

**BEFORE the HEARING EXAMINER for the
CITY of LYNNWOOD**

DECISION

FILE NUMBER: RZN-010042-2023

APPLICANT: ¹ SC Lynnwood RL II, LLC
25035 SW Parkway Avenue
Wilsonville, OR 97070

TYPE OF CASE: Site-specific reclassification of approximately 3.7 acres from Highway 99 Mixed Use (HMU) to General Commercial (CG)

STAFF RECOMMENDATION: Approve

EXAMINER DECISION: GRANT

DATE OF DECISION: September 26, 2023

INTRODUCTION ²

SC Lynnwood RL II, LLC (“Swickard”) seeks a site-specific reclassification, ³ not involving a change to the adopted comprehensive plan nor done in conjunction with adoption of a sub-area plan, of approximately 3.7 acres from Highway 99 Mixed Use (HMU) to General Commercial (CG).

Swickard filed the rezone application on February 2, 2023. (Exhibit 1, PDF 1 ⁴) The Lynnwood Development and Business Services Department, Community Planning Division, (“Planning”) deemed the application complete on July 6, 2023. (Exhibits 1, PDF 1; 11) Planning issued a Notice of Application on July 20, 2023. (Exhibit 11)

¹ Applicant’s mailing address obtained from the Conceptual Plan Set (Exhibit 5) and confirmed by the Stormwater Drainage Report (Exhibit 9).

² Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

³ Reclassification is commonly referred to as a “rezone,” a shorthand terminology which will be used herein interchangeably with “reclassification.”

⁴ Exhibit citations are provided for the reader’s benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. Citations to exhibits that are available electronically in PDF use PDF page numbers, not source document page numbers. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner’s Decision is based upon all documents in the record.

The subject property occupies the northwest quadrant of the Highway 99/188th Street SW intersection. The subject property is composed of two Tax Assessor Parcels, each of which has a separate street address: Parcel 00374300500401 (5711 188th Street SW) and 00374300500402 (5615 188th Street SW).⁵

The Lynnwood Hearing Examiner (“Examiner”) viewed the subject property via Google Earth imagery: Overhead imagery dated August 23, 2022; Street View imagery along 188th Street SW dated May 2019; Street View imagery along Highway 99 dated August 2023.

The Examiner held a hybrid open record hearing on September 21, 2023: In-person participation was available at the City Hall; remote participation was available through the “Zoom” platform. Planning gave notice of the hearing as required by the Lynnwood Municipal Code (“LMC”). (Exhibit 12)

The following exhibits were entered into the hearing record during the hearing:

- Exhibits 1 - 12: As enumerated in Exhibit 1, the Planning Staff Report
- Exhibit 13: Swickard’s PowerPoint Hearing Presentation

Section 1.35.025 LMC requires that decisions on project permit applications be issued within 120 calendar days after the application is found to be complete; subsection 1.35.025(A) LMC lists four exclusions from the 120-day count, one of which is an extension mutually agreed upon by Planning and the applicant. The open record hearing was held on day 77. (Exhibit 1, PDF 1)

The action taken herein and the requirements, limitations and/or conditions imposed by this decision are, to the best of the Examiner’s knowledge or belief, only such as are lawful and within the authority of the Examiner to take pursuant to applicable law and policy.

FINDINGS OF FACT

1. Swickard seeks a site-specific reclassification, not involving a change to the adopted comprehensive plan nor done in conjunction with adoption of a sub-area plan, of approximately 3.7 acres from HMU to CG. The property subject to this application is Assessor Parcels 00374300500401 and 00374300500402.

⁵ The Staff Report lists only one parcel with one street address. (Exhibit 1, PDF 1) The title report (Exhibit 4) lists three Tax Assessor Parcels, Parcels A, B, and C. Parcel A is the “Holman” property which was the subject of a prior rezone from HMU to CG under file number RZN-009802-2021. Parcels B and C are two of the three remaining HMU-zoned parcels in the area. Exhibit 13, Slide 7, Swickard’s PowerPoint Hearing Presentation, indicates that the Swickard rezone application applies to only title report Parcels B and C. The Examiner has confirmed the two parcel numbers using the Snohomish County Assessor’s public, on-line GIS system. [[https://scopi.snoco.org/Geocortex/Essentials/REST/sites/SCOPI/viewers/SCOPI/virtualdirectory/Resources/Config/Default](https://scopi.snoco.org/Html5Viewer/Index.html?configBase=https://scopi.snoco.org/Geocortex/Essentials/REST/sites/SCOPI/viewers/SCOPI/virtualdirectory/Resources/Config/Default), last visited September 24, 2023] (Exhibits 7; 13; official notice) The Examiner concludes that title report Parcels B and C, listed above with their Assessor’s Parcel Numbers, are the subject of this application.

2. The Comprehensive Plan designation for the property along both sides of Highway 99 between (and extending beyond) 186th and 188th Streets SW is Highway 99 Corridor. The implementing zones for that Comprehensive Plan designation are HMU and CG. (Exhibit 1, PDF 2; 13, Slides 8 & 9)
3. All of the Highway 99 designated property in the vicinity, except for the two parcels which are the subject of this application and the small parcel immediately to their west along 188th Street SW, are zoned CG. The subject parcels and the small parcel to their west are zoned HMU. (Exhibit 7) The small parcel to the west is the site of an electric utility substation. (Exhibit 6, PDF 2, visible in the background of the photograph)
4. The Holman property to the north now contains a Porsche dealership. The subject parcels used to contain a Harley-Davidson motorcycle dealership. That business has closed and the eastern of its two buildings has been demolished. (Exhibit 6)
5. Swickard proposes to construct a BMW dealership on the subject properties and the southern portion of the Holman property. (Exhibit 5) Swickard has filed a Project Design Review application for the proposed dealership. Swickard has elected to not consolidate that application with the current application. (Exhibit 1, PDF 1)
6. The criteria for approval of a reclassification are set forth at LMC 21.22.600. Those criteria and the facts disclosed by the evidence and testimony in the hearing record regarding each are:

“The city may approve or approve with modifications an application for a reclassification of property if:

“A. The reclassification is substantially related to the public health, safety, or welfare; and”

Facts: This criterion is essentially conclusory in nature and can best be addressed in the Conclusions of Law, below.

“B. The reclassification is warranted because of changed circumstances or because of a need for additional property in the proposed land use zone classification or because the proposed zoning classification is appropriate for reasonable development of the subject property; and”

Facts: The three elements of this criterion are each separated by the word “or.” Compliance with any one or more of the three thus constitutes compliance with the criterion. The rezoning of the Holman property constitutes changed circumstances. The CG zone will allow the BMW dealership to locate on the subject property as a companion to the Porsche dealership.

“C. The subject property is suitable for development in general conformance with zoning standards under the proposed zoning classification; and”

Facts: Swickard has submitted a plan for the subject property which shows that the site can be developed for the proposed use in conformance with the LMC’s CG zone requirements.

“D. The reclassification will not be materially detrimental to uses or property in the immediate vicinity of the subject property; and”

Facts: Swickard’s site plan retains the larger, remaining Harley-Davidson building, so that building will remain in motor vehicle use. The site plan is integrated with the new Porsche dealership. (Exhibit 5)

“E. The reclassification has merit and value for the community as a whole; and”

Facts: This criterion is essentially conclusory in nature and can best be addressed in the Conclusions of Law, below.

“F. The reclassification is in accord with the comprehensive plan; and”

Facts: As noted above, both the CG and the HMU are implementing zones for the Comprehensive Plan’s Highway 99 Corridor designation.

“G. The reclassification complies with all other applicable criteria and standards of the Lynnwood Municipal Code.

Facts: The record contains no evidence of any conflict between the requested CG zone and other provisions of the LMC

7. The requested rezone is categorically exempt from the threshold determination requirements of the State Environmental Policy Act. (Exhibit 1, PDF 5)
8. Planning recommends approval of the requested rezone. (Exhibit 1, PDF 5)
9. Swickard concurs with the Planning recommendation. (Testimony)
10. No testimony or evidence was entered into the record by the general public either in support of or in opposition to the application.
11. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK ⁶

The Examiner is legally required to decide this case within the framework created by the following principles:

⁶ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

Authority

A site-specific reclassification, not involving a change to the adopted comprehensive plan nor done in conjunction with adoption of a sub-area plan, is a modified Process I application (open record hearing before the Examiner, final decision by the Examiner, and right of reconsideration); “provided, that any appeal of the hearing examiner’s decision will be to the city council under Process VII.” [LMC 1.35.100 and .168; LMC 21.22.400(D); quotation from LMC 21.22.400(D)]

Review Criteria

The review criteria for reclassifications are set forth in Finding of Fact 6, above.

A “consistency determination” is required for every project permit application. [LMC 1.35.070] Although a reclassification is a Process I application, it is not a project permit application. A consistency determination is not required since there is no project to evaluate.

Vested Rights

The City has no vesting regulations for land development applications. “Vesting” serves to “fix” the regulations against which a development application is judged. [*Potala Village Kirkland, LLC v. City of Kirkland*, __ Wn. App. __ (Div. I, 2014)] Since a rezone, by definition, seeks to change the regulations which would govern development of a parcel, the vested rights doctrine has no applicability.

Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof. [LMC 1.35.155]

Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

CONCLUSIONS OF LAW

1. The facts summarized in Finding of Fact 6, above, clearly and unequivocally demonstrate compliance with five of the seven criteria for approval of a reclassification.
2. With respect to Criteria A (“public health, safety, and welfare”) and E (“merit and value for the community as a whole”), the requested rezone is consistent with Criterion A. Both the existing HMU zone and the requested CG zone allow a wide range of commercial uses. Changing the zoning from HMU to CG will not result in any material change in the areas of public health, safety, or welfare associated with future commercial uses.
3. The requested rezone is also consistent with Criterion E (“merit and value for the community as a whole”). This rezone will eliminate the last vestige of HMU zoning (except for the small electric

substation parcel whose use will not likely change in the foreseeable future) in the area of the Highway 99/188th Street SW intersection. Consolidating the area zoning as CG streamlines the zoning pattern in the area.

4. The requested reclassification should be granted.
5. Swickard submitted plans depicting future development of the subject parcels as could occur under the new zoning. (Exhibit 5) Reclassification from HMU to CG does not require submittal of binding site development plans. Therefore, Exhibit 5 is informational only and has had no bearing on the Examiner's evaluation of the reclassification request.
6. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, the testimony and evidence submitted at the open record hearing, and the Examiner's site view, the Examiner herewith **GRANTS RECLASSIFICATION** of Assessor Parcels 00374300500401 and 00374300500402 from HMU to CG.

Decision issued September 26, 2023.

/s/ John E. Galt

John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ⁷

Sam Huck

Karl Almgren

NOTICE of RIGHT of RECONSIDERATION

This Decision is final subject to the right of any party of record to file with the Lynnwood Development and Business Services Department a written request for reconsideration within seven calendar days following the issuance of this Decision in accordance with the procedures of LMC 1.35.168. Any request shall specify the error of law or fact, procedural error, or new evidence which could not have been reasonably available at the

⁷ The official Parties of Record register is maintained by CDD.

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time of the hearing conducted by the Examiner which forms the basis of the request. See LMC 1.35.168 for additional information and requirements regarding reconsideration.

NOTICE of RIGHT of APPEAL

This Decision is final subject to the right of a party of record (See LMC 1.35.148.) with standing, as provided in RCW 36.70C.060, to appeal “the hearing examiner’s decision ... to the city council under Process VII.” [LMC 21.22.400(D)] See LMC 1.35.700 - .740 for information about Process VII appeals.

The following statement is provided pursuant to RCW 36.70B.130: “Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.”