

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

In the Matter of the Application of	)	No. PLA 19-0285
	)	
<b>Daniel Assefa</b>	)	Assefa Rezone
	)	
	)	FINDINGS, CONCLUSIONS,
<u>For a Site-Specific Rezone</u>	)	AND RECOMMENDATION

**SUMMARY OF RECOMMENDATION**

The Hearing Examiner recommends that the request to rezone a 0.87-acre parcel at 2806 South 128th Street from the Office 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:

Thara Johnson, Senior Planner  
Michael Aippersbach, Applicant Representative  
Lisa White de Calderon

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 February 12, 2019; letter from Michael Aippersbach & Associates to Thara Johnson, dated February 8, 2019; City Ordinance No. 701, adopted December 17, 2018; Comprehensive Plan Amendment Request, received February 28, 2018
  3. City Ordinance No. 701, adopted December 17, 2018
  4. Comprehensive Plan Map Amendment for Miles-Assefa PLA 18-0528, dated November 29, 2018, with attachments
  5. SEPA Determination of Nonsignificance (DNS) and Adoption of Existing Environmental Document, dated June 12, 2019
  6. Letter from Lisa White de Calderon, undated; email from hmwrk4venesa@comcast.net to Thara Johnson, dated May 6, 2019; letter from

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Amelia Petersen, Northwest Regional Office, Department of Ecology, to Thara Johnson, dated April 16, 2019; written comment by Lisa White de Calderon and Prudencio Calderon, undated.

7. Notice of Application dated March 26, 2019
8. Determination of Completeness and confirmation of posting and mailing of Notice of Application dated March 26, 2019
9. Confirmation of publication of Notice of Application in *The Seattle Times* on March 26, 2019.
10. Notice of Public Hearing dated June 12, 2019
11. Confirmation of posting and mailing of Notice of Public Hearing dated June 11, 2019
12. Confirmation of publication of Notice of Public Hearing in *The Seattle Times* on June 12, 2019
13. Environmental Checklist dated March 4, 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. Daniel Assefa (Applicant) requests a zoning map amendment to rezone a vacant 0.87-acre parcel from the “Office” zoning district to the “Multi-Family Residential” (RM-18) zoning district. The property is located at 2806 South 128th Street.<sup>1</sup> *Exhibit 1, Staff Report, page 1; Exhibit 1.2.*
2. The City of Burien (City) determined the application was complete on March 12, 2019. On March 19, 2019, the City mailed notice of the application to property owners within 500 feet of the property and, on March 26, 2019, posted notice on the site and published notice in the local newspaper of record, *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, posted notice on-site, and published notice in the local newspaper of record, *The Seattle Times*. The City received two comment letters from neighboring residents about existing crime rate and public safety, additional multi-family buildings, sight-distance concerns along Military Road, and impacts to any natural critical aquifer recharge areas. *Exhibit 1, Staff Report, pages 3 and 4; Exhibit 1.2; Exhibit 1.7; Exhibit 1.8; Exhibit 1.9; Exhibit 1.10; Exhibit 1.11; Exhibit 1.12.*

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<sup>1</sup> The property is identified by Tax Assessor Parcel No. 092304-9039. *Exhibit 1, Staff Report, page 1; Exhibit 1.2.*

### 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 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. The City received no other SEPA-specific comments and the DNS was not appealed. *Exhibit 1, Staff Report, page 3; Exhibit 1.7.*

### Site-Specific Rezone

4. The subject parcel is bordered by Military Road South and South 128th Street to the south. South 128th Street is the city limit, and the City of Tukwila zoning exists on the southeast side of South 128th Street. The southwest corner of South 128th Street and Military Road South is within the City of SeaTac. The parcel is designated “Moderate Density Multi-Family Neighborhood” under the Comprehensive Plan and is currently zoned “Office.” The Applicant is requesting that the parcel be rezoned to “Multi-Family Residential” (RM-18). To the north and west, single-family uses are designated “Moderate Density Residential Neighborhood” and are zoned “RS-7,200.” To the east, a Union Gospel group home is within a Moderate Density Multi-Family Residential Neighborhood designation and a Multi-Family Residential (RM-18) zone. To the south, within the City of Tukwila, property is designated and zoned Office. The property has very little elevation change, with a slight slope from east to west and a number of dispersed mature trees. City Senior Planner Thara Johnson testified that adequate public facilities and services are available to the property. *Exhibit 1, Staff Report, pages 2 and 3; Testimony of Ms. Johnson.*
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. 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. On December 17, 2018, the City adopted a Comprehensive Plan map change for the parcel from Office to Moderate Density Multi-Family Neighborhood through Ordinance No. 701. The Moderate Density Multi-Family Neighborhood designation allows multiple-family residential uses with a density range of 18 to 24 units per net acre. This designation is implemented by the RM18 and RM-24 zoning categories. *Comprehensive Plan, Policy RE 1.8. Exhibit 1 Staff Report, pages 2 and 3; Exhibit 1.3; Exhibit 1.4.*
7. The City has designated adjacent properties to the north and west as Moderate Density Residential. Property to the east carries a Moderate Density Multi-Family Residential Neighborhood designation. Property to the south in the City of Tukwila is designated Office. City staff also determined that the proposed change would be consistent with many of the goals and policies of the Comprehensive Plan, including providing housing, encouraging transit supportive development, and providing services within walking distance to the immediate neighborhood. *Exhibit 1, Staff Report, pages 2 and 4.*
8. The property is currently zoned Office. If approved, the rezone request would change the zoning to Multi-Family Residential (RM-18). Under Burien Municipal Code (BMC) 19.15.010, the RM zones implement the Low and High Density Multi-Family Neighborhood Comprehensive Plan designations. The purpose of these zones is to establish areas in which a wide range of single-family and multi-family housing opportunities can be provided that are compatible with adjacent lower-density single-family housing and that protect environmentally sensitive areas. The intent is to provide a variety of stable and attractive, well-designed housing choices that are located near transit, employment, shopping, and recreational facilities and that meet the needs of existing and future city residents. Redevelopment of existing housing complexes is encouraged. As stated above, property to the east is zoned RM-18, with properties to the north and west zoned RS-7,200. Property to the south within the City of Tukwila is zone Office. *Exhibit 1, Staff Report, pages 2 and 3; Exhibit 1.1.*
9. 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 in 2018 so that the subject property is now designated as Moderate Density Multi-Family Neighborhood.

Rezoning the property would appropriately coordinate the City's zoning map and Comprehensive Plan map.

- The parcel is undeveloped, and all approved development would comply with the City's zoning and building codes.
- The proposed zoning would be a non-commercial zone and protect the single-family development to the north.
- No critical areas were identified on-site.
- The rezone is necessary to achieve consistency with the Burien Comprehensive Plan.

*Exhibit 1.2.*

#### Testimony

10. City Senior Planner Thara Johnson testified generally about the application and how it would meet the site-specific rezone requirements of BMC 19.65.090.3.C. She 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. Conditions within the City have changed since the parcel was first designated as Office and, 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 rezoning this property would contribute toward achieving that goal. *Testimony of Ms. Johnson.*
11. Applicant Representative Michael Aippersbach testified that he filed the application to change the zoning to be consistent with the new Comprehensive Plan. He and the Applicant support the recommendations of the City. Currently the land is vacant. *Testimony of Mr. Aippersbach.*
12. Lisa White de Calderon, a neighbor to the site, asked what "adequate services" to the site constituted. She would like to see development that would be purchased by residents: the neighborhood needs attention; there are problems with drugs, crime and fire; and unauthorized people are living on some areas, so owner-occupancy would be best for the community. There are also dangerous traffic conditions in the area, with multiple accidents; the area has been developed with apartments, with few occupied houses; vacant houses are being occupied unlawfully; and, because the area is on the edge of other jurisdictions, it is difficult to know who is responsible to respond to these local problems. *Testimony of Ms. White de Calderon.*
13. In response to the public comment, Ms. Johnson testified that the City is concerned about issues in the area. There is a sub-area plan looking at zoning changes in terms of future growth. She encouraged Ms. White de Calderon and other neighbors to get involved in the future planning process. Traffic, safety, parking, and other issues regarding

development will be reviewed when the applicant comes in with a specific proposal.  
*Testimony of Ms. Johnson.*

#### Staff Recommendation

14. 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

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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 in 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.

Changed circumstances, specifically the City's recent Comprehensive Plan amendment, warrants 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. 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 – 14.*

### **RECOMMENDATION**

Based on the preceding findings and conclusions, the Hearing Examiner recommends that the City Council **APPROVE** the request to rezone a 0.87-acre parcel at 2806 South 128<sup>th</sup> Street from the Office 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