

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF BREMERTON**

In the Matter of the Application of)	No. BP19-00069
)	
Harbor Custom Homes)	Werner Road Rezone
)	
)	
)	FINDINGS, CONCLUSIONS,
<u>For Approval of a Rezone Request</u>)	AND RECOMMENDATION

SUMMARY

The Hearing Examiner recommends that the request to rezone approximately 22.5 acres from the “Industrial” zoning designation to the “Low Density Residential” (R-10) zoning designation, including 9000 Werner Road, be **APPROVED**.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on October 28, 2019.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Garrett Jackson, City Planner
Norm Olsen, Applicant Representative

Exhibits:

The following exhibits were admitted into the record:

1. Application for Site Specific Rezone, received August 5, 2019; Project Narrative; Vicinity Map
2. Zoning Map 4, undated
3. Land Use Map, undated
4. Wetland Delineation, BGE Environmental, LLC, dated April 6, 2018
5. Legal Description; Rezone Exhibit, dated October 21, 2019
6. Notice Materials:
 - a. Determination of Completeness, dated September 30, 2019
 - b. Declaration of Mailing, dated September 30, 2019; with Notice of Application and Public Hearing, dated October 1, 2019; Proposed Comprehensive Plan Map Change Concept Plan; and Land Use Map, undated
 - c. Declaration of Posting, dated October 1, 2019; Notice of Application and Public Hearing, dated October 1, 2019
 - d. Invoice, *Kitsap Sun*, for publication October 1, 2019

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7. Determination of Nonsignificance, dated August 8, 2019
8. Staff Analysis and Conclusion, dated October 18, 2019
9. Findings and Conclusions of the Bremerton Planning Commission, dated September 16, 2019
10. Notice of Environmental Review for 2019 Comprehensive Plan Docket and Zoning Code Amendments, dated August 8, 2019; with attached materials

The Hearing Examiner enters the following Findings and Conclusions based upon the testimony and exhibits admitted at the open record hearing:

FINDINGS

Application and Notice

1. Harbor Custom Homes (Applicant) requests approval to rezone approximately 22.5 acres from the “Industrial” zoning designation to the “Low Density Residential” (R-10) zoning designation. The undeveloped property is located adjacent to Werner Road, and includes property at 9000 Werner Road. The City of Bremerton (City) is currently in the process of changing the land use designation for the subject property, under the Comprehensive Plan, from Industrial to Low Density Residential.¹ *Exhibit 1; Exhibit 8, Staff Report, pages 1 and 2; Exhibit 10.*
2. The City determined the application was complete on September 30, 2019. On October 1, 2019, the City provided notice of the application and the associated open record hearing by mailing notice to all owners of real property within 300 feet of the subject property, and by posting the combined notice on the subject property, and by publishing notice in the *Kitsap Sun*.² The City received no public comments in response to its notice materials. *Exhibit 6.*

State Environmental Policy Act

3. The City Department of Community Development acted as lead agency and analyzed the environmental impacts of the proposed rezone request under the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). The City reviewed the potential environmental impacts associated with the proposal concurrently with the environmental review it performed in adoption of its annual Comprehensive Plan amendments (for 2019). As noted above, the City is currently in the process of changing the land use designation for the subject property under the Comprehensive Plan. The

¹ The subject property is identified by tax parcel numbers: 202401-4-002-2003, 202401-4-001-2004, 4597-000-193-0008, 4597-000-001-0000, 4597-000-076-0000, 4597-000-085-0009, 4597-000-096-0006, 4597-000-099-0003, 4597-000-104-0006, 4597-000-107-0003, 4597-000-108-0002, 4597-000-112-0204, 4597-000-217-0000. *Exhibit 9.* A legal description of the property is included with the application materials. *Exhibit 5.*

² Bremerton Municipal Code (BMC) 20.02.100 and BMC 20.02.110 permit combined notice of application and open record hearing.

City reviewed the environmental checklist associated with the property, and other information on file, and determined that changing the land use designation and zoning for the property would not have a probable significant adverse impact on the environment. Accordingly, the City issued a Determination of Nonsignificance (DNS) on August 8, 2019, by publishing, mailing, and posting notice, with a comment deadline August 23, 2019. No comments specific to the rezone of the subject property were received and the DNS was not appealed. *Exhibit 7; Exhibit 8, Staff Report, page 2; Exhibit 10.*

Site-Specific Rezone

4. The Growth Management Act (GMA), Chapter 36.70A RCW, requires cities and counties to engage in a planning process. *RCW 36.70A.040*. Thirteen exclusive goals guide that process: the goals concern urban growth, sprawl reduction, transportation, housing, economic development, property rights, permitting, natural resource industries, open space and recreation, the environment, citizen participation and coordination, public facilities and services, and historic preservation. *RCW 36.70A.020*. Any jurisdiction subject to the GMA's planning requirement must balance these sometimes competing goals (*see Feil v. E. Wash. Growth Mgmt. Hrgs. Bd.*, 172 Wn.2d 367 (2011)) and produce a Comprehensive Plan that guides future growth and development. *RCW 36.70A.040 through .120*. The jurisdiction must then enact development regulations implementing the Comprehensive Plan and otherwise act in conformity with the Comprehensive Plan. *RCW 36.70A.120*.
5. Here, the subject property is currently designated "Industrial" under the City's Comprehensive Plan. The City, however, seeks to change the Comprehensive Plan designation to Low Density Residential when it amends its Comprehensive Plan later this year. The City's Planning Commission reviewed the proposed amendment and conducted a public hearing on the proposed changes. No comments specific to the Comprehensive Plan designation changes at Werner Road were received. On September 16, 2019, the Planning Commission produced a decision recommending that the City Council change the designation, as requested. It determined that, consistent with Bremerton Municipal Code (BMC) 20.10.080, the Comprehensive Plan amendment would: be consistent with the GMA and with the City's Comprehensive Plan and its other goals and policies; allow the opportunity for more housing as the City and region are experiencing shortages related to affordable housing; be consistent with existing or planned land uses in the area; and not adversely affect the City's ability to provide urban services to the area. *Exhibit 9; Exhibit 10.*
6. Much of the land in the general area that includes the subject property is underdeveloped or undeveloped. Surrounding property use includes industrial areas to the north, south, and west, and residential areas to the east. Surrounding zoning designations include Low-Density Residential (R-10) to the east and Industrial (I) to the north, south, and west. A portion of the land to the south is also zoned as City Utility Land (CUL). *Exhibit 2; Exhibit 3; Exhibit 8, Staff Report, page 1.*

7. The area that is proposed to be rezoned includes several critical areas, including wetlands and geologically hazardous areas. The Applicant submitted a Wetland Delineation, prepared by BGE Environmental, LLC (“BGE”), assessing on-site critical areas. BGE determined that there are two Category IV wetlands on-site that would require 50-foot wetland buffers when future site development occurs. In addition, the Applicant submitted information stating that the property contains steep slopes which are not conducive to use of the site for industrial purposes. Any future development of the site would require additional analysis to ensure the City’s critical areas ordinances are satisfied. *Exhibit 1; Exhibit 4.*
8. City staff reviewed the proposal for consistency with the requirements for a rezone under BMC 20.58.040(d) and determined:
 - The rezone would be consistent with the Comprehensive Plan designation for the property so long as the City Council adopts the Planning Commission’s recommendation to change the land use designation of the property from Industrial to Low Density Residential.
 - The rezone would advance the public, health, safety, and welfare and would not have adverse impacts on adjacent properties. Specifically, the amendment would separate industrial and residential uses, through utilizing existing topographical constraints, to provide a transition between industrial land and existing residential development. Moreover, because of on-site critical areas, the site is more conducive to residential development rather than industrial development.
 - The rezone is necessary because conditions in the immediate vicinity or neighborhood have changed and the rezone request would serve the public interest. Specifically, there is a demand for increased residential development in the area.

Exhibit 8, Staff Report, pages 2 and 3.

Testimony

9. City Planner Garrett Jackson testified generally about the proposal. He explained that the City Council would decide on December 18, 2019, whether to change the land use designation for the property, under the Comprehensive Plan, from Industrial to Low Density Residential. Mr. Jackson explained that, without such approval, it would be inappropriate to rezone the property. *Exhibit 8, Staff Report, pages 2 and 3; Testimony of Mr. Jackson.*
10. Applicant Representative Norm Olsen testified that the Applicant concurs with the City’s assessment of the site-specific rezone and the Planning Commission’s recommendation that the City Council amend the designation of the property under the Comprehensive Plan. *Testimony of Mr. Olsen.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has authority to conduct an open record hearing on a rezone request and to issue a recommendation on the request to the Bremerton City Council. *Bremerton Municipal Code (BMC) 2.13.070; BMC 2.13.080(3); BMC Chapter 20.02, Table 040.*

Criteria for Review

The Hearing Examiner holds the open record hearing on the rezone request and provides a recommendation to the City Council. *Chapter 20.02 BMC, Table 040; BMC 20.58.040(b).*

The City may grant a site-specific rezone only if it finds that:

- (1) The rezone is consistent with the Comprehensive Plan;
- (2) The rezone will advance the public health, safety, or welfare, and will not have adverse impacts on adjacent properties;
- (3) The rezone is necessary because either:
 - (i) Conditions in the immediate vicinity or neighborhood have so markedly changed that it is in the public interest to approve the rezone; or
 - (ii) The rezone will correct a zone classification or zone boundary that was inappropriate when established; and
- (4) The rezone is in the public interest.

BMC 20.58.040(d).

Conclusions Based on Findings

1. **The proposed rezone would be consistent with the City Comprehensive Plan.** The Planning Commission has recommended that the City Council amend the land use designation for the property from Industrial to Low Density Residential as part of the 2010 Annual Comprehensive Plan Amendments process. The Applicant's request to change the zoning from "Industrial" to "Low Density Residential" (R-10), would be consistent with the City Comprehensive Plan, if amended by the City Council. *Findings 1, 3 – 10.*
2. **The proposed rezone would advance the public health, safety, or welfare, and would not have adverse impacts on adjacent properties.** The City provided adequate public notice and opportunity for comment on the rezone request. No public comments specific to the rezone proposal were received. The City analyzed the environmental impacts of amending the property's zoning designation in conjunction with the City's process for evaluating changing the Comprehensive Plan designation for the property. The City determined that the proposed rezone would not have a probable significant adverse impact on the environment and issued a DNS. The proposed rezone from Industrial to Low Density Residential (R-10) is appropriate for these parcels and would benefit adjacent properties by providing a transition for the existing residential area to the east and the industrial areas to the west. The rezone would facilitate development of additional housing in the area. *Findings 1 – 10.*

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3. **The proposed rezone is necessary because conditions in the immediate vicinity and neighborhood have changed and it would be in the public interest to approve the rezone request.** The City’s Planning Commission determined that a change in the Comprehensive Plan designation from Industrial to Low Density Residential is appropriate, especially given the increased need for housing the vicinity and region. Assuming the City Council adopts the Commission’s recommendation, approval of this rezone request would implement the Comprehensive Plan with appropriate development regulations as required by the Growth Management Act. *Findings 1 – 10.*

RECOMMENDATION

Based on the findings and conclusions above, the Hearing Examiner recommends that the request to rezone approximately 22.5 acres from the “Industrial” zoning designation to the “Low Density Residential” (R-10) zoning designation, located adjacent to Werner Road, including the property at 9000 Werner Road, be **APPROVED**.

RECOMMENDED this 12th day of November 2019.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center