

OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

REPORT AND RECOMMENDATION

TO THE CITY COUNCIL

APPLICANT: ROYAL CONSTRUCTION GROUP, LLC, a Washington limited liability company (hereinafter the “Applicant” or “RCG”), is the current record owner of the real property subject to the requested rezone, and RCG is the applicant for the same. RCG was represented at the hearing by Robert Plummer and Dan Pasechnik.¹ For purposes of this Report and Recommendation, the references to “ROYAL CONSTRUCTION GROUP, LLC/RCG” and/or the “Applicant” also include any employees, agents and/or contractors of the Applicant in regard to conditions and compliance issues set forth herein, and in regard to the development of the Subject Property (defined below).

HEARING EXAMINER FILE NO: HEX2021-002

SUMMARY OF REQUEST:

This Report and Recommendation addresses a request to rezone one parcel of real property from R-2 One-Family Dwelling District to C-1 Neighborhood Commercial for the eventual construction of a 12-unit apartment building with parking and landscaping on an approximately 12,000 square-foot site (the “Project”). The rezone application required review under the State Environmental Policy Act (“SEPA”). The Planning and Development Services (“PDS”) Director issued a final determination of nonsignificance (“DNS”) on January 19, 2021. The DNS was not appealed.

LOCATION:

The Subject Property is located in South Tacoma at the southwest corner of South 79th Street and Pacific Avenue, at the street address of 7904 Pacific Avenue, and it is assigned Pierce County tax parcel number 7680000250 (the “Subject Property” or the “Site”).

RECOMMENDATION:

The Hearing Examiner recommends approval of the requested rezone, subject to any conditions set forth herein below. Under the authority set forth in Tacoma Municipal Code (“TMC”) sections 1.23.050.A.1, 1.23.130, and 13.05.110., the Examiner heard testimony and reviewed the presented record regarding requested rezone. The Examiner’s recommendation of approval is based on the hearing and the hearing record.

¹ See Ex. C-2 Property Owner Free Consent Form.

PUBLIC HEARING:

After reviewing the Preliminary Report submitted by PDS (herein the “PDS Report”—*Ex. C-1*) and all attendant information on file, the Hearing Examiner convened a public hearing on the rezone request on March 4, 2021.²

Testimony at the hearing was taken from all of the following:

City of Tacoma

Shirley Schultz, Principal Planner

RCG

Robert Plummer, Applicant’s agent.

No non-party members of the public appeared at the hearing to offer comment/testimony.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION:

FINDINGS OF FACT:

1. RCG submitted an application through its duly designated representative requesting a rezone of one parcel of real property from R-2 One-Family Dwelling District to C-1 Neighborhood Commercial intending to construct a 12-unit apartment building with parking and landscaping on an approximately 12,000 square-foot site (again, the “Subject Property” or the “Site”). All parking in the Project would be accessed from South 79th Street. The rezone application also required review under SEPA; PDS conducted this review prior to the rezone hearing. The PDS Director issued the above referenced DNS on January 19, 2021. The DNS was not appealed. There were no mitigation or other conditions that were made part of the SEPA review and approval. *Schultz Testimony; Ex. C-1, Ex. C-3, Ex. C-5.*

2. The Subject Property is a single parcel measuring 100 feet along Pacific Avenue, and 116 feet in depth from east to west. The total Site area is 11,600 square feet (0.266 acres +/-). The Subject Property slopes downward from Pacific Avenue, with an approximate 10-foot grade difference from east to west. The Site is comprised of what was historically two platted lots, and a portion of a third. The Site is currently vacant, and historic aerial photos show that to be the case since at least 1990. Prior permit records show the Site in use from the 1920s through the 1970s. *Schultz Testimony; Ex. C-1, Ex. C-5.*

3. The Site is bounded by Pacific Avenue on the east, and South 79th Street on the north. Pacific Avenue is a principal arterial and a state highway (Washington State Route 7). It is also designated as a pedestrian street by the City’s Comprehensive Plan (the “Comp Plan”) and the Land Use

² Due to National, State of Washington and City of Tacoma (“City”) Proclamations of Emergency caused by the COVID-19 virus, the City closed the Tacoma Municipal Building to the public until further notice on or around March 17, 2020. As a result, the public hearing in this matter was conducted virtually using Zoom teleconferencing with both internet visual and audio access, as well as separate telephonic (only) access via call in number on Zoom.

Code (TMC 13.06.010.D). South 79th Street is a 60-foot-wide residential street. Pacific Avenue is fully built-out with curb, gutter, and sidewalk. South 79th Street has curb and gutter, but no sidewalk along the Site's frontage. The existing driveway is substandard and will be rebuilt as part of the Project. *Id.*

4. Pierce Transit bus stops are located on Pacific Avenue at South 78th and South 80th Streets (Route 1). Route 1 serves Pacific Avenue with 15-minute peak-hour service; this corridor is planned for bus rapid transit within the next few years. *Ex. C-1.*

5. The surrounding area is a diverse neighborhood with commercial-retail, single-family and multi-family residential uses present. To the west of the Site is a single-family home, to the north and south are office uses, and to the east are commercial and multifamily uses. Ryan's Park is located approximately 1000 feet (2.5 blocks) to the west of the Site, at South 80th Street and South D Street. *Ex. C-1.*

6. The Site was originally zoned R-2 One-Family Dwelling District in 1953 when the City's zoning code was first established. Permits show a residential use on the Subject Property in the early to middle part of the 20th century; but, as referenced above, the Subject Property has been vacant since at least 1990. There have been multiple rezones of other properties in the vicinity along Pacific Avenue. The area across Pacific Avenue and north of South 79th Street was designated the "Upper Pacific Crossroads Mixed Use District" in the early 1990s in anticipation of transit-oriented dense development. The area south of the Subject Property is a patchwork of commercial and residential zoning. *Id.*

7. The City's Comprehensive Plan Future Land Use Map designates the Subject Property as being located within the "Neighborhood Commercial" land use category. This designation would support zoning of C-1, as proposed. Lower density multi-family use, such as that proposed by the Project, is allowed in C-1 zoned areas. The target density for such is 14-36 dwelling units per net acre. The proposed density for the Subject Property is about 45 dwelling units per acre, which would be met by having 12 units on 0.266 acres, as proposed in the Project. *Schultz Testimony; Ex. C-1.*

8. Review under SEPA was required on the way to this Report and Recommendation because rezone applications are not exempted from SEPA review as minor land use decisions. *Ex. C-1, Ex. C-3.*

9. Pursuant to the State's SEPA Rules (WAC 197-11) and the City of Tacoma's Environmental Code (TMC 13.12), the PDS Director issued (the already referenced) Determination of Environmental Non-Significance for the proposed Project on January 19, 2021 (Exhibit C-3). The DNS was based on a review of the Applicant's Environmental Checklist, a site survey, and other supporting information on file with PDS. The appeal deadline for the DNS was February 2, 2021. No appeals were filed. One comment/review letter was received from the Washington State Department of Ecology, which is in the hearing record as part of Exhibit C-6. The letter details advisory conditions and comments related to development of the Site. The Applicant has been advised of additional permitting requirements (as applicable). *Ex. C-1, Ex. C-3, Ex. C-6.*

10. PDS determined RCG's application to be technically complete on November 24, 2020. The Public Hearing Notice was issued on December 22, 2020, and was mailed to owners of record and/or taxpayers of record for properties within 400 feet of the Site and mailed and/or emailed to the South End

Neighborhood Council, qualified neighborhood and business groups, City staff, and outside agencies. In addition, property information signs were posted on the Subject Property, and the Public Hearing Notice was posted on the City's website along with the application documents. *Ex. C-1.*

11. No non-party members of the public appeared at the hearing to testify nor have any written or telephonic public comments been received.

12. As part of the review process for the Project, PDS provided notification of this rezone request to various City departments/divisions, and outside governmental and non-governmental agencies. Departmental comments and requirements regarding this proposal are included in the PDS Report. These agencies/departments/divisions recommended important conditions they believed would be properly attached to the Project if the rezone is approved by the City Council. As a result, PDS left most of the comments and/or conditions to be more appropriately addressed as part of the permit/entitlements process for the Applicant's intended Project, as opposed to being expressly attached to this rezone Recommendation and Report and made part of any approval. *Schultz Testimony; Ex. C-6.*

13. The Applicant did not express any objection to the City's conditions, as set forth in the hearing record primarily in Exhibit C-6. Testimony indicated that, if the rezone is approved, the Project will commence quickly. Plummer highlighted features of the Project in his testimony, such as the building's accessibility features for differently-abled persons, and design features intended to allow the Project to blend aesthetically with the surrounding neighborhood. *Schultz Testimony, Plummer Testimony.*

14. The PDS Report (Exhibit C-1) accurately describes the requested rezone and the Project, general and specific facts about the Site, applicable sections of the Comp Plan, and applicable regulatory codes. The PDS Report is marked as Exhibit C-1, and by this reference, is incorporated herein as though fully set forth. To the extent that anything in the PDS Report conflicts with the contents of this Report and Recommendation, this Report and Recommendation shall control.

15. Any conclusion of law herein which may be more properly deemed a finding of fact ("FoF") is hereby adopted as such.

CONCLUSIONS OF LAW:

1. The Hearing Examiner has jurisdiction over the subject matter of this proceeding to conduct a hearing and make a recommendation to the City Council in regard to a reclassification (rezone) request. The final decision on any requested reclassification is made through an ordinance by the City Council. *TMC 1.23.050.A.1 and TMC 13.05.*

2. The requirements of SEPA have been met by the City's issuance of the DNS,³ which has not been appealed.

3. Under TMC 13.05.030.C.b (formerly TMC 13.06.650.B), the applicant for a rezone is required to demonstrate consistency with all of the following criteria:⁴

³ See TMC 13.12.430.

⁴ Numbering of the criteria is kept the same as in the TMC for consistency.

- (1) That the change of zoning classification is generally consistent with the applicable land use intensity designation of the property, policies, and other pertinent provisions of the Comprehensive Plan.
- (2) That substantial changes in conditions have occurred affecting the use and development of the property that would indicate the requested change of zoning is appropriate. If it is established that a rezone is required to directly implement an express provision or recommendation set forth in the Comprehensive Plan, it is unnecessary to demonstrate changed conditions supporting the requested rezone.
- (3) That the change of the zoning classification is consistent with the district establishment statement for the zoning classification being requested, as set forth in this chapter.
- (4) That the change of the zoning classification will not result in a substantial change to an area-wide rezone action taken by the City Council in the two years preceding the filing of the rezone application. Any application for rezone that was pending, and for which the Hearing Examiner’s hearing was held prior to the adoption date of an area-wide rezone, is vested as of the date the application was filed and is exempt from meeting this criteria.
- (5) That the change of zoning classification bears a substantial relationship to the public health, safety, morals, or general welfare.

The Applicant bears the burden of establishing by a preponderance of the evidence that the requested rezone conforms to all of the foregoing criteria, which are addressed below in turn. *TMC 1.23.070.A*

4. Consistency with the Comp Plan—TMC 13.05.030.C.b.(1) *“That the change of zoning classification is generally consistent with the applicable land use intensity designation of the property, policies, and other pertinent provisions of the Comprehensive Plan.”*

As mentioned above (*FoF 7*), the Subject Property currently falls within an area the Comp Plan designates as “Neighborhood Commercial.” The requested change in classification to C-1 Neighborhood Commercial, as proposed, is entirely “consistent with the applicable land use intensity designation of the property” because it would reclassify the Subject Property from a single-family classification to C-1 classification as the Comp Plan intends. Approving the Applicant’s request here simply catches classification of the Subject Property up with what is already memorialized in the Comp Plan. The C-1 classification allows for multi-family residential use such as proposed by the Applicant’s Project. The presently allowed single-family residential use is not in keeping with the Comp Plan’s intentions for the area.

TMC 13.05.030.C.b.(1) further requires general consistency with the “[p]olicies, and other pertinent provisions of the Comprehensive Plan.” Both the Applicant’s submissions (Exhibit C-4) and the PDS Report (Exhibit C-1) set forth numerous Comp Plan policies and goals that are advanced by the

Applicant's intended use of the Subject Property. A review of those policies and goals makes it easy to conclude that the proposed use of the Subject Property is generally consistent with the Comp Plan (*See highlighted sections in Exhibit C-8*). A representative sampling of these consistent goals and policies includes all the following:

- (1) ***Policy UF-1.4*** Direct the majority of growth and change to centers, corridors, and transit station areas, allowing the continuation of the general scale and characteristics of Tacoma's residential areas.
- (2) ***Policy UF-9.1*** Encourage transit-oriented development and transit-supportive concentrations of jobs, housing, and multimodal connections, at and adjacent to high-frequency and high-capacity transit stations.
- (3) ***Policy UF-9.7*** Encourage concentrations of mixed-income residential development and supportive commercial services close to high capacity transit stations that are not located in a center.
- (4) ***Policy UF-10.5*** Enhance Avenues as distinctive places with transit-supportive densities of housing and employment, and high-quality transit service and pedestrian and bicycle facilities that are models of ecologically-sensitive urban design.
- (5) ***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 accessory dwelling units to serve the changing needs of a household over time.
- (6) ***Policy DD-4.3*** Encourage residential infill development that complements the general scale, character, 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.
- (7) ***Policy DD-4.6*** Promote the site layout of residential development where residential buildings face the street and parking and vehicular access is provided to the rear or side of buildings. Where multifamily developments are allowed in established neighborhoods, the layout of such developments should respect the established pattern of development, except where a change in context is desired per the goals and policies of the Comprehensive Plan.
- (8) ***Policy DD-4.8*** Provide on-site open space for all types of residential uses.
Specifically, . . . c. For multifamily uses, this includes balconies, patios, rooftop decks, and/or shared common open space.
- (9) ***Policy DD-4.9*** Promote multifamily residential building design that is compatible with the existing patterns of the area.

(10) **Policy DD–4.11** Encourage the diversity of design in multi-unit residential developments. Examples include provisions for a diversity of façade treatments and architectural styles that can add visual interest and diversity to the neighborhood.

(11) **Policy DD–5.3** Promote building and site designs that enhance the pedestrian experience in centers and corridors, with windows, entrances, pathways, and other features that provide connections to the street environment.

(12) **Policy DD–5.6** Site and design new developments with safe, convenient, connected and attractive pedestrian access.

(13) **Policy DD–5.8** Improve the livability of places and streets with high motor vehicle volumes. Encourage landscaped front setbacks, street trees, and other design approaches to buffer residents from street traffic.

(14) **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.

(15) **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; small units; accessory dwelling units; pre-fabricated homes such as manufactured, modular; co-housing and clustered housing.

(16) **Policy H–3.2** Locate higher density housing, including units that are affordable and accessible, in and around designated centers to take advantage of the access to transportation, jobs, open spaces, schools, and various services and amenities.

(17) **Policy H–3.3** Promote transit supportive densities along designated corridors that connect centers, including duplex, triplex, cottage housing, and townhouses.

(18) **Policy EN–1.11** Coordinate and partner with federal, state, regional and local governmental jurisdictions and the public to manage the City’s environmental assets.

(19) **Policy EN–1.21** Encourage the identification and characterization of all contaminated sites which adversely affect the City’s shoreline areas, surface waters, groundwater and soils.

Approving the requested rezone to allow the Subject Property to be developed with a low-density, multi-family use, brings the Subject Property into conformance with its current Comp Plan designation and promotes the various Comp Plan goals and policies set forth in Exhibit C-8 of the City’s submittals, as

sampled above. As a result, the Examiner concludes that the standards set forth in TMC 13.05.030.C.b.(1) are met.

5. Substantial Changes—TMC 13.05.030.C.b.(2) *“That substantial changes in conditions have occurred affecting the use and development of the property that would indicate the requested change of zoning is appropriate. If it is established that a rezone is required to directly implement an express provision or recommendation set forth in the Comprehensive Plan, it is unnecessary to demonstrate changed conditions supporting the requested rezone.”*

In regard to the rezone criteria found in TMC 13.05.030.C.b.(2) that deals with substantial change, the City made the following analysis:

The zoning and use pattern in the area has changed significantly since the adoption of the zoning in 1953. The Comprehensive Plan designation for the area is “Neighborhood Commercial” and this reclassification implements that designation.
Ex. C-1.

The Examiner agrees with the City that granting the requested rezone “[i]mplement[s] an express provision or recommendation set forth in the Comprehensive Plan, [making] it [] unnecessary to demonstrate changed conditions supporting the requested rezone.”⁵ As such, the second prong of TMC 13.05.030.C.b.(2) is met.

6. District Establishment Statement— TMC 13.05.030.C.b.(3) *“That the change of the zoning classification is consistent with the district establishment statement for the zoning classification being requested, as set forth in this chapter.”*

PDS staff had the following to say regarding this criterion:

The intent of the C-1 Neighborhood Commercial District is “to contain low intensity land uses of smaller scale, including office, retail, and service uses. It is characterized by less activity than a community commercial district. Building sizes are limited for compatibility with surrounding residential scale. Residential uses are appropriate. Land uses involving vehicle service or alcohol carry greater restriction. This classification is not appropriate inside a plan designated mixed-use center or single-family intensity area.” [Emphasis in the original.]

As noted in the discussion of the Comprehensive Plan goals and policies, above, the site proposed for rezone to C-1 implements the Comprehensive Plan future land use designation, with the proposed development meeting the development standards to ensure compatibility with neighboring uses and development. Applicable zoning regulations are excerpted in Exhibit C-7. *Ex. C-1.*

⁵ Nonetheless, there is also evidence in the record (*see FoF 6*) that supports concluding that substantial changes in conditions surrounding the Subject Property along Pacific Avenue warrant the change in classification. These changed conditions are, no doubt, at least part of the basis for the Comp Plan designating this area Neighborhood Commercial.

The City's analysis is correct. The TMC 13.05.030.C.b.(3) criterion is satisfied.

7. Recent Area-Wide Rezone—TMC 13.05.030.C.b.(4) *“That the change of the zoning classification will not result in a substantial change to an area-wide rezone action taken by the City Council in the two years preceding the filing of the rezone application. Any application for rezone that was pending, and for which the Hearing Examiner’s hearing was held prior to the adoption date of an area-wide rezone, is vested as of the date the application was filed and is exempt from meeting this criteria.”*

No area-wide zoning action involving or affecting the Subject Property has been taken by the Tacoma City Council in the two years preceding the filing of the present rezone application. More to the point, there has not been an area-wide rezone action affecting the Subject Property since the original zoning was put in place in 1953. *Ex. C-1*. As a result, the criterion set forth at TMC 13.05.030.C.b.(4) is satisfied.

8. Relationship to the Public Welfare—TMC 13.05.030.C.b.(5) *“That the change of zoning classification bears a substantial relationship to the public health, safety, morals, or general welfare.”*

The TMC and Comp Plan set forth policies and requirements, including design and development standards, aimed at regulating growth and development to ensure consistency with the public health, safety, morals and general welfare.

In order to ensure further that this rezone request and the intended development of the Subject Property are consistent with the public health, safety, morals and general welfare of the community, the City and related agencies reviewed and commented on the proposed development (the Project), supplying various conditions that will ensure compliance with applicable laws and development regulations. Requiring compliance with applicable development regulations and standards helps safeguard the public, and ensures compatibility with the surrounding community.

In addition to the foregoing, the city of Tacoma, as well as western Washington in general, has been experiencing a shortage in available housing and more particularly in affordable housing. Increasing the available housing supply in the City helps address this public health, safety and welfare concern by increasing the available supply of housing, and by increasing the supply, hopefully helping to stabilize or even reduce costs.

The Applicant has intentionally designed its building and the Project generally to be accommodating to differently-abled individuals as well.

Given the foregoing, the Examiner concludes that the requirements of TMC 13.05.030.C.b.(5) are met or will be met through the development of the Project as specified.

9. Findings entered herein, based on substantial evidence in the hearing record, support a conclusion that the proposed rezone is consistent with the applicable criteria and standards for rezones. As referenced above (FoF 12), City staff have not recommended the usual complement of development conditions be attached to approval of this rezone request, but rather that such requirements follow

through the natural evolution of the permitting process for the Project. Given that, conditions to attach to the approval of the rezone request are minimal.

10. Accordingly, the requested rezone is recommended for approval subject only to the following conditions:

A. RECOMMENDED CONDITIONS OF APPROVAL: “Conditions” set forth herein are derived primarily from the PDS Report. As is typical with a rezone recommendation, the conditions below have more to do with the code compliance of the Applicant’s intended development of the Subject Property after approval of the requested rezone than they do with the rezone request itself, i.e., they are not recommended herein as conditions precedent to approving the rezone. Compliance with later development conditions prior to approving the rezone is, in most cases, physically and temporally impossible.

As set forth at FoF 14 above, the PDS Report is incorporated herein by reference. The Applicant should also continue to pay close attention to the City’s Exhibit C-6 and the useful guidance and notice of development requirements that are enumerated therein, even though those requirements are not set forth in the body of this Report and Recommendation.

City Council approval of the requested rezone does not release the Applicant from state or other permitting requirements for subsequent development of the Subject Property, nor does anything in this Report and Recommendation take precedence over application of, and compliance with, the TMC. *See Usual Condition 2 below.*

Therefore, should this request be approved, the Examiner recommends making the following conditions from the PDS Report conditions of the rezone and accompanying permits as applicable to the Project:

1. LAND USE

- a. Any future development of the Site shall be consistent with the C-1 Neighborhood Commercial development standards (TMC 13.06.030), the Landscaping Code (TMC 13.06.090.B), Parking Code (TMC 13.06.090.C), Transit Support Facilities (TMC 13.06.090.H), Bicycle and Pedestrian Support Standards (TMC 13.06.090.F), Residential Transition Standards (TMC 13.06.090.J) and all other applicable sections of the Tacoma Municipal Code.
- b. The required Landscape Plan shall provide the type, size and location of trees, shrubs, and groundcover plan for the Site, to include open yard space, site perimeter, and tree canopy coverage.

2. GENERAL

Prior to obtaining building or grading permits, the Applicant shall contact the appropriate City departments and outside agencies to make the necessary arrangements for all required improvements. The required departmental approvals shall be acquired from, but not necessarily limited to, Planning and Development Services (253-591-5030), Tacoma Power (253-383-2471), Tacoma Water (253-383-2471), and Public Works Department (253-591-5525) the Tacoma-Pierce County Health Department and Washington Department of Ecology.

B. USUAL CONDITIONS:

1. The recommendation and decision set forth herein is based upon representations made and exhibits, including development plans and proposals and intended use, submitted at the hearing conducted by the Hearing Examiner. Any **substantial** change(s) or deviations(s) in such development plans, proposals, or conditions of approval imposed shall be subject to the approval of the Hearing Examiner and may require additional review/hearings.
2. If the recommendation made herein leads to approval of the requested rezone, such approval shall be subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such law, regulations, and ordinances are conditions precedent to the approval granted and are a continuing requirement of such approvals. By accepting any resulting approval, the Applicant represents that the development (the Project) and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development (the Project) and activities permitted do not comply with such laws, regulations, and ordinances, the Applicant shall promptly bring such development or activities into compliance.

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

RECOMMENDATION:

The Hearing Examiner recommends approval of the requested rezone, subject to the above listed conditions.

DATED this 10th day of March, 2021.



JEFF H. CAPELL, Hearing Examiner

NOTICE

RECONSIDERATION/APPEAL OF EXAMINER'S RECOMMENDATION

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 14 calendar days of the issuance of the 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 Examiner. It shall be within the sole discretion of the Examiner to determine whether an opportunity shall be given to other parties for response to a motion for reconsideration. The 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. (*TMC 1.23.140*).

APPEALS TO CITY COUNCIL OF EXAMINER'S RECOMMENDATION:

Within 14 days of the issuance of the Hearing Examiner's final recommendation, any aggrieved person or entity having standing under the ordinance governing such application and feeling that the recommendation of the Examiner is based on errors of procedure, fact or law shall have the right to appeal the recommendation of the Examiner by filing written notice of appeal with the City Clerk, stating the reasons the Examiner's recommendation was in error.

Appeals shall be reviewed and acted upon by the City Council in accordance with *TMC 1.70*.

GENERAL PROCEDURES FOR APPEAL:

The Official Code of the City of Tacoma contains certain procedures for appeal, and while not listing all of these procedures here, you should be aware of the following items which are essential to your appeal. Any answers to questions on the proper procedure for appeal may be found in the City Code sections heretofore cited:

1. The written request for review shall also state where the Examiner's findings or conclusions were in error.
2. Any person who desires a copy of the electronic recording must pay the cost of reproducing the tapes. If a person desires a written transcript, he or she shall arrange for transcription and pay the cost thereof.

Once the permit decisions are finalized, any appeal thereof should be taken pursuant to the provisions of the Land Use Petition Act (LUPA, RCW 36.70C).

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**