

Memorandum

**To:** Vancouver City Council  
**From:** Stephen W. Horenstein  
**Date:** December 16, 2022  
**Subject:** Schwartz First Comprehensive Plan Amendment and Zone Change  
**File No.:** 139518-272442

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We represent Schwartz First LLC (the “Applicant”) in its pursuit of a Comprehensive Plan Amendment and Zone Change (“CPA” or “Comp. Plan Amendment”) and zone change. This memorandum summarizes why the Applicant has sufficiently met the approval criteria for granting a Comp. Plan Amendment, and includes an overview of the Community Development Department’s (“Staff”) inconsistent analysis of the Comp. Plan Amendment application. Given our satisfaction of the approval criteria, we respectfully request that subject to our comments in Section IV below, the City Council vote to adopt the Comp. Plan Amendment.

**I. PROCEDURAL HISTORY**

» *Comprehensive Plan Amendment Application*

Earlier this year, the Applicant proposed a Comp. Plan Amendment impacting two parcels (Tax Parcel Nos. 177468000 and 177485000, collectively, the “Property”) totaling approximately 2.1 acres.<sup>1</sup> The Applicant is seeking to change the Comprehensive Plan Designation from Urban Low Density to Commercial and to change the zoning from Low-Density Residential District (“R-2”) to Community Commercial (“CC”). The Applicant has been growing a small home-based business in the residence on the Property and seeks to expand this business by vacating the Residential use of the property and converting the residence to an office for use by the business. See attached business license.

» *Pre-Application Review*

During Pre-Application Review, the Applicant presented their plans for the proposed Comp. Plan Amendment and demonstrated how the proposal would meet Vancouver Municipal Code (“VMC” or “Code”) requirements. Importantly, based on review on the pre-application submittal and a site visit, Staff “indicated that from a staff perspective **the proposed change away from the current R-2 zoning which requires large lots was likely to be supported.**” Pre-Application Conference Summary at p. 3 (Emphasis added).

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<sup>1</sup> The parcels are addressed as follows: 20101 SE First Street (Tax Parcel No. 177485000) and 20117 SE First Street (Tax Parcel No. 177468000).

» *Planning Commission Review*

For reasons that remain unclear to the Applicant, support for the CPA from Staff began to wane during review before the Planning Commission despite clear enthusiasm from Staff during Pre-Application Review. More specifically, at the July 12, 2022 Planning Commission Workshop, Staff first questioned the appropriateness of Commercial zoning for the site, even though he reiterated that the Property “is certainly a viable commercial location ... no doubt about that ... [given its location] on a relatively major street.” Staff stated that there was “certainly a strong argument to zone it something more efficient” but anticipated issues as to whether the Property would be best zoned as a Commercial or High-Density Residential.” This change in opinion from Staff was distressing to the Applicant given the strong statements in support of the proposed CPA from Staff earlier on in the process and the expenditure of significant funds by the Applicant on her application.

During the September 13, 2022 Planning Commission Meeting, Staff expressed additional concerns about the proposed Comp. Plan Amendment, specifically about the long-term effects of the rezone, but provided no in-depth comments or explanation of these concerns. It is worth noting, however, that Staff also acknowledged that the R-2 zoning remains a “particularly inefficient zone” and therefore, there is a “strong case to look at alternatives.”

Two weeks later, the September 29, 2022 Staff Report to the Planning Commission was issued. The Report was a clear reversal of opinions expressed during the Pre-Application Conference: Staff found that the proposed Comp. Plan Amendment did “not comply with applicable criteria for Comprehensive Plan and zoning map changes of VMC 28.285.050” and that “other zoning designations may be more appropriate.” Further, Staff indicated that it was their view that “the proposal is ... premature in light of the pending Comprehensive Plan Amendment update to be completed in 2025.” This point could certainly have been communicated to the Applicant during the Pre-Application Conference, potentially causing the Applicant to cease spending money on a full application not move forward. Consequently, the Staff Report recommended that the Planning Commission forward a recommendation of denial to the City Council.

These comments were later reiterated during the October 11, 2022 Planning Commission Meeting. Importantly, Staff continued to acknowledge that there are “arguments in favor [of the Comp. Plan Amendment]” and he also recognized the “intensification of the area.”

At no point during Planning Commission review was the Comp. Plan Amendment approval criteria listed under Vancouver Municipal Code (“VMC” or “Code”) 20.285.050 mentioned, analyzed, or debated. Rather, the Commission summarily on a 3-2 vote, forwarded a recommendation of denial as proposed in the Staff Report.

One planning commission member indicated that he supported commercial uses North of First Street and Residential South of First Street. The issues with this is that 6 of the 8 “houses” south of First Street are engaged in commercial activity. Our client did a quick survey of all 8 of these houses and advises us that 6 of the structures, as indicated below, involve commercial uses:

19701 SE First Street – A Jehovah’s Witness building.

116 SE Westridge Boulevard – Residential and recently purchased for investment purposes

19909 SE First Street – Used as residential.

20011 SE First Street – Steelhead Tools/Tonoimous Engineering engaging in commercial uses.  
This property has recently been sold.

20019 SE First Street – Owner-occupied/auto restoration business.

20101 SE First Street – Applicant’s business.

20117 SE First Street – Applicant’s business.

107 SE 292<sup>nd</sup> Ave – Residential.

All of these properties front on First Street, notwithstanding their street address referencing a cross street.

## **II. THE COMP. PLAN AMENDMENT SATISFIES THE CODE APPROVAL CRITERIA SET FORTH IN VMC 20.285.050**

Comp. Plan Amendments may be approved only if they are in the public interest, more consistent than the existing designation with the Vancouver strategic plan and Comprehensive Plan, and meet the following criteria (no findings for which were entered by the Planning Commission):

- a. “Encourage more intensive development to locate in major urban centers and corridors, particularly downtown Vancouver. Encourage development of distinct neighborhoods served by commercial nodes, and discourage urban sprawl and strip commercial development;”

*Applicant: Approval of this proposal would encourage more intensive use and future development along the SE First Street corridor, which is a major arterial transportation corridor (which is not suitable for single family detached residential use). Staff acknowledged the intensification of this area during Planning Commission review. Further, this proposal would also support the growth of distinct neighborhoods by providing a commercial node within an existing residential community. Re-use of this previously developed site also reduces urban sprawl by providing for a more intense use of already developed property.*

- b. “Provide development of uses which are functionally integrated with surrounding areas and neighborhoods in terms of local shopping, employment, recreational or other opportunities;”

*Applicant: This proposed change would provide a commercial site adjacent to an existing residential area and public facility across the street. The 4-way signalized intersection with sidewalks, crosswalks, and vehicle circulation already integrates the site into the transportation system and allows for connectivity with neighboring properties and uses. This functional integration of the site promotes expanded commercial use, which could in the future provide shopping or commercial uses and would immediately support the expansion of a locally based, woman-owned, small business providing additional employment.*

- c. “Provide development which is compatible and integrated with surrounding uses in terms of scale, orientation, pedestrian enhancements, and landscaping;”

*Applicant: This 2-acre site would support small to medium scale commercial uses in the long term. It is oriented along a major transportation corridor connecting Vancouver and Camas. Commercial use of this property is more compatible with the existing transportation corridor than is residential use, especially with the benefit of a signalized 4-way intersection at the site driveway. Existing sidewalks along SE First Street provide for pedestrian connectivity as does the signalized intersection with crosswalks. Future commercial use of the property would be developed under Vancouver Codes which require appropriate landscaping, screening, and buffering from neighboring uses.*

- d. “Conserve or enhance significant natural or historical features;”

*Applicant: By allowing the redevelopment of this previously developed site, development is contained in an area without any designated critical areas or significant natural or historic features.*

- e. “Provide adequate provision of transportation, water, sewer, and other public services;”

*Applicant: The proposed rezone is for a property along SE First Street, an improved major arterial roadway. There are water and sewer mains through the site, with water taps already installed for future commercial use. There are adequate water, sewer and transportation services already existing to this site.*

- f. “Provide significant family wage employment opportunities and broadening of the Vancouver economy;”

*Applicant: In the immediate term, the rezoning of this property will allow the growth of a small home-based business into a commercial business. This will increase the employment opportunities on this site by allowing the conversion of the existing residence to office space. This will broaden the Vancouver economy and support locally based, woman-owned, small business growth. In the long term, the rezone would promote commercial*

*development opportunities on the site which would also support employment growth and opportunities.*

- g. “Provide for the formation and enhancement of neighborhoods and communities; and”

*Applicant: Providing a commercial node along a major transportation corridor already connected to neighboring residences and school with sidewalks, signalized crosswalks, and bike lanes enhances the opportunities for this neighborhood and surrounding community by providing opportunities for employment, and eventually commercial services.*

- h. “Provide affordable or below-market-rate housing opportunities.” VMC 20.285.050.

*Applicant: The Proposal has no impact on affordable housing.*

As we extensively articulated throughout our 17-page Narrative submitted with the CPA application, the Comp. Plan Amendment satisfies the criteria set forth in VMC 20.285.050(A)(4).

### **III. THE CITY HAS FAILED TO CONDUCT A CUMULATIVE EFFECTS ANALYSIS REQUIRED BY VMC 20.285.050(A)(4)**

The Code requires that review of Comp. Plan Amendments must consider “the cumulative transportation, **land supply**, and environmental impacts of other plan amendments proposed within the same annual cycle.” VMC 20.285.050(A)(4) (Emphasis added). This is way the growth Management Act only allows comprehensive plans to be amended once every 12 months. All requests are to be reviewed together for whether the jobs to housing balance is being maintained. The City has made no indication that this analysis has been conducted, nor have the results of said analysis been presented at any point during Planning Commission review.

The Applicant is particularly aggrieved by the absence of a cumulative effects analysis in light of the only other Comp. Plan Amendment proposed for this cycle, which would, if approved, result in land (roughly proportional in size to the Applicant’s Property) being redesignated from commercial to residential. Further, Staff repeatedly expressed concern about the loss of residential land for Applicant’s proposed CPA, **yet no net loss of residential land would occur if the CPA proposals were subject to a cumulative effects analysis.** The failure to conduct cumulative effects analysis therefore violates the Code and flouts the express provision of the Growth Management Act which requires that “all proposals shall be considered by the governing body concurrently **so the cumulative effect of the various proposals can be ascertained.**” RCW 36.70A.130(2)(b) (Emphasis added).

### **IV. “Wait until next year”**

After spending a large sum of money on a planning consultant, traffic analysis, market study and legal fees and based on initial indications of staff support, Staff would now prefer to “study the area to determine if Commercial is the best designation for the Applicant’s property.” This would

take another year and preclude the Applicant from growing her business on this site for that period of time. If the City Council is inclined to either deny this application or comply with staff's desire to study the area, Applicant would reluctantly agree to this if two conditions are imposed:

1. City Council directs staff to study this area and come back during the next Comprehensive Plan update cycle with its findings
2. The application remains pending while staff proceeds on a timely basis with this work (the Applicant should not be penalized from a time and money standpoint to have to start over with a new application).

## **V. CONCLUSION**

The Applicant's submittals support a Comprehensive Plan Amendment and zone change to from residential to commercial.