

BEFORE THE HEARING EXAMINER

CITY OF SEATTLE

In the Matter of the Petition of

AVTECH CORPORATION

FILE NO. 8800131

C.F. NO. 296257

for an amendment to the Official
Zoning Map pursuant to Title 23,
Seattle Municipal Code

and

In the Matter of the Appeals of

MARIETTA FOUBERT

FILE NO. W-89-002 and

LAW PROPERTIES

FILE NO. W-89-003

from an environmental determination
by the DCLU Director

Introduction

Avtech proposes that land addressed as 3400 Wallingford Avenue North be reclassified from Lowrise 2 to Commercial 2 with a 40 ft. height limit.

The Director's report, submitted by the Department of Construction and Land Use (DCLU), recommended that the petition be conditionally granted. DCLU also issued a determination of nonsignificance. Appellants Foubert and Law Properties appealed the DCLU environmental determination.

The appeals and rezone were heard together before the Hearing Examiner on March 13, 1989. On March 4, 1989, the record was reopened at appellant Foubert's request. Replies to the Foubert submittal were due to the Hearing Examiner on or about April 3, 1989.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 23, as amended unless otherwise indicated.

After due consideration of the evidence presented by the Petitioner, the information provided by the Director's report, and all evidence elicited during the public hearing, the following shall constitute the findings of fact, conclusions and action of the Hearing Examiner on this application.

Findings of Fact

1. Petitioner seeks to rezone approximately 13,680 sq. ft. of property addressed as 3400 Wallingford Avenue North from Lowrise 2 (L-2) to Commercial 2 with a 40 ft. height limit (C2/40'). DCLU recommended that the rezone be granted with specific conditions and issued a determination of nonsignificance (DNS), also with conditions. Appellants and others objected to the rezone and the respective appellants here challenge the DNS.

2. The proposal site is legally described as "Lots 3 and 10, Block 68, Lake Union Addition." Two relatively new apartments with a total of 28 units are on the north adjacent parcels.

3. In addition to these multifamily developments, land across Wallingford (west) from the subject property is developed with the 50-unit Egypt apartment building. To the east, across Burke Avenue, is a four-story office building. A mix of single family residences and two and three story apartments dominate this L-2 zone which includes the above-described developments. As of the DCLU report, approval had been secured for an eight

unit apartment on Wallingford Avenue, north of 35th and for a nine-unit apartment at 35th and Burke Avenue.

4. Lot 10 of the proposal site is developed with a duplex. This lot has 60 ft. of frontage to west adjacent Wallingford Avenue North. The more easterly Lot 3 is used as a recreation area for employees of the project applicant. Lot 10 has 60 ft. of frontage to east adjacent Burke Avenue North.

5. Wallingford Avenue and intersecting North 34th are both busy arterials. North 34th is a "minor arterial general" that connects to the University of Washington south campus, some 20 blocks east, and downtown Fremont, roughly 12 blocks west. Wallingford Avenue, a collector arterial, has curbs, gutters and sidewalks. Burke Avenue, classified as a residential access street, only has a sidewalk.

6. The proposal site has a total depth of 228 feet. It slopes down moderately from north to south (in the direction of nearby Lake Union and Gas Works Park).

7. The proposal site is at the southern edge of an L-2 zone that extends east and west along Wallingford Avenue block fronts. This zone's northern terminus is south of North 37th where the combined L-2/ commercial residential zone begins. The L-2 southern terminus is approximately one-half block north of North 34th. Generally, from the subject site, the L-2 zone extends irregularly east between North 35th and an area north of North 34th.

8. East and west of the subject L-2 zone is the Single Family 5000 (SF 5000) zone. South of the SF 5000 - L-2 boundaries extending to Lake Union are properties within the Commercial 2, 40 ft. height limit classification (C2/40').

9. The proposal site is part of a larger, south adjacent site that extends to North 34th that is owned and operated by applicant. This adjacent site is developed with a 46,000 sq. ft., two-story manufacturing building and accessory parking. The building is less than 30 ft. in height. Also southeast is Mariner Square, per its name a specialty shopping center. See Exhibit 7.

10. In general, the nearby commercially zoned sites are used by specialized retail sales and service, office and light manufacturing businesses. Most businesses offer parking, but the district is not auto-oriented.

11. The area north of the proposal site has transit access, a nearby business area, open space and some upslope views that could be affected by buildings taller than 30 ft. No views from public parks would be affected by proposed development. This residential area and the single family areas east and west of the site experience some of the traffic, noise and parking impacts of existing manufacturing uses.

12. The proposal site was zoned L-2 effective June 1982 as part of Title 23 area-wide zoning. The prior zoning was also for multiple residency (RM). The adjacent commercial zoning was implemented in 1986.

13. Vacant, commercially-zoned (C-2) land is present in the vicinity. Some C-2 land is presently developed with residential structures.

14. The site is within no Greenbelt or other overlay district.

15. The Wallingford Neighborhood Plan, a 1976 document, was not officially adopted. It urges the reduction in traffic in heavily used arterials (e.g. North 34th, per witness G. Hill). The Plan also includes language which favors housing as a principal use in the then-zoned manufacturing areas. (Specifically noted for application was the "M zone between 34th Avenue

and 36th Avenue near the north shoreline of Lake Union..." Exhibit 9.)

16. Applicant proposes this rezone of the subject site to C2/40' to accommodate future construction of a two-story manufacturing office building of some 14,402 sq. ft. The on-site duplex would be demolished. The new structure would be built over existing parking and an additional 58 spaces would be added for the northwest corner of the site for a total of 117 on-site parking spaces. Principal access would be from Burke Avenue North and lesser access from Wallingford Avenue. Per applicant the steeper topography precludes access from Wallingford. It is undisputed that there is an approximate 8 ft. drop from the property parking level down to Wallingford Avenue. Truck loading will continue to access via Burke Avenue.

17. Applicant proposes to retain the site's northeast recreational open space and add a 10 ft.-wide landscaped buffer along the north property line to separate the project site from the north adjacent apartment house development. Applicant is willing to further limit development to 46 percent of overall site depth and provide a 43 ft. building setback.

18. The new proposal is expected to account for an additional 15 employees, or approximately 50-60 average daily vehicle trips. Approximately 7 (new)- 15 (total) of these will occur during morning peak period and 7-15 during the evening peak period. For the 7200 sq. ft. of office space, 7.2 parking spaces are required, i.e. 1 per each 1000 sq. ft. For the 7200 sq. ft. of manufacturing space proposed, 4.8 spaces are required, i.e. 1 for each 1500 sq. ft.

19. In recognition of the proximate development and scale, DCLU recommended that the site be rezoned to C2, but with a 30 ft. height limit.

20. Other DCLU recommended rezone conditions appear below:

CONDITIONS - REZONE

Prior to Issuance of Construction Permit

1. The owner(s) and/or responsible party(s) shall receive concept approval from the Seattle Engineering Department (SED) for street improvements on the North 34th Street street frontage.
2. The owner(s) and/or responsible party(s) shall develop and execute a no-protest agreement for any local improvement district (LID) to be implemented for improvements along North 34th Street.

Prior to Occupancy

1. The owner(s) and/or responsible party(s) shall provide a fair share contribution in an amount to be determined by SED for the construction of a traffic control device at the intersection of North 35th Street and Burke Avenue North.
2. The owner(s) and/or responsible party(s) shall develop a Transportation Management Plan (TMP) to mitigate the impacts of employee traffic and parking demand. The TMP shall include, but not be limited to, the following elements:
 - ° provision of a permanent vanpool to pick up and drop off Avtech employees;
 - ° guaranteed provision of 117 parking spaces, with 20 spaces reserved for 2-person carpools;
 - ° a building transportation coordinator;
 - ° provision of a 40% METRO transit pass subsidy offered to all employees up to 30% of the total workforce.

Permanent for the Life of the Project

1. The owner(s) and/or responsible party(s) shall maintain the TMP discussed above.
2. The owner(s) and/or responsible party(s) shall improve the North 34th Street frontage per the SED approved plans.

21. Some neighborhood witnesses wished to have the height of the south adjacent Avtech site also limited to 30 ft. It, however, is not the subject of the petition or the DCLU decision.

22. It is undisputed and the Hearing Examiner finds that during the day, vicinity on-street parking is at capacity. DCLU states that the apparent nature of this phenomenon obviated the need for an official parking study. A Metro bus stop is located at North 35th and Wallingford Avenue.

23. Avtech engages in electronics metal finishing and electroplating. Toxic and other chemicals are used, including methyl isobutyl ketone, acetone, ammonium hydroxide and nitric acid.

24. Per the applicant representative's post-hearing submittal (PHS), Avtech discharges industrial wastewater, monitored by Metro, of "only one metal, chromium." The correspondence further indicates as follows:

Avtech is inspected by the Seattle Fire Department on an annual basis and we have rarely had any problems...I am sure those records are available...

25. The Environmental Checklist for this project includes an inquiry whether environmental hazards were present such as exposure to toxic chemicals, risk of explosion, spill or hazardous waste. Applicant answered in the negative. No annotation thereto was made. The Checklist also indicated that there would be no increased need for fire, health or other public service. For negative impact mitigation, applicant responded that there would be demolition - construction noise, a small increase in traffic and attendant fumes.

26. Applicant's PHS identifies chemical and health hazard properties of certain chemicals and compounds used by the company. For example, the ketone is listed as a flammable liquid. Inhalation causes

...irritation, weakness, headaches, narcosis, nausea, and vomiting. Prolonged exposure to high concentrations may result in kidney and liver damage...

Butyl cellusolve, a combustible liquid used by the company, results in similar physical discomfort if inhaled.

27. In response to appellant Foubert's PHS and Avtech's PHS, DCLU recommended remand of the appeal to DCLU for specific review of fire protection, air pollution and Metro (discharge) issues.

Conclusions

1. The Hearing Examiner has jurisdiction of these appeals and this rezoning hearing pursuant to the procedures of Chapter 23.76, Seattle Municipal Code.

2. Seattle Municipal Code Section 23.76.052 addresses the consolidation of this environmental appeal with this (Type IV) rezoning hearing. Per Section 23.76.052C.4

...The Hearing Examiner shall entertain only

those issues cited in the written appeal which relate to...the adequacy of the environmental documentation upon which the determination was made.

3. Seattle Municipal Code Section 23.76.052C.5 provides that the DCLU Director's environmental determination shall be given substantial weight.

4. Giving due weight to the Director's initial determination of nonsignificance, this application is properly remanded for further review and analysis.

5. The anticipated use of the proposed site is not clear from the record or files of this proceeding. Consequently, the discharge, air quality, and fire safety issues have not been adequately reviewed. The Environmental Checklist entries on these items are incomplete and inaccurate.

6. Toxic chemicals are in fact used in the applicant's manufacturing business. The rezone would allow a 60 ft. northern projection of the commercial zone and its manufacturing use to the residential zone. Depending on the nature of the impacts, the utility of a 10 ft. wide northern buffer could be de minimis. For this remand, applicant shall comply with the information request per the DCLU PHS. (See memo to the Hearing Examiner dated April 6, 1989.)

7. Further, a traffic study is necessary. Although the on-street parking is at capacity, the record should clearly indicate what traffic flow and distribution impacts are reasonably anticipated, particularly to the L-2 and single family - zoned residential areas north, northwest and northeast. Specific attention should refocus on the viability of principal site access from Wallingford Avenue, and on whether Burke egress and ingress can be limited to restrict Avtech traffic's penetration into the single family area to the north, along Burke Avenue.

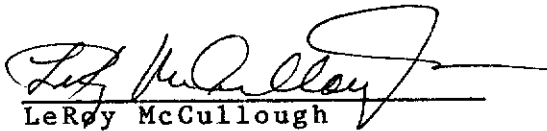
8. The DCLU supplemental report shall also indicate whether scenic route public views of natural features would be impacted by the proposal. Seattle Municipal Code Section 25.05.675P.

9. In accord with Seattle Municipal Code Section 23.76.052H the environmental determination and rezone recommendation are hereby remanded. Seattle Municipal Code Section 25.05.660; .665; .670; .675 A; .675 C; .675 F; 675 O; .675 R; .675 S.

Decision

This application is REMANDED for further environmental evaluation in accord with the foregoing. Further evaluation of the rezone application by DCLU shall follow the supplemental environmental analysis.

Entered this 18th day of April, 1989.


Leroy McCullough
Hearing Examiner

FINDINGS, RECOMMENDATION AND DECISION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Petition of

AVTECH CORPORATION

FILE NO. 8800131
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for an amendment of the official zoning
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MARIETTA FOUBERT

FILE NO. W-89-002

and

LAW PROPERTIES

FILE NO. W-89-003

from an Environmental Determination
by the Director of the Department of
Construction and Land Use

Introduction

Avtech proposes that land addressed as 3400 Wallingford Avenue North be reclassified from Lowrise 2 to Commercial 2 with a 40 foot height limit and to establish the use for future construction of a manufacturing/office building with parking underneath.

The Director's report submitted by the Department of Construction and Land Use (DCLU), recommended that the petition to rezone for the intended use be conditionally granted but with a 30 ft. height limit. DCLU also issued a Determination of Nonsignificance. Appellants Foubert and Law Properties appealed the DCLU environmental determination.

The appeals and rezone were heard together before Hearing Examiner LeRoy McCullough on March 13, 1989, reopened March 14, 1989, for further submittals, and closed April 3, 1989. Thereafter, by decision dated April 18, 1989, the application was remanded to DCLU for further environmental analysis on water discharge, air quality, toxic chemicals, fire safety, traffic and public views. The Department was also instructed to further evaluate the rezone application following the supplemental analysis.

On February 9, 1990, DCLU issued a supplemental environmental analysis and determination of nonsignificance with additional conditions to those recommended earlier. By letter of March 9, 1990, DCLU indicated that its recommendation to conditionally approve the rezone to Commercial 2 with a 30 foot height limit was unchanged.

Appellant Foubert's response to the supplemental analysis was filed on March 23, 1990. There was no response or further appeal from appellant Law Properties.

A supplemental hearing on these matters was held on March 28, April 23, April 25 and May 2, 1990. The proceedings remained open through May 11, 1990, to allow the new Examiner to listen to the tapes of the previous hearing, to review the exhibits submitted, and to take a site visit.

On March 28, 1990, at commencement of the hearing proceedings, applicant moved to dismiss appellant Law Properties who was not present. This motion was taken under advisement. On April 13, 1990, the appeal of Law Properties was dismissed at hearing, said appellant, again not being present and having repeatedly failed to appear for the hearing (or prehearing conference) or provide excuse or reason therefor despite due and proper notice having been given and said appellant otherwise having failed to pursue its appeal following remand.

Parties at the supplemental hearing were appellant Marietta Foubert, appearing pro se; the applicant, represented by Fred Butterworth, Attorney; and DCLU represented by Cristina Van Valkenburgh, Land Use Specialist.

For purposes of this recommendation and decision, all section numbers refer to the Seattle Municipal Code, unless otherwise indicated.

After due consideration of the evidence presented at all hearings on these matters, the Director's recommendation and reports, and the comments received on the petition during the comment period, the following shall constitute the findings of fact, conclusions, and recommendation of the Hearing Examiner on the petition for rezone and the decision on the appeal of the determination of nonsignificance.

Findings of Fact

1. Except as indicated herein the Findings of Fact entered April 18, 1989, in this matter are hereby fully incorporated by reference.

2. Subsequent to the first hearing and during the remand of this case DCLU has solicited and Avtech has supplied considerable information on chemicals used at Avtech. A list of 20 chemicals and their annual usage by volume was supplied March 28, 1989, which list was accompanied by most of the Material Safety Data Sheets (MSDS) relating to the chemicals. (Refer to Exhibit 38A). Later, on December 21, 1989, the company provided more information, adding chemicals and deleting some, providing further annual usage, indicating in what processes the chemicals were used, where they were used, handling methods, storage locations and whether the processes produced volatile fumes. (Refer to Attachment B, of Exhibit 37A).

3. During this time, DCLU also consulted with the Department of Ecology (DOE) the Environmental Protection Agency (EPA), Puget Sound Air Pollution Control Agency (PSAPCA) and Metro on the chemicals reported by Avtech. Those agencies were asked to evaluate the Avtech information and follow up with necessary investigations to determine the extent of the danger or adverse impact of those chemicals on air quality, water, and waste disposal. Personnel from those agencies complied, submitted written responses and evaluation, and testified at the hearing following remand.

4. Avtech is a manufacturing facility engaged, generally, in fabricating electronic components for use in the aerospace industry. In this respect it performs engineering development, design and testing; laboratory analysis; fabrication and assembly of front panels and circuit boards, among other products; and insulates, paints, and applies metal finishes to various of its products.

5. Many of the processes for these purposes utilize chemicals, some of which are toxic. The chemicals currently used by Avtech include: Isoprep 188, trichloroethylene, cimperial green, acetone, toluene, ammonium hydroxide, soldering flux, hydraulic oil #32 and #24, xylene, freon, methyl isobutyl ketone, #410 solvent, butyl cellusolve, insulating varnish #740-2103, isopropyl alcohol, paint, iridite 14-2, nitric acid, SO 225, humiseal 1-A33, and sodium hydroxide (caustic soda). Avtech also has a chromating facility in its basement. This facility utilizes a number of these chemicals in the chromating process or to produce the chromium needed.

6. A number of the chemicals used by Avtech are considered sufficiently toxic or hazardous so as to require special handling, storage, disposal and reporting to various governmental agencies. These include freon, ammonium hydroxide, toluene, xylene, butyl cellusolve, trichloroethylene, and isopropyl alcohol. These more toxic chemicals are used mainly in painting and varnishing processes or assembly processes where cleaning of tools, circuit boards, or panels is needed.

7. Present assembly of products is performed on the second and first floor of the existing facility. Assembly utilizes soldering flux, freon, isopropyl alcohol and, in some cases, tinning oil #5738. Soldering is the method by which the electronic components are attached to the printed circuit boards. Soldering flux acts as a cleaning agent so solder will adhere to the board. The freon is used to degrease boards and remove solder flux. The alcohol is used after manual soldering to clean off solder flux also.

8. Varnishing, coating and cleanup is done in the plastics room on the second floor, south side of the building. Some local ventilation is provided.

Painting processes are done in the painting room on the main floor, south side. Painting booths are used with ventilation directly outside.

9. The chromating is done in a special room in the basement on the south

east corner of the building. This chromating process was of special concern to DCLU from testimony at the previous hearing and later because it appeared that hexavalent chromium might potentially be released in the air in the chromating process. This substance is particularly dangerous and is a known carcinogenic.

10. DCLU discussed these concerns with an EPA Air Toxics Coordinator. After reviewing the Avtech chromating operation and evaluating the data known, she concluded that the "chromating" process at Avtech was different from "chromium electroplating;" and that "chromating" did not release hexavalent chromium into the air. She indicated that emissions of hexavalent chromium result from bubbling caused by hydrogen gas produced during the electroplating process. The bubbling generates a fine chromic acid mist containing hexavalent chromium. Without electricity or heating no bubbling occurs. The chromating process at Avtech does not use electricity or heat. Therefore, she concluded that no significant emissions of hexavalent chromium were produced at Avtech.

11. The Examiner at the previous hearing was also concerned with discharges of toxic chemicals at Avtech into waste water or other waters, particularly from the chromating room. DCLU discussed these matters and requested analysis and investigations by Metro Waste Water personnel. The Department also discussed it with DOE.

12. Avtech has an Industrial Waste Water permit from Metro. This permit is needed primarily because of the chromating room and the release of chemicals there from the rinses into the waste water. This discharge is now metered and the permit is regulated and enforced by Metro. The Industrial Waste Water Supervisor from Metro who testified indicated that just having a hazardous component in waste water does not make the water hazardous per se. The hazardous standard for chromium would be 2.77 parts per million. The chromium from Avtech's discharge does not meet this level.

13. The permit specifies the volume of waste water and level of pollutants which can be discharged into the sewer system; it also regulates processes for handling, sampling and monitoring such discharge. Under the permit, no change in general operations of waste water processes or additional chemical elements can be discharged without Metro approval. The permit further builds in DOE protections and regulations as required compliance. Avtech's present permit requires a discharge meter in addition to a water meter to get a direct reading. The responsibility for maintaining these is Avtech's.

14. The Waste Water Supervisor at Metro indicates that Avtech is a small discharger of industrial waste and that its record of compliance in the past has been good. In her opinion, assuming compliance with the permit, there should be no environmental impact at all from Avtech's waste water discharge.

15. The storage and disposal of hazardous waste generated other than waste water is under the jurisdiction of DOE. That agency indicates that Avtech is presently a generator of hazardous waste given the volume and type identified in its reports of 1989 (Exhibit 12A). In 1985 Avtech was not so classified, given the lower volume of less than 220 lbs. per month then (or 2,640 lbs. per year). (Exhibit 11A.) The 1989 records indicate that Avtech generates 6,752 lbs. of hazardous waste annually. With such volume, Avtech is and will be required to meet DOE standards and regulations.

16. One of DOE's requirements is that hazardous waste not be stored for more than 90 days without disposal. Others are that dangerous waste containers be properly dated for accumulation, labeled as hazardous, and marked with the major risk attendant; and that wastes be adequately characterized to determine if they are dangerous or not. Disposal is also to be done in an approved manner.

17. On 1985, Avtech was given notice by DOE of dangerous waste activities, apparently as a result of prolonged storage of certain waste reported by Avtech to DOE. In December of 1989, a DOE inspection of the facility resulted in notification of inadequate compliance due to improper container labeling, dating, and risk identification. (Exhibit 14A). In addition, DOE indicated the facility had not adequately characterized its waste generations to designate dangerous waste. Compliance has been achieved on characterization since. The others were still being worked on as of April 25.

18. The Hazardous Waste Inspector from DOE testified that if Avtech complied with DOE regulations, then there should be no probable significant environmental impact on the neighborhood from waste disposal due to the handling of the waste itself.

19. Freon is one of the hazardous chemicals that have wastes. These wastes can be recycled. Freon also has an effect on the ozone. There have been restrictions placed on its use, but because it is the best industrial cleaner available, the product has not been banned.

20. There was no evidence of where the dangerous waste is stored. Avtech contracts with an EPA qualified transporter and disposal company to remove and dispose of its dangerous waste. Avtech does no incineration or recycling of such waste itself. All disposal is done off site.

21. The DOE inspection of December 1989 revealed no evidence of ground or surface water pollution from waste at Avtech.

22. The environmental impact of air emissions from other chemicals than hexavalent chromium was also of concern from the earlier hearing. PSAPCA investigated and evaluated potential air emissions from chemicals at both appellant's and DCLU's request. An inspection of June 5, 1989, resulted in registration of Avtech with PSAPCA. Further data from Avtech on air contaminants, controls, and processes which emit contaminants is necessary to complete registration.

23. From the June 1989 inspection and walk through, seven types of equipment were identified as generating air contaminants: the spray painting equipment, curing ovens, silk screening, plating line, vapor degreaser, flow solder machine, and symphony dust shaker. There was a note on the report that as to exterior observations before inspection, no problems were noted. (Exhibit 6A).

24. In another inspection done March 8, 1990, by PSAPCA personnel, there was no odor noted outside.

25. An Air Pollution Control Engineer from PSAPCA who had inspected at Avtech and was familiar with the agency's records and Avtech chemical information, indicated that Avtech did not appear to be a major source of air pollutants. He indicated the chemicals most likely to cause toxic air emissions were: methyl isobutyl ketone, butyl cellosolve, trichloroethylene, methylene chloride, xylene, toluene, acetone, nitric acid and freon. After estimating potential volumes of these and assuming a 100 percent loss to the atmosphere for all chemicals, he concluded that Avtech did not pose a significant air emission threat to the environment; that Avtech's potential emissions even at 100 percent loss were still well under 10 tons. He indicated that the 100 percent loss was an overestimation, it was a worse case situation. Under PSAPCA standards, a major air pollution source is 25 tons.

26. A letter dated January 29, 1990, from the Air Toxic Coordinator at PSAPCA to DCLU indicated that PSAPCA does not presently monitor air emissions from Avtech and that Avtech does not need a permit to operate, although it would be required to apply for a notice of construction permit if it establishes or installs a new air contaminant source. (Exhibit 8A.) If the information supplied to complete registration revealed a need for a permit, then one would be required and Avtech would be fully under PSAPCA regulation and monitoring. Mere registration, apparently, results in an annual inspection of the facility by PSAPCA.

27. PSAPCA further stated in the letter of January 29, 1990, that from a review of the chemicals and quantities reported by Avtech (Attachment B1 to Exhibit 37A), "at the present time, Avtech is not a large enough source of toxic air contaminants to require further study by our agency." (Exhibit 8A.)

28. The regulations of PSAPCA, DOE and Metro applicable to Avtech would apply to the expansion proposal if the same or other hazardous chemicals were used there.

29. Fire safety was also a concern from the prior proceedings. Avtech currently uses and stores hazardous flammable materials on the site. It conducts painting operations in its main facility and also at a facility south of North 34th Street. Spray booths in each of these are utilized.

30. Avtech has recently installed a new fire detection system which has

the capability to monitor the proposed addition. Apparently, the system is connected in some way to the Seattle Fire Department, because it is alleged that when the alarm is triggered, the Fire Department is dispatched immediately.

31. The Seattle Fire Code (SFC 80.103(G)) requires that incompatibles not be stored in the same area; bases and acids must be separated from each other as well as from flammable liquids. The Seattle Fire Code has other regulations applying to this facility. Under the present code, only physical hazards are regulated; health hazards are not. Changes to include health hazards have been included in the 1988 edition of the Fire Code, but this addition has yet to be adopted by the City.

32. Avtech in the past has had permits from the Seattle Fire Department (SFD) to store and use flammable or combustible liquids, store and use corrosive liquids, and perform welding and cutting in the shop areas. The parameters and restrictions applicable to these permits are stated on their faces. (Exhibits 2A.) Avtech is in the process of getting new permits and the SFD is working with the company to formulate conditions.

33. Annual fire inspections of facilities such as Avtech's are conducted each year by SFD personnel. When problems are noted, the company is alerted by notices of violation and fire personnel thereafter follow up for compliance. The main facility at 3400 Wallingford was last inspected about November 8, 1989, and the company was issued a notice of violation relating to excess accumulations of chemical residues around duct work and boxes near the drying ovens and venting areas of the plastics room; various holes found around ducting and boxes in the facility generally, and for storage of flammable and combustible liquids, among other matters. (Exhibit 1A.) A reinspection of November 29, 1989, revealed the company had corrected the problems noted.

34. The Fire Lieutenant who inspected the facility and issued the notice of violation in November also testified at the hearing. He indicated that while the storage of flammables on site was extensive, it was not unusual for such installations. He further indicated that the new Avtech facility was no more or no less hazardous than similar buildings, but that there was a potential for explosion and fire. In his judgment, strict compliance with the fire code would reduce the likelihood of a severe emergency, but not eliminate the hazard.

35. Avtech has a higher flammable load than apartments, so would have a potential for greater fire impact.

36. Avtech has operated at its present facility since at least 1983. There have been no fire explosions during this time that the Lieutenant was aware of.

37. There was another fire inspection from the Fire Marshal's office in early 1990. This resulted from reapplication by Avtech for permits for 1990. The inspection revealed violations of the fire code concerning dispensing, storage and identification of flammable, combustible and/or hazardous materials (Attachment I to Exhibit 37A; Exhibit 50A). In particular, Avtech was cited for dispensing flammable and combustible materials in an unapproved area and for storing incompatibles (corrosives and flammables) in the same area. Hazard signs were also not in the area where such products were stored, handled or used. A number of follow-up inspections have been made from the Fire Marshal's Office to resolve these matters and work on conditions for the permits.

38. The main chemical storage area of the facility is an outdoor caged area near the northwest corner of the building close to Wallingford Avenue. (Refer to Exhibit 41A, and 48A for location.) There are two open sides; one side is bordered by the building; the last side is bordered by a concrete retaining wall. This area does not meet City Fire Code requirements. The SFD is requiring that a 4" solid concrete fire wall be built and extended to the fence on Wallingford Avenue. Corrosives will need to be stored elsewhere. That location has not been determined.

39. There are special storage requirements under the Fire Code for isopropyl alcohol. A maximum of 10 gallons of this chemical can be stored inside a building. Isopropyl alcohol is highly flammable.

40. One of the conditions required by DCLU to mitigate the fire hazard

impacts to the neighborhood was that Avtech contact the Seattle Fire Department on the addition prior to the issuance of a certificate of occupancy. Another condition imposed for fire and hazardous wastes and chemicals was that Avtech develop a spill prevention control countermeasure plan, including emergency responses in the case of fire and toxic fumes, prior to issuance of a master use permit. This plan is to comply with 40 CFR Part 112 federal regulations, to be developed in consultation with EPA, and is to be approved by the Seattle Fire Department.

41. The Hearing Examiner on remand concluded that a traffic study was necessary to address traffic flows and distribution impacts of the project into the L-2 and SF zones. He also directed reconsideration of the access planned and evaluations of whether Burke Avenue ingress and egress could be limited to present traffic penetration into the residential community.

42. No traffic study was in fact done, although there were observations of Avtech-generated traffic made by a consulting traffic engineer on two days in the mornings and afternoons from Burke Avenue between N. 34th and N. 35th. Also, the appellant and another neighbor conducted their own traffic observations on two afternoons on Burke counting vehicles and, on one afternoon, video-taping traffic.

43. The evidence on traffic establishes that most of the traffic generated by Avtech comes from its employees. There are also trucks or vans delivering or removing products and supplies, as well as wastes, to and from the facility. On each afternoon observed by appellant, six trucks or vans made deliveries or pickups at Avtech. Many of them went north or came south on Burke from the residential area north of N. 35th. In a three hour period one afternoon there were 54 vehicles leaving Avtech and heading north on Burke. Twenty-eight of those vehicles turned left on N. 35th (52%); 17 went north beyond N. 35th on Burke (31%); 9 turned right on N. 35th (9%). On the other afternoon observed there were 39 total vehicles, 26 of which turned left and five of which turned right on N. 35th. Eight headed further north on Burke from N. 35th. Appellant's exhibits (Ex 34A and 35A) do not show any Avtech vehicles going south on Burke to N. 34th.

44. By contrast, the observations done on four occasions by applicant's consulting traffic engineer from Burke showed that only two to four vehicles a day from Avtech went north on Burke beyond N. 35th. His information showed that somewhat more of the vehicles in the afternoon went south and turned onto N. 34th from Burke then went north on Burke and turned on N. 35th. He noted a total of 53 and 59 vehicle trips related to Avtech in the a.m. on Burke and 63 and 62 vehicle trips in the p.m. periods observed.

45. The volume of non-Avtech traffic on Burke or N. 35th was not recorded by either group. From the video presented, existing non-related Avtech traffic appears minor. Both sets of observations show considerable use of N. 35th Street for travel. This street is also a residential access street.

46. There are presently 62 parking stalls provided on the Avtech site at 3400 Wallingford. About 20 of these are in the truck loading area. The proposal will add 55 stalls, for a total of 117 spaces. Twelve on-site parking stalls are required for the intended use of the proposal under the present zoning. Parking demand relating to the existing facility, however, is 120. With the projected increase in employment from 240 to 255 with the proposal, parking demand would be 128. This results in a spillover from demand of 11 to the street where parking is already at practical capacity. Avtech's other work facilities below N. 34th have little or no on-site parking. Those employees, however, park below N. 34th usually.

47. Most of the parking demand is from existing employees. Many of Avtech's employees now park on Burke Avenue North between N. 34th and N. 35th and east and west of Burke on N. 35th. Some park further north on Burke. This presents parking problems for the residential community there.

48. The truck loading area at Avtech does not conform to present zoning requirements. The aisle width and maneuvering room is substandard, so that many of the trucks and vans which deliver or pickup goods have to back out over the sidewalk onto Burke Avenue. Some back in over the sidewalk. To bring the area up to Code, 10 to 20 parking stalls would have to be eliminated. Avtech does not plan to have a loading facility in the proposed addition.

49. Employment at Avtech has been growing over the years. In 1985 there

were 125 employees (Ex. 13A). In 1988, there were 180 employees (refer to Jensen letter of October 7, 1988 in Comptroller's File). Of these, 168 worked in the day, 12 worked at night. As of the end of 1989, there were 300 Avtech employees, 240 of whom work at the 3400 Wallingford facility. Avtech indicates that only about 15 more employees will be added to its staff with the addition. Others to use the new facility will come from the crowded areas of the existing main plant. None will come from the facilities south of N. 34th. Therefore the total employment projected at the main facility with this proposal will be 255. About 12 to 15 of these will be evening shift employees.

50. Work hours of the main facility are from 6:00 a.m. to 12 midnight. There are basically two shifts. Those working in the day arrive from 6:00 a.m. to 8:00 a.m. and leave from 2:30 to 4:30 p.m. The evening shift starts at 3:30 p.m. and finishes at midnight.

51. Only about six employees of Avtech live in the area of Wallingford near the site.

52. There is still some doubt about the intended use of the proposed addition. There is a lack of clarity from Avtech of the amount and nature of the manufacturing use proposed on the main level of the addition. Earlier documents indicated assembly of printed circuit boards. Later the company referred to use as "assembly area for mechanical assembly of sub-assemblies and finished products." At the hearing, Avtech's CEO indicated there would be assembly of florescent light ballasts, audio select units, and wire bundles, among others. He also suggested there would be some offices on the main floor as well as on the upper floor. Since Avtech performs a variety of manufacturing and assembly processes, actual use of the proposal for assembly could be different than what is presently suggested.

53. It is clear, however, that Avtech plans to use the upper floor of the facility for offices. The company has also clearly stated it will do no painting or chromating in the proposed addition. As to the assembly operations, it has stated it would use freon, isopropyl alcohol, and soldering flux. There might also be some use of tinning oil.

54. The Wallingford Community Council (WCC) is opposed to the proposed rezone. The Council contends the site does not meet the rezone criteria. It is concerned primarily with the expansion of a manufacturing facility using so many toxic chemicals into a more residential area and with the access planned on Burke and resultant traffic and parking problems to the residential community, as well as to the safety of pedestrians using the sidewalks. WCC contends the facility is a heavy manufacturing facility, not a light manufacturing one under the definition in Section 23.84.025 because it manufactures electronic components using chemical processes of etching or metal coating (Example number 8 under the definition.) It also contends the proposal is not consistent with the WCC neighborhood plan or with past efforts of WCC regarding zoning in the area. If the rezone is granted, WCC urges more traffic and parking impact mitigation, street and sidewalk improvements, more open space northward and a height restriction of 30 feet.

55. Residential neighbors of the area oppose the rezone because of traffic and parking impacts from the existing facility and from a foreseeable increase of the same when the site is totally developed in the future. They are also concerned with the number of toxic and flammable chemicals used by the facility and the potential danger to the surrounding residential community from any expansion when such chemicals are used.

56. Greenpeace and Washington Toxic Coalition, two environmental organizations, are concerned with potential health and physical hazards to nearby residents from the toxic chemicals or flammables used or stored by the present and proposed facility.

Conclusions

1. The Hearing Examiner has jurisdiction of these appeals and the rezone hearing pursuant to procedures of Chapter 23.76 of the Seattle Municipal Code.

2. Section 23.76.052A authorizes the consolidation of the environmental appeals with the rezone hearing.

3. For hearings on rezones of this type, the Hearing Examiner is to consider the Director's report, evaluation, and recommendation, other

evidence, comments; issues relating to the appeal of the Director's environmental determination; the various criteria for rezones and other applicable city ordinances and policies. There is no requirement that any specific weight be given the Director's recommendations. Section 23.76.052D.

Rezone:

4. A request to change a zoning designation from L-2 to C2 must satisfy the general rezone criteria (Seattle Municipal Code 23.34.008) and the locational criteria for Commercial 2 zoning (Seattle Municipal Code 23.34.082).

5. Section 23.34.008 provides as following:

Section 23.34.008 General rezone criteria.

In evaluating a request for a zoning change, the following factors shall be considered:

A. Match Between Established Locational Criteria and Area Characteristics. In order to ensure compatibility of new and existing development, the characteristics of the area to be rezoned should closely fit the adopted locational criteria for the proposed land use category.

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

C. Other Zoning Principles. Zoning principles relating to compatible land use patterns, size, configuration and boundaries shall be considered.

D. Impact Evaluation. The decision on a proposed rezone shall consider the possible negative impact on the area proposed for rezone and its surroundings. Factors to be examined include, but are not limited to the effects on transportation, parking, housing, particularly low-income housing, public services, and environmental factors such as noise, air and water quality and energy conservation.

E. Neighborhood Planning Efforts. If there are adopted neighborhood plans or recommendations which apply to the area proposed for rezone, those shall be taken into consideration.

F. Changes Circumstances. If part of the justification for the rezone is changed conditions since the adoption of the Official Land Use Map, evidence of the changes shall be taken into consideration. Evidence might include changes in structure height and scale, addition of new uses, traffic patterns and transit routes and demographic changes.

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

H. Greenbelt Plan. If the area is included in the Greenbelt Plan as adopted by Resolution 25670, the purpose and boundaries of the Greenbelt Plan shall be considered.

6. Section 23.34.082 provides as follows:

Section 23.34.082 Locational criteria--Commercial 2 (C2) zones.

In reviewing a proposal to rezone an area to Commercial 2, the following criteria shall also be considered:

A. Function. An auto-oriented, primarily nonretail commercial area which provides a wide range of commercial activities serving a citywide function. These areas provide employment opportunities, business support services and locations for light manufacturing uses.

B. Existing Character.

1. Major commercial nodes characterized by heavy commercial activity, often including a few major employers; or

2. A commercial strip located along a major arterial characterized by heavy commercial activity.

C. Existing conditions Favoring Designation as C2.

1. Readily accessible from a principal arterial;

2. Possibly adjacent to manufacturing/industrial zones;

3. Presence of edges which buffer low-density residential areas, such as more-intense residential areas, less-intense commercial areas, or changes in street layout or platting pattern which tend to define boundaries;

4. Predominance of large lots which can accommodate a wide range of heavy commercial and light manufacturing activities;

5. Limited pedestrian access.

7. There is a match between some of the area characteristics with the C-2 locational criteria, but not with others. Specifically:

a. The area around the proposal site is mainly not auto oriented. It also serves for pedestrian traffic from the residences and east, west and north of the site to Gas Works Park to the south. Some parking is provided by businesses of the area however, for customers and employees.

b. South and along N. 34th Street, the area is basically non retail, although there is some retail commercial activity southeast in the form of Mariner's Square (specialty center) and a small camping and kite store. Other commercial activities in the area include eating and drinking establishments, a bread company with a retail outlet, and office buildings. There is also a transfer station four blocks to the west, fuel storage facility, garage, and a few light manufacturing establishments including Avtech. Such activities serve a City-wide function, however, there is not a wide range of them.

c. The proposal site abuts C2/40 zoning on its south side which is developed with the present Avtech manufacturing building. Industrial commercial zoning (IC 45) exists below North 34th toward Lake Union south and west of the present C2 zoning strip along that street. Gasworks Park is south and east of the C-2 strip.

d. Around three sides of the site and to the north, west and

east, however, the area is primarily residential, with single family and multifamily development of small to medium scale.

e. The commercial area does include a few major employers, Avtech itself being a primary one. This is not a major commercial node however. Nor is it a commercial strip along a major arterial or one characterized by heavy commercial activity. It is a commercial strip along a minor arterial, that being N. 34th which is heavily traveled. Such travel appears to be generated by its east-west linkage of the University District and the Fremont District. The commercial activity is mixed, depending on which direction one travels. It is more business support services and retail to the east and southeast, it is heavier commercial or industrial southwest of the present C-2 zone. It is marine-oriented along Lake Union.

f. The area is not characterized by large lots; rather, the predominant pattern is average to small lots.

g. The proposed site is buffered, although thinly, from single family zoning and development in the area by the L-2 zoning adjacent on the east, north and west of the site. In the blocks between N. 34th and N. 35th the L-2 zoning is developed and being developed with multifamily structures, one group of which extends into the C-2 zone at N. 34th.

h. The major vehicular access proposed is from Burke Avenue, a residential access street with a commercial designation between N. 34th and N. 35th Street. This street does not fit the condition of accessibility from a principal arterial. Wallingford Avenue more closely fits this condition, although it is only a collector arterial. However, access from Wallingford would result in elimination of an estimated 50 parking spaces from the 117 identified (existing and planned) because of a drop in grade from the street to existing parking.

i. Nor does the area of the proposed rezone have limited pedestrian access. There are sidewalks on both sides of Burke as well as on Wallingford south to N. 34th Street. Below N. 34th, pedestrian access is more limited. These sidewalks and streets or shoulders are used by residents walking to Gas Works Park.

j. Although the Wallingford Community Council Land Use Chair contends the Avtech facility is a heavy manufacturing use, the Examiner concludes it is more closely linked to light manufacturing as defined in Section 23.84.025, even though the facility manufactures circuit boards using chemical processes of metal coating. There is no evidence the facility produces substantial noise, smoke, dust, vibration or other environmental impacts of pollution of a substantial magnitude, which factors characterize heavy manufacturing uses. Light manufacturing use is one of the functions of a C2 zone.

8. In summary, overall the area characteristics related to the proposal match only just under one-half of the locational criteria. Given the direction of Section 23.34.008 that the area to be rezoned "closely fit" the adopted locational criteria for the proposed zone, the Examiner concludes that the zoning change requested does not provide the close fit needed to ensure compatibility of new and existing development.

9. Furthermore, the zoning history and present development trends north of N. 34th do not support extending the C2 zoning further northward. The site was zoned L-2 only eight years ago as part of area-wide zoning. Prior zoning was RM. The adjacent commercial zoning along N. 34th was implemented in 1986. Despite the C-2 zone mapping, across from Avtech on Wallingford N. 34th a large two-structure multifamily structure was developed within the last three years. Further multifamily development is pending across Burke from Avtech on the east. New condominium/townhouses were developed north of the proposed site on the corner of N. 35th and Burke just last year. Other development in the area has been of offices or retail mixed with offices.

10. Also, if allowed, the proposal could have a precedential effect northward from N. 34th and westward from the L-2 strip to the baking company and North Transfer Station by other petitions for commercial zoning in the one and one-half square blocks' pocket of SF 5000 zoning between N. 34th and N.

35th streets.

11. The proposed rezone is not consistent with the WCC neighborhood plan, efforts, or recommendations for the area north of N. 34th. Nor is it compatible, in the Examiner's judgment, with most of the surrounding land uses, patterns, configurations or boundaries north of N. 34th. The areas on three sides of the facility have been and are being developed with residential structures. Extending a manufacturing facility utilizing and storing flammable and other hazardous chemicals further into the residential community could pose a more serious threat to the community in the event of fire and explosion. Since residential density is increasing around the site, more lives could be lost with such events. As the SFD has indicated, strict compliance with the fire code could reduce the likelihood of a "severe emergency" but not eliminate the hazard.

12. Moreover, the existing facility has inadequate truck maneuvering space and presents problems of truck traffic into the residential streets northward on Burke Avenue. Trucks often back out of the loading area, across the sidewalk. There is no proposal to enlarge the maneuvering space so that trucks do not back out of the loading area. If there were an enlargement, then 10 to 20 on-site parking spaces would be lost. The main access for vehicles for the proposal is also a problem. Presently, the access planned is off Burke. This is a residential access street, not a principal arterial, although in the block between N. 34th and N. 35th, the street has a commercial designation to serve the businesses there. Changing access to Wallingford would result in a decrease of about 50 on-site parking stalls. Therefore, while truck and vehicular utilization of residential streets would be reduced by changed access, parking problems on the neighboring streets would accelerate, inasmuch as on-street parking there is already at capacity. In either case, the access is not compatible with reduced traffic or parking impacts to the residential community.

13. The proposed rezone as planned would have a number of adverse environmental impacts on the community in the form of increased traffic, health hazards to employees and residents from increased utilization of toxic chemicals and air emissions and hazardous waste disposal. Waste water chemical discharge should not increase immediately with the proposed facility, since there are no present plans to move the chromatating facility. However, as the building is used to capacity, or space is freed in the existing facility and more manufacturing activity is generated there, such waste water discharge would likely increase. Parking impacts, also, should immediately decrease with the proposal because more on-site parking is planned and at present there are plans to employ only an additional 15 persons. However, when the facility is fully utilized or more employees are added, the parking problems could again increase. While these environmental impacts are adverse, they would not have a significant impact on the community at the present time, given the governmental regulations and monitoring in place relating to such impacts, the smaller volume of air emissions or wastes generated by the facility, and the conditions imposed by DCLU were the project to go forward. That is except for the fire or explosion hazards to public safety which can be reduced but not eliminated.

14. There are no issues presented as to changed circumstances for justification of the rezone. Section 23.34.008F. The site is not located in an overlay district or greenbelt. Section 23.34.008G and H.

15. In sum, having considered the Director's report, evaluation and recommendation; applicable city codes and policies; and the other evidence and concerns presented the Hearing Examiner recommends that the project site not be rezoned to C-2/40'; rather, that it retain its present L-2 zoning. Should the petition for rezone be granted by the Council, however, height of the zone should be limited to 30 feet, the conditions recommended by DCLU should be imposed and, in addition, the following conditions should be imposed by contract or pursuant to Section 23.34.008D:

A. That no toxic, hazardous, or flammable materials be used or stored (whether for use or disposal) on any part of the proposed site or within any part of the proposed addition or any future addition or construction on the site, except for very minor amounts relating to engineering drafting or copying equipment;

B. That the truck loading area of the existing facility, including turnaround and maneuvering space, be brought up to current zoning standards for such use;

C. That all chemicals utilized or stored by Avtech at the existing facility be fully disclosed to DCLU, the SFD, and to other regulatory agencies with jurisdiction over the storage, use and disposal of such chemicals or their waste; and that Avtech be in full compliance with any conditions imposed or regulations of such entities pertaining thereto prior to the issuance of any master use permit for the project;

D. That applicant secure and utilize other property (either nearby or by satellite lot with convenient free shuttles) for additional off-street parking for its employees should the number of employees at the Wallingford site (existing or proposed) increase by 10 percent or more;

E. That a detailed landscaping plan approved by DCLU be prepared and developed that will offer year-round screening and buffering of the garage for residential properties nearby and that will maintain a usable and attractive open space for employee recreation in a comparable amount to that now provided.

SEPA

16. Under Section 23.76.052C.4, environmental appeals of Type IV decisions on proposals such as this shall be considered de novo. However, the Director's environmental decision is to be given substantial weight, and:

The Hearing Examiner shall entertain only those issues cited in the written appeal which relate...to the adequacy of the environmental documentation upon which the determination was made.

Section 23.76.052C.4 and 5.

17. The burden is on the appellant to show that the Director's environmental determination is clearly erroneous. Brown v. Tacoma, 30 Wn.App. 762 (1981); see also Section 25.05.680.C.

18. Considering the matter de novo and giving the weight due the Director's environmental determination, the Hearing Examiner concludes that the review and documentation conducted and provided by the Director on the rezone petition for this project on which the determination of nonsignificance was made is adequate as supplemented following the first hearing and during remand of this matter. Appellant has not met her burden of showing the opposite.

19. The original environmental appeal received February 17, 1989, did not address the public safety issue related to fire and explosion. It did however, address impacts on recreational, natural, commercial or historical resources along Lake Union. It also took issue with the decisions on traffic, noise, necessary city services of water, sewer and garbage, land use and air pollution. Appellant's supplemental letter of March 13, 1989, discussed aesthetics and public view blockage. She has not shown that there would be significant adverse environmental impacts in the specific areas of her appeal.

20. There was no showing by appellant that the project would have an adverse impact on the recreational, natural, commercial or historical resources along the northern shores of Lake Union. There was a showing of adverse traffic impact by the proposal, but not sufficient to require an EIS or condition the project beyond that proposed by DCLU's decision and report or by this Examiner's recommendation on the rezone.

21. Appellant has not shown that the proposal would have an adverse environmental impact on city services relating to water, sewer and garbage; nor has she established that the proposal would generate sufficient noise or block public views so as to require mitigation beyond that proposed by DCLU.

22. The evidence does establish an adverse impact on water quality from waste water discharge into the sewer system from the existing facility. There is no evidence that this impact would be increased significantly with the proposed addition, however; nor does the evidence establish that the impact of waste water discharge from Avtech presently is significant. Avtech has an industrial permit from Metro to discharge its waste water into the sewer system. That agency regulates and monitors effluents; further, a discharge meter has been required as a condition of the current permit. Metro has indicated that Avtech's discharge has not increased significantly over the

years. Metro does not expect that there will be any significant increase in volume or type of discharge from the proposal.

23. The chromating facility is the primary reason for the industrial waste water discharge permit. Such facility does generate discharge of some chemical elements which adversely affect water quality. However, only a few of the chemicals used by Avtech are used in chromating. Most chemicals used are not discharged into the water. There will be some increase in discharge with increased chromating as the present facility expands its services; however, any increase in volume or type or discharge will be regulated and monitored by Metro. No chromating will be done in the proposed addition.

24. In sum, from the evidence presented it does not appear that there will be a significant impact on water quality or environmental health from the discharge of waste water into the sewer system due to the proposal. Any adverse impact from the present or increased discharge will be regulated and monitored by Metro. DCLU has also imposed conditions relating to any possibility of discharge into storm drains or ground water. Compliance with Metro's regulations and DCLU conditions should adequately mitigate any adverse environmental impact from discharge of wastes of the chemicals used.

25. As to other wastes produced by the chemicals used, such wastes are mainly stored in containers and disposed of pursuant to federal regulations. Disposal is off-site through a contract with a federally approved disposal service. Hazardous waste from the facility has increased over the years. Also there have been some problems noted with storage and identification of hazardous waste. The addition proposed will use freon, isopropyl alcohol, solder flux and occasional tinning oil for assembly of the company's products. Freon is a toxic chemical which generates hazardous waste and air emissions. Isopropyl alcohol is a highly flammable material, however, there is no evidence it produces a hazardous waste. The other chemicals are not identified as flammable or hazardous or as producing hazardous waste. The quantities of these to be used in the new facility are not established as significant. Because of the volume of hazardous waste already generated by Avtech, the company will be monitored and regulated by DOE, among other agencies. Such regulation and monitoring would also cover any increase in hazardous wastes produced in the proposed addition. Compliance with the conditions imposed by DCLU and the regulations of DOE and other agencies with jurisdiction over such waste should be adequate mitigation for any adverse environmental impact from waste disposal.

26. As to air pollution or air contamination produced by the chemicals or processes used at Avtech or proposed in the addition, appellant has not shown that there will be a significant air quality impacts. Although not significant, however, there will be adverse impacts on air quality from air emissions of certain chemicals, including toxic chemicals, which impacts will be regulated and controlled by PSAPCA, EPA, and other regulating agencies. Compliance with the regulations of such agencies should be adequate mitigation on this matter.

27. Under SEPA policies, where City codes or regulations have been adopted to address an environmental impact, such regulations are presumed to be adequate to achieve sufficient mitigation, absent certain special circumstances. Section 25.05.665.D. Furthermore, where environmental impacts are also addressed by state, federal or regional regulations, those regulations too are presumed to be adequate mitigation, absent special findings or circumstances. Section 25.05.665..E. Such regulations are pertinent and in force for the instant proposal and as to the existing facility relating to wastes, and water discharge and air quality. Compliance with such regulations and the additional conditions imposed by DCLU should be adequate mitigation, except as supplemented by the Examiner herein.

28. As to the public safety issue related to toxic, flammable and combustible chemicals used or stored in the facility or proposed in the addition, DCLU determined that compliance with fire codes of the City and other agencies with jurisdiction over fire safety and compliance with the conditions imposed in the environmental determination constituted sufficient mitigation under SEPA for the adverse impact presented pursuant to Section 25.05.675F. As to the facility as it exists, this may be so, but as to the facility's expansion into a residential area, the Hearing Examiner concludes that further conditioning would be necessary if the Council were to grant the petition for rezone due to the zone edge situation presented with the more intensive zoning sought. Section 25.05.665D.5. While it is indicated that only freon, isopropyl alcohol, soldering flux, and perhaps tinning oil will be

used in the proposed facility and in relatively small amounts, at least freon and the alcohol have very dangerous propensities which in the case of fire or explosion could result in severe emergency and potential loss of life. City codes and other governmental codes could not adequately anticipate and do not adequately address the adverse environmental impacts on public safety and fire safety presented by the proposal, given the severity of the potential hazard where such chemical use or storage is in a facility surrounded by residential uses and zoning, and which uses are in such close proximity. Accordingly, more mitigation is needed than that provided by the regulations or the conditions imposed by DCLU should the Council approve this rezone request. Section 25.05.665D.

29. Moreover, it is clear that SEPA policies were not meant to "diminish the independent effect and authority of other environmentally related policies adopted by the City" and that those policies are to be considered along with SEPA policies "to guide discretionary land use decisions such as...rezones..." Section 25.05.665.B. Adverse environmental impacts are among the general criteria for evaluating rezone requests. Section 23.34.008.D.

30. As indicated before, adverse parking impacts on the community from the existing facility will be decreased by the proposal in the immediate future. This should alleviate some of the present on-street parking problems, but not all. All parties recognize that on-street parking in the area is at capacity and much of it is due to Avtech's operations. Due to other development occurring there, it is not anticipated that the parking impacts will be substantially alleviated. Further, if Avtech expands employment in the future beyond the 15 additional employees projected now, the on-street parking problem will again increase. Under the present proposal, there is still a spillover of about 11 parking spaces based on existing and projected demand from 255 employees. If a better truck turnaround is created, an additional 10-20 spaces will be needed. Therefore, certain additional conditions to alleviate parking impacts beyond those imposed by DCLU have been recommended by the Hearing Examiner, should the Council grant the rezone requested. These are authorized by the rezone criteria of Section 23.34.008.D as well as by SEPA policies in Section 25.05.675M.

31. In sum, the Hearing Examiner concludes that the environmental determination of the Director should be affirmed as modified by the conditions recommended previously by the Examiner should the Council grant the petition to rezone to C-2.

Recommendation on Rezone

The petition to rezone the proposed site to Commercial 2 with a 40 foot height limit and establish use for future construction of a manufacturing/office building with parking should be denied. If, however, the Council grants the rezone, it should limit the height authorized to 30 feet and impose the conditions recommended by the Director and by the Hearing Examiner in Conclusion number 15 hereof.

Decision on DNS

The Director's determination of nonsignificance with conditions, as supplemented, is affirmed as modified by the additional conditions recommended by the Hearing Examiner in Conclusion 15 hereof.

Entered this 30th day of May, 1990.



Dona Cloud
Deputy Hearing Examiner

CONCERNING FURTHER REVIEW

W-89-002

Judicial review under SEPA shall without exception be of the decision on the underlying governmental action together with its accompanying environmental determinations. RCW 43.21C.075(6)(c). SEPA issues may be added to the request for review of the rezone,

Council conditional use or other council action within 30 days after the date of the underlying Council decision if a notice of intent to seek judicial review of SEPA issues is filed with the Director of the Department of Construction and Land Use, 408 Municipal Building, Seattle, Washington 98104, within fifteen days of the date of this decision. Seattle Municipal Code Section 25.05.680(D)94).

Further directions regarding review of the underlying rezone or council conditional use decision may be obtained from the Council.

NOTICE OF RIGHT TO PETITION
FOR FURTHER CONSIDERATION
FILE NO. 8800131

Pursuant to Seattle Municipal Code Section 23.76.054, as amended, any person substantially affected by a recommendation of the Hearing Examiner may submit a petition in writing to the City Council requesting further consideration. The petition must be submitted within fifteen days after the date of mailing the recommendation of the Hearing Examiner and addressed to: City Council, Urban Redevelopment Committee, Municipal Building, Seattle, Washington 98104. The request for further reconsideration shall clearly identify specific objections to the Hearing Examiner's recommendation, facts missing from the record, and the relief sought.

Pursuant to Seattle Municipal Code Section 23.76.054(D), if there is no request for further consideration Council action shall be based on the record established by the Hearing Examiner.

The City Council Urban Redevelopment Committee should be consulted for further information on the Council review process.