



Public Services

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VERN M. REDIFER, P.E. - Director

October 6, 2017

TO: Alan Heffron & Parties of Record

FROM: Karri Espinoza, Office Coordinator *KE*

RE: Hearing Examiner Recommendation -- File Nos. ZON2017-00005

On, October 2, 2017 the Yakima County Hearing Examiner issued his recommendation on a Rezone of certain properties Southwest of Sunnyside from Mining (MIN) to Agriculture (AG). The Examiner's recommendation is enclosed.

The Hearing Examiners recommendation will be presented to the Board of County Commissioners for consideration at a closed record public hearing. You will be notified when this date has been set. If you have any questions on the recommendation, please contact Dinah, Reed at 574-2300.

Encl.: *Hearing Examiner Recommendation*
Cy: *Parties of Record*

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**County of Yakima, Washington
Office of the Hearing Examiner**

In the matter of a Consolidated)	Yakima County File Nos. ZON2017-00005
Application for a Minor Rezone by)	
Alan L. Heffron)	
To Rezone Certain Properties)	HEARING EXAMINER
Southwest of Sunnyside from Mining)	RECOMMENDATION
(MIN) to Agricultural (AG))	

I. INTRODUCTION.

On July 14, 2017, Yakima County Public Services Department: Planning Division received a minor rezone application from Alan L. Heffron (c/o Kellen J. Holgate and Halverson Northwest Law Group, P.C.). The application requests an amendment to the official zoning map established by Yakima County Code Title 19 (Unified Land Development Code or ULDC) to change the zoning of the subject parcels from Mining (MIN) with a Mineral Resource Overlay to Agriculture (AG). The affected parcels have long been used for gravel mining and crushing, but the applicant believes that the mining operation is no longer viable. He has obtained cancellations of the surface mining and water quality permits that appertained to the mining operations. The applicant plans to level the site and evenly distribute topsoil. After these improvements, the site will be suitable for orchard or vineyard development, consistent with the Agricultural zoning district.

An open record hearing was conducted on the rezone application on September 21, 2017. A summary of the staff report was presented at the hearing by Dinah Reed. Attorney Kellen Holgate represented the applicant. Mr. Holgate submitted a hearing memorandum for the record. No public comment was offered at the hearing.

II. SUMMARY OF RECOMMENDATION.

This application for a minor rezone should be approved.

Based on the staff report and exhibits, the viewing of the site and comments received at the open record hearing, and a review of pertinent provisions of the Yakima County Unified Land Development Ordinance (Title 19 YCC) and *Plan 2015*, the Hearing Examiner makes the following

III. FINDINGS.

1. APPLICANT AND PROPERTY OWNER.

Alan L. Heffron

c/o Kellen J. Holgate, Halverson Northwest Law Group, P.C.
P.O. Box 22550
Yakima, WA 98907

2. LOCATION AND PARCEL NUMBERS.

The subject parcels are located off Snipes Mountain Lateral just less than one mile west of Emerald Granger Road ½ mile west of I-82 and approximately one mile southwest of the City of Sunnyside. The Assessor's Parcel Numbers for the properties are 221034-31402, 221034-32403, 221034-32404.

3. APPLICATION.

The applicant requests that the subject property be rezoned to Agriculture (AG) from its current MIN zoning. This application is made in accordance with ULDC 19.36.030 which provides: "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.30.030." No new structures or other specific development are proposed with this application.

4. HEARING EXAMINER JURISDICTION.

The Hearing Examiner has jurisdiction to conduct open record hearings and issue recommendations on applications subject to Type 4 review. YCC 16B.03.030 (Table 3-1). Minor rezones are subject to Type 4 review. Id. (Table 3-2).

5. PROPERTY DESCRIPTION, LAND USE, AND ZONING AND COMPREHENSIVE PLAN DESIGNATIONS.

The subject parcels been used in an active mining and rock crushing operation that has existed since 1946. This activity was previously permitted under file numbers SPU80-148, SPU80-149, SPU15-1982, and CUP20013-092/SEP20013-045. In 2016, after mining operations terminated, the applicant sought and received a cancellation of its NPDES permit (Permit No. WAG 505132) as well as its' Surface Mine Reclamation Permit (Permit No. 70-012907). The three subject parcels total 14.94 acres. Access to the site is via private roads from two directions that connect to public roads, which are Emerald Road to the south and Concord Drive to the north. The two private roads are improved with asphalt surfacing 10-16 feet in width. The property is within the Sunnyside Valley Irrigation District, although the district reports that there are no irrigation facilities on the parcels.

Zoning: The subject property is currently zoned Mining (MIN). All surrounding properties are zoned AG. There is a 66-acre parcel to the south, which has the Mineral Resource Overlay, and several parcels to the west which have the Mineral Resource Overlay totaling approximately 365

acres. There are three house sites directly adjacent to the Mineral Resource Overlay zoned land which are within the AG zoning district.

Comprehensive Plan: According to Plan 2015, the subject site and all surrounding lands have the plan designation of Agricultural Resource land use.

6. **PUBLIC NOTICE.**

The application was submitted on July 14, 2017, and was deemed complete for processing on July 26, 2017. A Notice of Application, Notice of Completeness, and Notice of Future Public Hearings was mailed to the applicant, agencies with jurisdiction, and adjoining property owners on August 1, 2017, with the comment period ending August 15, 2017.

Notice of the September 21, 2017 public hearing was provided in the following manner:

- Notice of Public Hearing was mailed to adjoining property owners on August 1, 2017.
- Publishing of a legal notice of the open record public hearing notice in the Yakima Herald-Republic: August 1, 2017
- Posting of hearing notice on the property: September 6, 2017

7. **ENVIRONMENTAL REVIEW.**

A SEPA review was submitted in conjunction with this proposal under SEP2017-00026 and was issued a threshold Determination of Non-Significance on September 1, 2017. No appeals of the threshold determination were reported.

8. **REZONE ANALYSIS**

There are eight decision criteria for minor rezone required by ULDC 19.36.030(5). The decision criteria are set out and addressed in turn below.

(a) *The testimony at the public hearing:* No public comment was offered on the applications either orally or in writing.

(b) *The suitability of the property in question for uses permitted under the proposed zoning:* The purpose of the AG district is to preserve and maintain areas for the continued practice of agriculture by permitting only those new uses that are compatible with agricultural activities and protect agricultural lands of long-term commercial significance. ULDC 19.11.010(1)(b). Type 1 land uses in the AG zoning district include: wineries, breweries, distilleries, farm labor shelter, dwellings, bed & breakfast inns, and any agricultural use to include silviculture, and animal feeding operations (except for CAFO's). Type 2 land uses in the AG zoning district include, for example: Retail level AG Tourist Operations, agricultural service establishments (crop dusting and spraying, harvesting and plowing services, specialized farm equipment service and repair, large animal veterinary, agricultural fertilizer and chemical product application service), farm labor

centers, churches, police/fire stations, etc. (all of which would be subject to a public comment period by neighboring property owners) which can influence the final land use decision. Type 3 uses (typically not compatible with the surrounding land uses) include, for example: fertilizer/chemical manufacturing, solid waste transfer station, retail nursery, power generating facilities, sewage treatment plants, etc. (all of which require a public comment period and the opportunity to make comment at an open record public hearing) before being approved by the Hearing Examiner.

The subject property is amenable to regrading to allow use of the land for agricultural production and is of a size that would allow commercial scale agriculture activities to be undertaken on it as reflected in the use of similarly-sized parcels in the vicinity being currently in active agricultural use. Furthermore, some of the surrounding parcels contain productive orchards and vineyards, some of which are located on grounds formerly mined. It may not be likely that other uses allowed in the AG zoning district would be sited on the subject parcels, but there is no evidence that the physical features of the property would prevent such uses following the appropriate level of administrative review. Accordingly, there is no evidence that the property would be physically unsuitable for an AG designation.

(c) *The recommendation from interested agencies and departments:* No recommendations were provided.

(d) *The extent to which the proposed amendments are in compliance with and/or deviate from the goals and policies as adopted in the Comprehensive Plans, adopted neighborhood plans and the intent of Title 19 YCC:* According to Title 19 Table 19.36-1 'Zoning District Consistency with Comprehensive Plan Future Land Use Designations' of Title 19, the requested AG zoning district is consistent with and may implement the Agricultural Resource land use designation. In addition, Goal LU-ER-MR 3 in *Plan 2015* seeks to "[ensure] that mineral resource site utilization is consistent with other Plan 2015 goals and recognize that mining is an interim land use." Policy LU-ER-MR 3.5 in *Plan 2015* encourages the reclamation of mineral sites "for future use in accordance with Plan 2015 goals" and promotes "innovative, adaptive re-use or reclamation planning." The rezone is consistent with the regrading of the of property to support efficient agricultural use of the existing agricultural lands owned by the applicant in the vicinity. It is appropriately consistent with *Plan 2015*. There is no indication that the rezone would be inconsistent with the intent of Title 19 YCC.

(e) *The adequacy and availability of public facilities, such as roads, sewer, water and other required public services:*

As noted previously, access to the site is via private roads from two directions that connect to public roads, which are Emerald Road to the south and Concord Drive to the north. The two private roads are improved with asphalt surfacing 10-16 feet in width. While there are currently no irrigation district facilities on the parcels, they are within the irrigation district, and there are means of getting water to the property as may be appropriate for agricultural use.

(f) *The compatibility of the proposed zone change and associated uses with neighboring land uses:* The subject parcels are surrounded in all directions to several parcels within the Agriculture (AG) zoning district. In addition to the subject parcels, the applicant also owns the properties directly to the north and east. The subject parcels and the surrounding contiguous parcels are all outside of the Urban Growth Area of Sunnyside. Dispersed around the agricultural lands with ½ mile of the subject properties are approximately 11 residences, most of which are along the county roads.

(g) *The public need for the proposed change:* Yakima County's economic well-being depends upon a healthy agriculture environment. The County has been ranked first statewide in terms of the value of all agricultural products sold; other reports have listed the County in the top five and number one nationally in production of certain commodities. Conversion of agricultural lands to non-agricultural uses is an ongoing concern addressed in *Plan 2015*. AG zoning protects agricultural lands. The request is intended to add additional land to the county's agricultural land base. According to the Yakima County GIS data, the parcels are categorized as being prime farmland if irrigated, similar to the AG zoned parcels to the north and east which are planted in orchards/vineyards. This rezone is timely based on continuing conversion concerns and the fact that the mineral values on the property have been played out.

(h) *Whether substantial changes in circumstances exist to warrant an amendment to the current designation or zone:* The principal relevant change in circumstances is that, as stated by the applicant, the property is no longer an economically viable source of gravel. No contrary evidence has been entered in the record, and there is no reason to doubt the applicant's assessment of commercial viability of continued gravel mining on the property. There is no evidence of other commercial scale mineral resource deposits on the property that would warrant retention of the current zoning designation.

9. CONSISTENCY WITH CHAPTER 16B.06 YCC CRITERIA.

As part of project review, the reviewing official is charged with determining whether a proposed project is consistent with Yakima County's applicable development regulations or, in the absence of applicable regulations, the adopted Yakima County Comprehensive Plan. Consistency should be determined in the project review process by considering four factors found in applicable plans and regulations (RCW 36.70B.040). These include

- (a) The type of land use;
- (b) The level of development, such as units per acre or other measures of density;
- (c) Infrastructure, including public facilities and services needed to serve the development; and
- (d) The characteristics of the development, such as development standards.

The purpose of minor rezone review under ULDC 19.36.030 is to address the first factor, and that consideration is included in III.8, above. Other listed factors are not relevant to this non-project rezone application.

From the foregoing findings, the Hearing Examiner makes the following

IV. CONCLUSIONS.

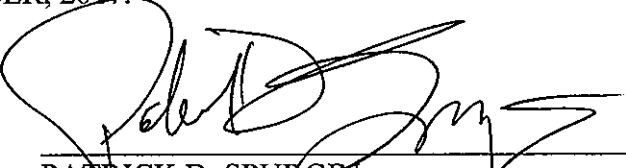
1. The Hearing Examiner has jurisdiction to conduct an open record hearing on the consolidated application for a minor rezone, and to make a recommendation to the Board of County Commissioners.
2. The subject property is suitable for some, if not all of, the uses permitted under the proposed zoning, following the appropriate level of administrative review.
3. No governmental entities have recommended denial of the requested minor rezone.
4. The requested rezone complies with *Plan 2015* and does not deviate from the intent of Title 19 YCC.
5. Existing public services and facilities are adequate to support the uses that would be permitted under the proposed zoning.
6. The proposed zone change and associated uses appear to be compatible with neighboring land uses, and the compatibility of specific uses can be determined in the future upon appropriate application for review of those specific uses.
7. The proposed rezone meets the public need for supporting commercially viable use of agricultural resource lands.
8. Any finding in this recommendation that should be more properly considered a conclusion should be construed as such, and any conclusion or other information in this recommendation that should properly be considered a finding should be construed as such.

Based on the foregoing Findings and Conclusions, the Hearing Examiner makes the following

V. RECOMMENDATION.

The application to rezone the subject property under Yakima County File No. ZON2017-00005 as proposed in the application materials request should be APPROVED.

DATED THIS 30th DAY OF SEPTEMBER, 2017.



PATRICK D. SPURGIN
HEARING EXAMINER *PRO TEM*


FILE NO: ZON17-005
HEARING EXAMINER RECOMMENDATION

AFFIDAVIT OF MAILING

STATE OF WASHINGTON)
) ss.
COUNTY OF YAKIMA)

I, Karri A. Espinoza, being first duly sworn, and as an employee of the Yakima County Public Services, Planning Division, I dispatched through the United States Mails, HEARING EXAMINER RECOMMENDATION, a true and correct copy of which is enclosed here-with; that said notice, was addressed to property owner, agencies and parties of record, that said parties are individually listed on the Mailing List retained by the Planning Division and that said notices were mailed by me on the 6th day of October, 2017.

That I mailed said notices in the manner herein set forth and that all of the statements are made herein are just and true. Dated this 6th day of October, 2017.



Karri A. Espinoza
Office Coordinator