

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

In the Matter of the Application of) NO. BP03-00001
)
John and Stacey Nelson)
(dba Chico Towing)) FINDINGS, CONCLUSIONS
) AND DECISION
)
For Approval of a Special Use Permit)

SUMMARY OF DECISION

The request for approval of a Special Use Permit to develop 9.1 acres of land in order to operate an automobile impound lot by constructing buildings, parking, spaces, storage, and auction lots on property located west of Broad Street, north of 'O' Street, and south of Tweed Lane in Bremerton, WA is **GRANTED**, subject to conditions.

SUMMARY OF RECORD

Request

John Nelson and Stacey Nelson dba Chico Towing (Applicant) requests approval of a Special Use Permit (SUP) to develop 9.1 acres of land in order to operate an automobile impound lot on property located west of Broad Street, north of 'O' Street, and south of Tweed Lane in Bremerton, WA. This development would include the construction of an estimated 7,500 square feet of buildings, 111 parking spaces, storage, and auction lots.

Hearing Date

The Hearings Examiner for the City of Bremerton held an open record hearing on the request on January 24, 2005. A public hearing is not required for a SUP unless Director finds, under BMC 21.02.905(c), that the proposal may have significant impacts beyond the immediate site, that there is neighborhood or community-wide interest, or that the proposal may be of a sensitive or controversial nature. The Director determined that the proposal may be of a sensitive or controversial nature and therefore classified the SUP as a non-administrative SUP requiring a Type III administrative Hearing Examiner decision.

Testimony

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

Stacey Neslon
Ron Templeton
Susan Demond
Robert Grumbach
Paul Wandling
William Duke
LuLu Potter

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L.J. Moore
Dean Warley
Michael Hudson

Exhibits

The following exhibits were admitted as part of the official record at the open record hearing:

Exhibit 1 City of Bremerton, Department of Community Development
Staff Report, Conclusions and Findings

→INSERT EXHIBIT LISTING

Exhibit 16 City of Bremerton, Staff Presentation by Richard Grumbach (Powerpoint Slides)
Exhibit 17 Letter from William T. Duke
Exhibit 18 Preliminary Site Plan
Exhibit 19 Owner Profiles – John Nelson and Stacey Tucker Nelson
Exhibit 20 Letter from Robert Forbes, Chief of Police, City of Bremerton
Exhibit 23 Proposed Modifications to Conditions 6 and 8

Based upon the evidence admitted at the open record hearing, the Hearings Examiner enters the following Findings of Fact and Conclusions of Law:

FINDINGS

1. The Applicant requests approval of a Special Use Permit (SUP) to develop 9.1 acres of land in order to operate an automobile impound lot on property located west of Broad Street, north of 'O' Street, and south of Tweed Lane. The Tax Assessor's Parcel Number are 202401-1-001-2000 and 212401-2-040-2000.¹ *Exhibit 1, Staff Report, page 1-2.*
2. In addition, the Applicant seeks to operate automobile auctions on the site one weekend a month. According to the Applicant, state law requires auctioning of vehicles after a period of time. The auctions are a subordinate activity to the impound lot and, pursuant to BMC 21.02.190 (Accessory Uses and Structures) are allowed if the SUP is approved. *Exhibit 1, Staff Report, page 7; Testimony of Mr. Grumbach.*
3. The subject property is approximately 8.75 acres² and is zoned Industrial Park (IP) under

¹ The abbreviated legal descriptions for the subject property are as follows: Lot 202401-1-001-2000: The east half of the northeast quarter of Section 20, Township 24 North, Range 1 East, W.M. in Kitsap County, Washington. Lot 212401-2-040-2000: The west half of the northwest quarter of the northwest quarter of the northwest quarter of Section 21, Township 24 North, Range 1 East, W.M., in Kitsap County, Washington. *Exhibit 1, Staff Report, page 2.*

² The Hearing Examiner notes a discrepancy in the size of the subject property. The Preliminary Site Plan and portions of the Staff Report state that the property is approximately 9.1 acres in size. However, page 2 of the Staff Report states that the property is 8.75 acres in size. The Hearing Examiner is proceeding under the presumption that

both the City's zoning code and the Comprehensive Plan Designation.³ The surrounding land is zoned both Residential Low-Density (SF-3) and Industrial Park (IP). Land to the north and east of the subject property is zoned SF-3 and is used primarily for single-family residential purposes. Land to the south of the subject property is zoned SF-3 and IP but is currently used only for single-family residential. Land to the west of the subject property is zoned IP and is used for a rock quarry (mining operations). *Exhibit 1, Staff Report, page 2; Exhibit 16, Staff Presentation, page 2, 4-9.* The proposal is compatible with adjacent uses and existing residential neighborhoods, subject to site screening and buffering requirements. *Exhibit 16, Staff Presentation, page 22.*

4. The subject project is located in a former 'borrow pit' which caused extensive alterations to the topography. The subject property now consists of a steep slope in the northerly portion, interrupted by a level plain, and lesser slopes in the southerly and southwesterly portions. The slopes are in a downward northeasterly direction. Critical areas do exist on site. The subject property has wetlands in the north/easterly portions and a stream that transects the site from southwest to northwest. Ingress/egress is from Tweed Lane and the site is served by public water and sanitary sewer services. *Exhibit 1, Staff Report, page 3; Exhibit 18, Preliminary Site Plan.*
5. The subject property currently has a moderate to dense vegetation cover. Several abandon structures are located on the site, including an abandon house. Applicant has proposed to remove all existing structures. *Exhibit 1, Staff Report, page 2 and 7; Exhibit 16, Staff Presentation, page 5.*
6. At the time of application, the Comprehensive Plan designates the subject property as "Industrial Park." The purpose of the IP zone to provide areas for a mix of office, wholesale, trade and distribution, bulk retailing, and light manufacturing in a low-density, campus-like environment. The district shall be designed to minimize adverse effects on adjacent areas and to present an attractive well-landscaped appearance. IP businesses should require little or no outdoor storage of products, materials or equipment, and operations should, for the most part, be contained within enclosed structures. *Exhibit 1, Staff Report, page 8; BMC 21.02, Table 120.*
7. The location and design of the proposed auto impound lot is consistent with the City's Comprehensive Plan including Goals 1, 2, 5, 10, and 12 which all seek to promote a strong local economy and development in urban areas where adequate public facilities exist. *Exhibit 1, Staff Report, page. 3-4.*
8. Applicant submitted a preliminary conceptual site plan as support for the SUP and SEPA review. Review for compliance with city development standards still need to occur prior

the subject property is 9.1 acres in size and requests that the City provide the Hearing Examiner with the correct acreage so that the record is accurate.

³ The property had previously been zoned as SF-3 but was changed to IP in December 2001. The site was zoned IP at the time Applicants submitted the application. However, the City Council has recently adopted a new comprehensive plan and the site is now designated as "Industrial"

to issuance of any building permits. *Exhibit 1, Staff Report, pages 7*

9. Applicant has proposed that this development occur in phases. This SUP involves the first phase of development which Applicant states shall include the development of 4500 square 7500 square feet of buildings (office, maintenance, and auction); 106 parking spaces (customer and auction); road, utility, and storm water improvements; and will involve the cutting and filling of soils. *Exhibit 16, Staff Presentation, page 12*. Future development, not in consideration under this SUP, is anticipated to include additional parking, relocation of an existing stream, and construction of a warehouse storage building. *Exhibit 16, Staff Presentation, page 12*.
10. In June 2003, Applicant submitted the initial application, the Department of Community Development started processing as a special use permit. The application was initially determined incomplete due to the City's need for more information about geologically hazardous areas, the identified stream, and the wetlands. The Applicant complied with the City's request and the application was determined to be complete in August 2004. *Exhibit 1, Staff Report, pages 5-6*.
11. All setbacks required under City code have been met. Official review for compliance will occur during formal site plan review. *Exhibit 1, Staff Report, page 8; Exhibit 16, Staff Presentation, page 20*.
12. The proposal was sent to reviewing agencies for comment. Comments were received by the following departments:
 - City of Bremerton Engineering Department: Comments pertained to storm water and water quality, road impacts (ingress/egress, paving); and lighting. *Exhibit 1, Staff Report, page 17-18*.
 - City of Bremerton Fire Department: Comments pertained to access to and conditions of roads, availability of hydrants, and premise identification. *Exhibit 1, Staff Report, page 18*.
 - Suquamish Tribe Fisheries Department: Comments pertained to the fact that the site is within the "usual and accustomed fishing area" of the Tribe; mitigation measures to avoid or reduce impacts on wetland and stream; consideration of physical and geological limitations; and storm water quality and quantity. *Exhibit 1, Staff Report, page 18*.
 - Washington State Department of Fish & Wildlife: Comments pertained to wetlands, stream relocation (HPA required), and buffer averaging. *Exhibit 1, Staff Report, page 18*.
 - City of Bremerton Police Department submitted no concerns and requested no conditions regarding public safety. The police supported the proposal seeing it as enhancing the Applicant's ability to service the towing needs of both the City and its residents. *Exhibit 20, Letter from Bremerton Chief of Police*.
13. Written Public Comments were received by nearby property owners. Nearby property

owners also provided testimony at the hearing. Both written and oral comments pertained to traffic impacts (access, parking, safety for children); noise impacts from 24-7 operation; geological hazards; impacts on wetland and stream created by filling wetland, vegetation removal, and contamination from cars; property devaluation; increase in crime rate; and lack of proper notification to surrounding property owners. *Exhibit 1, Staff Report, page 20-21; Exhibit 16, Staff presentation, page 24; Exhibit 17; Testimony of Mr. Duke; Testimony of Mr. Hudson; Testimony of Mr. Wartley; Testimony of Ms. Potter.*

14. The Applicant's preliminary site plan shows 134 spaces at completion of both phases. Phase one provides for construction of 50 parking space which may not be adequate to serve the proposal. The number of off-street parking spaces will be determined as the applicant develops and utilizes the site. *Exhibit 1, Staff Report, page 9; Exhibit 16, Staff Presentation, page 14, 20.*
15. Landscaping proposed by the Applicant appears to be adequate. Applicant proposes to provide a 15-foot vegetative buffer along the southern property line. However, a year-round sight barrier is required in those areas adjacent to residentially zoned properties. These properties are located on the north, south, and east side of the subject property. Applicant must still provide a detailed landscaping plan. *Exhibit 1, Staff Report, page 11; Exhibit 16, Staff Presentation, page 14, 20.*
16. The subject property contains extensive critical areas including geographical hazardous areas, stream corridors, wetlands, and buffer zones. Applicant has submitted a *Soil and Slope Survey and Geological Report*, prepared by AL Hart Engineering Geologist (May 2003), stating that the development would not create a risk to either the proposed development or adjacent properties. *Exhibit 1, Staff Report, page 12; Exhibit 16, Staff Presentation, page 15, 21.* Applicant submitted a *Wetland Analysis Report for the 10 Acre Parcel on O Street*, prepared by Wiltermood Associates (December 2004), stating that a Type II wetland was identified, requiring a 100-foot buffer, and a Type III stream was identified, requiring a 25-foot buffer. A Wetland Permit and a Hydraulic Project Permit will be required for the proposal. *Exhibit 1, Staff Report, page 12; Exhibit 16, Staff Presentation, page 16, 21.*
17. Pursuant to the State Environmental Policy Act (RCW 43.21.C), the City of Bremerton was designated as the lead agency for the identification of probably significant adverse environmental impacts from the proposed project. A Mitigated Determination of Non-Significance (MDNS) was issued on January 5, 2005, and concluded that the proposal, as conditioned, would not adversely affect the environment. Seventeen conditions were provided for in the MDNS. *Exhibit 1, Staff Report, page 1; Exhibit 16, Staff Presentation, page 21, 25.*
18. To address storm water requirements, Applicant submitted a *Preliminary Hydrologic Analysis for Tweed Lane Industrial Park*, prepared by Map LTD, this preliminary plan needs revisions. Full compliance will be evaluated during site plan review. *Exhibit 1, Staff Report, page 15; Exhibit 16, Staff Presentation, page 18, 20; Testimony of Mr.*

Wandling; Testimony of Ms. Demond.

19. The proposal was reviewed by the City Engineer for traffic impacts. A traffic study is not required for a SUP. *Exhibit 1, Staff Report, page 16; Exhibit 16, Staff Presentation, page 18.*
20. Though the Applicant operates a 24-hour, 365-day a year schedule, the majority of Applicant's business occurs between the hours of 8:00 am and 6:00 pm, Monday through Friday. Since Applicant provides services to the City of Bremerton, pursuant to BMC 9.10.020, the Applicant must maintain a business office opened and manned 24 hours a day, 7 days a week. *Exhibit 1, Staff Report, page 7.*
21. Notice was provided regarding application, completeness of application, SEPA determination, and the public hearing was mailed to property owners within 300 feet of the subject property. Notice was published in The Sun. *Exhibit 1, Staff Report, pages 17; Exhibits 16, Staff Presentation, page 26..*

CONCLUSIONS

Jurisdiction

The Hearings Examiner is granted jurisdiction to hear and decide applications for Special Use Permits pursuant to Section 21.02.850 of the Bremerton Municipal Code. The decision may be to approve, approve with conditions, or deny the application.

Criteria for Review

To approve a Special Use Permit, the Hearings Examiner must find that the application satisfies the applicable criteria for review; is consistent with the Comprehensive Plan and other adopted plans; and conforms to all applicable City development regulations, minimum standards, and design guidelines. *BMC 21.02.885.* BMC 21.02.905(d) provides that a Special Use Permit may be approved if all of the following questions can be answered "yes":

1. Is the proposal consistent with the City's Comprehensive Plan and either designated "SUP" in the Zoning Ordinance, or is being processed as an "Unlisted Use"?
2. Will the proposal comply with all applicable development standards and requirements, including the availability of all needed utilities and services?
3. Will the proposal, along with any mitigation measures or other conditions of approval, avoid significant adverse environmental consequences?
4. Will the proposal be compatible with adjacent uses and surrounding neighborhood?
5. Does the proposal comply with all other criteria or design guidelines that are applicable to the specific use or type of development?

The Hearings Examiner has authority to impose such conditions as site orientation, fencing, buffering, parking location, lighting, access, hours of operation or others as conditions of SUP approval if needed to prevent adverse impacts and/or ensure compatibility of the surrounding area. *BMC 21.02.905(e).*

Conclusions Based on Findings

1. **With conditions, the proposal satisfies the criteria for approval of a Special Use Permit.**
 - a. The proposed use is consistent with the City's Comprehensive Plan and is designated SUP in the Zoning Ordinance. *Findings of Fact 3, 6, and 7.*
 - b. Utilities and public services are available. The project will be developed to be in compliance with all applicable development standards, including traffic impact, roads standards, parking standards, stormwater standards, setback and building height and bulk standards at time of site plan review. With conditions, the preliminary conceptual plan demonstrates that the proposal will comply with all applicable standards and requirements. *Findings of Fact 4, 8, 11, 14, 15, 16, and 18.*
 - c. The proposal, as mitigated, will not have significant adverse environmental consequences to the subject property or to surrounding properties. Compliance with development standards set forth in the MDNS will ensure mitigation of any impacts that might occur during or after construction. Geotechnical reports and wetland delineation reports show a minimization of impacts to hazardous areas, the wetland, and to the stream. *Findings of Fact Nos. 16 and 17.*
 - d. The subject property is in a transitional area between residential and industrial uses (previously mining). The proposed use is industrial in nature and the clustering design of the proposal will integrate with the surround residential development. As conditioned, the project would be compatible with adjacent uses. *Findings of Fact Nos. 3, 6, and 7.*
 - e. Site plan review and the building permit process will be sufficient to ensure compliance with all applicable design standards pertinent to the zone and use of the proposed development. *Finding of Fact No. 8, 11, and 18.*

DECISION

Based upon the preceding Findings of Fact and Conclusions, the request for approval of a Special Use Permit to develop 9.1 acres of land in order to operate an automobile impound lot by constructing buildings, parking, spaces, storage, and auction lots on property located west of Broad Street, north of 'O' Street, and south of Tweed Lane in, Bremerton, WA is **GRANTED**, subject to the following conditions:

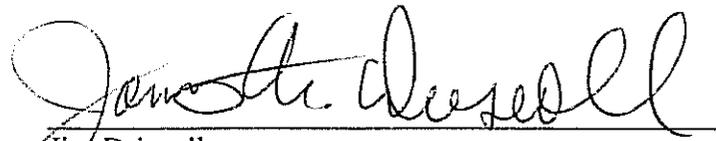
1. The 17 conditions set forth in the Mitigated Determination of Nonsignificance dated January 5, 2005 are incorporated as conditions for approving the Special Use Permit.

2. All parking, automobile circulation, and storage areas shall be paved with an all weather surface as defined in BMC 21.02.070 prior to the area being utilized or occupied. No parking or storage shall be allowed on areas without an approved paved surface.
3. The Applicant shall take measures to prevent the parking or storage of vehicles on unapproved surfaces. Such measures may include fencing, landscaping, earthen berms, or other measures approved by the Director. These measures shall be included with site plan review and must be approved by the Director and installed prior to occupancy of the site.
4. Landscaping shall be included in the conditions for site plan approval that meet the minimum standards set forth in BMC 21.02.700(a)(1)(i) – (iii). Landscaping that provides a year-round site barrier shall be provided along the property lines adjacent to residential properties.
5. As an alternative, the sight barrier landscaping may be provided interior to the lot provided it screens the impound lot and its outdoor storage areas from adjacent residential properties. Existing native vegetation should be preserved and incorporated into the landscaping plan whenever possible.
6. All outdoor storage areas shall have a 6-foot minimum solid fence or wall surrounding them. Required fencing shall be installed prior to occupancy or utilization of each storage area.
7. No auction activities shall be allowed on the property until adequate off-street parking facilities meeting City standards is provided.
8. Auction activities shall be limited to not more than one weekend a month between the hours of 8:00 am and 5:00 pm. The Community Development Director may modify this condition and allow additional auction days provided the Applicant can demonstrate that the auction activities do no adversely affect the surrounding residential properties.
9. Ingress and egress for the auction activities and towing operations shall be from Tweed Lane only. No public or towing access shall be permitted from the driveway access located adjacent to the south property line. If any problems arise from the non-authorized persons using this road, the City may require the Applicant to take measures such a employing personnel to direct the public to the Tweed Lane access to the site.
10. Conditions set forth in the Conditional Sewer and Water Availability letter dated April 28, 2003, are incorporated as conditions for the SUP.
11. A final storm water drainage plan shall be submitted with site plan review. The storm drainage system shall be designed in a manner so that no untreated storm water runoff enters into the wetland or stream.
12. The Administrative Hearing Examiner shall review the SUP in 2 years from the date approval is granted for occupancy. The purpose of this review shall be to review compliance to the SUP conditions, and, to evaluate if any significant adverse impacts are occurring to the

surrounding residential properties as a direct result of activities on the site. If any significant adverse impacts are substantiated, the Hearing Examiner may reconvene the hearing and/or modify or revoke the conditions of approval.

13. All conditions of approval set forth in site plan review or any building permits shall be included as conditions for approving the SUP.
14. The Applicant shall consolidate the two lots on the subject property site into one lot with the Kitsap County Assessor. A copy of the recorded consolidation shall be submitted prior to approval for occupancy.
15. The SUP shall run with the land and any change in ownership shall not affect the status of the SUP.
16. If the impound lot use of the site should be discontinued for more than 12 continuous months, the SUP shall expire.
17. Pursuant to BMC 21.02.905(f), if this Special Use Permit is not acted on within one year from the date of this decision, the Special Use Permit shall expire. The Director may grant a single written 6-month extension provided a written request is submitted before the Special Use Permit expires.

Decided this 4th day of February 2005.



Jim Driscoll
Hearings Examiner for the City of Bremerton