

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

In the Matter of the Application of)	No. BP13 00001
)	
Rice Fergus Miller)	Burwell Street Rezone
)	
)	FINDINGS, CONCLUSIONS,
<u>For Approval of a Rezone Request</u>)	RECOMMENDATION

SUMMARY

The Hearing Examiner recommends that the request to rezone three parcels located at 1008, 1016, and 1018 Burwell Street in Bremerton, Washington, from Low Density Residential to Warren Avenue Corridor, be **APPROVED**.

SUMMARY OF RECORD

Hearing Date:

The City of Bremerton Hearing Examiner held an open record hearing on the request on February 25, 2013.

Testimony:

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

Allison Daniels, City Planner
Ronald Easterday, Architect, Applicant Representative
Gloria Mellon, Citizen

Exhibits:

The following exhibits were admitted into the record:

1. Rezone Application, dated January 2, 2013
2. Section of City Zoning Map, dated January 2, 2013
3. Section of Downtown Regional Center, dated January 2, 2013
4. Determination of Completeness, January 16, 2013
5. Notice of Application and SEPA Determination with Declaration of Posting, Mailing and Affidavit of Publication, January 16, 2013
6. Adoption of Existing Environmental Documents and cover letter, January 31, 2013
7. Staff Analysis, dated February 11, 2013

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

*Findings, Conclusions, and Recommendation
City of Bremerton Hearing Examiner
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FINDINGS

1. Rice Fergus Miller (Applicant) requests a rezone from R-10 (Low Density Residential) to WC (Warren Avenue Corridor) of three parcels located at 1008, 1016, and 1018 Burwell Street in Bremerton, Washington.¹ *Exhibit 1; Exhibit 7, Staff Analysis.*
2. The City of Bremerton (City) determined the application was complete on January 16, 2013. On January 16, 2013, the City gave combined notice of the application and the 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 publication in the *Kitsap Sun*.² *Exhibit 4; Exhibit 5; Testimony of Allison Daniels.*
3. The City acted as lead agency and analyzed the environmental impact of the proposed rezone request under the State Environmental Policy Act (SEPA). The City previously had conducted environmental review of this area as part of the City's 2012 Annual Comprehensive Plan amendments. This environmental review resulted in the issuance of a Determination of Nonsignificance dated October 4, 2012. The City determined that the Comprehensive Plan amendment for parcel located north of Kitsap Way would have no significant impacts on the environment. On January 31, 2013, the City adopted this DNS as the environmental review document and threshold determination for this rezone request.³ *Exhibit 6; Exhibit 7, Staff Analysis.*
4. Current use of the land includes a surface pay parking lot and a vacated multi-family structure that is over 70 years old. Surrounding property use includes parking lots to the north and east, multi-family housing to the west, and a Police Station and multi-family housing to the south. Zoning designations include R-10 to the north and west, WC to the east, and LC to the south. *Exhibit 7, Staff Analysis, pages 1 and 2.*
5. The City Council approved a change in the subject property Comprehensive Plan designation from Low Density Residential to Downtown Regional Center on December 19, 2012 (Ordinance No. 5202) as part of the 2012 Annual Comprehensive Plan Amendments. It was understood by the City Council at the time that zoning classifications must be consistent with City Comprehensive Plan land use designations, but there was not sufficient time to process the zoning change at the time that the changes to the Comprehensive Plan were adopted. *See, RCW Chapter 36.70A; Bremerton Municipal Code (BMC) 20.40.170.* The intent of the proposed rezone is to change the

¹ The subject property is identified by tax parcel numbers 3718-022-016-0003; 3718-022-012-0007; and 3718-022-014-0005. A legal description may be found in the staff report. *Exhibit 7, Staff Analysis, page 1.*

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

³ Adoption of existing environmental documents is authorized under the provisions of WAC 197-11-630.

zoning of the parcels to a designation consistent with the Comprehensive Plan. *Exhibit 2; Exhibit 1, Statement of Applicant; Exhibit 7, Staff Analysis, pages 1 and 2; Testimony of Allison Daniels and Ronald Easterday.*

6. Ms. Gloria Mellon, a real estate agent and owner of property in the vicinity of the proposed rezone, appeared at the open record hearing. She testified in support of the rezone request by noting that the property presently is unattractive and that a rezone would facilitate positive developments in the area of Warren and Burwell. Mr. Ronald Easterday testified on behalf of his client and property owner of the parcels proposed for rezone, Diamond Parking. He stated that development plans were moving forward, but could not be specific about exactly what development may occur as many variables will impact development decisions. He testified that he agreed with the analysis of the City, and urged approval of the request. *Testimony of Gloria Mellon and Ronald Easterday.*

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 City Council amended the land use designation from Low Density Residential to Downtown Regional Center as part of the 2012 Annual Comprehensive Plan process. The parcels that are the subject property of this rezone request retained a zoning of Low Density Residential merely because there was not sufficient time to process a rezone at the time the amendments were made to the Comprehensive Plan. The Applicant's request to change the zoning from R-10 (Low Density Residential) to WC (Warren

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Avenue Corridor) would be consistent with the City Comprehensive Plan, as amended by the City Council in 2012. *Findings 1 and 5.*

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. The City previously analyzed the environmental impact of amending the property's land use designation and issued a DNS as part of the Comprehensive Plan amendment process. The City determined that the proposed rezone would not have a probable significant adverse impact on the environment and adopted this existing DNS. The proposed rezone from R-10 (Low Density Residential) to WC (Warren Avenue Corridor) is appropriate for these parcels and would not interfere with adjacent properties. The rezone would facilitate positive development in the area. *Findings 3- 5.*
3. **The proposed rezone is necessary because the rezone will correct a zone classification that is inconsistent with the Comprehensive Plan.** Proof of changed conditions is not required for a rezone if the proposed rezone implements policies contained in the comprehensive plan. *Bjarnson v. Kitsap County*, 78 Wn. App. 840 (Div. I, 1995); *Henderson v. Kittitas County*, 124 Wn. App. 747 (Div. III, 2004). The City Council determined that a change in the Comprehensive Plan designation from R-10 (Low Density Residential) to WC (Warren Avenue Corridor) for the parcels that are the subject property for this request will implement the Comprehensive Plan with appropriate development regulations as required by the Growth Management Act. *Findings 1-5.*
4. **The proposed rezone is in the public interest.** The proposed zoning amendment from R-10 (Low Density Residential) to WC (Warren Avenue Corridor) is in the public interest to bring the zoning district into compliance with the Comprehensive Plan designation. *Findings 1-6.*

RECOMMENDATION

Based on the findings and conclusions above, the Hearing Examiner recommends that the request to rezone three parcels located at 1008, 1016, and 1018 Burwell Street in Bremerton, Washington, from R-10 (Low Density Residential) to WC (Warren Avenue Corridor), be **APPROVED**.

Recommended this 28th day of February 2013.



THEODORE PAUL HUNTER
Hearing Examiner
Sound Law Center