

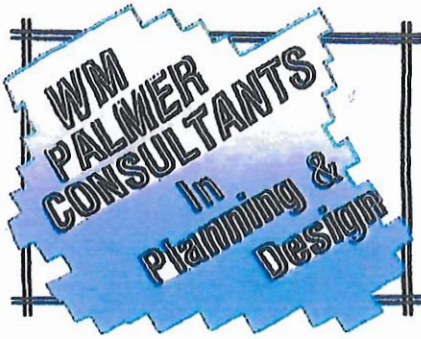


# Kitsap County Department of Community Development

2018 Comprehensive Plan Amendments - Planning Commission Consideration - Comment Matrix			
#	Name, Org	Comment	Staff Response
<b>AMENDMENT: CPA 18-00528 (HANLEY PROPERTY LLC)</b>			
40.	Oliver Hanley, Hanley Property LLC	<p>Summary of Oral Testimony (7/17/2018 &amp; 7/31/2017):</p> <ul style="list-style-type: none"> <li>Mr. Hanley thanks the Planning Commission and believes he has been a great neighbor to have. Better neighbor than the fire station. Station has grown in size by 5 times. Water spray sometimes comes over the buildings and gets the employees wet. Fire drills are a little annoying.</li> <li>When the experts say his business is a Contractor's Storage Yard, he'd like to know where that came from. 1960s, Charlie Ryan was a contractor who owned the site and a business on the top of Mile Hill. Built southpark, Kitsap Bank as a contractor.</li> <li>In the early 1990's Mark Grimm (a Kitsap County Code Compliance Inspector), told Mr. Hanley his business wasn't zoned correctly and would have to shut down. Used aerial photos and discussed with Fire Chief and Deputy Fire Chief. Business has been there for 38 years, now 49 employees and trucks on site. Current use is an extension of the previous use by Charlie Ryan as construction company.</li> <li>Mr. Hanley commends DCD but doesn't understand this new zoning problem. He does not want to push this down the road, because it's a pretty closed, simple, case.</li> <li>He has only ever had 2 complaints in almost 40 years. Mr. Hanley notes he is willing to put in a covenant that the property won't be sold for any intent to change the proposes for something different.</li> <li>(Buskirk - What is happening on these parcels?) Explained history of uses. 3 parcels used to have 3 single family residential rentals in front and equipment in back with trucks, offices upstairs, business from 6:15-7:00am and workers return in the afternoon. Continued business from Charlie Ryan's operations in 1960's. Inspected by Fire District for 14 years until the County took over that responsibility</li> <li>(Svenson - What about the contractor storage yard term that you don't agree with?) Materials and trucks are not stored for long periods of time.</li> </ul>	<p>Thank you for providing this comment. Given the site's current activities, DCD has determined that "contractor's storage yard" (defined as a place where heavy equipment, vehicles, construction equipment or any material commonly used in the erection of any structure, is stored or accumulated. Sites that involve current construction of projects with active permits involving the materials on site shall not be considered a contractor's storage yard) is the most similar use in Kitsap County Code 17.410 for the current use of the property. This use is not allowed by KCC 17.410 in either the existing Urban High Residential zoning designation or the requested Commercial zoning designation. Consequently, an approval of the requested amendment will not change the status of the current use with regards to KCC 17.410 and will create an additional isolated zone in an already fragmented zoning pattern.</p> <p>The area-wide review recommended by DCD and the City of Port Orchard is intended to address the existing fragmented zoning pattern in the immediate area. It would analyze the compatibility between the Fire District complex to the south, the approved commercial mixed use project to the north and west, and the Mile Hill Road corridor to the north of the Hanley Property LLC site and propose alternative zoning schemes intended ensure compatible future uses and an orderly development pattern. Zoning classifications that would allow a contractor's storage yard would be considered during that area-wide review. Kitsap County would also coordinate</p>

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		Always been a roofing company that runs the trucks out, toned down from what Charlie Ryan had.	with the City of Port Orchard as the jurisdiction associated with the Urban Growth Area.  A separate code compliance investigation is ongoing regarding the Hanley Property LLC site. If the proposed Comprehensive Plan amendment is deferred, as recommended by DCD, any future code compliance actions related to non-life safety issues would be deferred until the completion of the area-wide review.
41.	Brad Wiggins, South Kitsap Fire District	Summary of Oral Testimony (7/31/2018): <ul style="list-style-type: none"> <li>• Always considered them as a commercial occupancy.</li> <li>• The noise from them is limited, we are the noisy neighbors.</li> <li>• The fire department is in favor of making this into a commercial spot. Low impact.</li> <li>• Putting high residential in that space is problematic for the fire department. We are constantly getting complaints about our extra noise we make.</li> </ul>	Thank you for this comment. See response #40.
42.	William Palmer, Representing Hanley Property LLC	Summary of Oral Testimony (7/31/2018): <ul style="list-style-type: none"> <li>• It appeared to me when I read the staff report, the staff had characterized the uses taking place on Mr. Hanley's site one way, when they could have looked at their own commercial code. The uses taking place on this site are compliant with the commercial zone. The 7 subsections of 410 would allow for everything that is taking place on the site.</li> <li>• I thought it was instructive that you have a review of the history of the site (included in attached letter). I want to take point to one of the points in that letter. September 8th, 1995 is when the hearings board invalidated Kitsap counties comprehensive plan and zoning. There was a little over a month period when the county had no zoning or comprehensive plan.</li> <li>• Recommendation to postpone the application, concerned because we presented a good application this year. Postponement without a date is problematic. See no reason to postpone the application.</li> </ul>	Thank you for this comment. See response #40.

July 31, 2018



Kitsap County Planning Commission  
619 Division Street, MS – 36  
Port Orchard, Washington 98366

**SUBJECT: Applicant Testimony – Hanley Construction, Inc.’s Comprehensive Plan Amendment Urban High to Commercial – Application No: 18-000447**

Honorable Commissioners,

This letter is a means whereby Mr. Hanley of Hanley Construction, Inc. objects to the assessment of DCD staff that his duly filed Comprehensive Plan Amendment / Rezone request be postponed until 2019 or some later time. The substance of the Staff analysis hinges on the characterization of Mr. Hanley’s long-term business occupation of his site on Fircrest Drive SE as a contractor storage yard. Also, staff has asserted that his use of the site is “industrial” rather than “commercial.” This characterization of his business and nonconforming use of his site, is not entirely accurate given the provisions of the Commercial Zone.

**APPROPRIATENESS OF THE REQUESTED COMMERCIAL COMPREHENSIVE PLAN AMENDMENT AND ZONING:**

The conclusions reached by staff in their assessment of Mr. Hanley’s business use of his site ignores the following provisions of the Commercial Zone (KCC 17.410). Consider these allowable or conditionally allowed uses in this Zone:

Subsection 226 – Engineering and construction offices. Mr. Hanley has had for many years, (well over 22 years) his construction company office at this Fircrest Drive location.

Subsection 250 – General office and management serves – 10,000 S.F. or greater. While his office and management services do not quite occupy this amount of space, the company could with growth of the business.



**Subsection 504 – Assembly and packaging operations.** Much of the space in his two principal buildings is where his roofing and related products are stored and prepared for loading on to trucks and delivered to a site for installation.

**Subsection 520 – Manufacturing and light fabrication.** This is a sometimes business use that takes place in his buildings if there is a special kind of roof or very steep roof where it is necessary to erect platforms for safe work.

**Subsection 536 – Indoor storage.** There are no specifications pertinent to this subsection of the Zoning Ordinance limiting or even suggesting what can or cannot be stored “indoors.” Mr. Hanley does store roofing materials and items related to their installation in his two principal buildings.

**Subsection 542 – Storage, vehicles and equipment.** Mr. Hanley does park vehicles used in his business on his property and does store some equipment used in the installation of roofing. Given this provision in a Commercial Zone, Mr. Hanley’s current and historic use of his site is consistent with allowable uses and therefore constitutes a subsection compliant use.

**Note:** none of the footnote references for the Commercial Zone, 19,30,48,57 or 101 provide any limitations on uses within this Zone when applied in South Kitsap County.

When taken altogether there is clearly support for the requested Comprehensive Plan Amendment change from High Urban to Commercial. Just because DCD staff evaluated Mr. Hanley’s business as only a “Contractor Storage Yard,” does not mean the existing uses are not allowable in a Commercial Zone.

#### **HISTORICAL BACKGROUND:**

Questions have arisen over the years about the “nonconforming use status” of Mr. Hanley’s construction business. The attached letter dated June 8, 2018 to Scott Diener answers those questions in some detail. Worthy of note to Planning Commission members is what happened on or about September 8, 1995. It was on that date that the Central Puget Sound Hearings Board, invalidated Kitsap County’s newly adopted comprehensive plan and zoning. The result of that decision was Kitsap County had no zoning controls what-so-ever. Zoning was not re-established until late in October of that year, when the Board of County Commissioners adopted an interim ordinance and an interim Urban Growth Area boundary. The significance of this month’s period of time was, among other issues, a “re-set” period during



which no use of property was non-conforming. Regardless of what uses existed on a site that might have been considered non-conforming under the previous zoning regulations, they were all valid uses until the County adopted the new interim regulations.

Pertinent to Mr. Hanley's use of his Fircrest Avenue SE property, even though his business was established in the early 1980s, his prior nonconforming use status did not start again until late October 1995. Details of how his use of the property has evolved since 1980 and since November of 1995 are discussed in the attached letter.

#### **SUGGESTED POSTPONEMENT OF THE HANLEY CPA/ZONING REQUEST UNTIL 2019:**

Mr. Hanley wants it known that he submitted a valid Comprehensive Plan and Zoning request back in January of this year. He believes that he has properly assessed the Plan Amendment criteria. Thus, he is arguing now that his amendment be approved this year.

Based on past experience with DCD staff, there is an apparent reluctance on the part of staff to admit that Mr. Hanley's nonconforming use of his property is a viable business operation that should be encouraged. In fact, there appears to be an abiding wish that Mr. Hanley's business should be located elsewhere. Never mind the fact his business is long standing or that it contributes to the tax base of Kitsap County. Amazingly, those factors are of little consequence when making zoning compliance assessments. Contrary to DCD staff's views Mr. Hanley has a very substantial investment in his facilities on Fircrest Drive SE. Such investment cannot be abandoned and then duplicated somewhere else – the cost to do so is prohibitive.

Also, relevant, Mr. Hanley does not want to become involved in a protracted legal battle with the County over his right to continue his business at this location and provide for the needed parking facilities of his vehicles. A means of addressing his nonconforming use status, he has requested that his property be zoned appropriately to continue to serve his customers from this historic location. This Comprehensive Plan Amendment and Rezone request is a means by which legal battles can be avoided in the future. It almost goes without saying that everybody needs a new roof, have their roof repaired or have their roof redone. Mr. Hanley has served this community and all points in Kitsap County and the surrounding jurisdictions for about forty-years.

The real question is does Kitsap County support local businesses? Or does the County want to postpone an action just because the County is unwilling to do today what can be put off until tomorrow.

If indeed the decision is to postpone this application's consideration until 2019, such decision must be followed with a TIME CERTAIN commitment and with associated costs being assumed by Kitsap County.

Respectfully submitted on behalf of Oliver Hanley,



William M. Palmer  
W.M. PALMER CONSULTANTS

cc. Oliver Hanley  
Morgan Hanley





June 8, 2018

Scott Diener, Manager  
Development Services Division  
Department of Community Development  
619 Division Street, MS - 36  
Port Orchard, Washington 98366

**SUBJECT: Hanley Nonconforming Use Of Property On Fircrest Drive, South Kitsap County**

Dear Scott,

You requested I address the Non-Conforming Use of the Property located at 1752 Fircrest Drive SE, Port Orchard, Washington. While I am not quite sure what your real question is, I assume it relates to both history and how his existing use conforms to the new Commercial Zone.

Prior to the time Oliver Hanley acquired his property on Fircrest Drive, the site had been occupied by Ryan Built Homes and owned by Charlie Ryan. Ryan's business office was next door in the building later occupied by Sewer District No. 5 and now incorporated in the Fire District No: 7 complexes. While used by Charlie Ryan, he stored his construction equipment / material and supplies used in his business on property acquired by Oliver Hanley. Mr. Ryan's use of the now Hanley property predated the 1977 Zoning Ordinance before it went into effect in August of that year. The earlier 1969 Zoning Ordinance had very general provisions in all zones, so it was possible to establish uses in a residential area that would later be excluded. Such was the case for Ryan Built Homes.

Oliver Hanley's commercial use of the three properties that make up his business site started in 1980. In 1980, Ryan Built Homes still had equipment, construction materials and supplies stored on the property that Mr. Hanley had acquired. In fact, Mr. Ryan's equipment and supplies remained on the property until sometime in 1981. Thus, Hanley's business, which also involved outdoor storage of construction materials as well as truck and equipment parking, represented a continuation of a nonconforming use.

P. O. BOX 6

PORT ORCHARD, WASHINGTON 98366

TEL: [360] 621-7237 or [253] 858-3644 . FAX: [253] 858-3654

e-mail: [wpconsul@telebyte.net](mailto:wpconsul@telebyte.net)



When the 1980s era began, the Comprehensive Plan classified the site as Semi-Urban and the Zoning was RS-7,500. The Zoning Ordinance in effect at the time was the August 1977 Ordinance. As a note of interest, the 1977 Code was replaced in 1978 by a Code with that year's tag. However, the 1978 Code was overturned by a Superior Court decision because of its inclusion of a provision for "Lot Averaging." The "Interim Code" enacted after the Court decision was essentially the earlier 1977 Code and it remained in effect until June of 1983. Once adopted, it was amended six times between June of 1983 and April of 1986, and the 1983 Code continued to be Kitsap County's Zoning Ordinance until December of 1994.

Beginning in late 1994 and officially launching in January of 1995, Kitsap County's new zoning controls was the January 1995 Interim Ordinance. Under these regulations the Hanley property was Zoned Urban Low (UR-6), again a residential zone reflecting the prior subdivision pattern and typical lot sizes found in the South Park area wherein the Hanley property can be found.

In September of 1995, the Central Puget Sound Growth Management Hearings Board rendered a decision on an appeal of Kitsap County's December 1994 adopted Comprehensive Plan and implementing zoning. The Board ruled in their decision issued in early September (on or about September 8<sup>th</sup>) that Kitsap County's Plan and Zoning was invalid. That had the immediate effect of wiping out all pervious zoning boundaries and allowed uses in these now defunct zones (the adoption action in December of 1994 made no provisions for what would happen if the plan and zoning might be invalidated). Clearly stated and an important consideration of the Hanley property, is that there were no use restrictions applicable to his property – none, zilch, nada. The direct implication was then and even now, Mr. Hanley's commercial use of his property has/had a new start time even if there might be any questions about his prior status. That start time was September 10, 1995 and this is the start date for all nonconforming property conditions and uses in all parts of unincorporated Kitsap County.

Kitsap County was without any comprehensive plan or zoning, throughout the balance of September of that year and most of October. Around the 20<sup>th</sup> of October 1995, Kitsap County adopted interim zoning regulations, but could not adopt a Growth Management Act Compliant Comprehensive Plan until May of 1999. And even that plan was not certified by the Hearings Board until August of that year.

The October 1995 Interim Zoning reestablished residential zoning on Mr. Hanley's property as well as that of Fire District No: 7's facility and the building that at the



time still housed the offices of Sewer District No: 5, both immediately adjacent to the Hanley property on the south side. So, once again, the Hanley Roofing business became a non-conforming use.

Relevant to the issue of how Kitsap County has recognized Mr. Hanley's prior commercial use of his property is the fact that Mr. Hanley applied for and received building permit approval for the two-warehouse buildings that accommodated his business activities. One such building permit was issued for Lot 038 in the mid-1980s (It came on the tax rolls in 1985) and the second on Lot 040 in the 1990s (it came on the tax rolls in 1996). Besides fulfilling all of the building permit requirements, occupancy permits were received for each building. The north building, on Lot 040 includes an office for his business. That office is still a functioning part of Mr. Hanley's roofing business, even though he has other office space in downtown Port Orchard.

Because these buildings had received prior approval (before September 1995) by Kitsap County, regardless of any assumptions made by the Department of Community Development, these buildings, parking of vehicles, outside storage of construction materials on the property and the commercial use of the property became fully legitimized when Kitsap County had no zoning restrictions. After October of 1995, Mr. Hanley's commercial use of his property became a "legal non-conforming use as earlier observed.

Apparently, even in the 1980s and continuing through the early 1990s, the Department of Community Development staff had no concerns about Mr. Hanley's use of his property. Had there been an issue, there was none evident in the issuance of his building permit applications. It is noteworthy too, that when Fire District No: 7 conducted Fire Code Compliance inspections, these buildings passed inspection every year that the District was in charge of inspections. When DCD's Fire Marshall took over that inspection function sometime in the late 2000s there have been no inspections. These facts along with the re-establishment of the business use of his property in mid-September of 1995, should forever resolve any questions present day staff of DCD about the legitimacy of his now non-conforming use.

The Zoning on Mr. Hanley's property changed again as part of a "Site Specific Comprehensive Plan Amendment that was approved in late 2002. At that time property to the north and including Mr. Hanley's business site was classified by the Plan and applied Zoning as Urban High allowing a maximum of 30 dwelling units per acre residential density. Because Urban High is still a residential zone, Mr. Hanley's commercial use remained "nonconforming."



The loss of “institutional knowledge” of past zoning and property use conditions apparently, has led the Department of Community Development staff to the conclusion that perhaps Mr. Hanley’s nonconforming use of his property somehow lacks legitimacy. Mr. Hanley has, thus received communications from DCD staff within the last year to that effect, even though past investigations by Mark Grim, when he was the Building Official for the County (and a prior code compliance investigator) proved that Mr. Hanley had then a legitimate “grand fathered” use of his property. That investigation took place in the late 1990s.

Rather than “go to the mat” with DCD staff about his past and present use of his property Mr. Hanley chose this year to seek commercial zoning for his property. The arguments supporting his decision are clearly set forth in his Site-Specific Plan and Zoning Amendment application filed in January of this year.

In early March of this year the Board of County Commissioners elected to proceed to have Mr. Hanley’s application for Commercial Zoning reviewed along with other application submitted for the 2018 Plan Amendment cycle. DCD staff had opined previous to this decision that the application for commercial zoning was out of context and perhaps even, not the right zoning to characterize his past and present use operations. There was little opportunity to argue the conclusions of staff at that time, but a review of the 2016 Zoning Ordinance allowable use provisions for Commercial Zoned property indicates his existing use of the property fits this Zone as well as his plans for additional parking provisions for his vehicles. Mr. Hanley is prepared to make that presentation when the public hearing consideration of his Site-Specific Plan and Zoning Amendment application proceeds to public hearing.

Regarding the issue of Mr. Hanley’s Non-Conforming Use of his property, the preceding discussion should allay any of DCD staff’s concerns about his past and present use of his property. He clearly has a legitimate Non-Conforming Commercial use that has been in existence for now thirty-eight years and counting Ryan Built Homes’ prior use of the property for more than forty (40) years.

I trust that this letter has addressed the issue of how Mr. Hanley has and continues to use his property. If there remain any questions, please let me know.

Sincerely,  
William M. Palmer



W.M. PALMER CONSULTANTS

cc.

Oliver Hanley