**OFFICE OF THE HEARING EXAMINER**

**CITY OF TACOMA**

| | |
|---|---|
| **WARNER STREET AMICI HOUSE LLC,** a Washington limited liability company,<br><br>**Applicant/Appellant,**<br><br>**v.**<br><br>**CITY OF TACOMA,** a Washington municipal corporation, through its Planning and Development Services Department,<br><br>**Respondent.** | **HEX2024-011A-B (LU23-0228)**<br><br>**FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION AND ORDER** |
| **NORTH TACOMA NEIGHBORS UNITED,** a Washington nonprofit corporation,<br><br>**Appellant,**<br><br>**v.**<br><br>**WARNER STREET AMICI HOUSE LLC,** a Washington limited liability company,<br><br>**Applicant/Respondent,**<br><br>**AND**<br><br>**CITY OF TACOMA,** a Washington municipal corporation, through its Planning and Development Services Department,<br><br>**Respondent.** | |



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

**THESE CONSOLIDATED APPEALS** came on for hearing before JEFF H. CAPELL, the Hearing Examiner for the City of Tacoma, Washington, (the "City"), on December 19 and 20, 2024 (the "Appeal Hearing").[1] Applicant/Appellant Warner Street Amici House LLC (the "Applicant" or "Warner Street") was represented at the hearing by attorney David P. Carpman. Appellant North Tacoma Neighbors United ("NTNU") was represented at the hearing by attorney Gabriel Hinman. The City and its Planning and Development Services Department (separately "PDS") was represented by Chief Deputy City Attorney Steve Victor.

Previously, a prehearing conference in this matter was held on September 20, 2024. Thereafter, the parties filed one round of motions seeking summary disposition of issues raised on appeal. The motion cycle concluded with the filing of replies on November 1, 2024. The Examiner denied the parties' motions by written decision issued December 5, 2024.

At the hearing, witnesses were sworn and testified. Exhibits were admitted and reviewed. Arguments were presented by the parties and considered.

Testimony at the hearing was taken from all of the following (in order of appearance):

Appellants NTNU and Warner Street[2]
- Julie Cain
- Derek Woodworth
- Heidi Stoermer
- Peter Wimberger
- Michael Read, P.E.
- Justin Goroch, P.E.
- Reid Shockey, A.I.C.P.

[1] By agreement of the parties, the hearing was conducted over Zoom at no cost to any participant with video, internet, and telephonic access.
[2] Hereafter, witnesses will generally be referred to by last name only without meaning any disrespect.



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

City of Tacoma
- Kristina Haycock
- Shirley Schultz

The evidentiary record closed at the conclusion of the hearing on December 20, 2024. The parties requested to make closing arguments through post-hearing briefing. Post-hearing briefs were agreed to be submitted by January 10, 2025,[3] and they were received on that date.

## INTRODUCTION

The questions presented in this appeal are at their core legal issues. On that assumption, the parties brought motions prior to the hearing seeking summary disposition, which is only appropriate when there are no material facts in dispute. These motions were denied because it did appear, at that stage of these proceedings, that some material facts were in dispute, and in any event the material facts had not yet been either determined, or agreed upon, nor were they even presented in any form other than the, as yet unsupported statements made by counsel in briefing. Considering material facts in the light most favorable to the non-moving party on each given issue did not lead to a viable summary judgment decision at that point.

In cases such as this, where land use permit criteria, and their interpretation and application are at issue, the "legal issues" are almost inevitably mixed questions of law and fact.[4] By the time the hearing was concluded, there truly were not too many, if any, contested material facts, and the issues for resolution are essentially legal issues, but those issues are underlain by the facts of the permit at issue and the Project (defined below) it proposes.

[3] Submissions were delayed somewhat due to the intervening holidays.
[4] See e.g., *Citizens v. Mercer Island, 106 Wn. App.461, 24 P. 3d 1079 (2001); and City of Fed. Way v. Town and Country Real Estate, LLC, 161 Wn App. 17, 252 P. 3d 382 (2011).*



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

As with any legal review, the law must be determined and applied to the material facts. The Examiner is tasked here with determining those facts from the hearing record. As is typical in a decision such as this, the Examiner sets forth the Findings of Fact herein first, and then these findings will be applied to the controlling law below in the Conclusions of Law section of this Decision.[5]

Based on the record from the hearing, the Examiner makes the following:

## FINDINGS OF FACT

### Procedural History

1. This appeal challenges the decision of the City's Planning and Development Services (again "PDS") Director (the "Director") that approved the Applicant's CUP permit (separately the "Director Decision") subject to conditions. The Director Decision was issued on June 27, 2024. *Ex. C-1*.

2. Both the Applicant and NTNU filed reconsideration requests on the Director Decision. NTNU challenged the approval of the CUP on multiple fronts. The Applicant contested an approval condition that limited occupancy in the Project. The Director issued his "Order Denying Requests for Reconsideration and Affirming Decision" on August 20, 2024 (separately the "Reconsideration Decision").[6] *Ex. C-2.*

### The Application

3. Sometime around December of 2023, Applicant Warner Street Amici House LLC, a Washington limited liability company (again, the "Applicant" or "Warner Street"), submitted

[5] "Findings of Fact" are abbreviated herein at times as "FoF." "Conclusions of Law" may at times be abbreviated "CoL."

[6] The separate Director Decision is referenced hereafter collectively with the Reconsideration Decision as the "CUP Decision."



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

an application to the City requesting a Conditional Use Permit (permit no. LU23-0228, the "CUP") seeking authorization to convert an existing church building to a group home in north Tacoma at 2213 North Warner Street[7] (the "Project" as further described below). *Ex. C-1, Ex. C-4, Ex. R-1*.

4. PDS determined Warner Street's application to be complete on January 2, 2024. Written notice of the application was mailed to owners and residents of real property within 400 feet of the Subject Property (as indicated by the Pierce County Assessor-Treasurer's records), the neighborhood council, and other neighborhood groups, allowing a comment period on the Project of at least 30 days, beginning on January 16, 2024. PDS noticed a public meeting regarding the Project for February 15, 2024, which was rescheduled to February 22, 2024, due to neighborhood feedback and City technical errors. A public notice sign was posted on the Site within seven days of the start of the first comment period. *Ex. C-1.*

**The Site/Subject Property**

5. The Subject Property is 13,154 square feet (109.92 feet by 119.44 feet, or 0.32 acres approximately) in area. There are two underlying platted lot lines that comprise the total Site, together with reclaimed right-of-way of approximately 10 feet vacated from North Warner Street. *Id.*

6. The Site is located within the R-2 Single-Family Residential Dwelling District. The City's Comprehensive Plan presently designates the Site as Low-Scale Residential. *Id.*

7. The church building was originally constructed as a 2,840-square-foot structure in 1909. A 2,000 square-foot addition was added in 1955. The church building is located on the

[7] 2213 North Warner Street is Pierce County Tax Parcel no. 9150000490. This real property is referred to herein interchangeably as the "Site" or as the "Subject Property."



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

west side of the Subject Property, approximately six feet from the North 24th Street property line, eight feet from the North Warner property line, two and one-half feet from the alley boundary, and between 41 and 60 feet from the adjacent residential property to the east. This makes the building legally nonconforming to the front, west (side), and rear due to present setback requirements for the underlying zoning district. *Id.*

8. The Site had been used as a church since 1909, since well before the establishment of the City's current zoning regulations in 1953. No previous CUP has been issued for the Site, nor was one necessarily required for the preexisting church use.[8] An application for a CUP[9] to convert the Site to a school was denied in 1978, however. The use of the Subject Property as a church, up to now, was a legally established nonconforming use that did not require a separate CUP or Special Use Permit. *Id.*

9. The surrounding properties are developed mostly with single-family homes built primarily between the early 1900s and the 1960s. The average lot size in the blocks surrounding the Subject Property is approximately 5,274 square feet. *Ex. C-1*.

10. According to US Census data, the 98406-zip code area, which includes the Subject Property, has an average household size of 2.88 people. *Id.*

11. Approximately two blocks to the north and two blocks to the east there exists a small commercial node in what is otherwise predominately a residential neighborhood. There are stops for Bus Route 16 on North Alder Street, which is approximately two blocks to the east of the Subject Property. *Id.*

[8] Per TMC 13.05.010.A.11, "Pre-existing uses which were not required to obtain a CUP at the time they were developed, but which have subsequently become Conditional Uses, shall be viewed for zoning purposes in the same manner as if they had an approved CUP authorizing the extent of development as of August 1, 2011."
[9] Prior to 1998, a CUP was called a Special Use Permit in the Land Use Code.



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

**The Project**

12. As referenced above, the Applicant has requested a Conditional Use Permit (CUP) to convert the existing church building on the Subject Property into group housing for up to 51 residents in the R-2 Single-Family Residential Dwelling District. The CUP Decision limited the occupancy of the Project to 30—29 shared-room residents plus a live-in property manager or resident director. *Haycock Testimony; Ex. C-1.*

13. No additions to the existing building's footprint are proposed by the Project. The Project does propose the following work, however as set forth in the Director Decision:[10]

- Remodeling the interior of the building to add 10 bedrooms, one resident manager apartment, a laundry room, and six bathrooms.
- Constructing a new parking lot for 11 vehicles.
- Installing landscaped yard space between the parking lot and North 24th Street, approximately 2,675 square feet in area (20 percent of the lot).
- Installing eight angled parking stalls in the right-of-way along North Warner Street.
- Constructing two new curb ramps on the south side of the intersection of North Warner Street and North 24th Street.
- Improving the Site frontage with new curb and gutter.
- Improving the North Warner Street frontage with new sidewalk. *Ex. C-1*.

14. As part of the Project, landscaping will be provided as required by TMC 13.06.090.B. Some additional landscaping is required under conditions of the CUP as currently approved in the CUP Decision. At the time of application submittal, the Applicant had not submitted a detailed landscaping plan for review. A full landscaping plan was later prepared by BCRA, Inc., on April 12, 2024, and submitted to the City. The City then used this later submittal in its review of the CUP and approval thereof as memorialized in the CUP Decision. *Ex. C-1, Ex. R-7.*

[10] At p. 2. It should be noted here that the CUP itself does not authorize any of this actual construction work. The CUP is a land use permit, not a building permit or other permit that authorizes actual work at the Subject Property.



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

15. As referenced above, the Applicant proposes to use the building for group housing of 50 residents and one resident manager/director. The CUP Decision limited occupancy of the building to 29 standard residents plus the resident director. The Applicant's appeal challenges this limiting condition. The Project, as applied for, proposes a separate apartment for the resident director, 10 bedrooms for the remaining population, seven bathrooms, group sanctuary space, a community room, a fitness room, a laundry room, and a communal kitchen. Each bedroom is proposed to contain from three to seven beds. *Ex. C-1, Ex. C-3*.

16. The Applicant's justification/approval criteria analysis for the CUP application is in the hearing record as Exhibits R-1 and R-2. The Director's Decision[11] summarized much of this Applicant information as follows (quoted verbatim):[12]

- There is a known need for housing, as shown in the Pierce County Housing Action Strategy that was adopted in 2022 and the City of Tacoma's Affordable Housing Action Strategy, created in 2018. The plan encourages different types of housing development such as group housing.
- Multiple policies in Chapter 5 of the City of Tacoma Comprehensive Plan support this type of project, including Goal H-2, H-4, and Policy H-4.1, H-4.4, and H-4.7.
- The zoning code requires 11 parking stalls for this use. The Applicant is proposing 11 on-Site stalls and 8 public parking stalls.
- The Site is near transit (stop ID 537 is located approximately 670 feet away), is in a designated bike and pedestrian priority area, and is located centrally between the University of Puget Sound and the Proctor Commercial District.
- The Site will meet the Level Two alteration standards for landscaping (all landscaping standards that do not involve repositioning the building or reconfiguring Site development will apply).

[11] At page 6.

[12] Although quoted verbatim, references to the "site" in the quoted portion are changed to the "Site" to conform with the defined term herein. The same change is made with "applicant" to "Applicant." These changes persist throughout this Decision for uniformity and to dispel any confusion that might otherwise arise from the difference.



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

- The Site will meet the required zoning code and no variances are being requested.[13]
- The Site meets the requirements for the Pre-existing non-residential uses in residential districts, including the size of the Site, the legality of the existing building, and the proposed use.

In this last bullet point, the Director's reference to "the legality of the building" comes from the legal nonconforming status of the building referenced in Finding of Fact 8 above. With the foregoing explanation of "legality," the Examiner finds the above bulleted points to be factually accurate. *Ex. C-1*.

17. The Applicant's consultant, Transportation Engineering Northwest ("TENW"), completed a Traffic Engineering Technical Memorandum for the Project on August 22, 2022 (the "Traffic Memo"). TENW supplemented the initial Traffic Memo with an Updated Traffic Engineering Memo submitted on April 25, 2024. These two memos together constituted the Traffic Impact Analysis for the Project (the "TIA"). The Tacoma Municipal Code ("TMC") only requires 11 parking stalls for the Project. TENW's TIA indicated that for a Project of 50 residents, 28 parking stalls would be necessary. Again, the Project proposes only 11 on-Site stalls. In the Parking Study, TENW determined that there is adequate on-street parking in the right-of-way areas in surrounding blocks to accommodate the additional 17 vehicles expected to be generated by the use at 50 occupants. Neither Traffic Memo made a separate analysis of parking or traffic impacts/needs if the Project were limited to 30 total residents. The TIA (particularly the update) analyzed traffic impacts of the Project under the land use category of "off-campus student housing complex." *Cain Testimony, Goroch Testimony; Ex. R-8, Ex. R-9*.

[13] The Examiner would point out here that, although it is true that the Applicant has requested no variances under TMC 13.05.010.B, the CUP does act like a use variance in certain aspects, as was made evident in testimony during the hearing. *See Schulz Testimony*.



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

18. After consideration of the Applicant's TIA materials, the City's Public Works - Traffic Engineering Division determined that the Applicant's analysis of traffic impacts was reasonable. Based on the impacts identified in the TIA, however, the Director determined that mitigating conditions should be included in the CUP Decision. Among these are the following:

- The Project shall provide curb and gutter, on-street parking, and sidewalks as shown on the Site plan (*see Exhibit R-4*).
- Americans with Disabilities Act, (ADA)-compliant curb ramps must be constructed on the south leg of North 24th Street and North Lawrence Street, as set forth in the Applicant's Traffic Memo.
- One speedhump must be constructed on North 24th Street adjacent to the Site. The City Traffic Engineer or designee shall confirm the location and design during the Work Order permit process.
- The sidewalk adjacent to the back-in angle parking shall be widened to 7.5 feet to accommodate vehicle overhang and pedestrian access.
- Non-ADA-compliant curb ramps abutting the Site at North 24th Street and North Warner Street shall be constructed to be compliant.[14] The existing curb ramps can be evaluated for compliance before the Work Order submittal. Receiving curb ramps shall be constructed as required by the City of Tacoma Curb Ramp matrix. *Ex. C-1*.

19. The Project will undoubtedly add new vehicle and pedestrian trips to existing public streets in and around the Subject Property. Although Public Works - Traffic Engineering Division determined that the Applicant's analysis of traffic impacts was reasonable, it is not the Traffic Engineering Division's call to make the final determination as to whether the Project and its traffic impacts (and also non-traffic impacts) will lead to a Project compatible with the surrounding neighborhood. That is for the PDS Director and now the Examiner. The Director made that determination, and in addition to the more traditional traffic mitigation conditions

[14] This first sentence is changed here from the original language in the Director Decision after confirmation from the parties because the original language was not clear in its intent. Given that, this language in the Director Decision is amended to read as set forth here.



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

above, the Director also determined to lessen traffic and the overall impacts of the Project by limiting the occupancy to 29+1. *Ex. C-1, Ex. C-2.*

20. By the end of the hearing, and in its Post-Hearing Brief, NTNU challenged the adequacy of the TIA alleging that because Warner Street has agreed it will not limit occupancy at the Project to the 18 to 26 age range, the TIA is now inaccurate because it evaluated traffic impacts for the Project based on an occupancy in this age range.

21. As mentioned above (*Fn. 10*), the CUP is a land use permit and does not authorize any work at the Subject Property. That said, a building permit has been submitted and approved at the Site (BLDCA24-0040). The scope of the building permit includes repair to existing bathrooms to fix current plumbing issues, updates for accessibility, and demolition/movement of walls. Approval of the building permit did not approve a change of use and any work done by the Applicant to prepare the structure for a change of use was done/is being done at the Applicant's own risk. That said, there is nothing in the TMC that prevents this type of work in a legal nonconforming structure. *Ex. C-1.*

22. The City's zoning code does not specify open yard space requirements for group housing. That notwithstanding, the surrounding neighborhood is largely made up of single-family homes. Single-family residences have a yard space requirement of 10 percent of the lot size. Multifamily developments, which the Project is technically not, but would perhaps be similar to the Project in occupant density, require 20 percent of the lot to be usable yard space. Given the foregoing, the Director determined that the Project should include open space in order to be compatible with the community and required 20 percent of open yard space on the



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

Subject Property for the Project. The open yard or amenity space standards for residential zones found at TMC 13.06.020.F.7 will apply. *Ex. R-1, Ex. R-2, Ex. R-3., Ex. C-4*

23. Site perimeter landscaping is required for all properties in R-2 zones, including the Subject Property, with certain exceptions. The Project is expected be more intensive than a typical single-family residence. The Director found, and the Examiner agrees, that this expectation of greater intensity is evident in TMC 13.05.010.A.26, which specifies that "the replacement, reuse or expansion of existing structures and improvements shall be permitted subject to the development standards of the Neighborhood Commercial (C-1) Zoning District." The C-1 commercial zone requires a more intensive landscaping buffer and this standard will apply to the Project. *Ex. C-1.*

24. Again, because the Project presents a somewhat greater intensity than the surrounding neighborhood, street trees will also be required along both street frontages of the Subject Property in order to help screen the Project better from the surroundings as well as soften the new angled on-street parking. *Ex. C-1.*

25. To provide/enhance safety and visibility, the Project will add three streetlights to the neighborhood—one on the North Warner Street frontage, one on the North 24th Street frontage, and one on the corner of the North Warner Street and North 24th Street intersection. *Id.*

**Affordability, Discrimination, and Density**

26. The Applicant's "Application Narrative" billed the Project as intended to provide "affordable community living for young adults finishing their education, completing



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

internships and apprenticeships, and starting careers." The Application Narrative further references "Target residents [for the Project ] will be 18 – 26 in age and of all ethnicities." The Application Narrative also makes several references to "Christian faith" playing a role in the Project. *Cain Testimony;*[15] *Ex. R-1, Ex. R-2*.

27. Keying on the foregoing, NTNU alleges that the CUP should be disallowed because the Project will openly discriminate "[i]n tenant selection on the bases of both age and religion." During the hearing, due at least in part to questioning from the Examiner, Cain offered that the Project will not violate any applicable laws, including TMC 1.29.100, titled "Unlawful discriminatory housing practices." Cain offered further that the Project will not have any age limitation on who can become a tenant/occupant, nor will it have any religious affiliation requirements, but that she did still expect the Project would appeal more to the above age range, and that Christian religious values would still likely be promoted at the Project through voluntary activities. *Id.*[16]

28. By the close of the hearing and in its Post-Hearing Brief, NTNU argues now that the Applicant's confirmation that its Project will comply with applicable laws, and its disavowal of any age restrictions or religious affiliation requirements for occupancy in the Project constitutes a change to the CUP process sufficiently material enough that Warner Street should be required to start its application anew. *NTNU Post-Hearing Brief*, pgs. 16~18.

---

[15] All references to "*Cain Testimony*" are to the testimony of Julie Cain. NTNU originally sought the testimony of Andrew Cain as well. Warner Street objected to having to have Andrew present to testify on various grounds that are documented in the overall record of this appeal. After Julie Cain's testimony during the hearing, NTNU determined it did not need Andrew's testimony.

[16] Julie and Andrew Cain have a similar project underway in Port Orchard, WA. That project is classified as a congregate living facility. Cain testified that the city of Port Orchard placed conditions on its approval limiting age and perhaps even religious affiliation. Those conditions are not at issue here. The Tacoma CUP Decision placed no such conditions on its approval of the CUP, nor does the Examiner here. Tacoma is not Port Orchard, nor is there any precedent that arises from the Port Orchard project that is applicable here.



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

29. The Comprehensive Plan states a desired density goal of 10 to 25 units per acre in the Low-Scale Residential area. The Subject Property is 0.32 acres. The Director Decision determined that this density level would allow between three and seven "main units" on the Subject Property, and that each could potentially have an Accessory Dwelling Unit ("ADU") because ADUs are allowed in the current zone (but they are not calculated in overall density). The Director determined that these figures could total between six and 14 households. Using that figure and the average household size in this zip code taken from the census of 2.88 people per unit, the Director determined that up to 40 residents could theoretically be expected to live on the Subject Property. *Haycock Testimony; Ex. C-1. Ex. C-2*.

30. The Director further determined that under the current zoning code, three standard lots could be developed "as of right" using the total square footage that currently comprises the Subject Property. The Director determined that current zoning would allow each lot to have a single-family home and an ADU which could result in six total units. Again, using the census figure of 2.88 people per unit, the potential result would add approximately 17 people to the neighborhood as occupants of the Subject Property. *Id*.

31. In what was billed as an effort to balance the requirements of the current zoning code and the goals of the Comprehensive Plan, the Director averaged the two numbers (40 and 17) to arrive at an occupancy number of 28.5 rounded to 29. The Director determined this to be "a reasonable expectation for occupancy at the site [sic]." *Id*.

32. It was clear from hearing testimony that PDS went through this exercise in order to best determine what level of occupancy on the Subject Property would maximize the use of



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

the Site, while at the same time keeping the Site/Project compatible with the surrounding neighborhood. In large part, this exercise led to the resulting condition limiting the occupancy of the Site/Project to the 29+1 limit set forth at Condition 2 (page 15) of the Director Decision as upheld in the Reconsideration Decision. The Applicant challenges the occupancy limit as contrary to state law (RCW 35.21.682); NTNU challenges the Director's calculations as erroneous. *Haycock Testimony, Schultz Testimony*.

33. NTNU offered testimony and argument at the hearing challenging whether the Project will offer "affordable" housing based on standardized/accepted definitions of affordability such as those found in *One Tacoma: Comprehensive Plan* (the "Comp Plan") in the Housing Element of the Comp Plan at page 5-18, and those used by the United States Department of Housing and Urban Development (HUD).[17] NTNU offered several examples of housing possibilities in Tacoma that would allow for lower per room rental costs than what Warner Street anticipates its per occupant rental cost will be. At least one such example came from a 1,420 square foot, single-family house in the general vicinity of the Project that NTNU offered could easily rent out to seven people, and with a shared rent among these seven, the per-occupant rent cost would be less than what Warner Street anticipates charging its tenants. *Cain Testimony; Exs. A-7~A-9.*

34. Cain testified that the CPU application's rent figures are simply estimates at this point because the Project is not built nor is it open for business. She testified that per room rentals would probably be in the $500 to $600 range, which is at the low end of the affordability tables in the Housing Element of the Comp Plan, but that actual rents would have

[17] See *https://mrsc.org/explore-topics/housing-homelessness/housing/affordable-housing-background#definition* for Municipal Research and Services Center's (MRSC) discussion of affordability generally.



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

to be determined from the market once the Project is complete. Cain further testified that the CUP application's references to providing affordable housing in the Tacoma housing market were not intended to align with HUD or other programmatic definitions of affordability but were rather intended to mean affordability in the general sense of adding more supply and type choice in a strained market.[18] *Cain Testimony; Ex. R-1; Comp Plan, Housing Element p. 5-19*.

**Environmental Review**

35. At some point in the permit review process, PDS determined that the Project is exempt from the review requirements of the State Environmental Policy Act (SEPA) and SEPA's companion regulations found at Washington Administrative Code (WAC) 197-11. The City pointed to WAC 197-11-800(6) as exempting the Project from environmental review because the Project is not new development, but rather a remodel/reuse of an existing structure. The Director Decision made no mention of any SEPA[19] review or that the CUP permit had been determined to be exempt. NTNU raised this omission alleging reversible error in its request for reconsideration. NTNU alleged that the Project should not be exempt on substantive grounds as well. *Haycock Testimony*; *Ex. C-2*.

**Public Comment/Agency Review**

36. Public comments were received on the CUP application from 109 people, many of whom submitted comments multiple times. The majority of the comments concerned traffic, parking, and overcrowding fears related to the Project. *Ex. C-1, Ex. C-7.*

[18] The allusion here to "programmatic definitions of affordability" references the fact that these express definitions of affordability are often used to determine whether a developer qualifies for some benefit such as density bonuses or property tax exemptions. No such program comes into play in the consideration of this CUP.
[19] SEPA is the State Environmental Policy Act found at RCW 43.21C.



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

37. Most of the comments submitted during the application comment period were opposed to the proposal, although the City did receive a few comments that were in support of more housing choices for young adults. The public comments can be summarized as follows:

- Many comments felt the Applicant did not sufficiently demonstrate the need for the use, particularly when located in an existing single-family neighborhood.
- Many felt the Project will be contrary to the public interest citing the following as reasons:
    - **This many young people in one area is a safety concern and one residential advisor will not be enough supervision;**
    - **The Project will strain utilities, parking, traffic, streets, and the alley;**
    - **There is not enough space for this many people, inside or outside of the structure;**
    - **The property owners do not have a good history of being good property managers with this property or others; and**
    - **The property owners have been violating the Fair Housing Act with their religious advertising.** *Ex. C-8.*

38. The Director Decision notes that "Multiple comments were received regarding the resident manager, tenant selection, and the type of work done on the structure." The Director stated that some of these concerns address matters "[u]nrelated to consistency with the CUP criteria…" The Director also stated that the Applicant had answered many of these concerns in its submitted materials. *Ex. C-1.*

39. Because of the type of permit (CUP) and because the hearing before the Hearing Examiner was an appeal of an approved permit, additional public comment/public testimony, beyond what was submitted during the permit review process, was not part of the proceedings. That notwithstanding, NTNU had three neighbor witnesses (Derek Woodworth, Heidi Stoermer



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

and Peter Wimberger) testify at the hearing offering testimony representative of the above summarized concerns. *Woodworth Testimony, Stoermer Testimony, Wimberger Testimony*.

40. Local governmental agencies and utility providers have reviewed the requested permit. During this review/comment process, comments were received from the City Building Engineer; Tacoma Water; the City's Site Development staff; Public Works Traffic Engineering; Solid Waste; Tacoma Power; PDS Land Use; and the Tacoma Fire Department. All comments received were attached as exhibits to the Director Decision and are included in the hearing record as Exhibits C-5 and C-6. The Director included conditions of approval in the Director Decision based on these comments.

**The Hearing**

41. As referenced above, the hearing on this appeal was conducted over Zoom on both December 19, and December 20, 2024. Testifying witnesses are as listed above. At the close of the hearing, at the parties' legal counsels' request, post-hearing briefs were allowed to substitute for closing oral argument. These briefs were submitted on January 10, 2025.

42. Any conclusion of law herein which may be more properly deemed a finding of fact is hereby adopted as such.

From the foregoing Findings of Fact, and the parties' presented arguments and authorities, the Examiner provides the following:

## AUTHORITY, ANALYSIS AND CONCLUSIONS OF LAW

**Jurisdiction/Burden of Proof**

1. The Hearing Examiner has jurisdiction over the parties and subject matter in this



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

proceeding. *Tacoma Municipal Code (TMC) 1.23.050.B.2; TMC 13.05.100.C.*

2. The hearing is a *de novo* proceeding under TMC 1.23.060.

3. Under TMC 1.23.070.C., "[t]he party seeking review has the burden to establish, by a preponderance of the evidence, that the matter is consistent or inconsistent with applicable legal standards and the lower decision should be reversed or otherwise modified." As applied here, TMC 1.23.070.C. requires Warner Street to meet this burden of proof for its issue challenging the 29+1 occupancy limit imposed in the CUP Decision and NTNU bears the burden of proof for its multiple challenges to the validity of the CUP Decision as set forth in its Notice of Appeal.

**Applicable Regulations and Policies**

4. TMC Section 13.05.010.A "Conditional Use Permits" sets forth the general criteria for obtaining a CUP in Tacoma, applicable to all CUP applications, as well as the specific criteria for certain types of CUPs.

5. TMC 13.05.010.A.1. sets forth the purpose statement for allowing CUPs in Tacoma as follows:

> In many zones there are uses that may be compatible but because of their size, operating characteristics, potential off-site impacts and/or other similar reasons warrant special review on a case-by-case basis. The purpose of the conditional use permit review process is to determine if such a use is appropriate at the proposed location and, if appropriate, to identify any additional conditions of approval necessary to mitigate potential adverse impacts and ensure compatibility between the conditional use and other existing and allowed uses in the same zoning district and in the vicinity of the subject property. The zoning district use tables identify which uses require a conditional use permit. These uses may be authorized by the Director or Hearing Examiner in accordance with the procedures established in this Chapter and the applicable criteria outlined below.



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

6. TMC 13.05.010.A.2. then sets forth the General Criteria that all CUPs must meet as follows:

> General Criteria. Unless otherwise excepted, all conditional use permit applications shall be subject to the following criteria:
>
> a. There shall be a demonstrated need for the use within the community at large which shall not be contrary to the public interest.
>
> b. The use shall be consistent with the goals and policies of the Comprehensive Plan, any adopted neighborhood or community plan, and applicable ordinances of the City of Tacoma.
>
> c. For proposals that affect properties that are listed individually on the Tacoma Register of Historic Places, or are within historic special review or conservation districts, the use shall be compatible and consistent with applicable historic preservation standards, and goals, objectives and guidelines of the historic or conservation districts. Proposed actions or alterations inconsistent with historic standards or guidelines as determined by the Landmarks Commission are a basis for denial.
>
> d. The use shall be located, planned, and developed in such a manner that it is not inconsistent with the health, safety, convenience, or general welfare of persons residing or working in the community. The following shall be considered in making a decision on a conditional property use:
>
> (1) The generation of noise, noxious or offensive emissions, light, glare, traffic, or other nuisances[20] which may be injurious or to the detriment of a significant portion of the community.
>
> (2) Availability of public services which may be necessary or desirable for the support of the use. These may include, but shall not be limited to, availability of utilities, transportation systems (including vehicular, pedestrian, and public transportation systems), education, police and fire facilities, and social and health services.
>
> (3) The adequacy of landscaping, screening, yard setbacks, open spaces, or other development characteristics necessary to mitigate the impact of the use upon neighboring properties.

[20] Nuisances are defined in TMC 8.30.030.



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

Inasmuch as NTNU has challenged essentially all of these criteria (except subsection c. which does not apply here) and the PDS Director's determinations thereon, they shall all be examined in their turn by the Examiner in this *de novo* appeal.

7. **TMC 13.05.010.A.1.a--There shall be a demonstrated need for the use within the community at large which shall not be contrary to the public interest.** The city of Tacoma needs more housing. Increasing the supply of housing in a tight market tends to bring housing costs down generally making housing more affordable in a general sense. The converse is also true that when housing is scarce, the greater the scarcity, the more costs trend upward in general. This is true in both the buyer's market and the renter's market to the point of being beyond reasonable challenge. The Comp Plan acknowledges that "Tacoma's housing growth target for 2040 is 59,800 housing units."[21] On the same page of the Comp Plan's Housing Element it reads:

> Reducing household cost-burdens requires a multi-pronged strategy: 1) expanding and diversifying the housing supply, 2) expanding household prosperity through the location of new housing units in opportunity rich areas and promoting resource efficient housing, 3) direct investments in subsidized and permanently affordable housing, and 4) economic development strategies improving employability, job growth and connecting people to living wage jobs in close proximity to their residence.

The foregoing is a policy statement of need from the City's elected City Council. The Project will add housing units to the above 2040 target thereby expanding the housing supply. It also diversifies the housing supply by adding a housing type to the Tacoma market that is uncommon at present (group housing). The Project aligns squarely with 2) above because it locates new housing units in an opportunity rich area located near universities and commercial

[21] *Comp Plan, Housing Element*, pgs. 5-20.



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

and cultural amenities, and it promotes resource efficient housing through much needed greater density and shared facilities.

8. Providing affordable housing in exact accordance with the Comp Plan, the County, HUD, or some other definition of "affordable" is not a requirement of TMC 13.05.010.A.1.a. NTNU's affordability argument is a little like looking the wrong way through a front-door peephole. It narrows the field of vision in the extreme all while artificially moving the sighted target too far away to the point that it is badly obscured. As NTNU stated in its Post-Hearing Brief, "It is undisputed that Tacoma needs affordable housing."[22] Based on well-established principles of supply and demand economics, adding to the housing supply makes housing more affordable. Tacoma needs more housing types as well. The Project will meet this need. There is very little available group housing in Tacoma. NTNU argues that, because Warner Street's application touted the provision of affordable housing as how it will meet the requirements of TMC 13.05.010.A.1.a, Warner Street must meet a defined programmatic standard of affordability. This argument misses the mark by making it too small. It also adds express requirements to TMC 13.05.010.A.1.a that are not there. TMC 13.05.010.A.1.a is clear on its face—there must only be a demonstrated need for the criterion to be met.[23] "Where a statute [or ordinance] is clear on its face, its plain meaning should 'be derived from the language of the statute alone.'"[24] The Examiner cannot add words[25] to TMC 13.05.010.A.1.a

[22] NTNU Post-Hearing Brief, p. 3.
[23] "Municipal ordinances, such as the ordinances at issue here, are local statutes that are to be construed according to the rules of statutory construction." *Ford Motor Co. v. City of Seattle*, 160 Wn.2d 32, 156 P.3d 185 (2007), *citing McTavish v. City of Bellevue,* 89 Wn. App. 561, 565, 949 P.2d 837 (1998).
[24] *Ford Motor Co.*, 160 Wn.2d at 32.
[25] Decision makers "cannot add words or clauses to an unambiguous statute when the legislature has chosen not to include that language." *State v. J.P., 149 Wn.2d 444, 450, 69 P.3d 318, 320 (20023), citing State v. Delgado, 148 Wn.2d 723, 727, 63 P.3d 792 (2003).*



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

to require the provision of affordable housing as "the demonstrated need" and further to require the determination of affordability according to a certain programmatic definition.

9. The preponderance of evidence in the record shows, and as demonstrated by the goals and policies of the Comp Plan, that there is a need for more housing in Tacoma and also a need for that housing to be affordable. There is also a need for greater choice in housing types. The preponderance of evidence shows that the Project will meet both these needs. Although it is too early to tell whether the Project will meet any set definition of affordability, such is not required, and the preponderance of evidence does show that the Project will positively impact affordability by adding to a strained housing supply. The demonstrated need element of TMC 13.05.010.A.1.a is met.

10. NTNU next argues that the Project will be contrary to the public interest. NTNU pins this argument largely on the neighborhood opposition to the Project. This approach does not justify reversal of the CUP Decision. As the Director correctly pointed out in the Reconsideration Decision, community opposition alone cannot form the basis for land use decisions.[26] Instead, first the Director and now the Examiner is tasked with rendering a decision that is "[b]acked by policies and standards as the law requires."[27] Whether a project is in the public interest is not measured by its popularity in the neighborhood, but rather whether it comports with the stated goals and policies of the Comp Plan and with enacted land use

[26] *Sunderland Servs. v. Pasco*, 127 Wn.2d 782, 797, 903 P.2d 986, 994 (1995)(*While the opposition of the community may be given substantial weight, it cannot alone justify a local land use decision*), *citing Parkridge v. City of Seattle*, 89 Wn.2d 454, 462, 573 P.2d 359 (1978); *Maranatha Mining, Inc. v. Pierce County*, 59 Wn. App. 795, 805, 801 P.2d 985 (1990); *Kenart & Assocs. v. Skagit County*, 37 Wn. App. 295, 303, 680 P.2d 439, review denied, 101 Wn.2d 1021 (1984). See also *Concrete Nor'West v. W. Wash. Growth Mgmt. Hr'gs Bd., 185 Wn. App. 745, 759, 342 P.3d 351, 357 (2015).*

[27] *Maranatha Mining, Inc.*, 59 Wn. App. at 805.



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

regulations.[28] Those policies and laws are the objective legal measure of what is, and is not in the public interest for purposes of a permit decision. As has been referenced above and as detailed in the Director Decision at Finding 39, there are multiple goals and policies in the Comp Plan that show this Project to be in the public interest, even at the proposed location.[29] Given the significant amount of support for the Project in the Comp Plan's goals and policies, the Examiner concludes that the Project is not contrary to the public interest as that interest is meant to be determined in this context.

11. **TMC 13.05.010.A.1.b-- The use shall be consistent with the goals and policies of the Comprehensive Plan and applicable ordinances of the City of Tacoma**. NTNU did not carry its burden to show that the Project is inconsistent with the goals and policies of the Comp Plan. As has already been addressed above, the Project advances multiple City Council goals and policies regarding the need for additional housing, and more particularly affordable housing in Tacoma. A land use proposal need not be consistent in every point and detail of a comprehensive plan to be determined consistent. Comprehensive plans are, as billed, comprehensive. They often contain competing goals and policies simply because of their vast scope. As such, it is common for a project opponent to find some content in a comprehensive plan that supports it opposition. Here, that main opposition came from the Comp Plan's definition of affordable, and that argument has already been addressed above.

---

[28] Public opposition is not entirely a nullity, however, as the Director pointed out at the Reconsideration Decision, pgs. 5~6. Among other factors, the Director took public opposition/concern into account in the consideration of overall Project compatibility with the neighborhood. This consideration is addressed and mitigation measures were applied in the form of the CUP approval conditions, not the least of which was the 29+1 occupancy limit for the Project.

[29] And maybe even especially at a location such as this that is "opportunity rich." For purposes of inclusion in this Decision, the Examiner has included a non-exhaustive listing of Comp Plan goals and policies that support the conclusion herein that the Project is in the public interest at Attachment A, which is incorporated herein by this reference. The list is lifted more or less from the Director Decision, Exhibit C-1.



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

12. "Comprehensive plans serve as guides or blueprints to be used in making land use decisions."[30] "Thus, a proposed land use decision must only *generally conform,* rather than strictly conform, to the comprehensive plan."[31] Here, the Project certainly generally conforms to the Comp Plan which is evident from the number of Comp Plan goals and policies advanced by the Project.[32]

13. NTNU more specifically challenges the Project's consistency with applicable ordinances of the City of Tacoma, specifically the Residential Use Table found at TMC 13.06.020.E.4 (hereafter, the "RUT"). NTNU argues that the types of available housing choices at any given location is "[t]he central focus of the zoning code."[33] That is true as far as it goes, but consulting the TMC 13.06 Use Tables is far from the end in any given inquiry. In any setting, most rules have exceptions, and that is pervasively true in land use regulation as well.

14. NTNU argues that the RUT is the end of any consideration for a proposed group housing project in an R-2 zone, and that the Project must therefore be limited to six occupants. The City and the Applicant disagree with NTNU, and they posit instead that the CUP provisions found at TMC 13.05.010.A.26, titled "Pre-existing non-residential uses in residential districts"[34] are more specifically applicable (to the Project) land use regulations that control over the more general RUT. These potentially conflicting interpretations/applications present a brief foray into the rules of statutory construction/interpretation for the Examiner.

---

[30] *Woods v. Kittitas County*, 162 Wn.2d 597, 613, 174 P.3d 25 (2007), *citing Citizens for Mount Vernon v. City of Mount Vernon,* 133 Wn.2d 861, 873, 947 P.2d 1208 (1997).
[31] *Id*.
[32] *See Attachment A*.
[33] *NTNU Post-Hearing Brief*, p. 5.
[34] For brevity and ease of reference hereafter, TMC 13.05.010.A.26. is referred to as a defined term through the abbreviation "A26."



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

15. When construing or interpreting codified legislation, the decision maker's "[f]undamental objective is to ascertain and carry out the Legislature's [at this level the City Council's] intent, and if the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent."[35] While both the RUT and A26 appear to be plain on their faces when read in isolation, keeping them isolated in this appeal is both imprudent and impossible if both are to be given effect. They both deal with the same subject matter. They are both part of the same legislative scheme because the Project is both a pre-existing non-residential use in a residential district (A26) and it is group housing which appears in the RUT, and also in the use table in A26. "As part of the determination of whether plain meaning can be ascertained, it is appropriate to look at the language in the context of the statutory scheme as a whole."[36] Both the RUT and A26 together comprise the statutory scheme, as a whole, for deciding the issues in this appeal.

16. NTNU argues that if the RUT does not control here to limit the Project to six occupants, the RUT has been eviscerated and the City is ignoring its own zoning regulations. NTNU makes this argument by drawing an artificial distinction between TMC 13.06 and TMC 13.05, claiming that TMC 13.06 is paramount and ignoring the interplay between the two chapters and between the RUT and A26.

17. The Court in *Centrum Fin. Servs., Inc. v. Union Bank, NA,* 1 Wn. App. 2d 749, 759-760, 406 P.3d 1192, 1197 (2017) provided the following list of construction rules that are

[35] *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9, 43 P.3d 4, 9 (2002); *Belleau Woods II, LLC v. City of Bellingham*, 150 Wn. App. 228, 240, 208 P.3d 5, 7 (2009).
[36] *Id*.



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

applicable here (internal cites omitted):[37]

> We construe a statute so that all the language used is given effect, with no portion rendered meaningless or superfluous. A construction that would render a portion of a statute meaningless or superfluous should be avoided. We avoid interpretations that yield unlikely, absurd or strained consequences.

18. TMC 13.05 and TMC 13.06 have to work together. In the past (until 2019), the CUP provisions of the TMC were located in TMC 13.06 at section 640.[38] Relocating them to TMC 13.05 did not sever all interaction between these two chapters of the code such that, as NTNU argues, all inquiry regarding acceptable levels of occupancy in a group housing project ends with the RUT. If any question dealing with zoning in Tacoma had to be answered entirely in isolation to the provisions of TMC 13.06, many provisions of TMC 13.05 would become meaningless and superfluous even though they are meant to interact. The RUT does not become meaningless by still allowing the application of A26 to CUPs that are applied for in pre-existing non-residential uses in residential districts. They are an exception to the RUT as the Director correctly determined. The RUT still applies generally and limits occupancy in newly developed group housing or probably even any group housing that is not subject to a CUP under A26. The CUP Decision and its application of A26 did not make the "Group housing" row of the RUT meaningless or superfluous. Far from eviscerating the RUT, A26 provides only a limited exception for a specific type of conditional use.

19. Conversely, if the RUT's occupancy limit for group housing was ironclad, A26

---

[37] The quote was just too cluttery otherwise. All internal cites are, of course, available in the source at *Centrum Fin. Servs., Inc.,* 1 Wn. App. 2d at 759-760.

[38] *See Code Reviser's note* at *Fn 2* of TMC 13.05.010.A. NTNU cites *Stoebuck & Weaver*, 17 Wash. Prac. Series § 4.22 (2d Ed.) for the proposition that "Zoning ordinances usually spell out conditions under which conditional uses may be made." Since 2019, the TMC puts its CUP provisions in TMC 13.05, not TMC 13.06. This relocation does not support NTNU's argument that by being in TMC 13.05, the CUP provisions are not part of the City's overall zoning paradigm. The *Stoebuck & Weaver* treatise "rule" is not absolute in any event (*see "usually")*.



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

does become largely superfluous. NTNU argues that because the RUT allows group housing with occupancy levels as high as the Project in "the R-4-L, R-4, and R-5 residential districts, and various other commercial districts…"[39] those zones are the only places where such a use can locate. This interpretation renders A26 meaningless and of no effect because group housing is already an outright permitted use in the R-4-L, R-4, and R-5 without a CUP. A26's application comes into play where group housing is not an outright permitted use. In addition, TMC 13.05.010.A.26.d's application of the Neighborhood Commercial (C-1) Zoning District standards that allow for greater occupancy in group housing would be negated, and the language of TMC 13.05.010.A.26.a., which states that "The intent of these provisions is to provide flexibility and development opportunities that promote additional housing opportunities…" would also be nullified. There is nothing flexible or additional about a housing opportunity in an A26 CUP if the occupancy is limited to six.

20. NTNU's touted approach leads to the absurd result that a 1,420 square-foot, single-family dwelling in this general neighborhood could house seven people, while the 4,840 square-foot church building would be limited to six occupants in its reuse.[40] Construing the RUT and A26 in a way that leads to such a strained consequence is not in keeping with the stated intentions of the City Council in the Comp Plan to provide greater numbers and options in available housing, nor is it in keeping with the expressly stated intentions of A26 subsection a. "[t]o provide flexibility and development opportunities that promote additional housing opportunities…"

21. The Director was correct in stating that A26 would control over the RUT as a

[39] *NTNU Post-Hearing Brief*, p. 6.
[40] *See FoF 7, 33*.



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

more specific provision[41] that creates a limited-application exception to the more general RUT, assuming that the RUT and A26 are actually in conflict.[42] That notwithstanding, the RUT and A26 only appear to be in conflict because the RUT does not reference A26 specifically as an exception.[43] The RUT and its six-occupant limit on group housing applies generally. It does not apply to A26 CUPs because A26 allows greater occupancy through the application of the C-1 standards to accomplish "[p]rovid[ing] flexibility and development opportunities that promote additional housing opportunities…" The RUT and A26 are not in conflict—they are simply one example of the multiple instances of there being a specific exception to a general rule in zoning and land use. Application of A26 does not defeat the general applicability of the RUT in non-A26 applications.

22. NTNU made the above argument prehearing under the heading "*A Conditional Use Permit Does Not Authorize Noncompliance with the Zoning Code.*"[44] That is a correct statement again as far as it goes. NTNU cites to a non-binding superior court case that cites two extra-jurisdictional cases for the proposition that "A conditional use (sometimes called a special exception) is not truly an exception to a zoning ordinance, but is a use in compliance with, rather than in variance of, the ordinance and is allowable when the prerequisite facts and

[41] "The general-specific rule is undoubtedly a sound principle of statutory construction where applicable. The problem is that before applying the general-specific rule, we must identify a conflict between the relevant statutes that cannot be resolved or harmonized by reading the plain statutory language in context." *Univ. of Wash. v. City of Seattle*, 188 Wn.2d 823, 833, 399 P.3d 519, 524 (2017).
[42] The Examiner has taught continuing legal education courses in land use and zoning for over ten years now. In doing so, he instructs that any land use inquiry should typically start with a given jurisdiction's land use maps and use tables. The inquiry does not stop there though. One must then dig further into the code because there are almost invariably exceptions to the general designations in the maps and use tables. A26 is just such an exception.
[43] There may be other exceptions to the RUT as well, but they are beyond the scope of this appeal.
[44] *NTNU Hearing Brief*, p. 5.



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

conditions specified in the ordinance are found to exist."[45] The CUP Decision found the prerequisite facts and conditions specified in A26 to exist and be complied with as conditioned. The Examiner agrees. NTNU cites *Weyerhaeuser v. Pierce County*, 95 Wn. App. 883, 885 n.1, 976 P.2d 1279 (1999) for the proposition that "A CUP 'allows a property owner to use his or her property in a manner that the zoning regulations expressly permit under conditions specified in the regulations.'" That is what the CUP Decision does. Arbitrary lines drawn between TMC 13.05 and TMC 13.06 only serve to render A26 meaningless. It was not intended to be. A26 is part of the larger corpus of zoning and development regulations in the TMC. It has express application to the Project. Under the express conditions specified in the A26 regulations, the CUP permit and the Project can be approved. NTNU has not shown that the CUP Decision was erroneous by a preponderance of the evidence, or that applicable laws and regulations demand a different outcome because of the general provisions of the RUT.

23. As a result of all the foregoing, the Examiner is not persuaded that the RUT's six-occupant limit on group housing should nullify the application of A26 and all its provisions to the Project. Doing so would render A26 superfluous and meaningless in the group housing context,[46] and lead to an absurd result. As to this issue, under TMC 13.05.010.A.1.b, the proposed use for group housing is consistent with the applicable ordinances of the City of Tacoma.

//

[45] *Id.*, citing to *McRoberts v. City of Tacoma*, Pierce County Super. Ct. No. 15-2-07340-6 at 10 (May 2, 2016), *quoting Texaco Refining & Marketing v. Valente*, 174 A.D.2d 674 (N.Y.S.2d 1991); *and directing to see also Steen v. County Council of Sussex County*, 576 A.2d 642, 646 (Del. 1989). None of these cases are binding precedent on this appeal.

[46] A26's specific use table expressly allows group housing.



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

24. NTNU also argues that the CUP Decision is erroneous[47] because "The Project does not comply with C-1 Commercial District development standards."[48] NTNU bases this argument on the fact that the existing building does not meet current C-1 setback requirements. This is in addition to NTNU's contention that the C-1 occupancy limits, or lack thereof, should not apply to the CUP/Project. Under general principles of legal nonconformity, the existing building is legal, but nonconforming as a structure. The prior church use was also an established legal nonconforming use. There is a difference between legal nonconforming uses and structures (and lots).[49] Municipal Research and Services Center (MRSC) offers an excellent description of the different types of nonconformity in land use as follows:

> A nonconforming use is a use of property that was allowed under the zoning regulations at the time the use was established but which, because of subsequent changes in those regulations, is no longer a permitted use. A nonconforming structure is a structure that complied with zoning and development regulations at the time it was built but which, because of subsequent changes to the zoning and/or development regulations, no longer fully complies with those regulations. A nonconforming lot is one that, at the time of its establishment, met the minimum lots size requirements for the zone in which it is located but which, because of subsequent changes to the minimum lot size applicable to that zone, is now smaller than that minimum lot size.

Nonconforming uses and structures are not illegal.[50] NTNU is correct that nonconforming uses are generally "disfavored under the law."[51] NTNU is not correct that allowing A26 to

---

[47] Presumably under TMC 13.05.010.A.1.b as being ***in***consistent with the applicable ordinances of the City of Tacoma.
[48] *NTNU Hearing Brief*, p. 3.
[49] https://mrsc.org/explore-opics/planning/administration/nonconforming-uses#:~:text=A%20nonconforming%20use%20is%20a,no%20longer%20a%20permitted%20use.
[50] *Id.*; *Rhod-A-Zalea v. Snohomish County*, 136 Wn.2d 1, 8~9, 959 P.2d 1024 (1998).
[51] *NTNU Hearing Brief*, p. 14, *citing Open Door Baptist Church v. Clark County*, 140 Wn.2d 143, 150, 995 P.2d 33 (2000).



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

incorporate the C-1 standards and also allow the legal nonconforming church building to be reused/repurposed somehow "[f]lips [ ] longstanding Washington policy…on its head."[52] "Washington policy" does not control here.[53]

25. Again, although disfavored, "The right to continue a nonconforming use despite a zoning ordinance which prohibits such a use in the area is sometimes referred to as a 'protected' or 'vested' right.'"[54] Tacoma gives more protection to nonconforming rights than most jurisdictions.[55] The Court in *Rhod-A-Zalea* stated "[i]t is clear that local governments have the authority ***to preserve***, regulate and even, within constitutional limitations, terminate nonconforming uses." [Emphasis added.] The TMC gives wide latitude in most cases to the preservation of nonconforming uses and structure.

26. This latitude is apparent in A26 at subsection b.(3) which states (in context) "To be eligible (for an A26 CUP), all of the following must be applicable to the site: (3) The uses and/or structures are either legally nonconforming or legally permitted." Group housing is legally permitted at the Subject Property both through the RUT and more specifically in the context of the Project, through the use table in A26. The structure is legally nonconforming due to its size and the tenure of its existence at the Site. Lastly, NTNU references TMC 13.05.010.A.26.f as somehow making the CUP Decision erroneous, but the argument is

---

[52] *NTNU Hearing Brief*, p. 14.

[53] *See* MRSC cite above (*State law does not regulate nonconforming uses, structures, or lots, so local jurisdictions are free, within certain constitutional limits, to establish their own standards for regulation of these nonconforming situations*.)

[54] *Rhod-A-Zalea*, 136 Wn.2d at 7~8. The court here goes on to say that "This right, however, refers *only* to the right not to have the use *immediately terminated* in the face of a zoning ordinance which prohibits the use. [Emphasis in the original.]

[55] *See, TMC 13.06.010.L.* In TMC 13.06.010.L.2, the first sentence of the purpose statement for nonconforming uses in Tacoma, states, "The intent of this section is to allow the beneficial development of such nonconforming parcel, to allow the continuation of such nonconforming uses, to allow the continued use of such nonconforming structures, and to allow maintenance and repair of nonconforming structures."



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

unclear and not tied into the facts presented by this permit in any way that makes it persuasive. As a result, on this issue under TMC 13.05.010.A.1.b, there is no inconsistency with the applicable ordinances of the City of Tacoma, such that the CUP Decision should be reversed. NTNU did not meet its burden to show that the legal nonconforming structure status of the building should invalidate the CUP Decision.

27. **TMC 13.05.010.A.1.d.**[56] This subsection is a collection of criteria/factors that fall under the general unifier of being aimed at ensuring the "[u]se is not inconsistent with the health, safety, convenience, or general welfare of persons residing or working in the community." In substance and application, this provision has some commonality with A26 subsection e. which is aimed at ensuring compatibility with the surrounding neighborhood. TMC 13.05.010.A.1.d requires an analysis generally of the proposed CUP's impacts to health, safety, convenience, or general welfare, and also specifically to "noise, noxious or offensive emissions, or other nuisances," the availability to the Project of public services and utilities, and the adequacy of such development characteristics as landscaping, screening, yard setbacks, and open spaces that will help mitigate neighborhood impacts.

28. While it is clear from the many comments in the record from the permit review process and from the testimony of NTNU's three neighborhood witnesses at the hearing that the Project is not a hit with the neighbors, such unpopularity is not the deciding factor in analyzing criteria such as are contained in TMC 13.05.010.A.1.d. The analysis must be based on "[p]olicies and standards as the law requires."[57]

[56] Again, TMC 13.05.010.A.1.c. has no application here. Nothing in the record indicates that the Subject Property is on the Tacoma Register of Historic Places or is within a historic special review or conservation district.
[57] *Maranatha Mining*, 59 Wn. App. at 805.



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

29. The testimony at the hearing from the three neighbors consisted of generalized complaints and concerns regarding noise, parking, traffic, utility capacity, crime, and living conditions within the Project.[58] None of this testimony consisted of actual data matched to the proposed Project to show by a preponderance that the Project will, in fact, be inconsistent with the health, safety, convenience, or general welfare of persons residing or working in the community. None of this testimony rose to the level of overcoming the City's review that culminated in the CUP Decision and determined that the Project would be compatible with the neighborhood as conditioned. The court in *Maranatha Mining*, held that where the only opposing evidence was generalized complaints from displeased citizens, such community displeasure could not become the basis upon which a permit is denied.[59] In *Sunderland Family Treatment Servs.*, the State Supreme Court differentiated between "[w]ell founded fears and those based on inaccurate stereotypes and popular prejudices." NTNU's witnesses' concerns were not backed by objective evidence and did appear to be founded, at least inpart, on popular prejudices.[60] When neighborhood concerns are generalized and do not differ from those that would arise in any neighborhood at the prospect of a new development, "Such fears are not relevant to the consideration of…a conditional use permit."[61] Given the very generalized nature of the complaints of the three neighbors' testimony, the Examiner cannot conclude that

---

[58] As to this last concern, NTNU did not establish any standing to raise concerns about possible future living conditions within the Project. There was no showing of how NTNU or its members would be harmed even if their speculative fears become reality after the Project starts letting out rooms. The witnesses' projected future concerns were also not ripe, being purely speculative at this point. The same is true for NTNU's contention that "*The Applicant's Proposal Overtly Seeks to Prey on Tacoma's Least Fortunate." See NTNU Post-Hearing Brief,* p.6. This argument is speculative and NTNU has not established how it or its members will be particularly harmed based on this unsupported speculative allegation.

[59] *Id.*, at 804.

[60] One reference in particular to the Project appealing to "a certain demographic" seemed to indicate that the neighbors believe the Project will attract "undesirables" to the neighborhood.

[61] *Dep't of Corr. v. City of Kennewick*, 86 Wn. App. 521, 533~534, 937 P.2d 1119 (1997).



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

NTNU has shown by a preponderance that the CUP and the Project will be inconsistent with the health, safety, convenience, or general welfare of persons residing or working in the community.

30. NTNU further alleged that the CUP should be rescinded for not being in the public interest because "*The Project Openly Seeks to Violate Tacoma's Prohibition on Unlawful Discriminatory Housing Practices.*"[62] NTNU bases this allegation on the facts presented at Findings of Fact 26~28 above which are based on information in Warner Street's application materials and other marketing. Warner Street has not actually discriminated against anyone on the basis of age or religion relevant to the CUP and the Project because the Project is not up and running. From that perspective, NTNU's allegations are speculative and not ripe. In any event, Warner Street pledged at the hearing that it will not discriminate on the basis of age, religion or any other prohibited basis once the Project is completed and rooms are being rented. That is enough. If Warner Street breaks this pledge, enforcement action may be engaged, which could include a rescission of its CUP. NTNU's allegations of discrimination are not grounds to reverse the CUP Decision. NTNU's challenges to the CUP Decision's determinations on TMC 13.05.010.A.1.d. are not legally sufficient to warrant reversal, nor does NTNU's evidence meet its burden of proof to show that the CUP Decision/the Project will be "[i]nconsistent with the health, safety, convenience, or general welfare of persons residing or working in the community" by a preponderance.

31. Given all the foregoing, the Examiner concludes that the CUP Decision was correctly decided as to the general CUP criteria/requirements of TMC 13.05.010.A.1. The

[62] *NTNU Hearing Brief*, p. 15.



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

criteria are met. We move then to the criteria/requirements of A26 (TMC 13.05.010.A.26).

32. **TMC 13.05.010.A.26—**In regard to "Pre-existing non-residential uses in residential districts," A26 starts out by stating that:

> A conditional use permit may be granted for the replacement, reuse or expansion of existing structures in a residential zoning district for proposals meeting the General Criteria as well as following criteria. The intent of these provisions is to provide flexibility and development opportunities that promote additional housing opportunities and/or neighborhood-oriented and neighborhood-serving non-residential uses, while ensuring reasonable compatibility with neighborhood scale and character and limiting negative impacts to the neighborhood.

33. The CUP at issue here proposes the reuse of an existing structure in a residential zoning district for a proposal that (as addressed already above) meets the General (CUP) Criteria of TMC 13.05.010.A.1. In A26, only subsection b. and c. contain actual approval criteria. Subsection d. is where the C-1 commercial standards are applied. Subsection e. gives the Director or the Examiner the authority to deny an A26 CUP for incompatibility or to condition the permit to be compatible. Subsection f. states the specific intention that having an approved A26 permit remedies existing nonconforming status under TMC 13.06.010.L.[63] The A26 review criteria in subsection b. and c. will now be addressed.

34. **TMC 13.05.010.A.26.b.(1)—**Subsection b.(1) requires that the permit site be located in a residential zoning district. It is. This criterion is met.[64]

35. **TMC 13.05.010.A.26.b.(2)—**Subsection b.(2) requires that the permit site be less than 1 acre in size. It is. This criterion is met.[65]

36. **TMC 13.05.010.A.26.b.(3)—**Subsection b.(3) requires that the proposed uses

[63] This is another example of interaction between TMC 13.05 and TMC 13.06.
[64] *FoF 6*.
[65] *FoF 5*.



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

and/or structures are either legally nonconforming or legally permitted. They are.[66]

37. **TMC 13.05.010.A.26.b.(4)—**Subsection b.(4) requires that the primary building(s) or site improvements constructed for a non-residential use are still in place, irrespective of whether they continue to be used for their original purpose. The church building is still in place.[67]

38. **TMC 13.05.010.A.26.c.—**The proposed use is for group housing which is an allowed use in the A26.c. use table. The CUP Decision correctly concluded that the permit meets the requirements of TMC 13.05.010.A.26.b. and c.

39. Having concluded that the Applicant's permit satisfies the general criteria for approving a CUP and the specific criteria of A26, the Examiner now turns to NTNU's other arguments to determine whether any of them require reversal of the CUP Decision on other grounds. In its Post-Hearing Brief at page 2, NTNU alleges that the CUP Decision should be reversed because use variances are not authorized under the TMC. NTNU is correct that there is no land use permit or procedure specifically labelled a "use variance" in the TMC. NTNU's argument here boils down to an exercise in semantic labeling, however. CUPs can function similarly to a use variance in certain aspects in the absence of use variances being available in the TMC under that specific label. That absence notwithstanding, the Tacoma City Council has provided the legislative authority to allow the Project through A26 regardless of whether the labeling meets anyone's preferences. The present permit is not a variance process. Second, nothing in the CUP ***changes*** the allowed use here because the adaptive reuse is ***allowed*** through the process set forth in A26.

---

[66] *FoF 7 and 8*.
[67] *FoF 3, 7, and 8*.



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

40. NTNU argues that the Applicant should have applied instead for a "site specific zoning reclassification" under TMC 13.05.010.C. if it wanted a change in use at the Subject Property. As just stated, a change in use is not needed. Both the RUT and the A26 allow this use at the Subject Property.

41. Both Haycock and Schultz testified that A26 operates similarly to a use variance, but nothing in that characterization makes A26 unlawful. NTNU's contention that "'Use variances' are not a recognized application type because they would fundamentally undermine the purpose of the Zoning Code, which determines what property uses are appropriate at what locations," makes a very heavy supposition as to the absence of use variances in the TMC and only cites to a Bellevue case as support. Bellevue's land use and zoning code are not Tacoma's. Applying A26 as the Director did does not undermine a Zoning Code that allows for group housing at the Site. Again, TMC 13.06 and TMC 13.05 do not operate in isolation from one another.

42. Variances are generally of two types, development variances (aka area variances) and use variances. Development variances allow deviation from regulations on things such as height of structures, lot coverage, or lot setbacks and design regulations. These types of area/development variances can be applied for in Tacoma under the provisions in TMC 13.05.010.B.[68] NTNU is correct that TMC 13.05.010.B.1.e. prohibits a development variance from being used to effectuate what would otherwise be a use variance. This proceeding is not for a development variance. Nothing in the Variance section of the TMC prohibits the

[68] Another land use/development section of the TMC that used to be in TMC 13.06 at section .645, but is now in TMC 13.05. *See Code Reviser's note*: Previously codified as 13.06.645 (Variances); relocated to 13.05.010 per Ord. 28613 Ex. G. at *TMC 13.05.010.B. fn 1*.



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

implementation of the CUP provisions at issue here. Using TMC 13.05.010.B.1.e. to obviate the implementation of A26 would lead to undermining the effectiveness of A26 as it was intended to operate. Again, no development variance is even under consideration here and that process is not being used to grant what would otherwise be a use variance. NTNU's argument on this point is unpersuasive.

43. NTNU argues that pending code revisions cannot be applied to this CUP application and that the Applicant unlawfully modified its application which "obsoletes" the TIA. Along this same line, NTNU argued that Warner Street's disavowal of any age or religion requirements for tenancy in the Project also constitute an unlawful modification of the application. NTNU argues that these "modification" should require NTNU to reapply for a CUP.

44. NTNU is correct that pending code revisions cannot be applied at present to this CUP application.[69] Their pendency alone makes them inapplicable. They must first go into effect before the question of their application has any meaning. That said, NTNU's appeal to the principle of vesting has no application here.[70] In *Town of Woodway v. Snohomish Cty.*, 180 Wn.2d 165, 169, 322 P.3d 1219 (2014), our State Supreme Court stated the general rule on vesting as follows: "In Washington, ***developers*** have a vested right to have their development proposals processed under land use plans and development regulations in effect at the time a complete permit application is filed." [Emphasis added.] Vesting grants ***rights*** to

[69] The pending code revisions most in question here are the pending revisions falling broadly under the City's Home in Tacoma II program. These changes could be characterized as sweeping. They have been approved by the Tacoma City Council as of the end of last year, but they do (or perhaps did) not take effect until February 2025. As such, they have no direct application to this appeal.
[70] *NTNU Post-Hearing Brief*, p. 11.



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

developers or landowners, not ***protections*** to third party challengers such as NTNU.[71]

45. In any event, there is no vesting at play in this CUP application or this appeal. Where vesting used to be a common law principle with perhaps broader application, since *Town of Woodway,* vesting is purely statutory and only applies to building permits under RCW 19.27.095(1), subdivision applications under RCW 58.17.033(1), and development agreements under RCW 36.70B.180. The present CUP is none of these. The pending Home in Tacoma II regulations do not apply here simply because they are not effective yet.[72]

46. Before, during and after the hearing, the CUP at issue here is for group housing in the existing structure on the Subject Property. NTNU argues that the Project cannot discriminate by age or religious affiliation. Warner Street agreed at the hearing that it will not do so. Indeed, Warner Street cannot engage in any unlawful discrimination without risking code enforcement action and potentially the rescission of its CUP. Case closed on discrimination? No. With that sword being gone, NTNU then brandishes a shield alleging that Warner Street has unlawfully modified its permit, by agreeing not to discriminate, such that Warner Street must now restart its application process. NTNU cites to TMC 13.05.020.G.2. alleging that "Where a project application has been deemed 'complete,' and an 'applicant proposes modifications to an application which would result in a substantial increase in a project's impacts, as determined by the Department, the application may be considered a new application.'" NTNU then states, "An applicant cannot revise or modify its Project *after*

[71] "Washington adopted this rule because we recognize that development rights are valuable property interests, and our doctrine ensures that 'new land-use ordinances do not unduly oppress development rights, thereby denying a property owner's right to due process under the law.'" *Town of Woodway,* 180 Wn.2d at 173.
[72] Or at least they were not when this was first written. It was the Examiner's understanding that Home in Tacoma II did not become effective until February 25, 2025, but the City posted an email on February 4, 2025, stating that it is effective now.



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

receiving approval from the Director." NTNU's cited language from the TMC requires that a modification "would result in a substantial increase in a project's impacts." NTNU did not show that the Project's legal compliance with discrimination laws would result in increased impacts. The TMC provision is discretionary using "may consider" in any event. NTNU's absolute assertion that a new application is required is incorrect.

47. Agreeing that its Project will not be marketed or tenanted in a way that violates applicable laws does not modify the Project in any material way that would require a restart. The Applicant's agreement to comply with applicable laws does not nullify the TIA as NTNU alleges either. As was testified to at the hearing,[73] even without any type of age requirement for tenancy at the Project, the group housing type will still likely attract a majority of tenants in the age range that would make the appropriate land use category to apply in the TIA "off-campus student housing complex" as was done. There is nothing in the TIA relevant to Warner Street's disavowal of tenancy requirements that now requires a reversal of the CUP Decision.[74]

48. Both NTNU and Warner Street challenge the Director's determination to condition the CUP with the 29+1 occupancy limitation. Warner Street appeals to RCW 35.21.682 claiming it bars any occupancy limitation whatsoever on the Project. NTNU challenges the 29+1 limitation as being too lenient/high because it was calculated incorrectly and because again, the TMC 13.06 RUT should limit occupancy to six, an argument already

[73] *Cain Testimony, Goroch Testimony; Shockey Testimony; Ex. R-9.*

[74] *See FoF 17.* NTNU's arguments such as this one in which NTNU argues that Warner Street should have to start over are a bit perplexing. If such a restart were called for, would it not be likely that Warner Street would submit its restart application after the new Home in Tacoma II regime would be in effect and apply. To the extent NTNU believes the prior land use/zoning regime would still apply to a reset application, NTNU is almost certainly incorrect.

addressed above.

49. Dealing with Warner Street's appeal argument first, RCW 35.21.682 provides as follows:

> Except for ***(a)*** occupant limits on group living arrangements regulated under state law or ***(b)*** on short-term rentals as defined in RCW 64.37.010 and ***(c)*** any lawful limits on occupant load per square foot or ***(d)*** generally applicable health and safety provisions as established by applicable building code or city ordinance, a city or town may not regulate or limit the number of unrelated persons that may occupy a household or dwelling unit.[75]

Warner Street contends that this statute prohibits the 29+1 occupancy limit from the CUP Decision. The statute certainly does prohibit occupancy limits, but the prohibition is subject to four exceptions highlighted by the Examiner's designational additions to the text above. Warner Street argues, by invoking the principle of *expresio unius*[76] that the Legislature's exception in (a) above to "group living arrangements regulated under state law" means that all other group housing is thereby excluded from any exemption and cannot limit occupancy. This is not convincing for two reasons. First, ***group living arrangements*** regulated under state law are not necessarily the same as a ***group housing*** use under the TMC. They may be, but Warner Street's assumption of sameness is not the same as showing that sameness by a preponderance of the evidence. Different verbiage in legislation is usually presumed to evince a different meaning.[77]

---

[75] The sub-indicators (a) through (d) are not in the original RCW text. The Examiner adds them for ease of parsing in addressing Warner Street's argument. The Legislature's rhetorical structure here and use of conjunctions is somewhat tricky. It seems to the Examiner that there are two groupings of exception joined by the "and" between (a) and (b) and (c) and (d). The (a) and (b) exceptions come from state law, while the (c) and (d) exceptions arise at the local level. This seems to be the distinction between the two groupings rather than conjoining the two sides as having to satisfy one exception from both sides of the "and."

[76] *Applicant's Post-Hearing Brief*, p. 3.

[77] "When the legislature uses two different terms in the same statute, courts presume the legislature intends the terms to have different meanings." *Citizens All. for Prop. Rights Legal Fund v. San Juan County*, 184 Wn.2d 428, 440 *citing Densley v. Dep't of Ret. Sys.*, 162 Wn.2d 210, 219, 173 P.3d 885 (2007). The Examiner acknowledges

50. Secondly, and more on point, the Applicant's argument that the (a) exception excludes all other group housing except that which is regulated under state law still does not negate the exception in (d) that allows for limitations under "[g]enerally applicable health and safety provisions as established by applicable building code or city ordinance." The City correctly pointed out in its Post-Hearing Brief[78] (Closing Argument) that TMC 13.05.010.A.1.d requires that "The use shall be located, planned, and developed in such a manner that it is not inconsistent with the health, safety, convenience, or general welfare of persons residing or working in the community." This requirement is not simply a "site-specific compatibility consideration[ ] rather than [a] general[ly] applicable health and safety standard[ ]" as the Applicant argues.[79] To reduce it to something less than a "[g]enerally applicable health and safety provision[ ] as established by applicable building code or city ordinance," is overly reductive and the assertion is unsupported in the Applicant's briefing. Certainly, this requirement is aimed at compatibility as the Applicant claims, but that does not negate its general applicability to all CUP applications as established by ordinance, nor does it negate that neighborhood compatibility is a ***health***, ***safety***, convenience, and general welfare determination.

51. The City's explanation in its Post-Hearing Brief[80] of the legislative history of ESSB 5235, which became RCW 35.21.682. is helpful here in showing that the Legislature was targeting arbitrary occupancy limits. These limits were prevalent in local land use codes previously. The Legislature then codified that generally applicable health and safety

---

that the present circumstance is not precisely one in which two different terms appear in the same statute, but they are two different turns of phrase dealing with presumably related subject matter.

[78] At pages 3 and 4.

[79] *Applicant's Post-Hearing Brief*, p. 3~4.

[80] At pages 1 and 2.



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

provisions, if established by applicable building code or city ordinance, are an exception to the statute because they are not an arbitrary limitation, but rather have non-arbitrary application that is a valid exercise of the police authority of local land use regulation aimed at preserving the health and safety of the community. Greater occupancy tends to have greater impacts in all the areas that TMC 13.05.010.A.1.d. addresses. Greater impacts affect the health and safety of the community. Being able to limit occupancy through ordinances such as TMC 13.05.010.A.1.d. addresses the health and safety of the community. The Examiner concludes that this exception applies here to allow the Director (and now the Examiner) to limit the occupancy of the Project in a way that is not arbitrary or capricious[81] in order to mitigate impacts and preserve community health and safety. Because of this conclusion, the Director does not address other arguments centered on the definitions and applications of the words in the phrase "household or dwelling unit" from the statute. Because this exception applies, the Applicant's appeal is denied.

52. Turning now to NTNU's arguments regarding occupancy, here again, NTNU misses the mark and argues that the Director should not have attempted any balancing between the Comp Plan and the TMC and that his calculations were incorrect. What NTNU misses here is that the calculations made in an attempt to determine a compatible occupancy level for the Project were an exercise of the Director's ***discretion*** in reviewing a ***discretionary*** permit on the way to exercising his authority to condition that permit for compliance with the TMC and to "ensure compatibility between the conditional use and other existing and allowed uses in the

[81] The 29+1 limit was also not arbitrary or capricious as evidence by the process PDS went through to arrive at its limiting number. The process engaged applicable laws and policies in a good faith effort to arrive at a reasonable compatibility condition.



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

same zoning district and in the vicinity of the subject property [sic]." This was not an attempt to arrive at a mathematically unassailable sum that shows the exact occupancy number the TMC allows. The calculations that PDS performed, and that the Director adopted, were reasonable under the circumstances, and conditioning the Project with the 29+1 occupancy limit was a reasonable exercise of the Director's discretion.

53. The Applicant maintains that the record shows the 50+1 occupancy level to be code compliant. Compliance comes in many forms. One of those is analyzing impacts. The Applicant contends that the impacts from a 50+1 occupancy for the Project are acceptable. Regardless of the truth of that statement,[82] the Project must still be compatible with the "[o]ther existing and allowed uses in the same zoning district and in the vicinity of the subject property." The other uses in the same zoning district are single family residential. It is axiomatic that greater occupancy leads to greater impacts. Unfortunately, there was no analysis of a Project of only 29+1 occupants. In the absence of such, PDS made its calculations on what level of occupancy should be allowed on the Subject Property in order to be compatible, while recognizing the magnitude of a 50+1 occupant new use in the neighborhood. Again, the City's approach was reasonable. Certainly, other approaches could have been taken. "Where there is room for two opinions, a zoning action is not arbitrary and capricious when exercised honestly and upon due consideration, even though a different conclusion might have been reached."[83] "Agency action is 'arbitrary and capricious' only if it is willful and unreasoning action in

[82] And not conceding that it is true.
[83] *Barrie v. Kitsap County*, 93 Wn.2d 843, 850, 613 P.2d 1148 (1980), c*iting Bishop v. Houghton,* 69 Wn.2d 786, 420 P.2d 368 (1966).



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

disregard of facts and circumstances.'"[84] The Director's approach and its result were neither arbitrary nor capricious. His determination took into account the facts of the Project and analyzed them against the backdrop of applicable law and policy. The result was a reasonable occupancy limiting condition in conformance with the Director's ability to condition the Project.

54. The Applicant made an additional attack on the 29+1 condition alleging that it was only based on neighborhood opposition.[85] The record shows that neighborhood concerns did play a part in that determination, but then the Director turned to controlling code (the TMC) and informing policy (the Comp Plan) to calculate a reasonable occupancy level and arrive at his decision to limit occupancy to 29+1. The Examiner sees no legal or evidentiary basis (rising to a preponderance) to reverse or revise the Director's determination to limit occupancy to 29+1.

55. NTNU alleges that the Director's failure to mention in the Director Decision that the Project had been determined to be exempt from SEPA review requires that the CUP application/Project be subject to an environmental threshold determination now. NTNU further alleges that the Project should not be exempt from SEPA review under WAC §197-11-800(6) pointing to definitions of "residential facility" and "dwelling unit" as they apply to the Project to make a somewhat convoluted argument. At the hearing, the City indicated that PDS had determined the CUP application to be exempt from SEPA review early on, but conceded that

[84] *Skagit Cy. v. Department of Ecology,* 93 Wn.2d 742, 749, 613 P.2d 115 (1980); *United Parcel Serv., Inc. v. Department of Rev.,* 102 Wn.2d 355, 365, 687 P.2d 186 (1984).

[85] As explained in depth above, generalized neighborhood complaints cannot be the actual or only basis for denying a permit such as was done in *Maranatha Mining,* 59 Wn. App. at 805. Both *Sunderland* (*127 Wn.2d* at 797) and *Concrete Nor'West* (185 Wn. App. at 759) state that community opposition can be taken into some account, which is what the Director did here.



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

this determination was not referenced in the Director Decision. It was addressed in the Reconsideration Decision.[86]

56. Under WAC §197-11-305(2), "An agency is not required to document that a proposal is categorically exempt." The City's failure to mention its exemption determination in the Director Decision is at worst harmless error because any reference was not required.

57. WAC §197-11-800 subsection (6) ("Subsection 6") categorically exempts certain land use decisions "[f]rom threshold determination and EIS requirements, subject to the rules and limitations on categorical exemptions contained in WAC §197-11-305." The present appeal concerns a land use decision. Subsection 6 at (b) provides the following:

> **(b)** Other land use decisions not qualified for exemption under subsection (a) (such as a home occupation or change of use) are exempt provided:
>
> **(i)** The authorized activities will be conducted within an existing building or facility qualifying for exemption under WAC §197-11-800 (1) and (2); and
>
> **(ii)** The activities will not change the character of the building or facility in a way that would remove it from an exempt class.

Here, the "authorized activities will be conducted within an existing building or facility." The only question that remains then is whether that existing building or facility qualifies for exemption under WAC §197-11-800 (1) and (2).

58. Backing up for just a moment from the rules to the statute, RCW 43.21C.229, in an attempt "[t]o accommodate infill and housing development and thereby realize the goals and policies of comprehensive plans adopted according to chapter 36.70A RCW," allows GMA[87] cities and counties to establish categorical exemptions from SEPA review. WAC §197-11-

[86] *FoF 35*.
[87] Growth Management Act, RCW 36.70A.



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

800(1)(a) furthers this by allowing the city or county in which a project is located to establish an exempt level under (c) of WAC §197-11-800(1). The City did just that at TMC 13.12.310, which exempts "The construction or location of any residential structure of twenty or fewer dwelling units" at subsection A. The Project will be a residential structure. NTNU argues that the Project does not offer any dwelling units pointing to the definition thereof at TMC 13.01.060.D. Certainly zero dwelling units is less than twenty in which case TMC 13.12.310.A. still applies. A more reasoned approach would look at the number of occupancy rooms (bedrooms) in the Project and equate each to a dwelling unit within the Project. At a target of 50+1 occupants, the Project proposed 11, 10 general occupancy rooms plus the manager/director apartment. This is still less than 20. Revising the Project to 29+1 is unlikely to yield more. The City did not err in its determination that the Project is categorically exempt from SEPA. Omitting any reference to that determination in the Director Decision was not required and was harmless in any event.[88]

59. Lasty, NTNU argues that the Hearing Examiner should retain jurisdiction over the Project "[a]nd require the Applicant to return to the Examiner prior to issuance of an occupancy permit" in order to ensure compliance in various areas. City staff will still be in contact with the Project on the way to issuing an occupancy permit. As the Applicant acknowledged at the hearing, applicable laws require compliance. If the Applicant fails in this regard, the Examiner's jurisdiction over the failure to comply with permit conditions, as well as his jurisdiction over code enforcement issues in the City generally are sufficient oversight here without any special recitation here of retained jurisdiction. If there is a compliance issue,

[88] It is only harmless and not harmless error because it was not an error under WAC § 197-11-305(2).



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

the City can issue a Notice of Violation (NOV). The Applicant would then either comply, rectifying the violation, or appeal the NOV which would bring the matter before the Examiner for a decision on appeal.

60. Any Finding of Fact herein that is more appropriately determined to be a Conclusion of Law is hereby adopted as such.

Based on the foregoing, the Examiner now makes the following:

## DECISION AND ORDER[89]

1. Warner Street's challenge to the CUP Decision's occupancy limitation of 29 general residents plus one manager/director is denied. RCW 35.21.682 allows for limitations based on "[g]enerally applicable health and safety provisions as established by applicable building code or city ordinance." This is what the Director did.

2. NTNU's appeal alleging that "The Project fails to comply with the zoning code"[90] is denied. NTNU's artificial isolation of TMC 13.06 from TMC 13.05 does not comport with the rules of statutory construction and would render TMC 13.05.101.A.26. meaningless. That was not the City Council's intention. The Director followed the TMC in his application of A26 to the CUP application here. The appeal on this issue is denied.

3. NTNU's appeal issue alleging that "The Applicant has failed to show how the standards for issuance of a CUP under both the CUP general criteria and TMC 13.05.010.A.26

[89] This Decision and Order section specifically addresses the parties' issues raised in their notices of appeal. The issues changed and evolved somewhat as the appeal process went on and those evolutions have been addressed herein, but the original appeal issues are specifically addressed in summary here.
[90] *NTNU Notice of Appeal*, p. 2.



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

("Section 26") have been met"[91] is denied for the reasons and based on the analysis and authority set forth above. Both the general and specific CUP criteria were met.

4. Lastly, NTNU's appeal issue alleging the failure "[t]o perform an environmental threshold determination before considering and approving the CUP…"[92] is denied. The Project is exempt.

GIVEN THE FOREGOING, the CUP Decision is upheld and remains in full force and effect.

**DATED** this 5th day of February 2025.

**JEFF H. CAPELL, Hearing Examiner**

[91] *Id.*
[92] *Id.*



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

## RECONSIDERATION/APPEAL OF EXAMINER'S DECISION

**RECONSIDERATION:**

Any aggrieved person or entity having standing under the ordinance governing the matter, or as otherwise provided by law, may file a motion with the Office of the Hearing Examiner requesting reconsideration of a decision or recommendation entered by the Examiner. A motion for reconsideration must be in writing and must set forth the alleged errors of procedure, fact, or law and must be filed in the Office of the Hearing Examiner within l4 calendar days of the issuance of the Hearing Examiner's decision/recommendation, not counting the day of issuance of the decision/recommendation. If the last day for filing the motion for reconsideration falls on a weekend day or a holiday, the last day for filing shall be the next working day. The requirements set forth herein regarding the time limits for filing of motions for reconsideration and contents of such motions are jurisdictional. Accordingly, motions for reconsideration that are not timely filed with the Office of the Hearing Examiner or do not set forth the alleged errors shall be dismissed by the Hearing Examiner. It shall be within the sole discretion of the Hearing Examiner to determine whether an opportunity shall be given to other parties for response to a motion for reconsideration. The Hearing Examiner, after a review of the matter, shall take such further action as he/she deems appropriate, which may include the issuance of a revised decision/recommendation. (*Tacoma Municipal Code* 1.23.140)

**APPEAL TO SUPERIOR COURT OF EXAMINER'S DECISION:**

**N O T I C E**

Pursuant to the Official Code of the City of Tacoma, Section 1.23.160, the Hearing Examiner's decision is appealable to the Superior Court for the State of Washington. Any court action to set aside, enjoin, review, or otherwise challenge the decision of the Hearing Examiner shall be commenced within 21 days of the entering of the decision by the Hearing Examiner, unless otherwise provided by statute.



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

## ATTACHMENT A – COMP PLAN GOALS AND POLICIES SUPPORTIVE OF THE PROJECT

**GOAL UF-1**[93] Guide development, growth, and infrastructure investment to support positive outcomes for all Tacomans.

Policy UF-1.3 Figure 3 lists the target development density for Low-Scale Residential as 10-25 dwelling units/net acre.

Policy UF-1.5 Strive for a built environment designed to provide a safe, healthful, and attractive environment for people of all ages and abilities.

Policy UF-1.6 Support energy-efficient, resource-efficient, and sustainable development and transportation patterns through land use and transportation planning.

Policy UF-1.11 Evaluate the impacts of land use decisions on the physical characteristics of neighborhoods and current residents, particularly underserved and under-represented communities. a. Avoid or reduce negative development impacts, especially where those impacts inequitably burden communities of color underserved and under-represented communities, and other vulnerable populations.

**Goal DD-2**[94] Ensure that parking area design and management balances the needs of all users, supports modal priorities, and is responsive to site context.

Policy DD-2.3 Utilize landscaping elements to screen and shade parking lots, loading areas, utility service and storage from the street view and adjacent uses, to create visual appeal, de-emphasize the prominence of the parking lot, and to enhance the pedestrian environment.

Policy DD-2.4 Promote an efficient use of developable space by minimizing the amount of land devoted to automobile parking. Strategies may include: transportation demand management, parking reductions for locating near transit services, reducing minimum parking requirements or implementing maximum parking requirements, utilizing multilevel parking structures and on-street parking to meet demand, use of compact stalls, implementing a parking management strategy including shared parking facilities, and other methods as appropriate.

[93] *Comp Plan Urban Form*, Page 2-3, with policies on Pages 2-14 to 2-17.
[94] *Comp Plan Design and Development*, Page 3-7, with policies noted on Page 3-8.



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

Policy DD-2.6 Recognize the availability and cost of parking substantially influences public transit's viability as a transportation alternative and is a substantial barrier to meeting housing supply and affordability goals.

**GOAL DD-4**[95] Enhance human and environmental health in neighborhood design and development. Seek to protect safety and livability, support local access to healthy food, limit negative impacts on water and air quality, reduce carbon emissions, encourage active and sustainable design, and integrate nature and the built environment.

Policy DD-4.2 Encourage more housing choices to accommodate a wider diversity of family sizes, incomes, and ages. Allow adaptive reuse of existing buildings and the creation of diverse infill housing types such as ADUs to serve the changing needs of a household over time.

Policy DD-4.3 Encourage residential infill development that complements the general scale, character, neighborhood patterns, and natural landscape features of neighborhoods. Consider building forms, scale, street frontage relationships, setbacks, open space patterns, and landscaping. Allow a range of architectural styles and expression, and respect existing entitlements.

Policy DD-4.8 Provide on-site open space for all types of residential uses. Specifically:

a. For single family uses and duplexes, this includes private rear-yard areas and landscaped front yards.

b. For triplexes and townhouses, this includes landscaped yard space, patios, balconies, rooftop decks, porches, and/or common open spaces.

c. For multifamily uses, this includes balconies, patios, rooftop decks, and/or shared common open space.

Policy DD-4.10 Utilize landscaping elements to improve the livability of residential developments, block unwanted views, enhance environmental conditions, provide compatibility with existing and/or desired character of the area, and upgrade the overall visual appearance of the development.

Policy DD-4.17 Strengthen landscaping, streetscape planting and other standards and incentives, and take other actions called out in the Urban Forestry Management Plan to ensure that housing development supports Tacoma's urban forestry goals.

[95] *Comp Plan Design and Development*, Page 3-10, with policies on pages 3-10 to 3-14.



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

**GOAL DD-7**[96] Support sustainable and resource efficient development and redevelopment.

> Policy DD-7.1 Encourage rehabilitation and adaptive reuse of buildings, especially those of historic or cultural significance, to conserve natural resources, reduce waste, and demonstrate stewardship of the built environment.

**Goal DD-9**[97] Support development patterns that result in compatible and graceful transitions between differing densities, intensities and activities.

> Policy DD-9.1 Create transitions in building scale in locations where higher-density and intensity development is adjacent to lower scale and intensity zoning. Ensure that new high-density and large-scale infill development adjacent to single dwelling zones incorporates design elements that soften transitions in scale and strive to protect light and privacy for adjacent residents.

**Goal H-1**[98] Promote access to high-quality affordable housing that accommodates Tacomans' needs, preferences, and financial capabilities in terms of different types, tenures, density, sizes, costs, and locations.

> Policy H-1.3 Encourage new and innovative housing types that meet the evolving needs of Tacoma households and expand housing choices in all neighborhoods. These housing types include single-family dwelling units; multi-dwelling units from duplexes to multifamily developments; small units; ADUs; pre-fabricated homes such as manufactured, modular; co-housing and clustered housing.

**GOAL H-3**[99] Promote safe, healthy housing that provides convenient access to jobs and to goods and services that meet daily needs. This housing is connected to the rest of the city

and region by safe, convenient, affordable multimodal transportation.

**GOAL H-4**[100] Support adequate supply of affordable housing units to meet the needs of residents vulnerable to increasing housing costs.

---

[96] *Comp Plan Design and Development*, Page 3-22.
[97] *Comp Plan Design and Development*, Page 3-24.
[98] *Comp Plan Housing*, Page 5-10.
[99] *Comp Plan Housing*, Page 5-16.
[100] *Comp Plan Housing*, Page 5-22.



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org

Policy H-4.1 Preserve and produce affordable housing to meet the needs that are not met by the private market by coordinating plans and investments with housing providers and organizations.

Policy H-4.5 Encourage income diversity in and around centers and corridors by allowing a mix of housing types and tenures.

Policy H-4.7 Promote a range of affordable housing strategies that extend from basic emergency shelter for the homeless to temporary transitional housing to permanent rental housing and to home ownership.

**GOAL H-5**[101] Support access to resource efficient and high performance housing that is well integrated with its surroundings, for people of all abilities and income levels.

Policy H-5.1 Support development and maintenance of housing, especially multi-dwelling housing, that protects the health and safety of residents and encourages healthy lifestyles and active living.

Policy H-5.11 Promote public acceptance of new housing types in historically lower density areas by ensuring that they are well designed and compatible with the character of the neighborhoods in which they are located through a robust design review process.

**GOAL H-6**[102] Ensure equitable access to opportunity and housing choice throughout the City's neighborhoods.

**GOAL H-7**[103] Strive to meet multiple goals through housing actions, consistent with Tacoma's vision for neighborhoods that are inclusive, welcoming to our diverse community, resilient, thriving, distinctive and walkable, including robust community amenities and a range of housing choices and costs.

[101] *Comp Plan Housing*, Page 5-25.
[102] *Comp Plan Housing*, Page 5-2.
[103] *Comp Plan Housing*, Page 5-2.



City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3702
Ph:(253)591-5195
hearing.examiner@cityoftacoma.org