### **Conclusions**

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

#### Effect On Zoned Capacity

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

#### Match Between Zone Criteria and Area Characteristics

5. The most appropriate zone designation is the one "for which the provisions for designation of the zone type and the locational criteria for the specific zone match the characteristics of the area to be rezoned better than any other zone designation." SMC 23.34.008.B. The proposed rezone would complement adjacent multi-family zoning to the west. Currently, the site and its relation to

adjacent zoning matches the LR1 zone function and locational criteria, found in SMC 23.34.014,<sup>1</sup> so the designation is appropriate.

Neighborhood Plan/Precedential Effect

6. The development is consistent with the portions of the Morgan Junction Neighborhood Plan listed in Finding 10 above. In particular, the proposed development associated with the rezone request has completed the streamlined design review process, as described earlier. Consistent with SMC 23.41, that process includes consideration of the pedestrian-oriented streetscape, open space, landscaping, design context and signage. That process is intended to meet goals and policies such as MJ-G3, MJ-P4, MF-P7, MJ-G5, and MJ-P25. The proposal is further consistent with these goals and policies, because the proposal includes open space opportunities for the neighborhood and a variety of housing types. The project especially fulfills the aims of policy MJ-P13, as the proposal is to provide for housing development encompassing a public open space for the purpose of maintaining the adjacent church which is a long-standing neighborhood institution.
7. The current SF5000 zoning would allow maximum construction of three single family homes. The City proposed RSL zone would allow construction of up to seven single family homes. The project proposed LR1 zoning would allow approximately up to eleven residential units on the property, though the proposal would not reach this maximum density as it only includes six new units, retention of the existing single-family residence, and a large amount of open space to be preserved for neighborhood use. Therefore, the proposal is consistent with development that might occur under the City's area wide proposal, and LR1. For these reasons, the proposed rezone is not

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<sup>1</sup> 23.34.014 – Lowrise 1 (LR1) zone, function and locational criteria.

A. Function. The function of the LR1 zone is to provide opportunities for low-density multifamily housing, primarily rowhouse and townhouse developments, through infill development that is compatible with single-family dwelling units, or through the conversion of existing single-family dwelling units to duplexes or triplexes.

B. Locational Criteria. The LR1 zone is most appropriate in areas generally characterized by the following conditions:

1. The area is similar in character to single-family zones;
2. The area is either:
  - a. located outside of an urban center, urban village, or Station Area Overlay District;
  - b. a limited area within an urban center, urban village, or Station Area Overlay District that would provide opportunities for a diversity of housing types within these denser environments; or
  - c. located on a collector or minor arterial;
3. The area is characterized by a mix of single-family dwelling units, multifamily structures that are similar in scale to single-family dwelling units, such as rowhouse and townhouse developments, and single-family dwelling units that have been converted to multifamily residential use or are well-suited to conversion;
4. The area is characterized by local access and circulation that can accommodate low density multifamily development oriented to the ground level and the street, and/or by narrow roadways, lack of alleys, and/or irregular street patterns that make local access and circulation less suitable for higher density multifamily development;
5. The area would provide a gradual transition between single-family zoned areas and multifamily or neighborhood commercial zoned areas; and
6. The area is supported by existing or projected facilities and services used by residents, including retail sales and services, parks, and community centers.

expected to be precedential. The proposal is part of an ongoing pattern of infill and development in the neighborhood, and is consistent with existing and planned zoning patterns in the area.

#### Zoning Principles

8. The zoning principles listed in SMC 23.34.008.E are generally aimed at minimizing the impact of more intensive zones on less intensive zones, if possible. They express a preference for a gradual transition between zoning designations, including height limits, if possible, and potential physical buffers to provide an effective separation between different uses and intensities of development.
9. There is some effective separation between the proposal and adjacent and nearby properties provided by 42<sup>nd</sup> Avenue Southwest to the east and an alley to the west. Property to the north which contains the church will be incorporated into the proposal's design. The proposed open space and retention of existing exceptional trees will assist buffering and screening the proposal from properties to the south.
10. The proposed rezone would maintain the existing pattern of residentially zoned properties facing residentially zoned properties across 42<sup>nd</sup> Avenue Southwest. Multi-family and commercial uses would face the proposal from across the alley to the west.

#### Impact Evaluation

11. The proposed rezone would positively impact the housing supply, as it would add six new residential units. The proposed rezone will add housing capacity to the neighborhood and locate additional housing in the Urban Village.
12. 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 parking, and utility sewer capacity were shown to be sufficient to serve the additional units that would be allowed by the rezone. The Director has evaluated impacts on public services and service capacities, as well as noise, air, water, historic preservation, transportation and other environmental impacts, pursuant to SEPA, and has identified conditions to mitigate impacts that are not otherwise adequately addressed through existing regulations.
13. The approved design includes design strategies to minimize the appearance of height, bulk, and scale impacts.
14. 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, instead the project will create a new community recreational area.

#### Changed Circumstances

15. Changed circumstances are to be considered but are not required to demonstrate the appropriateness of a proposed rezone. As noted above the property was changed in 2015 from single family to multi-family. The proposed rezone is part of a pattern of changed circumstances

for this area, including the City's goal of increased development in areas designated as Residential Urban Villages.

Overlay Districts/ Critical Areas

16. The subject property is not within an overlay district or critical area; therefore, these criteria do not apply.
17. Weighing and balancing the applicable sections of Chapter 23.34 SMC together, the most appropriate zone designation for the subject site is LR1 with a PUDA.

Compliance with Mandatory Housing Affordability

In the hearing, the Applicant raised issues challenging the Council's authority to condition the proposal pursuant to MHA. The Council's authority is clearly provided in the Code:

Notwithstanding any contrary provision of subsection 23.34.004.A, the Council may approve a map amendment subject to execution, delivery, and recording of a property use and development agreement (PUDA) executed by the legal or beneficial owner of the property to be rezoned containing self-imposed restrictions applying the provisions of Chapter 23.58B or Chapter 23.58C to the property. The Director shall by rule establish payment and performance amounts for purposes of subsections 23.58C.040.A and 23.58C.050.A that shall apply to a contract rezone until Chapter 23.58C is amended to provide such payment and performance amounts for the zone designation resulting from a contract rezone.

SMC 23.34.004.B. SMC 23.58B.015 states that "This Chapter 23.58B contains provisions that apply where the provisions of the zone refer to this Chapter 23.58B, or through the terms of a contract rezone according to Section 23.34.004." SMC 23.58C.015 provides that "This Chapter 23.58C contains requirements that apply only where provisions of the zone refer to this Chapter 23.58C, or through the terms of a contract rezone according to Section 23.34.004." Additional concerns expressed by the Applicant regarding the applicability of the MHA to the project and its design are outside of the rezone criteria in SMC 23.34.008, and therefore are not within the scope of consideration for the Hearing Examiner's recommendation.

**Recommendation**

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

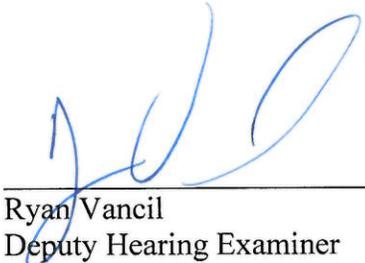
Prior to Issuance of a Master Use Permit

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

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 3016200. (P)

Entered this 26<sup>th</sup> day of September, 2017.



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Ryan Vancil  
Deputy Hearing Examiner

**Concerning Further Review**

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

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

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

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

## Attachment D: Hearing Examiner's Exhibit 20

Applicant \_\_\_\_\_  
 Department  ADMITTED   
 Public  DENIED   
 FILE # CF-314343

20

**From:** Neuman, Megan  
**To:** "David Neiman"; Davis, Bradford; Guillory, Carly  
**Cc:** joepaar@gmail.com; Liz Pisciotta; Deb Barker-Shaw (djb124@earthlink.net); Barker, Cindi; Wentlandt, Geoffrey  
**Subject:** RE: 3016200 - MHA inclusionary housing calculation for the Nazarene Townhomes  
**Date:** Wednesday, March 29, 2017 10:50:00 AM

Hi David.

Thank you for this summary. When I receive your response to the correction in the system I will complete the POTECH review to allow this project to move forward without MHA calculations in the plans. As we discussed, SDCI will still forward the recommendation to the Hearing Examiner that this project be conditioned on compliance with Chapters 23.58B and 23.58C. Council will ultimately make the final decision on what to include in the PUDA. If compliance with MHA is part of the approval for this project, I will review the MHA calculations through the standard review process. At that time, I encourage you to put all the MHA related calculations on one sheet or a series of consecutive sheets in the plan set and include information that "shows your math" so that I may confirm the calculations. I am happy to meet with you to discuss the best way to provide the information in the plans, but am not able to do full reviews in a timely manner outside of a correction cycle.

Best,  
 Megan

MEGAN C. NEUMAN || 206.684.3101

"As stewards and regulators of land and buildings, we preserve and enhance the equity, livability, safety and health in our communities."

**From:** David Neiman [mailto:dn@neimantaber.com]  
**Sent:** Tuesday, March 28, 2017 5:50 PM  
**To:** Neuman, Megan <Megan.Neuman@seattle.gov>; Davis, Bradford <Bradford.Davis@seattle.gov>; Guillory, Carly <Carly.Guillory@seattle.gov>  
**Cc:** joepaar@gmail.com; Liz Pisciotta <liz@neimantaber.com>; Deb Barker-Shaw (djb124@earthlink.net) <djb124@earthlink.net>; Barker, Cindi <cindilbarker@gmail.com>  
**Subject:** 3016200 - MHA inclusionary housing calculation for the Nazarene Townhomes

Megan, some notes from our conversation yesterday. Can you confirm if I've gotten this right so that we are all on the same page for moving ahead with this MUP review?

- The Nazarene Townhomes project has been in the works for several years, pre-dating HALA and the MHA framework. The project is predicated on the idea that the site is up-zoned from SF5000 to LR1 in order to allow concentrated development along the alley, which in turn allows the remainder of the site to be preserved as open space for public use. This exchange of development rights for public benefit has already been proposed, reviewed at multiple public meetings, approved by unanimous vote at the Morgan Junction Community Association, and reflected in changes to the Morgan Junction Neighborhood Plan and an approved amendment to the Comprehensive plan. An overlay of MHA requirements in exchange for this up-zone would be duplicative, punitive, and would affect the financial

viability of this proposal.

- We are not required to show the MHA calculations on our plan set at this stage. We will put the above rationale in our correction response, and put a corresponding note in the plan set as well. That will be a sufficient response to the corrections at this stage.
- The directors rule requires SDCI to recommend that MHA should be applied to this project. The planners recommendation to the city council will reflect this policy, but the city council is free to make up their own mind when they write up the PUDA.
- SDCI will give us the basic information on how to prepare the MHA calculations & Megan will look at a draft version as a "just-in-case" scenario to that in the event that the city council does require MHA for the project, we can submit the required calculation with a reasonable chance of getting through the review of our calculations quickly.

Regards,

-DEN

David Neiman  
Neiman Taber Architects, PLLC  
1421 34<sup>th</sup> Ave Suite 100  
Seattle, WA 98122  
P> 206.760.5550  
F> 206.400.7922  
[www.neimantaber.com](http://www.neimantaber.com)  
<http://neimanarchitects.blogspot.com/>

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

In the matter of: ) C.F. 314343  
)  
Application of David Neiman to rezone ) FINDINGS, CONCLUSIONS  
property located at 5911 42<sup>nd</sup> Avenue ) AND DECISION  
Southwest from Single Family 5000 (SF )  
5000) to Lowrise 1 (LR1) (Project No. )  
3016200, Type IV). )

Introduction

This matter involves the petition of David Neiman for a contract rezone of the property located at 5911 42<sup>nd</sup> Avenue Southwest. The property, depicted on Attachment A (the “Rezone Area”), is composed of a single parcel of land measuring 18,681 square feet. The proposal is to rezone the property from Single Family 5000 (SF 5000) to Lowrise 1 (LR1).

On July 24, 2017, the Director of Seattle’s Department of Construction and Inspection (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 August 14, 2017. Following the Hearing Examiner’s site visit, the record closed on August 29, 2017. On September 26, 2017, the Hearing Examiner issued Findings and Recommendations recommending approval of the rezone, subject to conditions. On November 27, 2017, the Planning, Land Use and Zoning Committee reviewed the record and the recommendations by

SDCI and the Hearing Examiner and recommended approval of the contract rezone to the Full Council.

### **Findings of Fact**

The Council hereby adopts the Hearing Examiner's Findings of Fact, Conclusions and Recommendation for C.F. 314343, dated September 26, 2017. In addition, the Council adopts the following Findings of Fact:

1. The Rezone Area is an area where increased residential development will assist in achieving local growth management and housing policies.
2. Approval of the rezone provides substantially increased residential development capacity in the Rezone Area. In particular, under the City's Land Use Code, the LR1 zone allows greater density than does the SF 5000 zone.

### **Conclusions**

The Council hereby adopts the Hearing Examiner's Conclusions as stated in the Findings and Recommendation of the Hearing Examiner dated September 26, 2017.

### **Decision**

The Council hereby **GRANTS** a rezone of the Rezone Area from SF 5000 to LR1, as reflected in Attachment A, subject to the conditions to be set forth in an executed Property Use and Development Agreement (PUDA) to be attached to the Council Bill approving the rezone, and repeated here:

- a) Development of the Rezone Area is restricted to a project developed in substantial conformance with the final approved plans for Master Use Permit number 3016200.
- b) The provisions of Seattle Municipal Code Chapter 23.58C shall apply to the Rezone Area. For purposes of application of Chapter 23.58C, development of the Rezone Area shall be

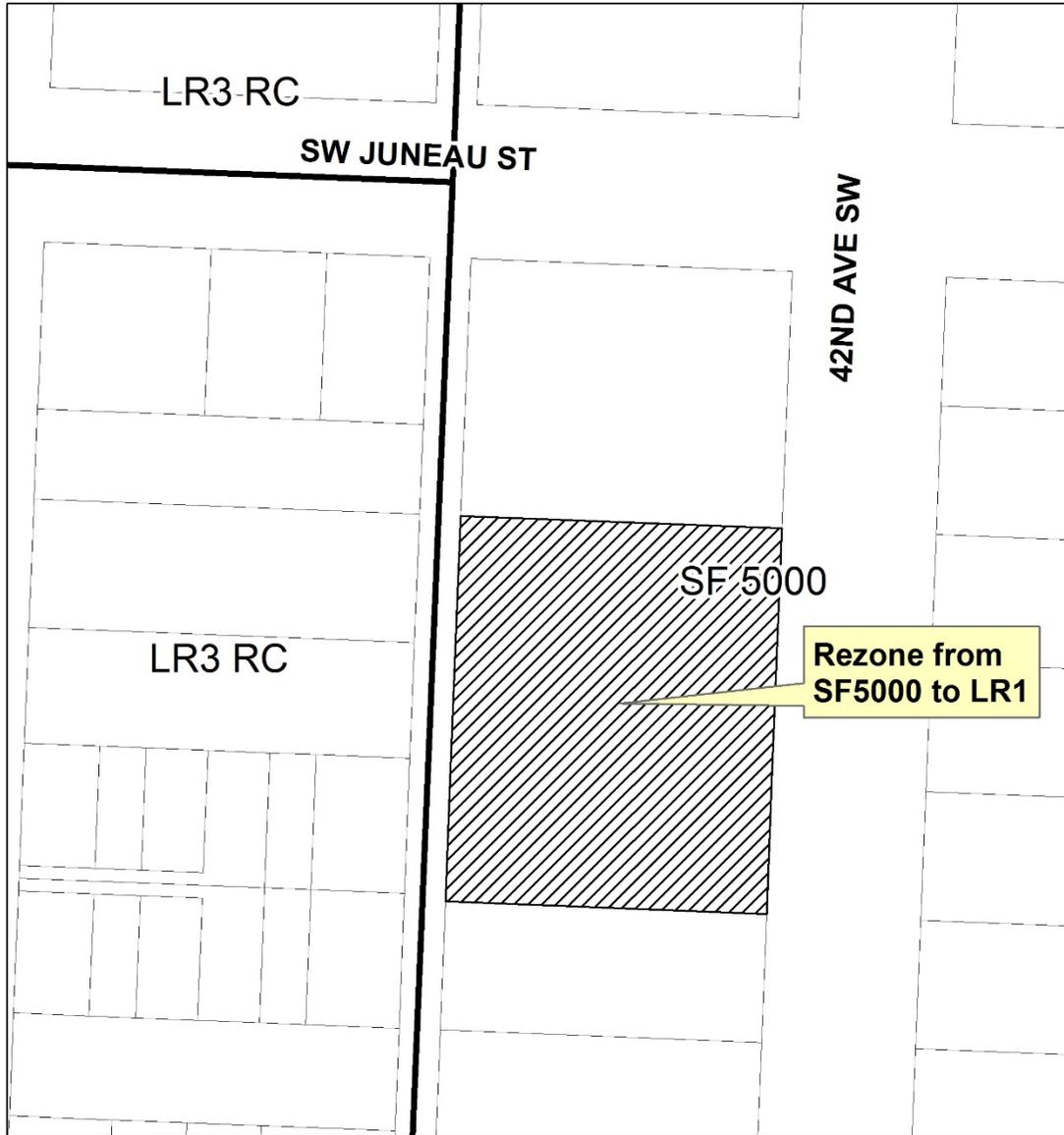
subject to the following performance or payment requirements: 9% of units for the performance option or \$20.00 per square foot for the payment option.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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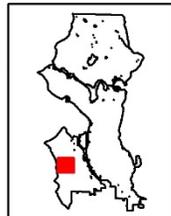
City Council President

ATTACHMENT A



Proposed Rezone  
SDCI Project No. 3016200  
5911 42nd Avenue SW

 Parcels selection



No warranties of any sort, including accuracy, fitness, or merchantability accompany this product.  
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City of Seattle. Prepared 11/03/2017  
by Council Central Staff

0  100 Feet

Eric McConaghy  
LEG 5911 42<sup>nd</sup> Avenue SW ORD  
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**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 150 of the Official Land Use Map to rezone property located at 5911 42<sup>nd</sup> Avenue Southwest from Single Family 5000 to Lowrise 1, and accepting a Property Use and Development Agreement as a condition of rezone approval. (Petition by David Neiman, C.F. 314343, SDCI Project 3016200)

..body

**BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

Section 1. This ordinance rezones the following legally described property (“the Rezone Area”) commonly known as 5911 42<sup>nd</sup> Avenue SW:

Lots 3, 4 and 5, Block 28, Sea View Park Addition, according to the plat thereof recorded in Volume 13 of Plats, Page 80, records of King County, WA.

Except that portion of Lot 3, said Block 28 being more particularly described as follows:

Beginning at the N.E. corner of said Lot 3; thence S 01°08’37” W, along the east line of said Lot 3 for a distance of 1.17 ft.; thence N 88°50’08” W, 59.06 ft.; thence N 01°08’37” E, 1.12 ft. to the north line of said Lot 3; thence S 88°52’51” E, 59.06 ft. to the Point of Beginning.

Section 2. Page 150 of the Official Land Use Map, Seattle Municipal Code Section 23.32.016, is amended to rezone the Rezone Area described in Section 1 of this ordinance, and shown in Exhibit A to this ordinance, from Single Family 5000 to Lowrise 1. Approval of this rezone is conditioned upon compliance 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 B is approved and accepted.

Section 4. The City Clerk is authorized and directed to file the PUDA with the King County Recorder’s Office; to file, upon return of the recorded PUDA from the King County Recorder’s Office, the original PUDA along with this ordinance at the City Clerk’s Office; and to

1 deliver copies of the PUDA and this ordinance to the Director of the Seattle Department of  
2 Construction and Inspections and to the King County Assessor's Office.

3

4



**Property Use and Development Agreement**

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

**PROPERTY USE AND DEVELOPMENT AGREEMENT**

<b>Grantor(s):</b>	(1)	West Seattle Church of the Nazarene	(2)	n/a
<input type="checkbox"/> Additional grantors on page <u>n/a</u>				
<b>Grantee:</b>	(1)	The City of Seattle		
<input type="checkbox"/> Additional on page <u>n/a</u>				
<b>Legal Description</b> <i>(abbreviated if necessary):</i>	See below.			
<input type="checkbox"/> Additional legal description on page <u>n/a</u> :				
<b>Assessor's Tax Parcel ID #:</b>	762570-2370			
<b>Reference Nos. of Documents Released or Assigned:</b>	n/a			

THIS PROPERTY USE AND DEVELOPMENT AGREEMENT (the "Agreement") is executed this   th day of   , 2017, in favor of the CITY OF SEATTLE (the "City"), a Washington municipal corporation, by WEST SEATTLE CHURCH OF THE NAZARENE (the "Owner").

**RECITALS**

A. WEST SEATTLE CHURCH OF THE NAZARENE is the owner of that certain real property (the "Rezone Site") in the City of Seattle zoned Single-Family 5000 (SF5000) shown in Attachment A and legally described as:

Lots 3, 4 and 5, Block 28, Sea View Park Addition, according to the plat thereof recorded in Volume 13 of Plats, Page 80, records of King County, WA.

Except that portion of Lot 3, said Block 28 being more particularly described as follows:

Beginning at the N.E. corner of said Lot 3; thence S 01°08'37" W, along the east line of said Lot 3 for a distance of 1.17 ft.; thence N 88°50'08" W, 59.06 ft.; thence N 01°08'37" E, 1.12 ft. to the north line of said Lot 3; thence S 88°52'51" E, 59.06 ft. to the Point of Beginning.

B. On August 25, 2016, the Owner submitted to the City of Seattle a complete application under Project No. 3016200 for a rezone of the Rezone Site from SF5000 to Lowrise 1 (LR1). The application was deemed complete on August 31, 2016. The purpose of the application is to allow the Rezone Site to accommodate three townhouse structures with a total of six units, and an open

space community park area with various amenities. The proposal includes parking for 12 vehicles within attached garages.

C. Per SMC 23.58C.015, the requirements of Chapter 23.58C apply where the provisions of the zone refer to that Chapter or through the terms of a contract rezone according to SMC 23.34.004.

D. Seattle Municipal Code Section 23.34.004 allows the City to approve a rezone subject to execution, delivery and recording of a PUDA containing "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 Chapter 23.58C to the property.

E. SDCI Director's Rule 14-2016 (April 6, 2017) determines the performance and payment requirements that shall be applied under SMC 23.58C in a contract rezone like the one sought by Owner.

F. The project for which the contract rezone is sought contains no commercial use so no requirements under Chapter 23.58B would apply.

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 the Rezone Site from Single Family 5000 (SF5000) to Lowrise 1 (LR1) (the "Rezone"):

- a) Development of the Rezone Site is restricted to a project developed in substantial conformance with the final approved plans for Master Use Permit number 3016200.
- b) The provisions of Seattle Municipal Code Chapter 23.58C shall apply to the Rezone Site. For purposes of application of Chapter 23.58C, development of the Rezone Site shall be subject to the following performance or payment requirements: 9% of units for the performance option or \$20.00 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 Owner of the Rezone Site.

## Section 3. Termination of Conditions.

The conditions listed in Section 1 of this Agreement shall expire if the Rezone expires according to SMC 23.76.060.C, or if the Rezone is revoked pursuant to SMC 23.34.004.

**Section 4. Amendment.** This Agreement may be amended or modified by agreement between Owner and the City, if such amendments are approved by the City Council by ordinance.

**Section 5. 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 6. No Precedent.** The conditions contained in this Agreement are based on the unique circumstances applicable to the Rezone Site and this Agreement is not intended to establish precedent for other rezones in the surrounding area.

**Section 7. Repeal as Additional Remedy.** Owner acknowledges that compliance with the conditions of this Agreement is a condition of the Rezone and that if Owner avails itself of the benefits of the Rezone but then fails to comply with the conditions of this Agreement, 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 SF5000 zoning designation or some other zoning designation imposed by the City Council; and/or
- b. pursue specific performance of this Agreement.

SIGNED this \_\_\_\_ day of \_\_\_\_, 2017.

West Seattle Church of the Nazarene

By: \_\_\_\_

Shaun Mattson

Its: Lead Pastor

On this day personally appeared before me Shaun Mattson, to me known to be the Lead Pastor of West Seattle Church of the Nazarene that executed the foregoing instrument, and acknowledged such instrument to be a free and voluntary act and deed of such Church, 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 \_\_\_\_ day of \_\_\_\_, 2017.

		Printed Name _____
		NOTARY PUBLIC in and for the State of Washington, residing at _____
		My Commission Expires _____
STATE OF WASHINGTON	}	ss.
COUNTY OF KING		

Attachment A: Rezone Map

