

**COUNTY OF YAKIMA, WASHINGTON
HEARING EXAMINER'S RECOMMENDATION**

September 21, 2017

In the Matter of an Application)
For a Rezone Submitted by:)
)
Cragg Gilbert for Sagehen, LLC)
)
To Rezone a 5.79-Acre Parcel at)
11302 Gilbert Road Which is About)
One-Half Mile West of Wiley Road)
From the R-1 Zone to the SR Zone)

**ZON2017-00004
PRJ2017-00454**

A. Introduction. The preliminary background findings relative to the public hearing process conducted for this application are as follows:

(1) The Hearing Examiner conducted an open record public hearing regarding this application on September 7, 2017.

(2) The staff report prepared and presented by Yakima County Senior Project Planner Dinah Reed recommended approval of the application.

(3) Eric Herzog, PLS, of HLA Engineering and Land Surveying, testified in favor of the rezone on behalf of the applicant/property owner, Cragg Gilbert for Sagehen, LLC.

(4) No written comments were submitted by members of the public regarding the requested rezone.

(5) This recommendation has been issued within 10 business days of the open record public hearing.

B. Summary of Recommendation. The Hearing Examiner recommends that the Board of Yakima County Commissioners approve the requested rezone from the Single-Family Residential (R-1) zoning district to the Suburban Residential (SR) zoning district as recommended by Senior Project Planner Dinah Reed.

C. Basis for Recommendation. Based upon a view of the site without anyone else present on September 5, 2017; the information contained in the staff report, the application, the exhibits, the testimony and the other evidence presented at the open record public hearing on September 7, 2017; and a review of the applicable Yakima County Comprehensive Plan and the Yakima County Unified Land Development Code, Title 19 of the Yakima County Code (YCC), the Hearing Examiner makes the following:

FINDINGS

I. Applicant / Property Owner / Representative. The applicant/property owner is Cragg Gilbert for Sagehen, LLC, P.O. Box 9066, Yakima, Washington 98903. The representative of the applicant/property owner for this matter is Eric Herzog, PLS, of HLA Engineering and Land Surveying, 2803 River Road, Yakima, Washington 98903.

II. Location. The subject 5.79-acre parcel is located at 11302 Gilbert Road on the south side of the road approximately one-half mile west of Wiley Road and approximately one mile southwest of the city limits of the City of Yakima within the Urban Growth Area of the City of Yakima. The parcel number is 171211-12005.

III. Application. The main aspects of this rezone application may be summarized as follows:

(1) This rezone application was submitted on May 22, 2017. The application requests an amendment to the official zoning map established by the Yakima County Unified Land Development Code (Yakima County Code Title 19) to change the zoning of the subject 5.79-acre parcel from the Single-Family Residential (R-1) zoning district to the Suburban Residential (SR) zoning district.

(2) Since no new structures are proposed with this application, it is a non-project rezone application. Since the rezone request is site-specific and does not depend upon a Comprehensive Plan or Sub-Area Plan amendment, it is a minor rezone which may be processed at any time under Type 4 review pursuant to YCC §16B.03.030.

(3) A house and well are located on the subject parcel. The house utilizes a septic system. Bachelor Creek runs through the south end of the parcel. The north end of the parcel is within the 100-year floodplain.

(4) Sagehen, LLC is affiliated with the owner of several parcels to the east, Gilbert Orchards, Inc. Those parcels are used for the large Gilbert Orchards fruit packing plant operation. Those parcels are within the Suburban Residential (SR) zoning district. Some small house lots, as well as some large tracts ranging in size from 10 to 20 acres, are located west of the subject parcel and are zoned Single-Family Residential (R-1). Most of the parcels north of the subject parcel across Gilbert Road range in size from 1/4 acre to 2-1/2 acres, are zoned Single-Family Residential (R-1) and contain houses.

IV. Jurisdiction. The jurisdictional aspects of this rezone application may be summarized as follows:

(1) YCC §19.36.030 entitled “Minor Rezone – Map Amendment” states that rezone applications consistent with Table 19.36-1 and not dependent upon a Comprehensive Plan or Sub-Area Plan amendment shall be considered minor rezones. These quasi-judicial actions, when site-specific, may be processed at any time under Type 4 review pursuant to YCC Section 16B.03.030.

(2) According to YCC Table 19.36-1 entitled Zoning District Consistency with Comprehensive Plan Future Land Use Designations, the requested SR zoning district is consistent with, and may implement, the Urban – Low Density Residential land use designation of the Yakima County Comprehensive Plan. The review process will consider those sections of Title 19 that control the direction and requirements for considering approval of this application.

(3) The Yakima County Hearing Examiner has conducted an open record public hearing and has prepared this recommendation for consideration by the Board of Yakima County Commissioners at a closed record public hearing that will result in a decision by that Board. The records of both public hearings are open to public inspection in accordance with YCC Title 16B.

V. Notices. Notices of the September 7, 2017, public hearing were provided in accordance with applicable ordinance requirements in the following manners:

Mailing of notice of public hearing to property owners:	August 14, 2017
Publishing of notice of public hearing in the newspaper:	August 14, 2017
Posting of notice of public hearing on the property:	August 21, 2017

VI. State Environmental Policy Act. Since this is a minor rezone in an Urban Growth Area that is considered consistent with the Urban – Low Density Residential designation of the Yakima Urban Area Comprehensive Plan applicable to Urban Growth Areas when this application was deemed complete for processing, WAC 197-11-800 requires no additional environmental review beyond what was completed for the Comprehensive Plan.

VII. Comprehensive Plan, Zoning and Land Uses. The Comprehensive Plan, Zoning and Land Use characteristics of the subject property and properties in the vicinity may be summarized as follows:

(1) The Comprehensive Plan designation for the subject property and for all surrounding lands is Urban – Low Density Residential. The Urban designation is intended to include land that is characterized by urban growth or will be needed for urbanization, consistent with forecasted population growth and the ability to extend urban services. The Urban Growth Area designation is intended to establish the area within which incorporated cities and towns may grow and annex over the next twenty years. Yakima County’s Urban Growth Area land use category is also intended to implement the Washington Administrative Code provision which describes an Urban Growth Area as “the physical area within which that jurisdiction’s vision of urban development can be realized over the next twenty years.”

(2) The existing Single-Family Residential (R-1) zoning district is intended to preserve existing residential neighborhoods and establish new residential neighborhoods (YCC §19.12.010(1)(c)).

(3) The requested Suburban Residential (SR) zoning district is intended to provide areas for transitional uses as urban development expands, with a mixture of land uses and residential densities including small farms, scattered low-density residential development and clusters of higher density residential development (YCC §19.12.010(1)(b)).

VIII. Rezone Review Criteria. YCC §19.36.030(5) provides that the Hearing Examiner shall issue a written recommendation to approve, approve with conditions or deny proposed minor rezones based upon the following considerations:

(1) **The testimony at the public hearing:** All of the testimony at the open record public hearing which was presented by Senior Project Planner Dinah Reed and by the applicant’s representative Eric Herzog was in favor of the requested rezone.

(2) **The suitability of the property in question for uses permitted under the proposed zoning:** Factors that relate to the suitability of the property in question for SR zoning include the following:

(a) The application states that the requested rezone would allow the single-

family residence, garage and outbuildings to be separated from the remainder of the property which would then allow expansion of agriculturally related industry uses onto the remainder of the property through Type 3 review. A boundary line adjustment for this purpose would serve an objective of the Urban Growth Area to increase residential density on the lot where the existing house would be located.

(b) The remaining southern portion of the subject parcel would be suitable for expansion of Gilbert Orchards' existing agriculturally related industry uses through Type 3 review if the subject parcel is rezoned to Suburban Residential. Those existing uses include the Gilbert Orchards cold storage warehouses, packing plant, bin storage and administrative offices located on parcels east of the subject parcel which are already zoned Suburban Residential.

(3) The recommendation from interested agencies and departments: The only recommendation from interested agencies and departments was the recommendation of Yakima County Public Services, Planning Division, in favor of the proposed rezone.

(4) The extent to which the proposed rezone is in compliance with and/or deviates from the goals and policies adopted in Comprehensive Plans and neighborhood plans and the intent of the zoning ordinance: The proposed rezone would comply with the goals and policies of the Yakima Urban Area Comprehensive Plan (Plan 2015) which applied to the entire County when this application was deemed complete for processing, as well as with the intent of the zoning ordinance, in the following ways:

(a) Purpose Statement LU-U 3: A number of farming operations exist in urban areas. This goal recognized that the choice to continue farming or to develop these lands rests with the farmer.

(b) Goal LU-U 3: Recognize the transitional nature of agricultural uses within the Urban Growth Area.

(c) Policy LU-U 3.1: While ultimately land in farm use within the Urban Growth Area is needed for urban development, the decision to convert to urban development will rest with the landowner.

(d) Purpose Statement LU-U 4: The goal seeks to ease pressure on farmers to convert farms before they are ready. It also recognizes the conflicts that may arise between farmers and their non-farm neighbors, and seeks to protect farmers from nuisance lawsuits that may result from these conflicts.

(e) Goal LU-U 4: Recognize the right to farm and farm use as a legitimate activity within the Urban Growth Area prior to conversion of property to urban use.

(f) Policy LU-U 4.1: Allow agriculture and farming operations as a permitted use on existing parcels within the Urban Growth Area.

(g) The proposed rezone to the Suburban Residential (SR) zone would be in compliance with the intent of the zoning ordinance so long as the considerations enumerated in YCC §19.36.030(5) warrant approval of the rezone.

(5) The adequacy of public facilities such as roads, sewer, water and other required public services: The parcel is served by Gilbert Road, a paved County road, and by Nob Hill Water. The house is on a septic system. No new development is proposed with this minor rezone.

(6) The compatibility of the proposed zone change and associated uses with neighboring land uses: The proposed zone change and associated uses on the subject parcel are compatible with neighboring land uses for the following reasons:

(a) The SR zoning district allows many uses as Type 1 permitted uses, including agriculture, single-family site built or modular dwellings, temporary sales offices within a residential or mixed-use project, bed and breakfast inns and minor home businesses. Under a Type 2 land use review, the SR zoning district allows uses such as churches, community centers, fraternal organizations/lodges/clubs, retirement homes, school bus storage facilities, accessory dwelling units and most primary residential businesses, major home businesses, pet day care/grooming businesses and linear transmission facilities. Under a Type 3 land use review, the SR zoning district allows uses such as agriculturally related industries, campgrounds/RV parks, drive-in theaters, cemetery/crematorium facilities, child day care facilities, health care facilities, libraries, police/fire stations, schools, retail nurseries, radio/TV studios,

veterinarian clinics and utility services.

(b) Land uses surrounding the subject parcel are almost entirely either small lot residential uses or large tract agricultural uses. Since Gilbert Orchards, Inc., has an established agriculturally related business on the parcels to the east consisting of an apple cold storage warehouse facility and an administrative office, the applicant's intent is to expand that facility in the future rather than develop other uses on the subject parcel. Although the applicant intends to apply only for agriculturally related industry uses in the future, the Type 1 uses allowed in the SR zoning district would not have an adverse impact on surrounding land uses. Even though some of the Type 2 or Type 3 uses could have an impact upon the surrounding existing land uses, a Type 2 land use requires public comments to be considered in the process, and a Type 3 land use requires an open record public hearing to be conducted where public comments are considered by the Hearing Examiner. Any impacts associated with any future proposal will be reviewed through the applicable Type 1, Type 2 or Type 3 review process.

(7) The public need for the proposed change: The Gilbert Orchards agriculturally related industry uses serve a public need for agricultural products which this area is capable of providing. Providing the opportunity for potential expansion of nearby agriculturally related industries in this area in the future by a rezone of the subject parcel would be consistent with the following Comprehensive Plan and zoning ordinance provisions:

(a) The Suburban Residential and Single-Family Residential zoning districts are very similar in their intent – “to facilitate development at targeted urban densities under the Comprehensive Plans, and provide for low-density, single-family residential development in areas designated by the Comprehensive Plan, depending on availability of infrastructure.” The difference between the two districts lies with their purpose. The Single-Family Residential district is further intended to protect single-family neighborhoods from encroachment by potentially incompatible non-residential land uses or impacts, whereas the Suburban Residential district is further intended to provide areas for transitional uses as urban development expands, with a mixture of land uses and residential densities including small farms and scattered low-density residential development (YCC §19.12.010).

(b) Since the surrounding property land uses range from residential to commercial and agriculture, rezoning the subject parcel to SR will allow flexibility to provide for needed expansion of non-residential land uses. The subject parcel is within the Urban Growth Area which would typically have a variety of land uses that may also support jobs. The evidence in the record indicates that the Gilbert Orchards agriculturally related industry located on the adjacent parcels to the east will in the future need to expand onto the subject parcel which is not allowed under the current zone because an agriculturally related industry is not an allowed use in the Single-Family Residential zoning district. The rezone would provide the opportunity for the agriculturally related industry business to expand in accordance with Comprehensive Plan Policy LU-U 4.1 which allows agricultural activity within the Urban Growth Area and the criteria for approval of a Type 3 use. Additional land adjacent to the existing agriculturally related industry uses is required for that expansion and the timing is appropriate to allow such adjacent property to be available for such uses in the future.

(8) Whether substantial changes in circumstances exist to warrant an amendment to the current zone: The substantial change in circumstances that warrant an amendment to the current zoning consists of a foreseeable future need to expand the existing agriculturally related industry uses that currently exist east of the subject parcel.

IX. The Consistency of the Rezone with Development Regulations and with the Comprehensive Plan under the Criteria set forth in YCC §16B.06.020 is to be determined by a consideration of the following factors:

(1) The types of land uses permitted at the site would include the types of uses allowed within the SR zoning district, including the expansion of the existing agriculturally related industry located east of the subject parcel.

(2) The density of residential development or the level of development such as

units per acre or other measures of density would not be affected by the requested non-project rezone since no development is being permitted by the rezone, and any future development would have to comply with SR zone density requirements or with applicable administrative adjustment criteria.

(3) The availability and adequacy of infrastructure and public facilities is not an issue because no new uses are being permitted by the requested rezone.

(4) The characteristics of any future development will have to be consistent with the requirements of the SR zoning district or satisfy the criteria for adjustment of the standards.

CONCLUSIONS

Based on the foregoing Findings, the Hearing Examiner reaches the following Conclusions:

(1) The Hearing Examiner has jurisdiction to make a recommendation to the Board of Yakima County Commissioners regarding this minor rezone application.

(2) The notice requirements for the open record public hearing regarding this application have been satisfied.

(3) The minor rezone to Suburban Residential would allow the property owner to apply for an expansion through a Type 3 review process of Gilbert Orchards' agriculturally related industry onto the subject parcel. Any impacts associated with a future proposal will be evaluated through the associated land use review process.

(4) The proposed rezone from the Single-Family Residential (R-1) zone to the Suburban Residential (SR) zone would satisfy the requirements for a rezone set forth in YCC §19.36.030(5) and the consistency standards set forth in YCC §16B.06.020.

RECOMMENDATION

The Hearing Examiner recommends that the Board of Yakima County Commissioners approve this application for a rezone of parcel no. 171211-12005 located at 11302 Gilbert Road from the Single-Family Residential (R-1) zoning district to the Suburban Residential (SR) zoning district.

DATED this 21st day of September, 2017.



Gary M. Cuillier, Hearing Examiner