

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

In the Matter of the Application of

CF 314318

BELLWETHER HOUSING

for a contract rezone of property addressed
as 1511 Dexter Avenue North

Department Project No.:
3015682

Introduction

The applicant, Bellwether Housing, seeks a contract rezone from NC3-40 to NC3-65 for a 16,246 square-foot parcel addressed as 1511 Dexter Avenue North.

The public hearing on this application was held on June 8, 2016, before the undersigned Deputy Hearing Examiner. The Director's SEPA DNS and design review approval for the proposal were not appealed. Represented at the hearing were the Director, Seattle Department of Construction and Inspections (SDCI) by Garry Papers, Senior Land Use Planner; and the applicant, Bellwether Housing, by Thomas Walsh, attorney at law. The record was held open after the hearing for the Examiner's inspection of the site on June 11, 2016.

For purposes of this recommendation, all section numbers refer to the Seattle Municipal Code ("SMC" or "Code"), as amended, unless otherwise indicated. After due consideration of the evidence elicited during the hearing, the following shall constitute the findings of fact, conclusions and recommendation of the Hearing Examiner on this application.

Findings of Fact

Site and Vicinity

1. The site is addressed as 1511 Dexter Avenue North and is located at the northwest corner of Dexter Avenue North and Galer Street. The site is currently developed with a surface parking lot. The site is bounded by Dexter Avenue North to the east, by Galer Street to the south, by an alley to the west, and by another parcel to the north.
2. Development in the vicinity includes a four-story office building to the north, and a five-story office building (West Lake Union Center) to the east across Dexter Avenue North. To the south across Galer Street is the Nautica multifamily structure, and west across the alley is the Cityscape Condominium structure. Lake Union is two blocks east of the site. The majority of buildings in the vicinity are between four and seven stories, although there are older buildings with between two and four stories on the blocks further north and south.
3. The neighborhood includes multifamily housing, community services, offices and retail shops. Services within walking distance of the site include restaurants, retail shops, and parks. Aurora Avenue North is one block to the west. A pedestrian bridge crosses Aurora Avenue

North as part of the Galer Street hillclimb path which connects Upper Queen Anne to Lake Union. Dexter Avenue North is an arterial and a major Metro bus corridor providing service from Downtown Seattle to many districts north of Lake Union. Dexter Avenue North is also a designated bicycle route with cycle track improvements in the street. Galer Street is a local street. The alley west of the site is improved.

4. There are 20 mature trees on the western portion of the site which form a continuous canopy and as a group are classified as an exceptional tree grove under the City's Code. None of the individual trees is considered an exceptional tree under the Code.

5. The site is mapped as a Potential Landslide Environmentally Critical Area (ECA). A Limited Steep Slope Exemption for development at the site was granted under permit application #6371977 (Ex.7). SDCI concluded that the steep slope areas on and adjacent to the property were created by previous legal grading activities and therefore met the criteria of SMC 25.09.180.B for an exemption.

6. The site and surrounding area generally slope downhill from west to east towards Lake Union. There is a drop in elevation of 24 feet from the west property line at the alley, to the east property line at Dexter Avenue North.

7. The site is currently zoned Neighborhood Commercial 3 with a 40-foot height limit (NC3-40). North of the site, the zoning is zoned NC3-40 with a Pedestrian Overlay (NC3P-40). Zoning to the south across Galer Street is Seattle Mixed with an 85-foot height limit (SM-85) and SM 85/65-125. Across Dexter Avenue North to the east, the zoning is Commercial Two with a 65-foot height limit (C2-65). To the west across the alley, the zoning is Commercial One with a 65-foot height limit (C1-65). The site is located just north of the South Lake Union Urban Center, with Galer Street as the boundary for the Urban Center.

8. The Queen Anne Neighborhood Plan, as adopted in 1999, is shown at Section B-25 of the City's Comprehensive Plan; Ex. 6. The adopted portions of the Plan include only one policy that specifically refers to future rezones, and addresses the rezoning of L3 to L4 inside urban villages. The Plan's other policies include some which apply to future development, including pedestrian streetscapes (QA-P1), quality design (QA-P3), housing for a diverse population (QA P-5), and provision of trails and non-motorized linkages throughout the neighborhood (QA-P22).

Proposal

9. The proposed rezone is for a change in the height limit from NC3-40 to NC3-65. The applicant's proposed design actually achieves an average height of 55 feet, and includes an upper floor setback on the south side, resulting in a south façade height of approximately 45 feet.

10. The applicant, Bellwether Housing, seeks the rezone in order to construct a six-story structure with 68 units of housing and three ground floor live-work units, as well as parking for 30 vehicles. All of the units would be affordable housing units, with 45 units affordable to households at 30-50 percent of the area median income, and 26 units (including the live-work

units) affordable to households at 60 percent of the area median income. The proposed rezone for height would allow the applicant to provide an additional 15-20 units at this project, on account of the additional top floor space as well as space captured by the efficiencies that the added height provides.

11. The proposed design was reviewed by the West Design Review Board. The Board held an Early Design Guidance meeting on February 19, 2014, took public comments, and identified the priority design guidelines for the project. At its Final Recommendation meeting on November 18, 2015, the Board took more public comments, considered the applicant's response to the guidelines, the requested departures, and the removal of the exceptional tree grove. The Director's Analysis and Recommendation (Ex. 1 at pp. 5-14) and Ex. 8 describe the priority guidelines and the design responses to those guidelines.

12. With regard to the exceptional tree grove, the Board considered the fact that the preservation of the grove and its required root zone would result in a 32 percent reduction of development potential on the eastern portion of the site. To recover the lost development potential would require a greatly increased height (80 feet). The Board unanimously supported a site plan that would replace the grove with on-site trees and other plantings sufficient to create a larger canopy area than the area being replaced.

13. The four Board members present recommended approval of the design and requested departures at the Board's November 18, 2015 meeting.

14. The Director accepted the Board's recommendations and conditionally approved the design and the departures, as described in the Director's Analysis and Recommendation. The design review decision was not appealed.

15. The Director conducted a SEPA review of the project and issued a Determination of Non-significance (DNS) for the project. The DNS was not appealed.

Zoning history

16. There is limited evidence of recent zoning changes at the site. The most recent zoning change to the site (to NC3-40) occurred in 1994. In April 1995, the parcels south of Galer Street were zoned C1-65 feet, and rezoned by Ordinance 117434 to be within an Urban Village. In April 2013, Ordinance 124172 rezoned the property south of Galer Street from SM-65 to SM-85, and rezoned the area south and east of the subject site to allow commercial uses up to 85 feet height, and residential heights up to 125 feet. In 2007, the Commercial zones across the City were updated through Ordinance 122311, which included the addition of a Pedestrian Overlay to the parcel north of this site (changing the zoning from NC3-40 to NC3P-40). There are no City-initiated zoning changes currently proposed for this parcel or sites surrounding the subject property, or contemplated changes to the Urban Center boundary south of the subject site.

Public comment

17. Public comment letters were received by the Department during the three comment periods on the project application. At the public hearing on the proposed rezone, two members of the public offered comments, one on behalf of the Citiscape Condominium Association, and the other on behalf of Salal Credit Union. Both commenters were in support of the proposed rezone.

Codes

18. SMC 23.34.007 addresses the evaluation of rezones and states in part:

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.

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.

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.

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.

19. SMC 23.34.008 contains 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, boundaries; impacts of the rezone, both positive and negative; relevant changed circumstances; the presence of overlay districts or critical areas; and whether the area is within an incentive zoning suffix.

20. SMC 23.34.009 addresses the designation of height limits. Under this section, the factors to be considered are the function of the zone; the topography of the area and its surroundings; height and scale of the area; compatibility with the surrounding area; and neighborhood plans.

Conclusions

1. The Hearing Examiner has jurisdiction to make a recommendation on the proposed rezone to City Council, pursuant to SMC 23.76.052.

2. Under SMC 23.34.007, the rezone provisions are to be weighed and balanced to determine the appropriate zone designation or height designation best meet the provisions of the chapter. No single criterion or group of criteria are applied as an absolute requirement and no hierarchy or priority of considerations exists, unless specifically identified. The analysis below examines the rezone provisions which apply to this proposed rezone for height, as provided for by SMC 23.34.007.

General rezone criteria of SMC 23.34.008

3. The first general criterion applies to areas within urban village centers and urban villages, and considers a rezone's effect on zoned capacity. The rezone site here is not in an urban center or urban village, so this criterion is not applicable.

4. The next consideration is the match between zone criteria and area characteristics. The most appropriate zone designation is 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 designation. In this case, no change is proposed to the NC3 designation. The proposed change to the height designation is discussed below.

5. Zoning history and precedential effect are to be considered. Under this criterion, previous and potential zoning changes, both in and around the proposal site, are to be examined. The zoning history is limited and does not appear relevant to the proposed rezone. It is always possible for a rezone to encourage similar proposals, e.g., requests for increased height north of the site where the zoning is also NC3-40; but no clear precedential effect has been indicated on account of this proposal.

6. The adopted neighborhood plan policies concerning rezones are to be considered. The adopted Queen Anne Neighborhood Plan applies to the proposed rezone site, but the Plan's only policy which specifically references future rezones, applies to sites within the Upper Queen Anne Residential Urban Village, and does not apply to this site. The neighborhood plan also does not identify any specific areas for rezone. Although not directly applicable to this rezone, other policies in the Neighborhood Plan which more generally address future development (see Director's Analysis at pp. 21-22) appear to be implemented by the proposed rezone and design.

7. Zoning principles are to be considered, including impacts on less intensive zones and transitions, physical buffers, zone boundaries and height limits. The site is already surrounded on the east and west by a 65-foot height limit, and to the south by the SM-85 zone, and development in those zones largely approaches the zoned heights. The project's design achieves a 55-foot height, providing a more gradual transition between the SM-85 zone to the south and the NC3P-40 zone to the north, and steps back the upper floor on the Galer Street side, resulting in a south façade height of approximately 45 feet.

8. The alley and the topography separate the site from areas to the west, although the zoning to the west has a 65-foot height limit. The site's eastern edge is bordered by Dexter Avenue North, which is minor arterial with a 78-foot right-of-way at this location, providing physical separation from areas east of the site, although the zoning east of Dexter is already zoned for a 65-foot height limit and the structure immediately east of Dexter from the site is approximately 60 feet tall. The south edge of the property is adjacent to the 58-foot right-of-way of Galer Street, a non-arterial, which separates the site from the SM-85 zone to the south. The north edge lacks a physical buffer, but the building's height at 55 feet, and the architectural features approved by the Design Review Board (e.g., modulation) will reduce the appearance of height, bulk and scale along the north façade.

9. The rezone boundaries would run along platted lot lines and are adjacent to the physical buffers of the alley and streets on three sides as noted above.

10. Height limits. Under SMC 23.34.008.E.4, height limits greater than forty feet are generally limited to urban villages, but may be considered in areas outside of urban villages where higher limits are consistent with the adopted neighborhood plan, an adopted major institution master plan, or where the height is consistent with the existing built character of the area. The proposed 65-foot height limit (with a 55-foot building height) would be consistent with the built character of the area, since the three existing buildings to the east, south and west are 60-65 feet high.

11. Impact evaluation. Under SMC 23.34.008.F, consideration is given to certain impacts and to the service capacities in the area. Housing, particularly low-income housing, is an identified factor for consideration. The proposed rezone directly supports the creation of affordable housing on the site; the rezone will allow Bellwether Housing to add 15-20 units at this site, not only because of the 10 units added to the top floor, but because the added space creates efficiencies within the development).

12. Public services are to be considered. The proposed project and rezone would increase the demand for public services, since it will add population to the area. No adverse impacts on public services were identified in the Director's rezone analysis or SEPA decision as being caused by this proposal.

13. Environmental factors are to be considered. Impacts related to air quality, water quality, glare, odor, shadows and energy are not expected to be a factor. Any impacts related to these factors are addressed by the City's codes and by the design review decision. Flora and fauna are to be addressed, and this would include the grove of trees on the site. The grove will be removed and new vegetation will be installed. Removal of vegetation, including the trees, at the site is not directly an outcome of a height increase but is the result of the development of this site. However, the proposal includes replacement of the tree grove with trees and understory plantings to create a canopy area that at maturity will be larger than the existing grove canopy.

14. Pedestrian safety is to be considered. The rezone and proposed design includes transparent and active uses on both street edges, with pedestrian-scaled light on all four sides.

At hearing, the applicant noted that it had worked with the neighboring residents to develop lighting and pedestrian improvements to improve safety. The Director has concluded that pedestrian safety and quality will be improved over current conditions.

15. Shoreline views, public access and recreation are to be considered. The proposed height change and design (including a step back of the top floor from the south face) would maintain public views of Lake Union from the Galer Street public right-of-way, and from the Galer hillclimb pedestrian overpass over Aurora Avenue. The proposed 55-foot structure may block windows for one level for half of the length of the Citiscape Condominium building to the west (see Ex. 8, p. 42) but views of the lake from those units are already blocked by the 60-foot building on the east side of Dexter Avenue North.

16. The other listed factors in SMC 23.008.F.1 are not applicable to this rezone: manufacturing and employment activity, and architectural/ historic value (there are no designated or eligible landmarks on or near the site).

17. Under SMC 23.008.F.2, service capacities are to be considered. Street access and capacity, transit service, parking, utility capacity and sewer capacity are expected to be adequate to serve the project. Shoreline navigation is not a factor in this rezone application.

18. Changed circumstances. Changed circumstances are to be taken into account, but are not required to demonstrate whether a proposed rezone is appropriate. The last zoning change at this site occurred in 1994. The South Lake Union Urban Center borders the site and is expected to accommodate growth in jobs and housing over the next decades, and transit service has increased in this area. Changed circumstances are not a substantial factor in this rezone, but changes occurring in proximity to the site tend to indicate that the increased height and additional units will be supported by transit in the area.

19. Overlay districts. The site is not located within an overlay district established by the Code, but according to the Director' analysis of transit service in the area, is in an area "frequent transit service" as defined in SMC 23.84A.038; the project proposes less than a 1:1 parking to residential unit ratio, so to the extent the "frequent transit" area is an overlay, no conflict with this designation is presented by the proposed rezone.

20. Critical areas. The site is mapped as a Potential Landslide ECA, but a limited exemption (providing relief from some of the ECA requirements) was obtained under a DCI permit. The Director's SEPA analysis concluded that no significant adverse impact would occur on account of the ECA, and that the existing Grading and Stomwater Codes, which will apply to development at the site, will sufficiently mitigate any impacts on the ECA. The rezone will not have any significant impacts on the ECA.

21. Incentive provisions. The site is not located within a zone with an incentive zoning suffix, so this criterion does not apply.

22. The general rezone criteria of SMC 23.34.008 would be met by the proposed rezone.

Height Limits

23. Under SMC 23.34.009, several factors are to be examined when a height designation is sought, including function; topography; height and scale; compatibility with surrounding area; and neighborhood plans.

24. Height limits are to be consistent with the type and scale of development intended for the zone classification. NC3 zones are intended to allow multifamily and commercial uses, and the proposed rezone would be consistent with this purpose, with no potential to displace preferred uses. The design of the building, including its scale, was considered during the design review process and was approved.

25. The topography of the area and surroundings are to be considered, and the natural topography of the area is to be reinforced; blockage of views is to be considered. The site and its surroundings run downhill from west to east, toward Lake Union, with many buildings in the area achieving a height of 60-65 feet. The proposed building, at 55 feet (45 feet on the south façade) would be consistent with the height of existing nearby development. The design follows the sloping topography; see p. 43-42 of Ex. 8. Because of the area's topography and the building's design, the views presently obtained from the Cityscape Condominium (located uphill to the west) will not be affected by the change in zoned height. It is possible that the stepback design with its 45-foot height along Galer, will benefit angled views from some units in the Cityscape development.

26. The height and scale of the area are to be considered in this rezone. The current zoned limit at the site is 40 feet, while zoned heights to the east and west are 65 feet, and zoned height to the south is 85 feet. There are NC3-40 zones to the north and northeast. The predominant height and scale of existing development nearby is for 5-8 story buildings (50'-85'), with the multifamily structures to the east and west essentially achieving the zoned height limit of 65 feet. Older (early to mid-century) development on the blocks north and south of the site, which range from 2-4 stories (20'-45') may not be a good measure of the area's development potential, given those properties' proximity to the South Lake Union Urban Center.

27. Compatibility with the surrounding area is to be considered. The area is not in or near a major institution, so SMC 23.34.009.D.1 is not relevant. An appropriate transition in height and scale is achieved, given the existing zoning patterns, topography and the design of the project. The levels of activity will remain consistent with those permitted in the NC3 zone.

28. The adopted neighborhood plan's height recommendations or height limits are to be considered. In this case, the adopted Queen Anne Neighborhood Plan does not include recommendations or limits on height. The West Design Review Board reviewed the proposed development, and addressed the scale and context of the project in light of its location.

29. The proposed height increase from NC3-40 to NC3-65 would meet the criteria of SMC 23.34.009.

30. On balance, the proposed rezone meets the provisions of Chapter 23.34. Therefore, the Examiner recommends approval of the proposed rezone with the condition set forth below.

Recommendation

The Hearing Examiner recommends **APPROVAL** of the rezone with a PUDA requiring substantial conformance with the conditions identified in the Director's Analysis and Recommendation dated April 14, 2016.

Entered this 14th day of June, 2016.



Anne Watanabe
Deputy Hearing Examiner

CONCERNING FURTHER REVIEW

NOTE: It is the responsibility of the person seeking further review 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 Hearing Examiner's recommendation to the City Council. The appeal must be submitted within fourteen (14) calendar days following the date of the issuance of the Hearing Examiner's recommendation, and be addressed to: Seattle City Council Planning, Land Use and Zoning Committee, c/o Seattle City Clerk, 600 Fourth Avenue Floor 3, P.O. Box 94728, Seattle, WA 98124-4728. The appeal shall clearly identify specific objections to the Hearing Examiner's recommendation and specify the relief sought.

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Findings and Recommendation** to each person listed below, or on the attached mailing list, in the matter of **Bellwether Housing Rezone**. Council File: **CF 314318** in the manner indicated.

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Dated: June 14, 2016

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Tiffany Ku
Legal Assistant