

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

Regarding the Application to Rezone a)
0.55 acre site located within the Island)
View Subarea from C-2 (Retail)
Business) to C-3 (General Business), to)
allow businesses that require both a)
small office space and warehouse space)
for storage and/or assembly of products,)
submitted on behalf)

File No. Z2014-109

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

GAUNTT NW, LLC,

Applicant,

*(The site is located on two vacant parcels, addressed as
1788 and 1790 Fowler Street, in the City of Richland)*

I. SUMMARY OF RECOMMENDATION.

The applicant has met its burden of proof to demonstrate that its rezone application merits approval. Accordingly, the undersigned Examiner recommends APPROVAL by the Richland City Council, subject to conditions.

II. BACKGROUND and APPLICABLE LAW.

In this matter, the Hearing Examiner has jurisdiction to conduct an open record public hearing on the site-specific rezone application at issue, and is directed to issue a written recommendation for consideration and final action by the Richland City Council. See Richland Municipal Code (RMC) 19.20.010(C)(2)(identifies “site-specific rezone” as a Type III permit application); RMC 19.20.030(jurisdiction to conduct public hearing, issue recommendation); RMC 19.25.110(authority for Examiner actions, including conditions of

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1 approval on applications or appeals); and RCW 35A.63.170(state statute regarding hearing
2 examiner system).

3 The applicant bears the burden of proof to show that its application conforms to the
4 relevant elements of the city's development regulations and comprehensive plan, and that
5 any significant adverse environmental impacts have been adequately addressed. RMC
6 19.60.060. And, because a site-specific rezone application is a Type III matter, the City's
code mandates that a concurrency review must be undertaken to determine the
transportation impacts (if any) that could be created by the proposed action. RMC
19.50.010(C).

7 Unlike many Washington jurisdictions, the City of Richland does not have a
8 specific section of its municipal code that sets forth supplemental decision criteria or
9 development regulations for a rezone application. The City Council is well within its
authority to adopt such criteria as it sees fit, so long as such provisions are consistent with
state statutes and case law on the topic.

10 Washington Courts apply three basic rules when reviewing appeals of rezone
11 applications: (1) there is no presumption favoring the rezone request; (2) the proponent of a
12 rezone must demonstrate that there has been a change of circumstances since the original
13 zoning, PROVIDED if a proposed rezone implements the policies of a comprehensive plan,
14 a showing of changed circumstances is usually not required¹; and (3) the rezone must have
15 a substantial relationship to the public health, safety, morals, or general welfare. *Woods v.*
Kittitas County, 162 Wn.2d 597 (2007), citing *Citizens for Mount Vernon*, 133 Wn.2d 861,
at 875 (1997); *Parkridge v. City of Seattle*, 89 Wn.2d 454, 462 (1978).

16 III. QUESTIONS PRESENTED.

17 For purposes of the pending rezone application, the central questions presented are:

18 A. Whether the requested rezone implements policies of the City's Comprehensive
19 Plan, and/or whether there has been a change of circumstances since the original C-2
20 zoning was adopted for the site?

21 Short Answer: Yes.

22
23 ¹ *Save Our Rural Env't v. Snohomish County*, 99 Wn.2d 363, 370-71 (1983); *Henderson v. Kittitas County*, 124 Wn. App.
747, 754 (Div. III, 2004); *Bjarnson v. Kitsap County*, 78 Wn. App. 840, 846 (Div. III, 1995).

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1 B. Whether the rezone bears a substantial relationship to the public health, safety,
2 morals, or general welfare?

3 Short Answer: Yes.

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5 **IV. RECORD AND EXHIBITS.**

6 Exhibits entered into evidence as part of the record, and an audio recording of the
7 public hearing, are maintained by the City of Richland, and may be examined or reviewed
8 by contacting the City Clerk's Office.

9 ***Hearing Testimony:*** The following individuals presented testimony under oath at
10 the duly noticed public hearing for the underlying application, held on Thursday, January
22, 2015:

- 11 1. Rick Simon, Development Service Manager for the City of Richland;
12 2. Chep Gauntt, for the property owner/applicant, Gaunt NW, LLC²;
13 3. Marcee Woffinden, with Senior Life Resources, which owns the vacant lot
14 north/northwest of the site; and
15 4. Aaron Lambert, Senior Planner for the City of Richland.

16 At the public hearing, Mr. Simon made a brief presentation regarding the
17 application, the site, and his recommendation, as explained in the Staff Report. Mr.
18 Lambert assisted Mr. Simon, and they each were available to answer questions posed by the
19 Examiner. Mr. Gauntt spoke on behalf of himself and his wife, as owners of Gauntt NW,
20 LLC, the applicant in this matter. Ms. Woffinden testified that she works with Senior Life
21 Resources, that she does not oppose the rezone, and basically expressed her desire that any
22 building or development on the site will be attractive looking from the north, where SLR
may want to locate sometime soon. The Examiner noted that his authority to approve or
deny the proposed rezone does not include aesthetic, design considerations, and that such
concerns would be more appropriate for consideration if and when a building or other
development permit application is submitted. The participants answered several questions,

23 ² Mrs. Gauntt (Kay), also appeared at the hearing, but chose not to provide substantive testimony.

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1 and no one testified or submitted any written comments in opposition to the proposed
2 rezone. The entire hearing took less than one hour.

3 ***Exhibits:*** The Development Services Division Staff Report, including a
4 recommendation of approval subject to a proposed property use and development
5 agreement, was provided to the Examiner on January 15, 2015. The Staff Report, and the
6 following Exhibits, were all accepted into the Record in their entirety without modification:

- 7 1. Application Form and proposed site plan.
- 8 2. Commercial Zoning Regulations, Chapter 18.22 of the Richland Municipal
- 9 Code.
- 10 3. Site photos.
- 11 4. Public Notices.
- 12 5. Proposed Property Use and Development Agreement.

13 The Examiner confirmed through City staff and others present at the hearing that no
14 one submitted any written comments regarding the pending rezone application.

15 The Examiner visited the site of the proposed rezone on the day of the public
16 hearing, and is fully advised on matters at issue herein, including without limitation
17 applicable law, application materials, and relevant comprehensive plan provisions.

18 **V. FINDINGS OF FACT.**

19 Based upon the record, the undersigned Examiner issues the following Findings of
20 Fact.

21 ***Application, Public Notice, and Review***

22 1. In late November of 2014, the applicant/owners of the subject-property, Gauntt NW,
23 LLC (Chep and Kay Gauntt, of Pasco) submitted its/their application seeking a rezone of a
24 vacant site comprised on two parcels, addressed as 1788 and 1790 Fowler Street, in the City
25 of Richland. The Application is stamped "Received" by the City's "Permit and
26 Inspections" office on November 25, 2014, and the applicants' signatures are dated
November 20th. *Exhibit 1.*

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2. Following receipt, City staff complied with all applicable public notice requirements for the rezone application and the public hearing held for the matter. *Staff Report, Page 5, and Exhibit 4, copies of various public notices published and mailed.*

3. Because staff deemed the application to be consistent with the City's Comprehensive Plan, and the City's plan was analyzed in an environmental impact statement at the time of its adoption, the pending application is categorically exempt from SEPA review as provided in WAC 197-11-800(6)(c). *Staff Report, page 6.*

4. The application accurately describes the site as East of Columbia Center Blvd., and across Fowler Street from the McCurley Honda dealership. The site is currently vacant. It is a corner-property, bound on the south and east sides by paved, open and improved public roads, now known as Fowler Street. *Exhibit 3 (site photos); Site Visit.*

5. Under the City's transportation plan, Fowler Street is classified as an arterial collector. Consistent with the previously mentioned transportation concurrency requirements found in RMC 19.50.010(C), City staff confirmed that Fowler Street has existing capacity to support additional commercial development, and that an assessment of transportation-related improvements, if any are required, will be determined when specific development plans are submitted for review by the City. *Staff Report, page 3.*

6. As part of the review process, City staff confirms that adequate utilities, including without limitation water, power, and sewer, are in place and/or readily available to serve the Gauntt property. *Staff Report, page 5.*

Surrounding uses and zones.

7. The Gauntt property is surrounded by properties holding a mix of existing uses and zoning designations, described moving clockwise:

A. Northeast of the site: The property is developed with an apartment complex, and is zoned WF (Waterfront);

B. East of the site: The property is developed with an office complex, and is zoned CLB (Limited Business);

C. South of the site: As noted in the description provided on the face of the application, the site is immediately across the street from a local Honda car dealership, which is zoned C-3;

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1 D. West: The property immediately west of the site is developed with an
2 existing office building, and is zoned C-2; and

3 E. Northwest and immediately North of the site: The property is vacant, and is
4 zoned WF.

5 ***Site size.***

6 8. The Gauntt property is much smaller than most sites observed in the Tri-Cities area
7 that are developed with “big box” retail stores and other uses that are commonly known as
“large-format retail establishments”. *Site visit.*

8 9. Mr. Simon testified and explained in his staff report that the size of the Gauntt site
9 does not lend itself to large format retail establishments. *Staff Report, testimony of Mr.*
Simon.

10 10. Taking administrative notice of publicly available online records maintained by the
11 Benton County Assessor’s Office in accord with laws of the State of Washington, the
12 Examiner concurs with Mr. Simon’s finding, noting that the size of the Gauntt property
13 (0.55 acres) is far too small to achieve development of a “large format retail establishment”
14 like a Costco (Kennewick store listed at over 150,000 finished sq/ft), Wal-Mart (Richland
15 store listed at over 200,000 finished sq/ft) or even something the size of the Richland
Albertson’s store on Lee Boulevard, which is listed at approximately 41,300 finished square
feet, or 0.94 acres – nearly double the size of all the land available on the Gauntt site.

16 ***Commercial zoning.***

17 11. The City’s Commercial Zoning Districts are established and described in Chapter
18 23.22 RMC. For purposes of the pending application, the focus is upon the existing C-2
zoning and the requested rezone to C-3.

19 12. RMC 23.22.010(B), (C), and (D) include identical language, and explain that the C-
20 1, C-2, or C-3 zoning classifications are “intended to be applied to some portions of the
City that are designated Commercial under the City of Richland Comprehensive Plan.”

21 13. The Gauntt property is designated “Regional Retail” under the City’s existing
22 Comprehensive Plan. *Comprehensive Plan Map.* The term “Regional Retail” is one of the
23 many “Commercial” uses addressed in the City’s Comprehensive Plan and zoning
regulations.

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1 14. The Glossary section of the City's Comprehensive Plan defines the term
2 "Commercial Uses" as follows: "Businesses involved in: 1) the sale, lease or rent of new or
3 used products to the consumer public; 2) the provision of personal services to the consumer
4 public; 3) the provisions of leisure services in the form of food or drink and passive or
5 active entertainment; or 4) the provision of product repair or servicing of consumer goods."

6 15. The following definitions/explanation of terms that are relevant to the pending
7 rezone also appear in the City's Comprehensive Plan.

8 Commercial (C) - The commercial land use category includes a variety of retail, wholesale, and
9 office uses. Within this category are professional business offices, hotels, motels, and related uses. It
10 also includes a variety of retail and service uses oriented to serving residential neighborhoods, such
11 as grocery stores, hardware supply, and garden supply. Other commercial uses include automobile
12 related uses, and uses that normally require outdoor storage and display of goods. In transitional
13 areas between more intensive commercial uses and lower density residential uses, high-density
14 residential development may also be located within the Commercial designated areas.

15 Island View Retail Business (IVRB) - This designation is applied to the existing retail area that is
16 commonly known as Columbia Center North, as well as other nearby locations on Columbia Center
17 Boulevard and Fowler Street. Within this designation infill development is encouraged. Large format
18 region-serving retail establishments are also encouraged on parcels large enough to support such
19 uses.

20 Island View General Commercial (IVGC) - This designation is applied to lands in the southernmost
21 portions of Island View that are adjacent to and visible from SR 240. Within this category, new and
22 used auto sales, RV, truck dealers and similar retail uses are encouraged. Service related businesses
23 that require a central location within the Tri-Cities are also included in this designation.

24 16. The City's zoning code does not include a separate set of zoning districts for the
25 Island View subarea, where the Gauntt property is located. Instead, the designated zones
26 for the Gauntt site and other commercial uses in the vicinity are as set forth in Chapter
23.22 RMC. Again, both the existing C-2 and the proposed C-3 zones are among the
Commercial Zoning designations available for properties in the Island View area.

Consistency with Comprehensive Plan and city codes.

17 17. The proposed rezone appears to implement and achieve objectives set forth in both
18 the IVRB and IVGC provisions of the City's Comprehensive Plan, including without
19 limitation: infill development for service related businesses that will take advantage of
20 their central location within the Tri-Cities, adjacent to and visible from SR 240.

21 18. Because the requested rezone seeks to change the zoning classification from one (C-

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2) to another (C-3) of the Commercial Zoning Districts expressly intended to apply to portions of the City that are designated Commercial under the City's Comprehensive Plan, the application is consistent with existing city codes, particularly RMC 23.22.010(C) and (D), as well as the City's Comprehensive Plan.

19. The proposed Development Agreement is a reasonable and appropriate measure intended to fully comply with the City's existing zoning code provisions for General Business uses, specifically those that seek to ensure that commercial business uses located in a C-3 zoning district do not inflict adverse impacts on surrounding residential areas. RMC 23.22.020(C).

20. Based on the record, particularly existing types of development and the various Commercial zoning district classifications available for properties in the area of the rezone, the Examiner finds and concludes that the requested rezone from C-2 to C-3 is not totally different from or inconsistent with existing land uses located on or zoning designations assigned to surrounding properties in the area.

21. Standing alone, the requested rezone conforms to the Comprehensive Plan, because the plan already identifies the property as "Commercial". The City's zoning code includes multiple varieties of Commercial Zoning Districts available for "some portions of the City that are designated Commercial" in the City's Comprehensive Plan. The change from one Commercial zoning district to another, in this case from C-2 to C-3, is not an unreasonable request, and if approved, it is highly unlikely that any reviewing court could construe the rezone as anything remotely close to arbitrary and capricious spot zoning. The Gauntt's application is well within the scope of commercial uses envisioned in the Comprehensive Plan for the site, and would not involve a "dramatic" change or incongruity with neighboring properties. It simply substitutes a different sort of commercial use (C-3 businesses that require small office and warehouse space), for which the final dimensional requirements of a structure will be same – no taller or larger than would have been permitted under the existing C-2 zone for the site. *Testimony of Mr. Simon; Staff Report, Comparison of C-2 and C-3 Dimensional Standards.*

22. On behalf of the applicant, Mr. Gauntt testified and confirmed that he supports the findings and recommendations reflected in the Staff Report, specifically including the proposed Property Use and Development Agreement for the subject property. *Testimony of Mr. Gauntt.*

23. The applicant submitted preliminary plans depicting a building for the site, which could house a business or small businesses that desire small office space, with adjoining warehouse space to store or assemble products. Mr. Gauntt indicated his desire to move

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forward with construction as soon as possible, certainly within the current year. *Testimony of Mr. Gauntt; Staff Report, Exhibit 1, page 3.*

24. The Examiner finds that the applicant's plans for the site would transform a currently vacant site into a development for one or more small business operators in a commercial area with easy access to and visibility from SR 240, which would serve community residents, make efficient use of existing infrastructure, and "strengthen and expand" the City's tax base – all of which implement policies found in the City's Comprehensive Plan.

25. When combined with the proposed development agreement for the property (Exhibit 5), which expressly limits the types of uses and other activities that might be perceived as having a potential impact or conflict with neighboring multi-family residential property, the requested rezone would eliminate the possibility of more intense commercial uses that may not conform to the surrounding area. Thus, the requested rezone bears a substantial relationship to the public health, safety, and general welfare.

26. The requested rezone is appropriate in the context of adjacent properties, some of which already allow similar or even more-intense or impactful uses. Even as conditioned through the voluntary development agreement, the requested rezone is shown to allow for the reasonable development of the Gauntt's property.

27. In this matter, the record demonstrates general conformance with the City's comprehensive plan. The proposed rezone would provide for more commercial-development options on a relatively small site, which is consistent with the Comprehensive Plan, including without limitation:

- LU Goal 1, which explains that the City will establish land uses that encourage cost-effective development;
- Policy 1 of LU Goal 1, which reads "The City will encourage new development consisting of a variety of land uses adjacent to existing development, which will take advantage of the existing infrastructure network;"
- LU Goal 3, which promotes commercial growth and revitalization that serves residents and strengthens and expands the tax base;
- Policy 1 of LU Goal 3, which reads in relevant part: "The City will accommodate all types of commercial land uses"; and

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- Policy 2 of LU Goal 3, which reads in relevant part: “The City will create new land use and zoning designations to facilitate both new development and redevelopment where required to implement the City’s goals.”

28. The applicant’s proposed rezone and intended use for the site would be consistent with the “Island View General Commercial” land use designation, because it would include “service related businesses that require a central location within the Tri-Cities.” *Staff Report, Testimony of Mr. Simon.*

29. The Development Services Manager’s Staff Report (making a Recommendation of Approval) dated January 22, 2015 includes a number of specific findings and explanations that establish how the underlying application satisfies provisions of applicable law and is consistent with the city’s Comprehensive Plan and zoning regulations. Except as modified in this Recommendation, all Findings contained in the Staff Report are incorporated herein by reference as Findings of the undersigned hearing examiner.

30. Any factual matters set forth in the foregoing or following sections of this Recommendation are hereby adopted by the Hearing Examiner as findings of fact, and incorporated into this section as such.

VI. CONCLUSIONS.

Based upon the record, and the Findings set forth above, the Examiner issues the following Conclusions:

1. The applicant has met its burden to demonstrate that the requested rezone conforms to, and in fact implements objectives of, the City’s Comprehensive Plan. *Findings, including without limitation Nos. 3, 17, 18, 21, 24, 27, 28, and 29.*

2. The applicant has met its burden to demonstrate that the requested rezone bears a substantial relationship to the public health, safety, or welfare. *Findings, including without limitation Nos. 3, 5, 6 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, and 29.*

3. Comprehensive plans are not ordinarily used to make specific land use decisions but rather function as a “guide” or “blueprint” to be used when making land use decisions. *Barrie v. Kitsap County*, 93 Wn.2d 843, at 849 (1980). In a rezone process, all that is required is general conformance, not substantial conformance, with the general blueprint provided by the comprehensive plan. *Cathcart v. Snohomish County*, 96 Wn.2d 201, at 212 (1981).

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1 4. Here, the request is to substitute one type of Commercial Zoning designation for
2 another, a change that is further minimized if the proposed development agreement
3 (Exhibit 5) is adopted concurrently, thereby reducing the types of uses that can occupy the
4 space after any rezone is approved. In any event, the building height and final dimensional
requirements of a structure will be same – no taller or larger than would have been
permitted under the existing C-2 zone for the site. *Finding No. 21.*

5 5. The Staff Report and testimony on the record demonstrate that the proposed rezone
6 will not require new public facilities and that there is capacity within the transportation
7 network, the utility system, and other public services such as fire, to accommodate
8 additional development such as that envisioned for the rezone site. The rezoned property
9 can provide for an appropriate level of commercial development in a manner that is
compatible with the character of the existing uses and zoning districts surrounding the
property.

10 6. The rezoned site, especially if developed in a manner consistent with the terms of the
11 proposed development agreement (Exhibit 5), will not be materially detrimental to uses or
12 property in the immediate vicinity of the subject property – in fact, it will increase
13 commercial activity on a currently vacant, underutilized corner property in an area zoned
for commercial uses and businesses. The applicant testified that his plans are to promptly
move forward and develop the site, achieving a comprehensive plan goal for infill
commercial development on the site.

14 7. The rezone supports Richland's commitment to promote commercial growth and
15 expand the city's tax base.

16 8. As in all dynamic urban areas, circumstances in the area of the rezone site have,
17 and will continue to change, from those in existence when the original C-2 zoning was
18 imposed. In today's world, the types of uses desired under C-2 zoning demand larger
19 properties, especially large format retail, which is highly unlikely on the site, despite its
20 current C-2 zoning, because such projects need a much larger property. Infill is possible,
but is much more likely to occur through the requested rezone, which will allow for
commercial uses that seem more realistic for the small site, along the lines of the project
envisioned by the applicant.

21 9. While the pending rezone application is categorically exempt from formal SEPA
22 review, the record demonstrates that the potential for adverse impacts is very unlikely, and
23 even further reduced through adoption of the proposed development agreement for the site.

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10. As required by RMC 19.50.010(C), the record includes staff assurances that the transportation system is sufficient to accommodate the type of development envisioned with the proposed rezone, and that any specific improvements to such system, if any, will be determined when formal development plans are submitted for review by the City.
Finding No. 5.

11. Despite ample public notice and outreach efforts by City staff in conformance with applicable city requirements, no one stepped forward to provide any written comments or public testimony in opposition to the proposed rezone. Simply put, the application is unopposed.

12. Based on the record, the applicant demonstrated its rezone application merits approval, meeting its burden of proof imposed by RMC 19.60.060.

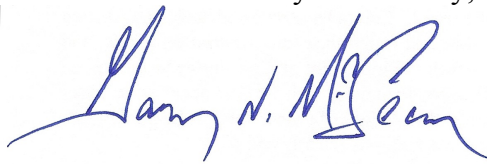
13. Approval of this rezone will not and does not constitute, nor does it imply any expectation of, approval of any administrative permit or subsequent reviews that may be required for project development on the site of the subject rezone, including without limitation design and construction of a building.

14. Any finding or other statement contained in this Recommendation that is deemed to be a Conclusion is hereby adopted as such and incorporated by reference.

VII. RECOMMENDATION.

Based upon the preceding Findings and Conclusions, the Hearing Examiner recommends that Gauntt NW, LLC's application to rezone a 0.55 acre site located within the Island View Subarea from C-2 to C-3, should be **APPROVED**, subject to compliance with all terms of the proposed Property Use and Development Agreement for the property.

ISSUED this 4th Day of February, 2015



Gary N. McLean
Hearing Examiner

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