

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

In the Matter of the Application of)	Nos. CPA20003; SEP20015
)	
Ron Clearwater, on behalf of)	
Clearwater Property Investments, LLC)	Clearwater Rezone
)	
)	FINDINGS, CONCLUSIONS,
<u>For Approval of a Site-Specific Rezone</u>)	AND RECOMMENDATION

SUMMARY OF RECOMMENDATION

The Hearing Examiner recommends that the City Council **APPROVE** the request to rezone the 4.9-acre property, on contiguous parcels at 13929 NE 190th Street and 18800 Woodinville-Snohomish Road, from the “General Business” zoning designation to the “Industrial” zoning designation. Conditions are necessary to address specific impacts of the proposal.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on January 26, 2021, using remote technology in light of the ongoing COVID-19 pandemic.

Testimony:

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

Dillon Roth, City Senior Planner
David Toyer, Applicant Representative

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated January 12, 2021
2. Application Materials, received September 30, 2020
3. Complete Application Letter, dated January 14, 2020
4. Notice of Application and SEPA Optional DNS, undated; Declaration of Public Notice, dated November 16, 2020
5. Notice of Public Hearing and Determination of Nonsignificance, dated January 7, 2021; Declaration of Public Notice, dated January 7, 2021
6. Mailing Labels
7. Ordinance 43; Former City Zoning Map, dated March 1993
8. Ordinance 175 § 2; Official City Zoning Map, dated July 1997
9. SEPA Environmental Checklist, signed November 10, 2020

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10. Applicant Responses to Rezone Decision Criteria, dated September 30, 2020
11. Industrial Market Summary, Kidder Mathews, Mid-Year 2020 Report
12. Applicant Responses to Comprehensive Plan Amendment Decision Criteria, dated September 30, 2020
13. Current Zoning Map
14. Current Comprehensive Plan Land Use Map
15. City Staff PowerPoint Presentation, dated January 26, 2021

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

FINDINGS

Background

1. The subject property is comprised of two parcels, totaling 4.9-acres, and was developed with a warehouse/manufacturing facility and associated on-site parking in 1975, prior to the incorporation of the City of Woodinville (City). Although the warehouse/manufacturing facility has undergone various improvements since that time, the property has remained largely unchanged since the site was initially developed. Ordinance No. 43, which adopted the City's first official zoning map in March 1993, zoned the property as "Industrial" (I). In July 1997, the City adopted Ordinance 175, which repealed Ordinance No. 43; amended the zoning code, and official zoning map; and established a new zoning designation, "General Business" (GB), which included the subject property. The property has remained zoned GB since that time. *Exhibit 1, Staff Report, pages 1 and 4; Exhibit 7; Exhibit 8; Exhibit 13.*

Application and Notice

2. Ron Clearwater, on behalf of Clearwater Property Investments, LLC (Applicant), requests a site-specific rezone of two contiguous parcels, totaling 4.9-acres, from the GB zoning district to the I zoning district. The property is located at 13929 NE 190th Street and 18800 Woodinville-Snohomish Road.¹ *Exhibit 1, Staff Report, page 1; Exhibit 2; Exhibit 10.*
3. The City determined that the application was complete on October 21, 2020.² On November 16, 2020, the City provided notice of the application by posting notice on-site and at designated City locations, mailing or emailing notice to interested agencies and to

¹ The property is identified by King County Tax Parcel Nos. 1927300280 and 1928300250. *Exhibit 1, Staff Report, page 1.* A legal description of the property is included in the City's staff report. *Exhibit 1, Staff Report, page 1.*

² On November 28, 2020, the City Council adopted Ordinance 706, comprehensively updating the City's project permitting procedures and decision criteria. The City has determined that the application would be processed under the old project permitting procedures and previous decision criteria. *Exhibit 1, Staff Report, page 2.*

property owners within 500 feet of the site, and publishing notice in *The Seattle Times*. On January 7, 2021, the City provided notice of the open record hearing associated with the application in the same manner used to provide notice of the application. The City's notice materials explained that written comments could be provided up until the scheduled hearing on January 16, 2021. The City received no comments in response to its notice materials. *Exhibit 1, Staff Report, page 2; Exhibit 2; Exhibit 3; Exhibit 4; Exhibit 5; Exhibit 6.*

State Environmental Policy Act

4. The City acted as lead agency and analyzed the environmental impacts of the proposal as required by the State Environmental Policy Act (SEPA), Chapter 43.21C RCW. The City used the optional Determination of Nonsignificance (DNS) process under Washington Administrative Code (WAC) 197-11-355 and provided notice of its SEPA threshold determination with the notice of application. The City's notice materials indicated that the City expected to issue a DNS for the proposal and provided for a SEPA comment period through November 30, 2020. The City did not receive any comments specific to SEPA in response to its notice materials. Following the comment period, the City reviewed the Applicant's Environmental Checklist, and other available information on file, and determined that the proposal would not have a probable significant adverse impact on the environment. Accordingly, the City issued a DNS on January 7, 2021, with the notice of public hearing for the proposal, which provided for an appeal deadline of January 25, 2021. The DNS was not appealed. *Exhibit 1, Staff Report, pages 4 and 5; Exhibit 5; Exhibit 9.*
5. The site contains a heavily wooded area, approximately 65,000 square feet in size, which generally aligns with an erosion hazard area on-site. The wooded area separates the existing warehouse facility from the on-site parking area in the northeastern portion of the site. The two are connected by stairs and a pathway. Because approval of the site-specific rezone does not involve any development, no additional environmental review is necessary. Further environmental review would occur, however, with redevelopment of the site. *Exhibit 1, Staff Report, pages 1 through 4; Exhibit 9.*

Comprehensive Plan and Zoning

6. The property is currently designated "General Commercial" under the City's Comprehensive Plan. The City identified the following Comprehensive Plan goals and policies as relevant to the rezone proposal, including:
 - Providing an active and diverse industrial area that promotes economic growth. [Land Use Policy LU-9.3]
 - Protecting industrial lands from encroachment by other land uses, which would reduce the economic viability of industrial lands. [Land Use Policy LU-9.3.B]
 - Establishing new or additional industrial development that incorporates available or planned sewer, water, and communications services, and has convenient access

to existing or planned freeways or other major arterials. [Land Use Policy LU-9.3.D]

- Growing the City’s diverse and vital mix of business. [Economic Development Goal ED-1]
- Practicing “proactive zoning,” including reevaluating and modifying land use zoning to meet the City’s fiscal goals and vision. [Economic Development Goal ED-2.]

Exhibit 1, Staff Report, pages 3 and 4.

7. The Applicant is seeking a Comprehensive Plan amendment concurrently with its application for a site-specific rezone that would change the Comprehensive Plan designation of the subject property from “General Commercial” to “Industrial.” The Comprehensive Plan amendment is being processed separately (as No. CPA20002), under Chapter 21.88 of the Woodinville Municipal Code (WMC), and at least one public hearing on the amendment will be heard by the City’s Planning Commission who will then forward a recommendation to the City Council on whether the amendment should be adopted. The City Council will consider the site-specific rezone request together with the request for a Comprehensive Plan amendment. *Exhibit 1, Staff Report, pages 6 and 7.*
8. The property is currently zoned General Business (GB), as are surrounding properties to the north, south, and west. Properties to the east are zoned Industrial (I). The GB zone is intended to “to provide auto-oriented retail and services for local and regional service areas that exceed the daily convenience needs of residential neighborhoods” and “to provide retail and business services in locations within the City that are appropriate for extensive outdoor storage and auto-related and commercial uses, and to provide space for offices as primary uses and for hotels and motels.” *Woodinville Municipal Code (WMC) 21.20.070.* The purpose of the I zone is to “provide for the location and grouping of industrial enterprises and activities involving manufacturing, assembly, fabrication, processing, bulk handling and storage, research facilities, warehousing and heavy trucking” and “to protect the industrial land base for industrial economic development and employment opportunities.”³ *Exhibit 1, Staff Report, pages 1 through 5.*
9. Chapter 36.70A Revised Code of Washington (RCW) mandates that zoning classifications should be consistent with Comprehensive Plan designations. The City’s Comprehensive Plan General Commercial designation is implemented solely through the GB zoning district and, accordingly, the I zoning district is not compatible with the General Commercial designation. Accordingly, as detailed above, the Applicant is seeking a Comprehensive Plan amendment concurrently with its request for a site-specific rezone to amend the Comprehensive Plan designation for the site to Industrial,

³ The subject properties are also located within the City’s “Sexually Oriented Business Overlay,” under Chapter 21.25 WMC, but the requested site-specific rezone would not impact the overlay. *Exhibit 1, Staff Report, page 6.*

because the I zoning district implements the Industrial Comprehensive Plan designation. *Exhibit 1, Staff Report, pages 4 through 7.*

Existing and Surrounding Property

10. As noted above, the existing property is comprised of two parcels, totaling 4.9 acres. The site is developed with a 70,000 square foot warehouse building and associated off-street parking facilities. The most recent use of the property was by Clearwater Spa, which vacated the site in November 2020. Clearwater Spa is categorized as a plastic product manufacturer, a use only permitted in the I zoning district. This use would be considered a legal, nonconforming use in the existing GB zoning district if a new tenant that was also categorized as a plastic product manufacturer occupied the site within 12 months of Clearwater Spa having vacated it, per the abandonment of nonconforming use provisions in WMC 21.34.060. Otherwise, any other industrial use of the site would be prohibited absent approval of the rezone request (and Comprehensive Plan amendment). *Exhibit 1, Staff Report, page 5; Exhibit 2; Exhibit 15.*
11. The property owner has not indicated that there are any plans to redevelop the site if the rezone is approved. Instead, the Applicant has stated that the purpose of the rezone is to align the zoning designation with the most recent and historic uses of the property for manufacturing activities, especially because potential tenants that have expressed interest in the site have generally “been manufacturing and industrial” users “that would not presently be permitted” to operate with the current GB zoning classification. The Applicant further stresses that the GB zoning district’s “lack of permitted light industrial uses and the site’s location adjacent to existing industrial uses make it highly likely that the building could become vacant for a long time.” *Exhibit 10.*
12. Surrounding uses include a variety of industrial, commercial, and retail uses, including: a commercial and industrial outdoor sales and storage yard to the north; a regional recycling center to the northeast; a warehouse and office building to the east; a manufacturer to the southeast; commercial services to the south; railroad right-of-way to the southwest and west; commercial warehouse and offices to the west; and a place of worship, mini-storage structure, and offices to the northwest. *Exhibit 1, Staff Report, page 6; Exhibit 2; Exhibit 15.*

Rezone Criteria

13. The Applicant provided a project narrative addressing how the proposal would comply with the rezone criteria of former WMC 21.80.300(2). Specifically, the Applicant contends:
 - The proposed rezone is consistent with several goals and policies of the City’s Comprehensive Plan, including Policy LU-9.3, which encourages providing an active and diverse industrial area that promotes economic growth; Policy ED-1.1, which focuses on attracting and retaining businesses within the City; and Policy

ED-1.4, which stresses the need to continue improvement of the City's business climate.

- The region has experienced a high demand for existing industrial buildings, which offer more affordable industrial space for small- to medium-size businesses and startups.
- Rezoning the property from the GB zoning district to the I zoning district would position the City to better support, encourage, and attract light industrial uses, as well as potential research, development and testing startups, that favor existing industrial spaces as incubators that have more affordable lease rates and large open floor plans.
- The project site is adjacent to industrial zoning and uses to the north, east, and southeast, as well as industrial uses within the GB zone to the west. This includes uses such as the Waste Management Cascade Recycling Center, an industrial powder coating facility, and a manufacturer of parts and valves for hearing and cooling.
- The property is practically and physically suited for uses allowed in the I zoning district. In particular, the site is adjacent to a recycling center, which generates some odor and substantial traffic/truck noise; the existing site configuration would discourage retail/commercial users and/or multi-tenant uses given parking limitations, as the available parking for the property is not adjacent to the existing warehouse facility.

Exhibit 10.

14. In support of the rezone request, the Applicant also submitted a detailed market analysis, addressing the lack of industrial space available in the area and the Applicant's challenges in finding a new tenant for the property given the current zoning designation. Of note, the submitted materials show that at least 12 different tenants have viewed or inquired about the property since November 2018 and determined that the existing zoning classification would not be suitable. Moreover, the Applicant has begun the process of selling the property on four occasions since November 2018 but, in each instance, the sale was not consummated, generally because of concerns over the current GB zoning classification. *Exhibit 11.*
15. City staff also reviewed the proposed site-specific rezone request against the required criteria for a rezone and determined:
 - If the request to amend the Comprehensive Plan designation of the subject property to Industrial were granted, the proposed rezone would be consistent with the goals and policies of the City's Comprehensive Plan.
 - The Applicant's market analysis shows a vacancy rate of only 1.82 percent for industrial space in the urban areas on the eastside of Lake Washington, indicating a need for additional industrial space. The analysis has also shown that many

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businesses have expressed interest in the property, but the existing zoning classification is a serious concern.

- The site is within an area of Woodinville that was originally developed for industrial uses and was originally zoned Industrial when the City first incorporated in March 1993. While the GB zoning district looks to transform some of these areas to more commercial-type uses, the project site and many of the surrounding properties are developed for industrial uses.
- There is a demonstrated need for additional industrial space in the area and the project site abuts the Industrial zoning district.
- The property was developed in 1975 for industrial uses. The existing structure on-site consists of a large manufacturing warehouse with smaller associated retail and office areas. The property has been historically and most recently occupied by a use that is permitted in the Industrial zoning district. The property is practically and physically suited for industrial uses.

Exhibit 1, Staff Report, pages 6 through 9.

Testimony

16. City Senior Planner Dillon Roth testified generally about the proposal, the history of the project site, and the Applicant's efforts to obtain a Comprehensive Plan amendment for the property, in addition to the Applicant's current request for a site-specific rezone. Mr. Roth stressed that, in particular, there are serious parking limitations for the property given the existing site configuration such that it would be difficult for a non-industrial user to operate from the property. Mr. Roth also noted that there is a demonstrated need for additional property zoned for industrial use in the area. *Testimony of Mr. Roth.*
17. Applicant Representative David Toyer testified that the Applicant concurs with City staff's assessment of the proposal. He stressed that, in addition to the parking limitations, the presence of so many other industrial users, including several manufactures and the nearby recycling center, limit the viability of using the existing site for a non-industrial use. *Testimony of Mr. Toyer.*

Staff Recommendation

18. Mr. Roth testified that the City recommends approval of the proposed site-specific rezone, with conditions. Mr. Toyer testified that the Applicant would comply with the proposed conditions of approval. *Exhibit 1, Staff Report, page 11; Testimony of Mr. Roth; Testimony of Mr. Toyer.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is authorized to hold an open-record hearing on site-specific rezones and make a recommendation to the City Council, who will decide the rezone proposal at a closed-record meeting. *Former WMC 21.83.020(5).*

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Criteria for Review⁴

The Hearing Examiner, in recommending approval of a site-specific rezone, must determine that:

- a. The proposal is consistent with the Comprehensive Plan;
- b. There is a demonstrated need for additional zoning as they type proposed;
- c. The zone reclassification is consistent and compatible with uses and zoning of the surrounding properties; and
- d. The property is practically and physically suited for the uses allowed in the proposed zone reclassification.

Former WMC 21.80.300(2).

The criteria for review adopted by the City Council are designed to implement 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 development to ensure consistency with City development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development.

Conclusions Based on Findings

1. **With conditions, the proposed development would be consistent with the Comprehensive Plan.** The City’s Comprehensive Plan has several goals and policies applicable to the requested rezone, including: providing an active and diverse industrial area that promotes economic growth; protecting industrial lands from encroachment by other land uses, which would reduce the economic viability of industrial lands; establishing new or additional industrial development that incorporates available or planned sewer, water, and communications services, and has convenient access to existing or planned freeways or other major arterials; growing the City’s diverse and vital mix of business; and practicing “proactive zoning,” including reevaluating and modifying land use zoning to meet the City’s fiscal goals and vision. The Applicant is seeking a Comprehensive Plan amendment concurrently with its application for a site-specific rezone that would change the Comprehensive Plan designation of the subject property from “General Commercial” to “Industrial.” The Comprehensive Plan amendment is being processed separately (as No. CPA20002), under Chapter 21.88 of the Woodinville Municipal Code (WMC), and at least one public hearing on the amendment will be heard by the City’s Planning Commission who will then forward a recommendation to the City Council on whether the amendment should be adopted. Assuming the Comprehensive Plan amendment is adopted, the site-specific rezone would be consistent with the Comprehensive Plan. Conditions are necessary to ensure the rezone is limited to the two subject parcels and that a Comprehensive Plan amendment to change the designation of

⁴ As noted in the City staff report and in the testimony of Mr. Roth, the City has determined that the proposal should be decided in accordance with the decision criteria in effect when the application was deemed complete on October 21, 2020, rather than under the current criteria as adopted on November 28, 2020, with the adoption of Ordinance 706. *Exhibit 1, Staff Report, page 2; Testimony of Mr. Roth.*

the subject property to Industrial occurs within two years of this recommendation.
Findings 1, 6 – 18.

2. **There is demonstrated need for additional zoning of the type proposed.** The subject property was developed as an industrial site in 1975 and the site was zoned for industrial use when the City first incorporated in 1993. The Applicant submitted a detailed market analysis (Exhibit 11) demonstrating the need for additional industrial zoning in the area, with a less than two percent vacancy rate for industrial space. Moreover, the Applicant provided information on the challenges it has faced in renting the existing warehouse to tenants, or selling the property, in light of the current General Business zoning classification of the site. *Findings 1, 6 – 18.*

3. **The zone reclassification would be consistent and compatible with uses and zoning of the surrounding properties.** The property is currently zoned General Business (GB), as are surrounding properties to the north, south, and west. Properties to the east are zoned Industrial (I). The GB zone is intended to “to provide auto-oriented retail and services for local and regional service areas that exceed the daily convenience needs of residential neighborhoods” and “to provide retail and business services in locations within the City that are appropriate for extensive outdoor storage and auto-related and commercial uses, and to provide space for offices as primary uses and for hotels and motels.” *Woodinville Municipal Code (WMC) 21.20.070.* The purpose of the I zone is to “provide for the location and grouping of industrial enterprises and activities involving manufacturing, assembly, fabrication, processing, bulk handling and storage, research facilities, warehousing and heavy trucking” and “to protect the industrial land base for industrial economic development and employment opportunities.” Surrounding uses include a variety of industrial, commercial, and retail uses, including: a commercial and industrial outdoor sales and storage yard to the north; a regional recycling center to the northeast; a warehouse and office building to the east; a manufacturer to the southeast; commercial services to the south; railroad right-of-way to the southwest and west; commercial warehouse and offices to the west; and a place of worship, mini-storage structure, and offices to the northwest. As already noted, the property was originally zoned for industrial use when the City first incorporated and, as such, the surrounding area has historically developed with a mix of uses including industrial land uses. Rezoning the property would be consistent and compatible with other uses and zoning of the surrounding properties.

In addition, the City provided notice of the application and open record hearing, as required by the municipal code, and did not receive any comments expressing concern over the proposed rezone from either the public or reviewing government departments and agencies. Also, the City reviewed the Applicant’s environmental checklist, determined that the proposal would not have a probable significant impact on the environment, and issued a DNS, which was not appealed. *Findings 1 – 18.*

4. **The property is practically and physically suited for the uses allowed in the proposed zone reclassification.** The property was developed in 1975 with an existing warehouse building, surface parking, and an outdoor storage area. It was developed for industrial purposes and, until recently, facilitated an industrial use (plastics manufacturing). City staff reviewed the proposal and determined that the site is practically and physical suited for the uses allowed in the Industrial zoning district. The Hearing Examiner concurs with staff’s determination. *Findings 1, 4 – 18.*

RECOMMENDATION

Based upon the preceding findings and conclusions, Hearing Examiner recommends that the City Council **APPROVE** the request to rezone the 4.9-acre property, on contiguous parcels at 13929 NE 190th Street and 18800 Woodinville-Snohomish Road, from the “General Business” zoning designation to the “Industrial” zoning designation, with the following conditions:

1. The rezone is limited to Parcel Nos. 1927300280 and 1972300250, as set forth in Exhibit 2.
2. Approval of the rezone requires concurrent or prior approval of a Comprehensive Plan Land Use Map Amendment to change the subject parcels to the Industrial Land Use designation. If such a change is not approved within two years of the date of this recommendation, the recommendation shall expire and become null and void.

RECOMMENDED this 11th day of February 2021.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center