



Public Services

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VERN M. REDIFER, P.E. - Director

September 5, 2018

TO: Shayne and Lesley Downing & Parties of Record
FROM: Karri Espinoza, Office Coordinator *Ke*
RE: Hearing Examiner Decision – ZON18-00005

On, August 30, 2018 the Yakima County Hearing Examiner issued his decision on the minor rezone application for Shayne and Lesley Downing. The Examiner's decision is enclosed.

The Hearing Examiner decision may be appealed to the Yakima County Superior Court Commissioners for consideration. If you have any questions on the decision or the appeal process, please contact Dinah Reed at 574-2300.

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

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Yakima County ensures full compliance with Title VI of the Civil Rights Act of 1964 by prohibiting discrimination against any person on the basis of race, color, national origin, or sex in the provision of benefits and services resulting from its federally assisted programs and activities. For questions regarding Yakima County's Title VI Program, you may contact the Title VI Coordinator at 509-574-2300.

If this letter pertains to a meeting and you need special accommodations, please call us at 509-574-2300 by 10:00 a.m. three days prior to the meeting. For TDD users, please use the State's toll free relay service 1-800-833-6388 and ask the operator to dial 509-574-2300.

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

In the matter of an Application for a)	Yakima County File Nos. ZON2018-00005
Minor Rezone by)	
)	
Shayne & Lesley Downing)	
)	
To Rezone Certain Properties in the)	HEARING EXAMINER
Vicinity of the Intersection of Old)	RECOMMENDATION
Naches Highway and SR 410 from)	
Rural 10/5 (R-10/5) to)	
Remote/Extremely Limited)	
Development Potential (R/ELDP))	

I. INTRODUCTION.

On May 2, 2018 Yakima County Public Services Department: Planning Division received a minor rezone application from Shayne & Lesley Downing. The application requests an amendment to the official zoning map established by Yakima County Unified Land Development Code Title 19 (Title 19) to change the zoning of a 2.55-acre parcel within the Rural 10/5 (R-10/5) zoning district to Remote/Extremely Limited Development Potential (R/ELDP). If the minor rezone is accomplished, the applicant plans to submit a subsequent Boundary Line Adjustment combining the subject property with Parcel No. 161536-11407, thereby creating a 7.09-acre lot that will include the existing primary residence, shop and barn on that parcel, leaving 15.36 acres of vacant land to the north that abuts Washington Department of Fish and Wildlife (WDFW) land. WDFW plans to do a future Boundary Line Adjustment between Parcel Nos. 161536-11407 and 161525-11001 (640-acre lot owned by WDFW), absorbing approximately 4.5 acres of the northern portion of 161536-11407 (demarked with an WDFW elk fence) into the Oak Creek Wildlife Management Area.

An open record hearing was conducted on the rezone application on August 16, 2018. A summary of the staff report was presented at the hearing by Dinah Reed. Shayne Downing appeared as the applicant. No members of the public attended the hearing to offer comment.

II. SUMMARY OF RECOMMENDATION.

This application for a minor rezone should be approved.

Based on the staff report and exhibits, the oral statements received at the open record hearing, and a review of pertinent provisions of the Yakima County Unified Land Development Ordinance (Title 19 YCC) and *Horizon 2040* (the Yakima County Comprehensive Land Use Plan), the Hearing Examiner makes the following

III. FINDINGS.

1. APPLICANT AND PROPERTY OWNER.

Shayne & Lesley Downing
13733 Old Naches Highway
Naches, WA 98937

2. LOCATION AND PARCEL NUMBERS.

The subject parcel is adjacent to 13733 Old Naches Highway, located north of Old Naches Highway, approximately one (1) mile northeast of the intersection of Old Naches Highway and SR 410, and approximately 2.5 miles northwest of the City of Naches. Parcel no. 161536-11405.

3. APPLICATION.

The application is a request for a minor rezone to change the zoning of the subject property from R-10/5 to R/ELDP. 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 parcel is 2.55 acres as in the R-10/5 zoning district. The parcel has a Type 4 stream that is heavily vegetated running north/south through the middle. The parcel does not have access to public facilities such as public water and sewer, and it is not located in an irrigation district. It is accessible generally from the southwest by a gravel road across the applicants' adjacent property to the west. It is essentially undeveloped other than for a small graveled area on the west portion.

The larger parcels to the west and north of the subject parcel are within the R/ELDP zoning district, and other than a house site, are vacant grazing lands for elk. Parcels to the south and east are within the R-10/5 zoning district, are approximately 2.0 – 2.5 acres in size and are house

sites. The parcel to the north and east is within the R/ELDP zoning district and is approximately 20.0 acres and has a house, shop and barn. Additionally, the north 4.5 acres of parcel to the north is within the Oak Creek Wildlife Area, and is delineated by fence running from west to east.

Comprehensive Plan: According to Yakima County Comprehensive Plan, *Horizon 2040*, the subject site is designated Rural Self Sufficient.

6. PUBLIC NOTICE.

The application was submitted on May 2, 2018, and was deemed complete for processing on June 20, 2018. A Notice of Application, Notice of Completeness, Notice of Environmental Review, and Notice of Future Public Hearing was mailed to the applicant, agencies with jurisdiction, and adjoining property owners on June 26, 2018, with the comment period ending July 10, 2018

Notice of the August 16, 2018 public hearing was provided in the following manner:

- Notice of Public Hearing was mailed to adjoining property owners on June 26, 2018.
- Publishing of a legal notice of the open record public hearing notice in the Yakima Herald-Republic: June 26, 2018
- Posting of hearing notice on the property: August 1, 2018

7. ENVIRONMENTAL REVIEW.

The proposal subject to review under the State Environmental Policy Act (SEPA).

A SEPA checklist was submitted in conjunction with this proposal and reviewed under File No. SEP2018-00025. The SEPA Responsible Official issued a Determination of Non-Significance (DNS) on July 31, 2018. No appeal of the SEPA DNS has been timely filed.

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 Remote/Extremely Limited Development Potential (R/ELDP) zoning district is intended to recognize areas and allow development consistent with service availability and environmental constraints in remote areas and other places with extremely limited development potential.

In accordance with the Table of Allowable Land Uses – 19.14, the R/ELDP zoning district allows the following as a Type 1 use that are a higher level of review in the R-10/5 zoning district: Impoundment of water including dams and frost ponds. R/ELDP allows the following as a Type 2 use that are a higher level of review in the R-10/5 zoning district: concentrated animal feeding operations, livestock auction sale yards, and petroleum & natural gas and geothermal exploration and production. R/ELDP allows the following uses that are not allowed at all in the R-10/5 zoning district: distillery (Type 3), and a Radio/TV Studio (Type 3).

Except for the impoundment of water including dams and frost ponds, any proposed use listed above would be subject to noticing neighboring property owners and subject to a comment period where adjacent property owners can address concerns of suitability of the subject property for those land uses, if proposed. All other uses on the Table of Allowable Land Use, Title 19.14 not listed above that are allowed in the R 10/5 are also allowed in the R/ELDP.

(c) *The recommendation from interested agencies and departments:* No recommendations have been received from agencies outside of Yakima County Public Services, or from neighboring property owners.

(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:* Goal LU-R 11 set out in Horizon 2040 is to “[r]ecognize and maintain Rural/Extremely Limited Development Potential areas, and allow development at a level consistent with environmental constraints and services available in remote areas and other places with extremely limited development potential.” The minor rezone is consistent with goals of the R/ELDP plan designation. The location of the subject parcel is in an area that is a small residential community at the far west end of the City of Naches with very little development west of it on Highway 410 and the potential for development north of the subject parcel is limited by a 640-acre section of land owned by the WA State Department of Fish and Wildlife.

Further, according to Title 19 Table 19.36-1 “Zoning District Consistency with Comprehensive Plan Future Land Use Designations” of Title 19, the requested R/ELDP zoning district is consistent with and may implement the Rural Self-Sufficient land use designation of the Yakima County Comprehensive Plan. The parcel does not have access to public facilities such as public water and sewer, and it is not located in an irrigation district. For these reasons the parcel is more suited to be within the R/ELDP zoning district which limits density to one residential unit per 40 acres. The minor rezone will allow the landowner to create a lower density residential parcel for the existing house (via a future BLA), supporting the intent of the R/ELDP plan designation as a zone which typically does not have public services.

(e) *The adequacy and availability of public facilities, such as roads, sewer, water and other required public services:* The very purpose of the R/ELDP district is, among other things, to address areas where such services are not readily available without excessive cost in relation to potential uses.

(f) *The compatibility of the proposed zone change and associated uses with neighboring land uses:* All of the properties in the vicinity are used for grazing or low density residential uses, and are in either the R-10/5 or R/ELDP district. The larger parcels to the west and north of the subject parcel are within the R/ELDP zoning district, and other than a house site, are vacant grazing lands for elk. Permitted uses in the R/ELDP district such as concentrated animal feeding operations, livestock auction sale yards, and petroleum & natural gas and geothermal exploration and production might raise compatibility issues that would be addressed through Type 2 review without the rezone, but the likelihood of such uses being located on the property, given its size and location, does not suggest that incompatibilities are likely to arise. For the same reason, distilleries and Radio/TV studios permitted as Type 3 uses in the R/ELDP district do not appear likely to raise likely compatibility problems at this location.

(g) *The public need for the proposed change:* R-10/5 zoned land is usually suitable for agriculture; however, in this case, the subject lot has a Type 4 stream that is heavily vegetated running north/south through the middle of the small 2.55-acre parcel. Type 4 streams have a 25-foot buffer, which would leave less than 1.0 acres to the west of the stream and 1/2 acre east of the stream for possible agriculture production, or for a house site. The subject parcel is better suited for inclusion in the R/ELDP zoning district. In addition, the subsequent Boundary Line Adjustments enabled by the rezone will allow the WDFW to absorb 4.5 acres of land within the Oak Creek Wildlife Area which is an area highly used by recreational visitors, and would preserve natural elk habitat in the area.

(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, based on the reported goals of the applicant and WDFW, the rezone would allow timely action to achieve those respective interests' plans for adjusting the boundaries in conformance with YCC 19.34.020. In addition, there has been no public interest or necessity expressed in any agency or public comments to suggest that the change in circumstances is so insufficient as to warrant denial of the rezone.

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 and third factors, and those considerations are addressed 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 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 *Horizon 2040* and does not deviate from the intent of Title 19 YCC.
5. The proposed zoning change and likely associated uses appear to be compatible with neighboring land uses. Further, the rezone appears to be more appropriate for the subject parcel than its existing zone with respect to its development potential based on the natural features of the land.
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 Downings' application under Yakima County File No. ZON2018-00005 requesting a rezone of the subject property from R-10/5 to R/ELDP should be APPROVED.

DATED THIS 30TH DAY OF AUGUST 2018.


PATRICK D. SPURGIN
HEARING EXAMINER *PRO TEM*