

**DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER**

DATE OF DECISION: June 7, 2011

PLAT/PROJECT NAME: **NELSEN REZONE**

APPLICANT/
LANDOWNER: Warren Nelsen
10211 East Minnesota Ave.
Sun Lakes, AZ 85248

FILE NO.: 10-109351 LU

TYPE OF REQUEST: **REZONE** from Rural Conservation to Rural Industrial

DECISION (SUMMARY): **GRANTED**

BASIC INFORMATION

GENERAL LOCATION: 3927 300th Avenue NW, Stanwood, WA

TAX PARCEL NO. 320410-003-015-00

ACREAGE: 3.64 acres

ZONING: CURRENT: Rural Conservation (RC)
PROPOSED: Rural Industrial (RI)

COMPREHENSIVE PLAN DESIGNATION: Rural Industrial

UTILITIES:

Water: On-site well
Sewer: On-site septic system

SCHOOL DISTRICT: Stanwood-Camano School District NO. 401

FIRE DISTRICT: North County Fire EMS

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services: Approve

This matter having come before the Hearing Examiner on June 1, 2011, and the testimony of witnesses having been heard and all exhibits having been admitted into evidence and considered, the Hearing Examiner enters the following Findings of Fact, Conclusions of Law and Decision based on a preponderance of the evidence:

FINDINGS OF FACT

1. **The Record.** The official record for this proceeding consists of the Exhibits entered into evidence (Exhibits A.1 through I.1), as well as the testimony of witnesses received at the open record hearing. Exhibit I.1 was marked as an exhibit and added to the record by the Hearing Examiner at the public hearing. The entire record was admitted into evidence and considered by the Examiner in reaching the decision herein.

NOTE: For a complete record, an electronic recording of the hearing in this case is available in the Office of the City Clerk.

2. **Parties of Record.** The Parties of Record are set forth in the Parties of Record Register and include interested parties who testified at the open record hearing.
3. **Public Hearing.** The Hearing Examiner held an open record appeal hearing on June 1, 2011. Witnesses were sworn, testimony was presented, and exhibits were entered into the record at the hearing. Notice of the application and public hearing were made according to the provisions of SCC 30.70.050(5) and 20.72.030. (Exhibits E.1, E.2, and E.3) Tom Barnett appeared and testified on behalf of the Snohomish County Planning and Development Services Department (PDS). Warren Nelsen, Applicant, appeared at the public hearing along with Angela Larsh, Urban Concepts, LLC, his consultant. No members of the public testified at the public hearing.
4. **Rezone Request.** Warren Nelsen is the owner of certain real property known as tax parcel 320410-003-015-00, located at 3927 300th Avenue NW, in Stanwood, Washington (hereinafter, the "subject property"). He has owned this land for over forty years. He is seeking to rezone the property from Rural Conservation (RC) to Rural Industrial (RI), which is consistent with the land use designation of the property shown on the County's Future Land Use Map, which is part of the County's GMA Comprehensive Plan (GMACP). No new development is proposed at this time.
5. **Site description.** The subject property is located at the intersection of 300th Street NW and 40th Avenue NW in Stanwood, east of I-5. A sawmill and wood-turning plant has operated on the subject property under the terms of a conditional use permit since 1976. (Exhibit B.2) The plant is currently operated by Glacier Molding Company. The site is 3.64 acres in size. It is relatively flat and has been cleared. There are five buildings on the property served by septic drainfields. (Exhibit B.1)
6. **Adjacent uses.** The area is mainly rural, consisting of lots ranging from five to twenty acres in size, that are either undeveloped or developed with single family residences and/or small farms. (Exhibits C.2, C.3) Lots surrounding the subject property are zoned R-5, with the exception of a 32-acre parcel to the east of the site, which is zoned RC. The Freeborn Fire Station is located approximately one-third of a mile to the east of the site. (Exhibits C.1, C.2, C.3, and H)

7. State Environmental Policy Act Compliance. A SEPA threshold Determination of Nonsignificance (DNS) was made on April 4, 2011. (Exhibits D.1, D.2) Notice of the decision was made according to the County's regulations. (Exhibits E.1, E.2, and E.3) No appeal of the SEPA determination was filed. Accordingly, the Examiner finds that compliance with the substantive and procedural requirements of SEPA have been met.

8. Issues of Concern

A. Public Agency Review. The rezone application was distributed to the Washington State Departments of Transportation (Exhibit F.1), Ecology, and Fish and Wildlife, as well as the County's Departments of Public Works and Parks, the Snohomish Health District (Exhibit I.1), Snohomish County PUD No. 1, North County Fire/EMS (Exhibit F.2), the Stanwood-Camano School District No. 401, and the Stillaguamish Tribes. (Exhibit E.1) No issues of concern were identified by those agencies.

B. Citizens. The County received written (and verbal) comments from William A. Cecil expressing concern about the rezone request. (Exhibit G.1) In particular, Mr. Cecil expressed concern about potential noise pollution, air pollution, and impacts to area wetlands and salmon in Church Creek. Mr. Cecil also complained about noise from existing operations that may violate the County's Noise Ordinance or the terms of the Conditional Use Permit governing the subject property. (Exhibit B.2) PDS responded that given the fact that no new development is proposed, the appropriate avenue for resolving the noise and operational complaints is to make a complaint to the PDS Code Enforcement Division. PDS also responded that the environmental concerns expressed will be addressed by the application of the County's development regulations if the applicant proposes a new development on the subject property. No such new development is proposed at this time. At the public hearing, Angela Larsh acknowledged that there are some nonconforming code enforcement issues that they must deal with (in particular an unpermitted mobile home) on the site, and that they are working with PDS to resolve them.

7. Rezone Criteria. Chapter 30.42A SCC covers rezoning requests and applies to site-specific rezone proposals that conform to the Comprehensive Plan. The decision criteria under SCC 30.42A.100 provide that the hearing examiner may approve a rezone only when all the following criteria are met: (1) The proposal is consistent with the comprehensive plan; (2) The proposal bears a substantial relationship to the public health, safety, and welfare; and (3) Where applicable, minimum zoning criteria found in chapters 30.31A through 30.31F SCC are met. The Examiner considers each criterion in turn.

A. The proposal is consistent with the comprehensive plan.

The GMACP was adopted pursuant to Ordinance 94-125, which became effective on July 10, 1995. It includes the General Policy Plan (GPP), the Transportation Element, the Capital

Facilities Plan, the Comprehensive Park & Recreation Plan and the Future Land Use Map (FLUM). The General Policy Plan has been revised since its initial adoption by a number of amendments.

The subject application has been evaluated for consistency with the latest version of the GMACP. The subject property is designated “Rural Industrial” on the FLUM. According to the GPP, all “[e]xisting industrial lands outside UGAs shall be rezoned to the Rural Industrial zone, regardless of size.” (GPP at Policy LU 6.G.3) Accordingly, the requested rezone is not only consistent with this GPP policy, but mandated by its policies.

The Applicant prepared a detailed analysis of GPP Policy LU 6.G as those policies relate to the proposed rezone application. (Exhibit A.2) The PDS analysis relating to the consistency of the requested rezone with the GMACP is set forth in Exhibit H at pages 4 through 7. Having reviewed the GMACP, and the PDS and Applicant analyses relating to whether the proposed rezone is consistent with the GMACP, the Hearing Examiner concurs with said analyses and hereby adopts and incorporates by this reference Exhibits A.2 and H herein, as if set forth in full. Accordingly, the Hearing Examiner finds that the proposed rezone is consistent with and mandated by the County’s adopted GMACP.

B. The proposal bears a substantial relationship to the public health, safety, and welfare.

The current proposal does not include any new development or construction, however, it brings an existing, non-conforming use into conformance with the GMACP and its existing land use designation. Any future development proposals will be subject to compliance with the County’s development regulations, including provisions relating to transportation and road impacts, drainage and land disturbing activities, project density and zoning, landscaping, parks and school mitigation, critical areas protection, compliance with fire and emergency access requirements, and provision of adequate potable water and sewage disposal. The scale and character of any future development will be, by necessity, smaller and less intense than urban industrial development due to factors such as the lack of a municipal water system, the need for a septic system and drainfield, and the 60% maximum impervious area requirement of SCC 30.31F.130. Additionally, any new development proposal would likely require reconsideration of the conditional use permit governing the activities on the subject property, which enables the County to consider the need for any additional conditions or restrictions to protect the public health, safety and welfare. Accordingly, the Examiner finds that the proposed rezone bears a substantial relationship to the public health, safety and welfare.

C. Where applicable, minimum zoning criteria found in Chapters 30.31A through 30.31F SCC are met.

The Hearing Examiner finds that the Applicant is not requesting any of the zones listed in Ch. 30.31 SCC and, as such, the minimum zoning criteria in Ch. 30.31A through F SCC is not applicable to this rezone request.

8. The Hearing Examiner finds that the requirements of Chapter 30.42A.100 are satisfied by the present application and the rezone should be approved.
9. Any Finding of Fact in this Decision, which should be deemed a Conclusion of Law, is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over the rezone application pursuant to SCC 30.42A.020 and 30.72.020(2).
2. Rezones are not presumed valid. The proponent of a rezone has the burden of proof of showing (1) that conditions have changed since the original zoning, or that the proposed rezone implements policies of the comprehensive plan; and (2) that the rezone bears a substantial relationship to the health, safety, morals or welfare. *See, Woods v. Kittitas County*, 130 Wn. App. 573, 584, 123 P.3d 883 (2005); *Citizens of Mount Vernon v. Mount Vernon*, 133 Wn.2d 861, 875, 947 P.2d 1208 (1997). The county’s regulations are consistent with the criteria expressed in case law.
3. Chapter 30.42A SCC covers rezoning requests and applies to site-specific rezone proposals that conform to the Comprehensive Plan. The decision criteria under SCC 30.42A.100 provides as follows:

The hearing examiner may approve a rezone only when all the following criteria are met:

- (1) The proposal is consistent with the comprehensive plan;
- (2) The proposal bears a substantial relationship to the public health, safety, and welfare; and
- (3) Where applicable, minimum zoning criteria found in chapters 30.31A through 30.31F SCC are met.¹

4. The proposal is consistent with the comprehensive plan. In the context of the Growth Management Act, development regulations and, therefore, rezones must be consistent with and implement the comprehensive plan. (RCW 36.70.040) But in the context of site-specific rezones, the inquiry goes beyond mere consistency with the map designation of the comprehensive plan—as the Snohomish County Council explained in Motion 07-447, “The Comprehensive Plan is the most direct expression of public policy in the area of land use. In determining that a proposed rezone is consistent with the Comprehensive Plan, the proposal must be consistent with the policies as well as the map designation.”

¹ This criterion is not applicable in this case. SCC 30.42A.100(3) only applies to performance standard zones, resource land zones, and overlay zones, none of which are present here.

The Examiner interprets this language, as well as the law applicable to rezones, to mean that the burden is upon the applicant to demonstrate to the Examiner that the proposed rezone meets the applicable comprehensive plan policies. Based upon the analysis set forth in the Findings of Fact, above, the Examiner concludes that the Applicant has met this burden of proof. The proposed rezone is both consistent with the land use designation but also with the Land Use Element of the General Policy Plan.

5. The proposal bears a substantial relationship to the public health, safety, and welfare

Based on the analysis set forth in the Findings of Fact, the Examiner concludes that the proposal bears a substantial relationship to the public health safety and welfare.

6. Where applicable, minimum zoning criteria found in chapters 30.31A through 30.31F SCC are met.

This Examiner concludes that Ch. 30.31 SCC is not applicable in this case as it only applies to performance standard zones, resource land zones, and overlays, none of which exist in this case.

7. The request for a rezone was based upon the information set forth in the entire record, as well as the impacts disclosed in the SEPA Checklist and DNS.

8. The Examiner concludes that the rezone should be approved.

9. Any Conclusion of Law in this Decision which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION

The requested **REZONE** from Rural Conservation to Rural Industrial for the subject property is **GRANTED**.

Decision issued this 7th day of June, 2011.



Millie Judge, Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

The decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. However, reconsideration by the Examiner may also be sought by one or more parties of record. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 30.85 SCC and Ch. 36.70C RCW, and the Superior Court Civil Rules and Rules of Civil Procedure.

Reconsideration

Any Party of Record may request reconsideration by the Examiner. A Petition for Reconsideration must be filed in writing with the Office of the Hearing Examiner, 3000 Rockefeller Avenue, M/S #405, Everett WA 98201, on or before **JUNE 17, 2011**. There is no fee for filing a Petition for Reconsideration. **Reconsideration is filed under SCC 2.02.170 and requires that the petitioner for reconsideration “shall mail or otherwise provide a copy of the petition of reconsideration to all parties to the appeal on the date of filing.”**

The petition for reconsideration does not have to be in any special form but must:

- (a) Contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner’s attorney, if any;
- (b) Identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested;
- (c) State the relief requested; and,
- (d) Where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the applicant.

The grounds for seeking reconsideration are limited to the following:

- (a) The Hearing Examiner exceeded the Hearing Examiner’s jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner’s decision;
- (c) The Hearing Examiner committed an error of law;
- (d) The Hearing Examiner’s findings, conclusions and/or conditions are not supported by the record; or
- (e) New evidence which could not reasonably have been produced and which is material to the decision is discovered.

Petitions for Reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 2.02.170. Please include the County file number in any correspondence regarding this case.

Appeal

The decision of the hearing examiner in this matter constitutes a final land use decision within the meaning of Chapter 36.70C RCW. Accordingly, any person with standing may file an appeal of this decision in Superior Court **within 21 days from the date of this decision** pursuant to the Land Use Petition Act (LUPA). (See, RCW 36.70C.040(4) for guidance on how to calculate the appeal period). In addition to meeting other requirements, appeals must comply with the specific requirements of Sections 36.70C.040, 36.70C.060 and 36.70C.070 RCW. Service on Snohomish County must be made by delivery of a copy of the petition to the County Auditor or the person identified by or pursuant to RCW 4.28.080 to receive service of process. (RCW 36.70C.060) Service on other parties must be made according to SCC 36.70C.040. The Office of the Hearing Examiner may not provide legal advice. If you have questions about filing a LUPA appeal, please consult with your attorney.

Staff Distribution:

Department of Planning and Development Services: Tom Barnett