

**BEFORE THE HEARING EXAMINER  
FOR THE CITY OF BREMERTON**

In the Matter of the Application of	)	No. BP07-00055
	)	
<b>Triway Enterprises 5 C's Partnership</b>	)	FINDINGS, CONCLUSIONS,
	)	AND RECOMMENDATION
<u>For Approval of a Rezone</u>	)	

**SUMMARY**

The Hearing Examiner recommends that the request to rezone 97.09 acres south of Werner Road from Industrial (I) and City Utility Lands (CUL) to Low Density Residential (LDR) and Neighborhood Center Core (NCC), in Bremerton, Washington, be **GRANTED**, subject to conditions.

**SUMMARY OF RECORD**

Request:

Triway Enterprises 5 C's Partnership requests a rezone of 97.09 acres south of Werner Road in Bremerton, Washington, from Industrial (I) and City Utility Lands (CUL) to Low Density Residential (LDR) and Neighborhood Center Core (NCC).

Hearing Date:

The City of Bremerton Hearing Examiner held an open record hearing on the request on December 10, 2007.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Geoffrey Wentlandt, City Planner  
Jeff Pantier, Applicant Representative  
Wayne Lindberg, Bremerton School District

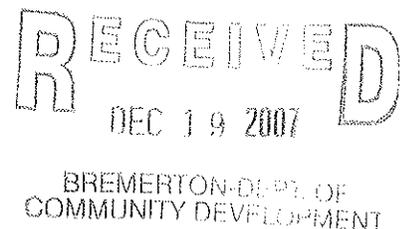
Ken Bagwell, Assistant City Attorney, represented the City at the open record hearing.

Exhibits:

The following exhibits were admitted into the record:

1. Location Map
2. Aerial Photo Map
3. Existing Comprehensive Plan City Land Use Map, adopted December 1, 2004, and Planning Commission Recommended Comprehensive Plan City Land Use Map, dated September 18, 2007
4. Notice Documents: Notice of December 10, 2007 Public Hearing; Notice of Postponement of November 19, 2007 Public Hearing; and Integrated Notice of Application and Notice of November 19, 2007 Public Hearing
5. Affidavits and Notice Documents: Affidavit of Mailing, dated November 28, 2007; Affidavit of Posting, dated November 28, 2007; Affidavit of Posting, dated October 30, 2007; Affidavit of Mailing, dated October 29, 2007; Mailing List; Posting Board photograph; Notice of Application and Notice of November 19, 2007 Public Hearing, published October 30, 2007; and Notice of Postponement of Public Hearing, published November 8, 2007

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6. Figure 20.40(b) BMC Comprehensive Plan/Zoning Consistency; Bremerton Municipal Code Excerpts
7. City of Bremerton Planning Commission Findings of Fact and Conclusions, 2007 Annual Comprehensive Plan Amendment Docket
8. Planning Commission Meeting Minutes: Planning Commission Meeting Minutes of a Special Meeting of the Planning Commission, dated September 18, 2007, and Minutes of a Regular Meeting of the Planning Commission, dated November 20, 2007
9. Excerpt – Staff Report to Planning Commission for Commission Meeting Date November 20, 2007, Agenda Item V.B.3, with Amendment 1 (Werner Rd. Industrial (I) to Low Density Residential (LDR))
10. Public Comment letters: WSDOT Comment Letter on City of Bremerton Comprehensive Plan Amendments, dated October 1, 2007; and Letter from the Bremerton School District to City Department of Community Development, dated November 13, 2007
11. Notice Documents: Notice of Planning Commission November 20, 2007 Public Hearing during Planning Commission Regular Meeting, published November 10, 2007; and Notice of Planning Commission September 18, 2007 Public Hearing during Planning Commission Special Meeting, published September 8, 2007
12. SEPA Determination of Nonsignificance for 2007 Comprehensive Plan amendment docket, issued September 7, 2007; Mailing List; and Notice of Determination of Nonsignificance, published September 7, 2007
13. SEPA Checklist for 2007 Comprehensive Plan amendment docket, prepared by the City of Bremerton, dated September 6, 2007
14. Applications: Application for Zone Reclassification (Rezone), dated received April 2, 2007 and Comprehensive Plan Amendment, dated received March 29, 2007, with project narrative, property ownership map, and proposed rezone map
15. SEPA Checklist Comprehensive Plan/Rezone Application, prepared by Triway Enterprises, dated April 2, 2007
16. City of Bremerton Department of Community Development Staff Report, Conclusions, and Findings for Hearing Examiner Public Hearing on December 10, 2007

The Hearing Examiner enters the following Findings and Conclusions based upon the testimony and exhibits admitted at the open record hearing:

### **FINDINGS**

1. Triway Enterprises 5 C's Partnership (Applicant) requests a rezone of 87.09 acres zoned Industrial (I) to Low Density Residential R-10 (LDR) and Neighborhood Center Core (NCC) and a rezone of approximately 10 acres zoned City Utility Lands (CUL) to LDR. Under the Applicant's proposal, a total of 90 acres would be zoned LDR and a total of 7.09 acres would be zoned NCC. The property subject to the rezone request is located along the south side of Werner Road in Bremerton, Washington.<sup>1</sup> *Exhibit 14; Exhibit 16, Staff Report, page 1.*

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<sup>1</sup> The subject property is identified by tax parcel numbers 202401-4-003-2002, 202401-4-004-2001, 202401-1-007-2004, 202401-4-009-2006, 202401-4-008-2007, 202401-4-010-2003, 202401-4-007-2008, 202401-3-006-2009, 202401-4-005-2000, and 292401-2-002-2008. *Exhibit 14.* All parcels except Parcel 292401-2-002-2008 are currently classified as located within the City's Industrial zoning district. The Applicant did not include a legal description of the subject property with the application. *Exhibit 14.*

2. The City of Bremerton (City) determined the application was complete on April 30, 2007. On October 29, 2007, the City gave combined notice of the application and the open record hearing associated with the application by mailing notice to departments, agencies, and owners of property within 300 feet of the subject property.<sup>2</sup> On October 30, 2007, the City posted combined notice on the subject property and published notice in the local newspaper of record. *Exhibit 4; Exhibit 5; Exhibit 16, Staff Report, page 4.*
3. The property subject to the rezone request is currently undeveloped. The property is accessed from Werner Road, an arterial roadway located along the northern boundary of the subject property. Werner Road contains public water and sanitary sewer mains to serve future development within the subject property. *Exhibit 16, Staff Report, page 2.*
4. Adjacent property to the west is currently designation designated Industrial and City Utility Lands under the City Comprehensive Plan. An existing gravel mine operates adjacent to the west of the Industrial- and City Utility Lands-designated property.<sup>3</sup> Adjacent property to the east is designated Low Density Residential under the City Comprehensive Plan. While the property adjacent to the east is currently undeveloped, plans for the 630-unit West Hills residential subdivision have been preliminarily approved for this property. Development of the planned West Hills subdivision would provide a secondary access route to the subject property. Geoffrey Wentlandt, City Planner, testified that the Applicant owns the property upon which the West Hills subdivision would be constructed. The City Staff Report noted that utilities would be extended to the subject property in conjunction with the adjacent planned development. Mr. Wentlandt testified that preliminary approval of the West Hills subdivision proposal has resulted in a marked change in the vicinity of the subject property. *Exhibit 1; Exhibit 2; Exhibit 3; Exhibit 9; Exhibit 16, Staff Report, page 2; Testimony of Mr. Wentlandt.*
5. Zoning classifications must be consistent with City Comprehensive Plan land use designations. *RCW Chapter 36.70A; Bremerton Municipal Code (BMC) 20.40.170.* Currently, 87.09 acres of the property are designated Industrial and 10 acres are designated City Utility Lands under the City Comprehensive Plan.<sup>4</sup> The Applicant submitted an application to the City for a comprehensive plan amendment in conjunction with the rezone application.<sup>5</sup> The Applicant

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<sup>2</sup> Bremerton Municipal Code (BMC) 20.02.100 and BMC 20.02.110 permit combined notice of application and open record hearing.

<sup>3</sup> Ace Paving Company holds Washington Department of Natural Resources Reclamation Permit No. 12599 and Bremerton Special Use Permit 6-87 to conduct basalt surface mining on a 60 acre site adjacent to the southwest corner of the subject property. The permits were issued in 1987 and 1988, respectively. The mine is expected to operate with a 40-year life expectancy. *Exhibit 9.*

<sup>4</sup> City of Bremerton Comprehensive Plan, last updated December 2004.

<sup>5</sup> According to BMC Chapter 20.10, the City considers Comprehensive Plan amendments on an annual cycle. Comprehensive plan amendments require Planning Commission recommendation and final City Council approval. Approval of a Comprehensive Plan amendment is required prior to or concurrently with the granting of an approval on a related rezone request. *BMC 20.58.040(e).* The City Council will act on the Applicant's Comprehensive plan amendment request on December 19, 2007. The City of Bremerton Hearing Examiner reviews the rezone request to permit efficient City Council processing of the concurrent comprehensive plan amendment and rezone requests. *BMC Ch. 20.10; Exhibit 16, Staff Report, pages 3 – 4.*

requested an amendment to change the comprehensive plan designation of 90 acres of the subject property from an Industrial and City Utility Lands designation to a Low Density Residential designation, and to change the designation of 7.09 acres of the subject property from an Industrial designation to a Neighborhood Center Core designation.<sup>6</sup> *Exhibit 6; Exhibit 14; Exhibit 16, Staff Report, page 1.*

6. The City acted as lead agency and analyzed the environmental impact of amending the City Comprehensive Plan under the State Environmental Policy Act (SEPA).<sup>7</sup> The City determined that proposed amendment would not have a probable significant adverse impact on the environment, and issued a Determination of Nonsignificance (DNS) on September 7, 2007. The DNS was not appealed. *Exhibit 12.*
7. According to BMC Chapter 20.10, Comprehensive Plan amendments require City Planning Commission recommendation and final City Council approval. On September 18, 2007, the Planning Commission held a public meeting on the 2007 Comprehensive Plan amendment docket and prepared a recommendation to the City Council. Planning Commission members suggested expanding the area that would provide commercial/retail uses within the property subject to the comprehensive plan designation change and associated rezone request, and working with the Applicant to determine a better location for the commercial/retail use within the subject property. The Planning Commission voted to send the 2007 Comprehensive Plan amendment docket to the City Council with revisions to the amendments. *Exhibit 8.*
8. The City Planning Commission held a second public meeting on the 2007 Comprehensive Plan amendment docket on November 20, 2007. At the public meeting, City planning staff presented revised Comprehensive Plan amendments according to Planning Commission instructions. The revised amendments included changing the land use designation of the subject property from Industrial and City Utility Lands to Low Density Residential (88.5 acres), Neighborhood

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<sup>6</sup> According to Figure 20.40(b), the BMC Comprehensive Plan/Zoning Consistency table, the LDR zoning classification is consistent with the Low Density Residential (LDR) Comprehensive Plan designation, and the NCC classification is consistent with the Neighborhood Centers (NC) designation. The Neighborhood Business classification is consistent with the Neighborhood Business designation, and the Industrial classification is consistent with the Industrial designation. *Exhibit 6.*

<sup>7</sup> The City analyzed the environmental impact of four proposed amendments to the City Comprehensive Plan under SEPA, including: changing the land use designation of the property south of Werner Road, making minor updates and corrections to the Comprehensive Plan Land Use Map, making minor updates and corrections to the Comprehensive Plan Eventual Growth Map and Comprehensive Plan text related to the City Urban Growth Areas, and making corrections to the Comprehensive Plan Land Use Element text descriptions. Together, these amendments comprise the 2007 City Comprehensive Plan Amendment docket before the City Council. The City prepared a SEPA checklist to aid in determining the impact of the 2007 Comprehensive Plan amendments, and the Applicant prepared a SEPA checklist to aid in determining the impact of the Applicant's proposed Comprehensive Plan amendment and associated rezone request. Mr. Wentlandt testified that the City analyzed Comprehensive Plan amendments and the rezone request as non-project actions under SEPA, as no development proposal has been made at this time. If critical areas such as slopes and wetlands are identified on the subject property, protection of those sites would be addressed in conjunction with any future development proposal. *Exhibit 12; Exhibit 13; Exhibit 15; Exhibit 16, Staff Report, page 2; Testimony of Mr. Wentlandt.*

Business (1.5 acres), and Industrial Park (7.09 acres). The revised amendments included relocating the Neighborhood Business designation more centrally within the Low Density Residential area to better serve the area that would be designated Low Density Residential, and locating an Industrial Park-designated area adjacent to Werner Road. Staff developed the revised recommendation based on Applicant input, public comment, Werner Road design and traffic pattern, and the site plan of the planned subdivision adjacent to the subject property. Staff recommended including an Industrial Park-designated area to respond to the input of neighboring property owners, and to be consistent with the Industrial designation of surrounding property and the existing semi-industrial character of Werner Road development. Staff recommended an expanded 1.5 acre Neighborhood Business designation to allow for future expansion into a Neighborhood Center, if proposed.<sup>8</sup> Jeff Pantier, Applicant Representative, spoke at the meeting in favor of the recommended revisions. *Exhibit 7; Exhibit 8; Exhibit 9; Exhibit 16, Staff Report, pages 1 and 3.*

9. On November 20, 2007, the City Planning Commission made a formal recommendation to City Council to change the comprehensive plan designation of the subject property from Industrial and City Utility Lands to Low Density Residential, Neighborhood Business, and Industrial Park, according to City staff recommended revisions. The City Council intends to consider the Comprehensive Plan land use re-designation recommendation during its December 19, 2007 meeting at the same time it considers final approval of the proposed rezone request. *Exhibit 7; Exhibit 16, Staff Report, pages 1 and 3 - 4.*
10. At the open record hearing on the rezone request, Mr. Pantier testified that the Applicant has revised his rezone application to request a rezone of the subject property to Neighborhood Business, Industrial, and Low Density Residential to reflect the recommended 2007 Comprehensive Plan amendments. The City Staff Report states that the rezone application is “fully consistent” with the Planning Commission’s land use re-designation recommendation. Mr. Wentlandt testified that the proposed rezone would be consistent with the City Comprehensive Plan if the 2007 Comprehensive Plan amendments are adopted by the City Council. Mr. Pantier testified that the change is due to a property exchange agreement between neighboring property owners: the City, the Applicant, and Richard Christopherson of Ace Paving. Under the

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<sup>8</sup> The Neighborhood Center (NC) land use designation is meant to establish Neighborhood Centers, which are mixed use environments with an emphasis on mixed use structures, pedestrian oriented design, mixed and varied housing types, and provision of neighborhood scale commercial, professional, and community services. The size and scale of a Neighborhood Center is such that it has an average development density of 20 units per acre, and it provides a focus and services for an area approximately one mile in diameter surrounding the center. *City Comprehensive Plan, Land Use Element, LU-48, page 86.* The Neighborhood Business (NB) land use designation is meant to establish small scale business locations outside of centers, commercial corridors, or the downtown area. Neighborhood Business districts are typically no larger than one acre. Uses under the designation are small scale retail and business activities serving the immediate surroundings, including small groceries, convenience stores, small offices, and restaurants. Neighborhood Business districts should only be placed in areas where access to neighborhood supporting commercial activities cannot be provided in a Neighborhood Center, District, Center, Employment Center, Downtown Regional Center or Commercial Corridor district within walking distance – usually one mile or less. *City Comprehensive Plan, Land Use Element, LU-55, page 93.* The Staff Report noted that the Planning Commission recommended a Neighborhood Business redesignation rather than the Neighborhood Center redesignation requested by the Applicant because of Comprehensive Plan directives for where Neighborhood Business designations should be located. *Exhibit 16, Staff Report, page 3.*

agreement, the Applicant would convey property adjacent to the existing Ace Paving gravel mine and adjacent to Werner Road to Christopherson. In return, the Applicant would receive property adjacent to the planned West Hills subdivision, for future residential development. *Exhibit 16, Staff Report, page 3; Testimony of Mr. Pantier; Testimony of Mr. Wentlandt.*

11. The City Comprehensive Plan contains goals and policies relevant to the rezone request. Housing Goal 6 would build strong, cohesive neighborhoods with a majority of households owning their own homes. Land Use Goal 3 calls for the City to create an environment that will promote growth, and Land Use Policy LU1 requires the City to identify and enhance distinctive neighborhoods, communities, and centers throughout the City. Land Use Policy LU1J provides for buffering surrounding communities from regional transportation corridors, allowing for transitional and sensitive development patterns. The Land Use Element Industrial Park Policy Direction noted in the Comprehensive Plan would provide for appropriate locations for light industrial uses in a well planned complex. *Exhibit 16, Staff Report, page 4.*
12. The intent of the City's Neighborhood Center Core (NCC) zoning district differs from the intent of the City's Neighborhood Business (NB) zoning district. The intent of the NCC zoning district is to establish base threshold standards for the central core of neighborhood centers that preserve future opportunity for full realization of the centers concept. *BMC 20.66.010.* The intent of the NB zone is to provide for small-scale business districts outside of centers and corridors that reflect the scale and character of surrounding neighborhoods. These NB locations support neighborhoods which generally lack access within walking distance to a designated center. The NB zone shall include uses such as small groceries, convenience stores, offices, and restaurants. Neighborhood business districts are generally limited in size to one (1) acre each and are typically comprised of a tight cluster of businesses on several parcels. *BMC 20.82.010.*
13. Wayne Lindberg testified on behalf of the Bremerton School District concerning the impact of future development on the District. The District sent a letter to the City Department of Community Development expressing the District's desire to discuss the possible placement of a school within the neighborhood of planned residential development. Mr. Wentlandt responded that schools are permitted as a conditional use within the Low Density Residential zoning district. The Applicant and City agreed to cooperate with the School District whenever it identified the need for additional facilities and a potential site for that facility. The School District intends to become more active in its relationship to the City in order to help ensure that quality facilities with safe access are provided to all school children. *Exhibit 10; Testimony of Mr. Lindberg; Testimony of Mr. Wentlandt.*

## CONCLUSIONS

### Jurisdiction

The Hearing Examiner has authority to conduct an open record hearing on a rezone request and to issue a recommendation on the request to the Bremerton City Council. *BMC 2.13.070; BMC 2.13.080(3); BMC Chapter 20.02, Table 040.*

### Criteria for Review

The Hearing Examiner holds the open record hearing on the rezone request and provides a recommendation to the City Council. *BMC Chapter 20.02, Table 040; BMC 20.58.040(b).* The City may grant a site-specific rezone only if it finds that:

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- (1) The rezone is consistent with the Comprehensive Plan;
- (2) The rezone will advance the public health, safety, or welfare, and will not have adverse impacts on adjacent properties;
- (3) The rezone is necessary because either:
  - (i) Conditions in the immediate vicinity or neighborhood have so markedly changed that it is in the public interest to approve the rezone; or
  - (ii) The rezone will correct a zone classification or zone boundary that was inappropriate when established; and
- (4) The rezone is in the public interest.

*BMC 20.58.040(d).*

If a Comprehensive Plan amendment is required in order to satisfy subsection (d)(1) above, approval of the Comprehensive Plan amendment is required prior to or concurrently with the granting of an approval on the rezone. *BMC 20.58.040(e).*

#### Conclusions Based on Findings

1. **With conditions, the proposed rezone would be consistent with the City Comprehensive Plan.** The Applicant has revised the initial rezone application to request a rezone consistent with the 2007 Comprehensive Plan amendments recommended to the City Council by the City Planning Commission. The recommended amendments include changing the land use designation of the subject property from Industrial and City Utility Lands to Low Density Residential, Neighborhood Business, and Industrial Park. Thus, the proposed rezone would change the zoning classification of the subject property from Industrial and City Utility Lands to Low Density Residential, Neighborhood Business, and Industrial. According to Figure 20.40(b), the BMC Comprehensive Plan/Zoning Consistency table, these zoning classifications are consistent with the recommended Comprehensive Plan amendments. The City Council will consider the proposed rezone concurrently with the recommended Comprehensive Plan amendments. The proposed rezone would facilitate single-family residential development adjacent to an area of planned residential development, consistent with Comprehensive Plan goals and policies to create and enhance residential neighborhoods within the City. The area that would be classified Neighborhood Business would permit growth over time into a Neighborhood Center to serve surrounding residential development. Providing for an Industrial classification within the subject property along Werner Road would permit Werner Road to retain its industrial character and buffer residential neighborhoods to the south and east from Werner Road. Conditions of approval are necessary to ensure that the rezone request is not approved unless the City Council approves the concurrent Comprehensive Plan amendments assigning a new land use designation to the subject property. *Findings 1, 3 – 5, 7 – 12.*
  
2. **With conditions, the proposed rezone would advance the public health, safety, or welfare, and would not have adverse impacts on adjacent properties.** The City provided adequate public notice and opportunity for comment on the rezone request. The City analyzed the environment impact of amending the property's land use designation, necessary to approve the rezone request, and determined that the amended designation would not have a probable significant adverse impact on the environment. The proposal would permit future residential and industrial development within the subject property, in an area that already hosts residential and industrial development. Commercial/retail use within the area that would be reclassified Neighborhood Business would provide services useful to residents of future surrounding

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residential development. City utilities would be available to future development within the subject property. The property is accessible through Werner Road and would also be accessible from the east with development of the neighboring West Hills residential subdivision. As the Applicant is the developer of the planned West Hills subdivision, residential areas within the subject property would be developed consistently with the neighboring West Hills residential areas, including utility and road extension. Rezoning a portion of the subject property as Industrial would not interfere with ongoing operation of the nearby gravel mine and would be consistent with the current industrial character of the area bordering Werner Road. Rezoning a portion of the property as Low Density Residential would not interfere with the possibility of using a portion of the property for a District school. Conditions of approval are necessary to ensure adequate protection of critical areas, should any critical areas be identified upon the subject property. *Findings 1 – 6, 8 - 13.*

3. **The proposed rezone is necessary because conditions in the immediate vicinity have so markedly changed that it is in the public interest to approve the rezone.** The 630-unit West Hills subdivision immediately adjacent to the subject property has received preliminary approval. It is in the public interest to rezone the subject property consistent with the planned residential development, in order to provide for ongoing operation of surrounding industrial uses, to buffer residential areas from the Werner Road industrial corridor, and to provide for an area of commercial/retail development to serve planned and future residential development in the vicinity. Approval of the proposed rezone would allow for residential, industrial, and commercial/retail growth as infill development upon the subject property, and would allow for coordinated infrastructure development upon and in the vicinity of the subject property to serve those uses. *Findings 1, 3, 4, 7 – 10, 12.*

#### RECOMMENDATION

Based on the preceding Findings and Conclusions, the Hearing Examiner recommends that the City Council **GRANT** the request to rezone 97.09 acres south of Werner Road from Industrial (I) and City Utility Lands (CUL) to Low Density Residential (LDR), Neighborhood Business (NB) and Industrial (I), subject to the following conditions:<sup>9</sup>

1. The City Council must approve both the rezone request itself pursuant to BMC 20.02 Table 040, as well as the underlying land use re-designation pursuant to BMC 20.10, in order for the rezone to be effective.
2. All subsequent development must be consistent with the development standards of BMC Title 20, including the Critical Areas Ordinance, and other applicable City Codes including Engineering Standards identified in BMC Titles 10 and 11.

Recommended this 18<sup>th</sup> day of December 2007.

  
THEODORE PAUL HUNTER  
Hearing Examiner

<sup>9</sup> The recommended conditions describe legal requirements applicable to all developments and provisions applicable to all rezone applicants. The conditions are intended to clarify the nature of the rezone in the recommendation and resolution, but need not be carried forward as part of a text amendment.