



1 constitutions. As ruled by the Court, “*solving the problem of the decrease in affordable rental*  
2 *housing in the city of Seattle is a burden to be shouldered commonly and not imposed on individual*  
3 *property owners.*” *Robinson v. Seattle*, 119 Wn.2d 34 (Wash. 1992), quoting *San Telmo Assocs. v.*  
4 *Seattle*, 108 Wn.2d 20, 25 (1987). Any efforts to make the Applicant responsible for the economic  
5 plight of the Star-Lite vendors would likely be invalidated for the same reason, i.e. that any  
6 responsibility for taking care of the vendors belongs to the community as a whole as opposed to the  
7 Applicant or owner of the Star-Lite. The City and higher levels of government may have the authority  
8 to provide economic development and welfare programs that could be of assistance to the vendors,  
9 but that type of assistance cannot be made available in this permit review process.

### 10 **Testimony**

11 Andrea Bell, City of Lakewood Associate Planner, summarized the staff report. In answer to Examiner  
12 questions, Ms. Bell responded that the proposal would not involve any amplified voice system.

13 Albert Ponton, neighbor, stated he wanted to make sure that the City would adjust the speed limit for  
14 the project. He also wanted to know if truck traffic would go down or up Tacoma Way.

15 Gracie Gallegos stated she’s a Starlite vendor. She noted there are 500 vendors at the Starlite market.  
16 She wanted to know what would happen to the vendors.

17 Jeff Davis, representing Applicant, noted that the project was designed to push truck traffic south of the  
18 site onto 84<sup>th</sup> street where trucks would be able to go east or west. There won’t be any truck traffic on  
19 82<sup>nd</sup> or 33<sup>rd</sup>, where the residences are located. Peak PM trips will be significantly reduced from 472 to  
20 24 trips per week. In response to examiner questions, Mr. Davis noted that the currently existing  
21 market operates seven days a week, so it does generate weekday traffic. Even on weekdays, the  
22 proposal will reduce PM trip generation. Trip generation will also be on the lighter end for the types of  
23 uses allowed in the applicable zoning district.

24 Les Seifert, project architect, noted that the Applicant followed the zoning code in putting the project  
25 together.

26 Rodney McClean, neighbor and former long distance trucker, was concerned whether there was  
sufficient room for truck maneuvering at the truck docks. There are two entrances and one exit. If  
there isn’t sufficient room to maneuver, trucks will back up into the adjoining streets. There’s only 160  
feet from the truck docks to the landscaping and the trucks can be 80 feet long. He also noted that  
before the Starlite market is dismantled to accommodate the distribution center that the vendors should  
be taken care of, maybe move them to a different location.

In rebuttal, Andrea Bell noted that the City has no plans to change any speed limits as a result of the  
proposal.

In rebuttal, Jeff Davis noted in responses to Mr. McClean’s comments that the market standard for  
maneuvering length is 100-130 feet. The proposal provides for 120 feet of maneuvering space. Page 4

1 of Ex. 8, the traffic impact analysis, shows the maneuvering templates used for the site. In response to  
2 examiner questions, Mr. McClean noted that the maneuvering space was subject to traffic engineer  
3 review.

4 In response to an audience question, Mr. Davis responded that construction would commence late  
5 summer 2019. Mr. Ponton asked whether the accident rate at the corner of 82<sup>nd</sup> street had been  
6 considered, because there had been a lot of accidents at that corner. Mr. Davis said that no accident  
7 analysis had been done, but one of the reasons for pushing truck traffic south was to avoid the tight  
8 turning radius of the 82<sup>nd</sup> street corner.

9 Steve Burnham, attorney representing the Starlite owner, stated that in the event the application isn't  
10 approved or the project doesn't proceed, the currently existing market will continue its operations. In  
11 response to examiner questions, Mr. Burnham stated that it's not known when the market will shut  
12 down if the proposed project moves forward, that will depend on the timing of the permit review and  
13 construction.

14 Rodney McClean noted that 120 feet isn't sufficient for truck maneuvering. He noted that spacing  
15 between dock doors also affects maneuvering. He's been trucking for 50 years and knows what works.

16 Mr. Davis responded that the distance between dock doors is four feet. In his company's experience,  
17 there will be enough for maneuvering. His company has designed millions of square feet of warehouse  
18 space and he's been designing these facilities for 20 years.

## 19 Exhibits

20 Exhibits A-Q as identified at page 8-9 of the February 12, 2019 staff report were admitted into the  
21 record during the February 19, 2019 hearing. The following exhibits were additionally admitted  
22 during the hearing:

23 Ex. R: Site Plan  
24 Ex. S: Project Elevations

## 25 FINDINGS OF FACT

### 26 Procedural:

1. Applicant. Davis Development Services.
2. Hearing. A hearing was held on the subject application on February 19, 2019 in the Lakewood City Hall Council Chambers.

1 **Substantive:**

2  
3 3. Project Description. The Applicant has applied for a conditional use permit to construct a  
4 244,905gsf warehousing, distribution and freight movement facility on 13.19 acres of land located at  
5 8327 South Tacoma Way. The full project plans include demolition of the existing Star-Lite Swap  
Meet, which will be replaced with a new concrete, tilt-up industrial building and associated site  
improvements for truck maneuvering, parking and landscaping, as well as, off-site improvements.

6 4. Surrounding Area. The project site is adjacent to single and multifamily residential uses to the  
7 north, east and south of the property with mainly commercial use types to the west and southwest.  
8 The adjacent residential uses are all located in the Air Corridor 2 zone and are considered to be legally  
non-conforming.

9 5. Adverse Impacts. There are no significant adverse impacts associated with the project.  
10 Pertinent impacts are addressed as follows:

11 A. Critical Areas. The proposed development is not located next to or near any critical areas. The  
12 new facility will not cause any unreasonably adverse effects to wetlands, shorelands, wildlife  
13 habitat and other sensitive areas. The project site is considered an aquifer recharge area;  
14 however, no wellheads have been found on-site. If wellheads are found on-site during  
preliminary site clearing or construction, the City of Lakewood Critical Areas Ordinance shall  
apply related to wellhead protection area regulations.

15 B. Traffic. The proposal will not create any significant adverse traffic impacts. It will significantly  
16 reduce the traffic generated by the current use of the project site. The traffic generated by the  
17 project would be similar and potentially have less of an impact than uses which are principally  
18 allowed in the current C2 zone. As part of the SEPA and Land Use Approval process for the  
19 project, a Traffic Impact Analysis has been prepared and will be reviewed by the City to insure  
20 that any significant impacts from the project are properly mitigated. Furthermore, the  
21 termination of the existing use as a swap meet six days a week will significantly decrease the  
22 amount of traffic from 472 to 24 PM peak hour trips per week in the area, as well as, the number  
23 of persons on the site. In addition, frontage improvements along the adjacent streets will be  
improved to current City standards, including curb, gutter, sidewalk, street lights and utility  
adjustments. The City's public works department has reviewed the Traffic Impact Analysis and  
made several recommendations for traffic improvements to mitigate the traffic impacts of the  
development. Those recommendations are made conditions of approval. As conditioned, the  
project will not cause an undue burden on the traffic circulation system.

24 At the hearing a commercial trucker with decades of driving experience, Rodney McClean,  
25 testified that in his opinion there wasn't sufficient space at the project for trucks to efficiently  
26 maneuver into their docking stations. Mr. McClean asserted that this insufficient space could  
lead to back-ups into adjoining streets. The Applicant, Jeff Davis, responded that the industry  
standard is 100-130 feet and that the project proposes 120 feet, which in his decades of

1 experience in designing truck distribution centers is sufficient space for truck docking. Mr.  
2 Davis stated his company has designed millions of square feet of truck warehouse stations such  
3 as the one proposed. The testimony of Mr. Davis is the more compelling on this issue. The  
4 Applicant has too much self-interested financial motivation to ensure that the layout of the  
5 warehouse facility is designed for efficient operations. Further, Mr. Davis has extensive  
6 experience in warehouse design, which is more directly related to design issues than the  
background experience of Mr. McClean. For these reasons it is determined that the project  
design will not create back up of truck traffic onto adjoining streets as asserted by Mr. McClean.

7 C. Hazardous Conditions. The proposed use as a warehouse/distribution facility will not include  
8 any uses that contain or introduce any hazardous conditions at the site or within the building that  
9 cannot be mitigated or managed to protect adjacent properties and the vicinity. The proposed  
10 use would most likely be less detrimental to the public health, safety and general welfare of the  
11 community than other potential uses, which are allowed outright in the current zone since the  
12 use of hazardous materials or substances are not anticipated in the proposed  
warehouse/distribution building. Any hazardous materials which may be introduced with uses of  
the building would be contained within the building and would be stored and maintained as  
required by city codes and standards.

13 D. Compatibility. The proposal will not create any significant noise or other adverse impacts that  
14 would affect surrounding properties. The proposed use as a warehouse/distribution facility is  
15 similar to the uses which are allowed outright in the current C2 zone and will not be injurious to  
16 or adversely affect the adjacent properties, uses or improvements in the vicinity of the site. The  
17 adjacent properties to the north, south and east of the site are zoned AC2 which allows for  
18 warehouse/distribution and freight movement as primary permitted uses. Although there are  
19 numerous nonconforming residences adjacent to the site, the project is conditioned to direct  
20 truck traffic to the south as testified by Mr. Davis in part to avoid noise impacts to the residents.  
21 The nonconforming homes are primarily located along 33<sup>rd</sup> and 82<sup>nd</sup> streets and the conditions of  
approval, adopting public works recommendations, prohibits truck traffic on these streets. The  
termination of the existing use will have a positive effect on the surrounding uses, and property  
by decreasing traffic significantly on the weekends and updating the look of the property with a  
new structure, new parking area and associated landscaping. Additionally, off-site improvements  
such as road widening and new curb and gutters will improve the surrounding infrastructure  
adjacent to the project.

22 E. Adequacy of Utilities. The proposal will be served by adequate utilities. The proposed project is  
23 a redevelopment of an existing site and is completely supported by existing domestic water,  
24 fire/sprinkler service, sanitary sewer, storm drainage, fire protection, police and franchise utilities  
25 including power, gas, telephone and cable service which are all available to the site from the  
26 surrounding streets. The project and proposed use is non-residential and is not anticipated to  
have any impact on the Clover Park School District. The proposed warehouse/distribution  
facility will have minimal demand on the water, sewer and fire protection services and all storm  
drainage runoff will be collected, treated and retained on-site with no discharge to off-site

1 properties or the city's street system. Furthermore, the termination of the existing use as a swap  
2 meet six days a week will significantly decrease the amount of traffic in the area, and the number  
3 of persons on the site, which will likely decrease the demand for police and fire protection  
4 services to this property.

### 5 **Conclusions of Law**

6 1. Authority. LMC 18A.2.502 Table 3 classifies conditional use permits as a Process III  
7 application subject to hearing examiner review.

8 2. Zoning Designations. Commercial 2 (C2) and Air Corridor 2 (AC2).

9 3. Review Criteria. 3. The proposed use type, Warehousing, Distribution and Freight  
10 Movement- Level 3, is allowed in the C2 and AC2 zoning district upon approval of a conditional use  
11 permit pursuant to LMC 18A.30.550(D)(9) and LMC 18A.30.750(D)(1). LMC 18A.10.150 governs  
12 the criteria for conditional use permit review. Applicable conditional use criteria are quoted below in  
13 italics and applied through corresponding conclusions of law.

14 **LMC 18A.10.150(A):** *The size and physical characteristics of the site are appropriate for the  
15 proposed use including all facilities and amenities that are required by this title or desired by the  
16 Applicant.*

17 4. The criterion is met. There are no critical areas on site and the project site and its large size is  
18 ideally suited for a large warehouse distribution center. As determined in Finding of Fact No. 5, the  
19 size of the parcel and associated project design sufficiently provides for on-site truck circulation.

20 **LMC 18A.10.150(B):** *The proposed use will not be detrimental to the public health, safety, and  
21 general welfare of the community and will not introduce hazardous conditions at the site that cannot  
22 be mitigated to protect adjacent properties and the vicinity.*

23 5. The criterion is met. As determined in Finding of Fact No. 5, no significant adverse impacts  
24 will be created by the proposal, which includes any hazardous conditions. Since the proposal creates  
25 no significant adverse impacts, it will not be detrimental to public health, safety and welfare.

26 **LMC 18A.10.150(C):** *The proposed use will not be injurious to, or adversely affect the uses,  
property, or improvements adjacent to, or in the vicinity of, the site upon which the proposed use is to  
be located. The proposed use will be compatible with adjacent land uses and consistent with the  
character of the surrounding area.*

6. The criterion is met. As determined in Finding of Fact No. 5, no significant adverse impacts  
will be created by the proposal and the proposal is compatible with surrounding uses. Consequently, it  
will not be injurious or adversely affect surrounding uses.

1 **LMC 18A.10.150(D):** *The proposed use will be supported by adequate water, sewer, storm*  
2 *drainage, schools, electrical, police, and fire protection facilities and services. The use will not*  
3 *overburden or adversely affect said public facilities and services.*

4 7. The criterion is met. As determined in Finding of Fact No. 5(E), the proposal is served by  
adequate public facilities and services.

5 **LMC 18A.10.150(E):** *The traffic generated by the proposed use will not unduly burden the traffic*  
6 *circulation system in the vicinity.*

7 8. The criterion is met. As determined in Finding of Fact No. 5(B), the traffic generated by the  
8 proposal is not significant and is adequately mitigated as conditioned by the City's public works staff.

9 **LMC 18A.10.150(F):** *An adequate site layout is proposed for on-site circulation and*  
10 *transportation activities, considering the potential impacts of the proposed use on traffic flow and*  
11 *control, emergency vehicle movements and safety associated with the suitability of access points, on-*  
12 *site drives, parking, loading and unloading areas, refuse collection and disposal points, sidewalks,*  
13 *bike paths, or other transportation facilities required by this title or desired by the Applicant. All*  
14 *conditions necessary to lessen any impacts of the proposed use have been included in the project*  
15 *design or will be required as conditions of approval pursuant to LMC 18A.10.160, Action of Hearing*  
16 *Examiner. Buffering devices such as fencing, landscaping or topographic characteristics may be*  
17 *required to adequately protect adjacent properties from adverse effects of the proposed use,*  
18 *including adverse visual or auditory effects.*

19 9. The criterion is met. As noted in Finding of Fact No. 5(B), the proposal has been reviewed by  
20 Public Works staff, who have reviewed the Applicant's traffic report and proposed site design and  
21 from that information have recommended several conditions of approval to assure adequate traffic  
22 facilities that conform to all City standards. Those recommended conditions are imposed by this  
23 decision. As previously noted, questions during public testimony were raised about adequacy of on-  
24 site traffic circulation and the Applicant was able to establish that project design sufficiently provides  
for that circulation. A preliminary landscape plan has also been prepared and is included in this  
application showing the proposed trees, shrubs and ground cover along the perimeter and interior of  
the site to help enhance and mitigate any aesthetic and noise impacts from the project.

25 **LMC 18A.10.150(G):** *The proposed use will cause no unreasonably adverse effects to wetlands,*  
26 *shorelands, wildlife habitat, and other sensitive areas.*

10. The criterion is met. As determined in Finding of Fact No. 5(A), the proposal will not  
adversely affect critical areas since none are on or near the project site.

**LMC 18A.10.150(H):** *That the granting of the proposed conditional use is consistent and*  
*compatible with the intent of the goals, objectives and policies of the comprehensive plan. For*  
*essential public facilities, the Hearing Examiner shall balance the goals and policies of the*

1 *comprehensive plan, the intent of this code, and the public need for the proposed facility.*

2  
3 11. The criterion is met for the reasons identified at pages 4 of the staff report. The proposal  
4 furthers the policies identified in the staff report by promoting large scale commercial development in  
5 the City's commercial corridor areas and directing truck traffic onto streets suited for that type of  
6 traffic.

7 **LMC 18A.10.150(I):** *The proposed use complies with the appropriate development and  
8 performance standards and all other applicable provisions of the City of Lakewood Land Use and  
9 Development Code.*

10  
11 12. The criterion is met. As conditioned, as outlined in the staff report, staff have reviewed the  
12 proposal for consistency with the City's development standards and found the project to be consistent.  
13 There is nothing in the record to reasonably suggest otherwise.

## 14 **DECISION**


15 Conditional Use Permit Application No. LU-18-00222 satisfies all conditional use criteria as  
16 determined in the Conclusions of Law of this decision and is therefore approved subject to the  
17 following conditions:

- 18 1. Minor modifications to the plans will require Community Development and Public Works  
19 Departments approval, and major modifications will require an amended or new  
20 Conditional Use Permit.
- 21 2. The Applicant shall be required to obtain Design Review approval, a Boundary Line  
22 Adjustment, a Site Development permit with Drainage Review and all necessary building  
23 permits through the City of Lakewood. In addition, outside permitting through various  
24 agencies may apply.
- 25 3. The Applicant shall abide by all mitigating conditions provided in the SEPA DNS issued  
26 on January 18, 2019.
4. The Applicant shall abide by all conditions of approval set forth in the revised Public  
Works Engineering Department memorandum dated February 6, 2018 (provided as exhibit  
J).



- 1 5. The Applicant shall dispose of demolition material in accordance with Board of Health  
2 Resolution 2004-3550 and WAC 173-350. Any hazardous material found during  
3 demolition must be appropriately handled and disposed.
- 4 6. Temporary construction fencing and safety signage shall be in place during construction  
5 and/or demolition.

6  
7 DATED this 27th day of February, 2019.

8  
9   
10 Phil A. Olbrechts

11 Hearing Examiner for Lakewood

12 **Appeal Right and Valuation Notices**

13 LMC 18A.02.502 Table 3 provides that the final decision of the Hearing Examiner is subject to  
14 appeal to superior court. Appeals of final land use decisions to superior court are governed by the  
15 Land Use Petition Act (“LUPA”), Chapter 36.70C RCW. LUPA imposes short appeal deadlines  
16 with strict service requirements. Persons wishing to file LUPA appeals should consult with an  
attorney to ensure that LUPA appeal requirements are correctly followed.

17 Affected property owners may request a change in valuation for property tax purposes  
18 notwithstanding any program of revaluation.