

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

In the Matter of the Application of	)	No. PLA 19-0554
	)	
<b>Mark Wierenga, on behalf of</b>	)	Wu Rezone
<b>George Wu</b>	)	
	)	FINDINGS, CONCLUSIONS,
<u>For a Site-Specific Rezone</u>	)	AND RECOMMENDATION

**SUMMARY OF RECOMMENDATION**

The Hearing Examiner recommends that the request to rezone a 0.24-acre parcel at 12419 Des Moines Memorial Drive South from the Single-Family Residential (RS-7,200) zoning district to the Multi-Family Residential (RM-18) zoning district be approved.

**SUMMARY OF RECORD**

Hearing:

The Hearing Examiner held an open record hearing on the request on June 26, 2019.

Testimony:

The following individuals testified under oath at the open record hearing:

David Johanson, Senior Planner  
Debbie Anderson, Applicant Representative  
Michael Grauberger, Neighbor

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, with the following attachments:
  1. Vicinity Map, undated
  2. Rezone/Zoning Map Amendment Request, received January 24, 2019; Rezone Application Narrative, dated March 13, 2019
  3. City Ordinance No. 701, adopted December 17, 2018, with attachments
  4. SEPA Determination of Nonsignificance (DNS) and Adoption of Existing Environmental Documents, dated June 12, 2019
  5. Email from Mike Grauberger to David Johanson, dated April 10, 2019; Email from Sabrina Souffront to David Johanson, dated April 11, 2019; Email from Sabrina Souffront to David Johanson, dated April 11, 2019; Letter from Amelia

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- Petersen, Northwest Regional Office, Department of Ecology, to Thara Johnson, dated April 11, 2019
6. Notice of Application, dated March 21, 2019
  7. Determination of Completeness and confirmation of posting and mailing of Notice of Application, dated March 21, 2019
  8. Confirmation of publication of Notice of Application in *The Seattle Times* on March 21, 2019.
  9. Notice of Public Hearing, dated June 12, 2019
  10. Confirmation of posting and mailing of Notice of Public Hearing, dated June 11, 2019
  11. Confirmation of publication of Notice of Public Hearing in *The Seattle Times* on June 12, 2019
  12. Environmental Checklist, dated March 14, 2019

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. Mark Wierenga, on behalf of George Wu (Applicant), requests a zoning map amendment to rezone a 0.24-acre parcel from the Single Family Residential (RS-7,200) zoning district to the Multi-Family Residential (RM-18) zoning district. The parcel would be combined with two lots to the east for an expanded multi-family housing development. The property is located at 12419 Des Moines Memorial Drive South.<sup>1</sup> *Exhibit 1, Staff Report, pages 1 and 3; Exhibit 1.2.*
2. The City of Burien (City) determined the application was complete on March 19, 2019. On March 21, 2019, the City mailed notice of the application to property owners within 500 feet of the property, posted the site, and published notice of the application in *The Seattle Times*. On June 11, 2019, the City mailed notice of the open record hearing associated with the application to property owners within 500 of the property and posted notice on-site. Notice was published in the local newspaper of record, *The Seattle Times*, on June 12, 2019. The City received two comment letters from neighboring residents about the existing crime rate and public safety, additional multi-family buildings, and an access easement. The City staff provided responses to these concerns. *Exhibit 1, Staff Report, pages 3, 4, and 5; Exhibit 1.2; Exhibit 1.5; Exhibit 1.7; Exhibit 1.8; Exhibit 1.9; Exhibit 1.10; Exhibit 1.11.*

#### State Environmental Policy Act

3. The City acted as lead agency and analyzed the environmental impacts of the proposed rezone, as required by the State Environmental Protection Act (SEPA), Chapter 43.21C

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<sup>1</sup> The property is identified by Tax Assessor Parcel No. 098500-1040. *Exhibit 1.2.*

Revised Code of Washington (RCW). The City reviewed the existing environmental documents that served as the basis for changing the Comprehensive Plan designation of the parcel on December 17, 2018, including an addendum to a Final Environmental Impact Statement (FEIS), dated November 30, 2018. The City used the optional Determination of Nonsignificance (DNS) process under Washington Administrative Code (WAC) 197-11-355, and provided notice of the SEPA review process along with the notice of application. Following its review, the City determined that the proposal would not have a probable significant adverse impact on the environment and issued a DNS on June 12, 2019. The Department of Ecology commented that sampling and analyzing the soil for arsenic and lead prior to land clearing and grading should take place. No other SEPA-specific comments were received and the DNS was not appealed. *Exhibit 1, Staff Report, page 4; Exhibit 1.4; Exhibit 1.5; Exhibit 1.6.*

#### Site-Specific Rezone

4. The subject parcel is accessed from Des Moines Memorial Drive South via a driveway for the property immediately to the east. The subject property is designated “Moderate Density Multi-Family Neighborhood” under the Comprehensive Plan, which allows multiple-family residential uses with a density range of 18 to 24 units per net acre. The Moderate Density Multi-Family Neighborhood designation is implemented by the “Multi-Family Residential” (RM-18 and RM-24) zoning categories. *Comprehensive Plan, Policy RE 1.8.* The property is currently zoned “Single-Family Residential” (RS 7,200), and the Applicant is requesting that the parcel be rezoned to Multi-Family Residential (RM-18). The property has very little elevation change, with a gentle slope from west to east. A single-family residence, with a number of mature deciduous trees, is located on the property. Properties to the north and west are designated Moderate Density Residential Neighborhood under the Comprehensive Plan and are zoned Single-Family Residential (RS-7,200), with single-family residences. Properties to the south and east are designated Moderate Density Multi-Family Neighborhood and are zoned RM-18, with a single-family residence to the east. Applicant Representative Debbie Anders testified that there is a vacant parcel to the south. City Senior Planner David Johanson testified that adequate public facilities and services are available to the property. *Exhibit 1, Staff Report, pages 2, 3, and 4; Exhibit 1.1; Testimony of Mr. Johanson and Ms. Debbie Anderson.*
  
5. 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, 259 P.3d 227 (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.*

6. In 2010, the City annexed this parcel and the surrounding neighborhood from King County. Interim zoning and Comprehensive Plan designations were assigned to the whole area during this process and, at that time, the parcel was designated and zoned Office. In 2011, the City initiated a community-based process to analyze existing land use designations and proposed Comprehensive Plan and zoning designations for the recently annexed area. As a component of this process, the City amended the Burien Comprehensive Plan to establish a hierarchy of commercial nodes throughout the city, designed to maintain the character of residential neighborhoods by focusing commerce and multi-family growth at specific locations dispersed throughout the city. The parcel is located within a low-intensity commercial node. On December 17, 2018, the City adopted a Comprehensive Plan map change for the parcel from Moderate Density Residential Neighborhood to Moderate Density Multi-Family Neighborhood through Ordinance No. 701. As stated above, the Moderate Density Multi-Family Neighborhood designation allows multiple-family residential uses with a density range of 18 to 24 units per net acre and is implemented by the RM-18 and RM-24 zoning categories. *Comprehensive Plan, Policy RE 1.8. Exhibit 1 Staff Report, pages 2 through 4; Exhibit 1.1; Exhibit 1.3.*
  
7. The Applicant submitted a project narrative with its application materials. The project narrative argues that the site-specific rezone should be approved because:
  - The Burien Comprehensive Plan was amended so that the subject property is now designated as Moderate Density Multi-Family Neighborhood. Rezoning the property to Multi-Family Residential (RM-18) would appropriately coordinate the City's zoning map and Comprehensive Plan map.
  - Incorporating the parcel into a larger multi-family project would provide a new access road, rather than the existing parcel access located in the middle of a curved portion of Des Moines Memorial Drive South.
  - Impacts from the proposed multi-family development would be mitigated.
  - The area is transitioning to multi-family development with all sites on the block face zoned RM-18 or higher.
  - The parcel does not have direct frontage on either Des Moines Memorial Drive South or South 124th Street.
  - The proposed rezone to RM-18 is more consistent with the Comprehensive Plan designation than the current RS-7,200 zone.

*Exhibit 1.2.*

#### Testimony

8. City Senior Planner David Johanson testified generally about the staff report, as well as the application and how it would meet the site-specific rezone requirements of Burien

Municipal Code (BMC) 19.65.090.3.C. He noted that environmental impacts of changing the land use designation for the property were already analyzed during the Comprehensive Plan amendment process and that any future development would be subject to further environmental review, including review of impacts to the critical aquifer recharge area. Mr. Johanson stated that conditions within the city have changed since the parcel was first designated as single-family residential and that, with anticipated growth, there is need for additional, higher-density housing opportunities, as well as more commercial land that can support the needs of adjacent residential development, and that rezoning this property would contribute toward achieving that goal. Neighboring properties are zoned RM-18. *Testimony of Mr. Johanson.*

9. Ms. Anderson testified that the Applicant concurs with the City's analysis of the proposal. *Testimony of Ms. Anderson.*
10. Michael Grauberger, a neighbor, testified that building apartments on the site would reduce property values of neighboring properties. He is against the proposal. There are problems with people occupying vacant building on the property. Mr. Grauberger testified that he is concerned that the proposal would devalue his property. He is not sure what the proposal is going to be. In response, Ms. Anderson testified that the intent is to build apartments on the site. Mr. Johanson testified that this application is only to rezone the site. There will be public notices given when there are specific proposals in the permit process. *Testimony of Mr. Grauberger, Ms. Anderson, and Mr. Johanson.*

#### Staff Recommendation

11. The City staff recommends the Hearing Examiner forward a recommendation of approval to the City Council. *Exhibit 1, Staff Report, page 1.*

### **CONCLUSIONS**

#### Jurisdiction

The Hearing Examiner has jurisdiction to receive and examine information on a rezone; conduct a public hearing on the application; prepare a record of the hearing; enter findings of fact; and, based upon those facts, make a recommendation to the City Council. *RCW 35A.63.170.*

The recommendation may be to grant the application, grant the application with conditions, or deny the application. *BMC 2.15.070(4); BMC 2.15.080.* A recommendation to the City Council is a Type 3 review process. *BMC 19.65.075.* A site-specific rezone application is processed as a Type 3 quasi-judicial decision. *BMC 19.65.090.3.A.*

#### Criteria for Review

The Hearing Examiner may recommend approval of a site-specific rezone request if the following criteria are satisfied:

- i. The rezone is consistent with the Comprehensive Plan; and
- ii. The rezone will advance the public health, safety, or welfare; and

- iii. The rezone will not have significant adverse environmental impacts that are materially detrimental to adjacent properties or other affected areas; and
- iv. The rezone is necessary because at least one of the following is met:
  - a. Conditions in the immediate vicinity or neighborhood have changed so that it is in the public interest to approve the rezone, or
  - b. The rezone will correct a zone classification or zone boundary that was inappropriate when established, or
  - c. The rezone is necessary to achieve consistency with the Comprehensive Plan land use map.

*BMC 19.65.090.3.C.*

The criteria for review adopted by the Burien City Council implements the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed developments to ensure consistency with City development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

#### Conclusions Based on Findings

**The proposed rezone satisfies the criteria for approval found in BMC 19.65.090.3.C and should be approved.** The proposed rezone would not require amendment of the City Comprehensive Plan and would be consistent with the 2018 Comprehensive Plan’s Moderate Density Multi-Family Residential designation of the property: Multi-Family Residential (RM-18) zoning is allowed for property designated Moderate Density Multi-Family Residential under the Comprehensive Plan. Conditions placed on any future land development permits would ensure that the proposal would comply with the development regulations required by the Growth Management Act and Title 19 of the Burien Municipal Code. The proposed rezone would advance the public health, safety, and welfare by allowing for a broader range of development options providing needed housing opportunities. City staff responded to public comments through its review process and at the public hearing.

Changed circumstances, specifically the City’s recent Comprehensive Plan amendment, warrant the rezone. The property is suitable for multi-family residential development that complies with the standards of the RM-18 zone. The City analyzed the environmental impacts of the proposal, as required by SEPA, and determined that the rezone would not have a probable significant adverse impact on the environment. The City’s DNS was not appealed. In addition, specific development impacts would be reviewed at the time of building permit application. Adequate public facilities and services are available to the property. Reasonable notice of the application and associated open record hearing was provided in a manner that was “reasonably calculated” to inform interested parties of the proposal “and of the opportunity to object.” *State v. Dolson*, 138 Wn.2d 773, 777 (1999). *Findings 1 – 11.*

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**RECOMMENDATION**

Based on the preceding findings and conclusions, the Hearing Examiner recommends that the City Council **APPROVE** the request to rezone a 0.24-acre parcel at 12419 Des Moines Memorial Drive South from the Single-Family Residential (RS-7,200) zoning district to the Multi-Family Residential (RM-18) zoning district.

**RECOMMENDED** this 15<sup>th</sup> day of July 2019.



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LEE RAAEN  
Hearing Examiner  
Sound Law Center