



Notice of Hearing Examiner Decision

01/29/2018

To: Interested Parties and Parties of Record

RE: Project Name: Encore Expansion – Rezone Request
Applicant: Munch Tooke, LLC
5012 Dogwood Drive
Lake Oswego, OR 97035
Type of Application: Rezone
Permit Number: 17 00782

Enclosed is the Decision issued by the Kitsap County Hearing Examiner for the above project.

The applicant is encouraged to review the Kitsap County Office of Hearing Examiner Rules of Procedure found at:

http://www.kitsapgov.com/dcd/lu_env/he/HE%20Rules%20for%20Kitsap%20County%20-%2006-23-09.pdf

The Decision of the Hearing Examiner is final, unless appealed, as provided under Washington law.

Please note affected property owners may request a change in valuation for property tax purposes, notwithstanding any program of revaluation. Please contact the Assessor's Office at 360-337-5777 to determine if a change in valuation is applicable due to the issued Decision.

The complete case file is available for review at the Department of Community Development, Monday through Thursday, 8:00 AM to 4:00 PM and Friday 9:00 AM to 1:00 PM, except holidays. If you wish to view the case file or have other questions, please contact Help@Kitsap1.com or (360) 337-5777.

CC: Owner: Munch Tooke, LLC
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Kitsap County DCD
Kitsap County Health District

Kitsap County Public Works
Kitsap Transit
Central Kitsap Fire District
Central Kitsap School District
Puget Sound Energy
Water Purveyor: Silverdale Water District
Sewer Purveyor: Kitsap County Waste Water
Point No Point Treaty Council
Suquamish Tribe
Port Gamble S'Klallam Tribe
WA State Dept of Ecology
WA State Dept of Ecology Wetland Review
WA State Dept. of Fish & Wildlife
WA State Dept. of Transportation
WA State Dept. of Transportation-Aviation
Naval Base Kitsap

**KITSAP COUNTY HEARING EXAMINER
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION**

**In the Matter of Request for Rezone
File No. 17 00782**

January 22, 2018

1. FINDINGS OF FACT

1.1 Proposal. The Applicant requests a site-specific rezone from Urban Restricted to Urban Low Residential. Although the Applicant has not yet decided on the exact type of senior housing it will construct, the rezone would allow for an adult residential housing and rehabilitation care center to be conditionally permitted. Any such future senior housing uses would be separately permitted. The Applicant/property owner and site location are:

Applicant/Property Owner: Munch Tooke, LLC, 5012 Dogwood Drive, Lake Oswego, OR 97035.

Site Location: 2400 NW Schold Place, Silverdale, WA 98383 (Assessor No. 092501-1-088-2000).

1.2 Administrative Record. The Hearing Examiner reviewed Exhibits 1-22 before the hearing, which included the Staff Report. At the hearing, the Department of Community Development (DCD) proposed adding its Power Point presentation as Exhibit 23. The Examiner admitted all exhibits.

1.3 Hearing. The Hearing Examiner considered the proposal at an open record public hearing on January 11, 2018. DCD, through Jeff Smith, summarized the proposal and the code established criteria for evaluating site specific rezones. As DCD found the proposal consistent with these criteria, the Department recommended approval, as long as it was understood no vesting would occur with the rezone. After being sworn in, the Applicant further addressed the proposal, noting its concurrence with the Staff Report, except for clarifying that the exact nature of the anticipated senior housing use had not been determined. Several citizens testified at the hearing. Concerns focused on traffic impacts, including parking and pedestrian safety. These comments are addressed below.

1.4 Public Comments - Hearing.¹

1.4.1 Initial Public Comments.

Ms. Anderson, an adjacent resident, raised concerns about the lack of shoulders and parking conditions. Along Schold Place, parking occurs on the south shoulder. Without a north side shoulder, foot traffic enters the right of way. Apartment residents across Silverdale Way

¹ Comments are only summarized. For exact verbiage, *see* the recording.

using the Clear Creek trail also face the lack of a shoulder and crosswalk. These conditions present safety issues which need to be addressed.²

Located at the end of Gregory Lane, Ms. Walls' property also abuts the site. She requested clarification on the rezone's scope. Is the proposal site-specific or will it re-designate other properties? The Examiner clarified that the only rezone before the Examiner is for the site described in the Staff Report, and that this is not an area-wide rezone proposal, which would change zoning designations on other properties. The Applicant also later confirmed the proposal's site-specific nature.

Ms. Roberts also raised traffic concerns. Her mother owns property at the corner of Schold Place. Ms. Roberts reiterated earlier testimony regarding the challenge with employee parking along Schold Place's south side, and asked whether a stoplight or other measures would be placed on Silverdale Way to help with the increase in traffic.

1.4.2 Applicant Responses and DCD Clarifications.

The Applicant testified that once the specific proposal is decided on, traffic issues identified in comment will be addressed. The Applicant testified that sidewalks will be installed at Applicant expense, along with on-site parking. The Applicant stated it would retain a transportation professional to advise on project impacts and mitigation.

DCD provided further information on its permit review processes, noting that as with the old 2010 conditional use permit (Exhibit 1), there would be a transportation impact analysis. With future development, roads would have to be brought from rural to urban levels of service, and traffic impacts, including off-street parking, would be addressed through the County permit review process, SEPA, and County traffic code requirements. As for signalization off Silverdale Way, the mitigation approach will be decided on once DCD has trip generation figures. DCD emphasized that pedestrian safety will be considered in reviewing and conditioning any future project.

1.4.3 Additional Comment and Proposal Information.

Ms. Anderson raised concerns about whether adequate attention is being given to traffic/pedestrian conflicts, including on Silverdale Way. As an example, across from Gateway Park, she identified a 200 home development located a quarter mile down the road. Although a dog park is also located there, there is no crosswalk.

In response, the Applicant recognized that on-street parking is an issue in the area and one which it will address in the future public hearing review process. This will include making site and civil plans available, with sidewalks and crosswalks shown, so the public can provide input on same.

² In response to Ms. Anderson's comment on whether this process or the future permitting process would be the appropriate forum for raising these concerns, the Examiner clarified that while there is more detail on what is being proposed during project permitting, traffic concerns are relevant in both types of decision making processes.

DCD noted that it is aware of these issues within the area, and is addressing these concerns project by project as the area builds out. As an example, DCD noted that with the Woodbridge crossing on Silverdale's east side, there will be a roadway which comes down and includes a signal and sidewalk extending south to Silverdale. Also, to specifically address pedestrian issues, DCD has recently retained a multi-modal traffic engineer.

1.5 Project Background. When the site was zoned Urban Low, in 2010 the County issued a conditional use permit on an approximately 1.45 acre portion of the site. The approval authorized Clearbrook senior facility expansion, including a congregate care facility with senior housing and associated off-street parking.³ However, the site was never built out and was rezoned in 2012 to Urban Restricted based on a critical areas mapping error.⁴ While the Applicant has not determined the exact use, the Applicant does plan to construct senior housing to meet increasing demand for same.⁵

1.6 SEPA. DCD determined the proposal was exempt from SEPA. The proposed rezone is within an urban growth area, is consistent with the Comprehensive Plan, and does not require a Plan amendment. That Plan was subjected to EIS review which adequately addressed the environmental impacts associated with the rezone, which implements an existing Plan designation. Consequently, the proposal is exempt.⁶

1.7 Public Notice and Comment. DCD mailed a Notice of Application to surrounding property owners and published the notice in the newspaper, and the public hearing notice was given in the same manner.⁷ In addition, DCD posted the site.⁸ DCD did not receive written public comments, but public testimony was submitted at the hearing. No concerns with notice were raised.

1.8 Department of Ecology Comment. The Washington State Department of Ecology raised concerns about wetlands.⁹ County mapping indicates wetland presence. However, while an old farm pond is present, the County's mapping is incorrect.¹⁰ The site was field verified and "there were no indicators of a significant amount of critical areas."¹¹ However, a wetland report will be requested when the property owner submits a development proposal to verify existing site conditions.

1.9 Zoning/Plan Designations. The Comprehensive Plan designation is Urban Low Density Residential.¹² Either the Urban Restricted or Urban Low Residential zone may implement

³ Exhibit 2.

⁴ In 2016, the Plan was changed to provide for transfer development rights for rezones from rural sending sites. As the 2012 rezone was a mapping error, DCD determined this approach was not warranted here.

⁵ Exhibits 9 and 10, and Applicant Hearing Testimony.

⁶ WAC 197-11-800(6)(c) and KCC Ch. 18.04; Exhibit 22 (Staff Report), p. 2. *See also* RCW 43.21C.229.

⁷ Exhibits 12, 13, 20 and 21. *See also* Staff Report.

⁸ Exhibit 21.

⁹ Exhibit 14.

¹⁰ DCD Hearing Testimony.

¹¹ Exhibit 22 (Staff Report), p. 2.

¹² Exhibit 17.

implement this designation.¹³ Urban Restricted authorizes 1-5 dwelling units per acre, while Urban Low Residential authorizes 5-9 dwelling units per acre.¹⁴ Following are descriptions of existing and proposed zoning for the property:

Urban Restricted Zone: The urban restricted zone is applied to areas within urban growth areas that have been identified with a significant concentration of critical areas regulated pursuant to Title 19, or are planned as greenbelts, and are therefore appropriate for lower-density development. These areas may include significant salmon spawning streams, wetlands and/or steep slopes. Actual densities allowed will be determined at the time of land use approval, following a site-specific analysis and review of potential impacts to the on-site or adjacent critical areas.

Urban Low Residential: The intent of this zone is to recognize, maintain, and encourage urban low density residential areas by including a full range of urban services and facilities that are adequate at the time of development. This zone is also intended to create cost-efficient residential areas which are capable of allowing the provision of community services in a more economical manner.¹⁵

The site was previously zoned Urban Low Residential, but was erroneously changed to Urban Restricted during the County's 2012 GMA Update. The change was based on erroneous County critical area mapping showing more wetland presence than actually occurs on site.¹⁶

1.10 Surrounding Land Uses. The surrounding area includes a variety of residential and commercial land uses. West of Schold Road NW, the zoning is Rural Protection, and properties are both undeveloped and developed with single-family homes. Properties along the north and east property lines are zoned Urban Restricted and include single-family homes. The properties to the south are zoned Urban Low Residential, and include the Clearbrook Inn Living Center retirement facility.

1.11 Physical Characteristics. The predominantly flat, rectangular 7.56 acre site is developed with a single-family home that will be demolished.

1.12 Utility and Public Services.

- **Water:** Silverdale Water District
- **Power:** Puget Sound Energy
- **Sewer:** Kitsap County Waste Water
- **Police:** Kitsap County Sheriff
- **Fire:** Kitsap Fire and Rescue District 1
- **Schools:** Central Kitsap School District No. 401

¹³ Comprehensive Plan, p. 11-147.

¹⁴ KCC 17.420.050(A) Rural, Resource, and Urban Residential Zones Density and Dimensions Table; Comprehensive Plan p. 11-147.

¹⁵ KCC 17.180.010 and KCC 17.200.010; Exhibit 22 (Staff Report), pp. 2-3.

¹⁶ DCD Hearing Testimony and Exhibit 22 (Staff Report), pp. 7-8.

1.13 Access. The existing driveway access to the site is from Schold Place NW, which functions as a local access road.

2. CONCLUSIONS OF LAW

2.1 Hearing Examiner Review Authority.

The Hearing Examiner has authority to review a proposed site-specific rezone which does not require a Comprehensive Plan amendment and to issue a recommendation on same.¹⁷ The Board of County Commissioners makes the final decision. A county has discretion in determining the zoning classifications which best implement its Comprehensive Plan.¹⁸ To guide this discretion, the County has established criteria for assessing site-specific rezones, which address Comprehensive Plan consistency, effects on the surrounding community, and the public health, safety, and welfare.¹⁹ In addition, the County considers circumstances warranting the rezone, be they changed conditions, improved Plan implementation, or a mapping error, as occurred here.²⁰ The Applicant has the burden of proof to demonstrate these criteria are met.

2.2 Code Established Criteria for Reviewing a Site Specific Rezone.

The County has adopted the following criteria to guide it in reviewing site-specific rezones:

1. The proposed rezone is consistent with the purpose and intent of the Comprehensive Plan, respective community or sub-area plan or other applicable regulations;
2. The proposed rezone will not adversely affect the surrounding community;
3. The rezone bears a substantial relationship to the public health, safety, or welfare of the community; and
4. The proposed rezone:
 - a. Responds to a substantial change in conditions applicable to the area within which the subject property lies;
 - b. Better implements applicable Comprehensive Plan policies than the current map designation; or
 - c. Corrects an obvious mapping error.²¹

¹⁷ KCC 21.04.230.

¹⁸ *Phoenix Dev., Inc. v. City of Woodinville*, 171 Wn.2d 820, 256 P.3d 1150 (2011).

¹⁹ KCC 21.04.230; Exhibit 22 (Staff Report), pp. 6-8.

²⁰ *Id.*

²¹ KCC 21.04.230(B).

The Hearing Examiner concludes the Applicant has met its burden of proof to demonstrate that these criteria are met.

2.2.1 Comprehensive Plan Consistency.

The Comprehensive Plan authorizes either the Urban Restricted or Urban Low Residential zone at this location. The Urban Restricted zone is intended for properties with a "high concentration" of critical areas. As addressed at the hearing and in the Staff Report, the 2012 rezone changing the original Urban Low Residential zoning to Urban Restricted was based on a critical areas mapping error showing a higher level of critical areas than actually exists on site. There is a farm pond and, as the Staff Report notes, during project review critical areas regulations, including those pertaining to wetlands, will be complied with. However, there are not extensive critical areas located throughout the site, as was originally assumed.

No Plan policy or goal was identified which presents a conflict with rezoning this 7.56 acre site. With its goal of directing 76% of growth to urban areas, higher levels of development are supported at this location, as long as adequate urban infrastructure can be provided to support it.²² The primary concern raised at the hearing was on traffic infrastructure, a concern addressed in paragraph 2.2.2 below. As concluded below, this is an issue which can be addressed during project review. The proposed zoning is thus consistent with the Comprehensive Plan.

2.2.2 Effects on Surrounding Community.

The rezone is compatible with the surrounding zoning. The site is adjacent to Urban Low Residential zoning, and the area to the south contains the Clearbrook Inn Living Center retirement facility. Surrounding uses include rural and commercial activities, as well as vacant land. Thus, while lower development levels are in general planned for on the site's other three sides, the rezone is consistent with surrounding uses.

As to anticipated effects on surrounding neighbors, the primary concern raised at the hearing was traffic. There are traffic conflict issues present at this location, concerns which were not disputed. These include insufficient onsite parking and a lack of adequate pedestrian facilities, including sidewalks and crosswalks. However, if the site's zoning designation is corrected, the land's increased economic value is likely to spur further review and construction of transportation infrastructure to address project impacts, including sidewalks and providing for off-street parking. This conclusion is consistent with the Applicant's testimony.

The Applicant has recognized the need to ensure safe employee access and parking once the project's exact nature is determined, and has committed to providing sidewalks and off-street parking with its future project. Also, DCD has indicated it is working to resolve these issues through its project permitting and long term planning processes, and has hired a multi-modal engineer to improve pedestrian circulation and safety.

²² See Exhibit 22 (Staff Report), identifying policies and goals directing planned growth to urban areas. *See also*, Comprehensive Plan, p. 1-12, Comprehensive Plan LU Goal 1 and Policy LU-2.

The evidence supports a conclusion that mechanisms are in place to require that adequate transportation infrastructure will be planned for and constructed, including measures to encourage multi-modal transportation and protect pedestrian safety. The Examiner thus concludes that the rezone's impacts on the community can be addressed. However, given the concerns raised, the Examiner encourages DCD, the Applicant, and those who testified to continue to work on these issues, particularly once a project application is submitted, to ensure that consistent with these requirements and the testimony presented, traffic issues within this area are satisfactorily addressed.

2.2.3 Public Health, Safety, and Welfare.

The rezone allows for more intensive uses. Thus, the land's increased economic value and expected senior housing development can be expected to spur further infrastructure improvements. Of course, if a future implementing project were to be approved without adequately addressing concerns such as transportation infrastructure, this conclusion would not be supportable. However, County regulations require transportation impact review and mitigation, as detailed at the hearing, and the Applicant has committed to sidewalks and on-site parking, along with professional review of transportation issues. The regulatory mitigation measures are coupled with the County's identified need for affordable housing for seniors, along with its stated goal of locating a majority of growth within its urban areas. Thus, the Examiner concludes that the rezone is consistent with and bears a substantial relationship to the public health, safety, and welfare.

2.2.4 Change in Conditions, Improved Plan Implementation, or Mapping Error.

The proposed rezone corrects an "obvious mapping error." The 2012 rezone was based on erroneous critical areas mapping. Returning the area to its original, pre-2012 zoning would correct the error. Even without such an error, given the Plan identified need for accommodating a range of housing types, including senior housing, and promoting housing affordability,²³ it is reasonable to conclude the proposed zoning better implements the Comprehensive Plan than the lower intensity zone, intended for areas with greater critical area concentrations. And, the Applicant presented evidence on the increasing need for senior housing, noting market conditions and developments such as Harrison Hospital, which are slated to create additional demand.²⁴ So, in addition to better implementing the Plan, the rezone responds to changed conditions.

RECOMMENDATION

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, recommends rezone approval.

The Examiner also recommends:

²³ See e.g., Comprehensive Plan Housing Goals 2 and 4.

²⁴ Exhibits 9 and 10, and Applicant Hearing Testimony.

(1) noting that consistent with DCD's recommendation, if the Board of County Commissioners approves the rezone, the rezone would not vest the property to current development regulations. Future land use applications will vest to applicable regulations at the time the County issues a notice of complete application for such application; and

(2) that as the site builds out and further transportation planning occurs, particular attention be paid to assessing and mitigating traffic impacts, including addressing the pedestrian safety and parking issues raised in this proceeding.

THIS RECOMMENDATION is entered this 22nd day of January, 2018.



Kitsap County Hearing Examiner
Susan Elizabeth Drummond