

Environmental Review: A Determination of Nonsignificance (DNS) was issued by the City of Liberty Lake on August 31, 2021. The State Environmental Policy Act (SEPA) Appeal period closed on September 28, 2021. The DNS was not appealed.

Site Description: The site is approximately 69.37 acres. Most of the site has been developed into an office park. The site is improved with four office buildings (providing 450,000 square feet of space), parking facilities, landscaping, and an amphitheater/picnic pavilion. There are approximately 17.9 acres remaining undeveloped. The site fronts on N. Molter Road to the west and E. Mission Avenue to the south, both classified as arterials.

Surrounding Conditions: The area north of the site is zoned Light Industrial (I) and is occupied by Huntwood Manufacturing. The area east of the site is also zoned Light Industrial (I) and is currently vacant. The area to the south is zoned Open Space (O) and Single-Family Residential (R-1) and is comprised of a home owners' association-owned open space/buffer and residential uses. Property to the west is zoned Community Commercial (C1) and I and is developed with mixed commercial offices and light industrial uses.

B. Procedural Information

Applicable Zoning Regulations: The proposal is generally regulated by Liberty Lake Development Code (LLDC) articles governing zoning districts (10-2J and 10-2F), amendments to the CP Land Use and Zoning Map (10-4B-5(C)), and Zoning District Map and Text Amendments (10-4J).

Hearing Date: The hearing was held on October 26, 2021, at 9:00 a.m.

Notice of Application and Public Hearing: Mailed: September 1, 2021
Posted: September 3, 2021
Publication: September 3, 2021

Site Visit: October 25, 2021

Testimony:

City of Liberty Lake	Applicant
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Exhibits:

1. Staff Report, including:
 - A Proposed Map Amendments
 - B Application Materials
 - C SEPA Documents & Procedural Notices
 - D Agency Comments
 - E Public Comments
 - F Trip Generation & Distribution Letter
 - G Planning Commission Documents
2. Staff Presentation
3. Applicant Presentation

FINDINGS AND CONCLUSIONS

A site-specific property rezone must follow the Type II project procedure. In accordance with that procedure, the Hearing Examiner Pro Tem's decision on a property rezone is in the form of a recommendation to the City Council. To be recommended for approval, the proposed rezone must comply with the criteria for quasi-judicial amendments to the zoning map set forth in Section 10-4J-3(B) of the development code.

- A. *A comprehensive plan amendment was filed in conjunction with the request for a site-specific rezone. Therefore, the prerequisite to reclassifying the site to the M-2 zone has been satisfied. See LLDC 10-4J-3(B)(1).*

The development code provides that a recommendation to approve, deny, or condition a quasi-judicial amendment shall be based, in part, on:

Demonstration of compliance with all applicable comprehensive plan policies and map designations. Where this criterion cannot be met, a comprehensive plan amendment shall be a prerequisite to approval.

See LLDC 10-4J-3(B)(1).

The Applicant seeks to develop the vacant area in the northeast portion of the campus with residential units. The Applicant is also seeking flexibility to re-develop five smaller areas of the campus, primarily with stand-alone commercial or retail spaces to be occupied by small businesses. However, the site is designated as Light Industrial under the CP. Light Industrial areas are comprised predominantly of industrial uses, such as manufacturing. See CP, Chapter 5, p. 49-50. Industrial uses may incorporate office or commercial uses, but only those that support and complement the industrial use. See *id.* The industrial designation does not contemplate residential uses. Nor would this designation support retail or commercial uses that are independent of the primary, industrial activities.

The Applicant's plans for the site are not consistent with its Light Industrial map designation. A CP amendment must be obtained to authorize the development/redevelopment of the site in the proposed manner. Understanding this reality, the Applicant has applied for a CP amendment in conjunction with seeking a site-specific rezone. Three workshops and a public hearing were conducted by the Planning Commission to consider the proposed amendment. At the end of that process, the Planning Commission voted 4-3 to recommend approval of the proposal. Now the site-specific rezone request is before the Hearing Examiner Pro Tem for review and recommendation, having proceeded on a parallel track.

In order to develop/redevelop the property as intended, the Applicant was required to apply for a CP amendment. The Applicant did so, consistent with the terms of LLDC 10-4J-3(B)(1). The next question, then, is whether the proposed rezone is generally consistent with the goals and policies of the CP. In this regard, the Hearing Examiner Pro Tem agrees with the analysis provided by the Planning Director. See Staff Report, pp. 6-8; see also Exhibit 2; *Testimony of L. Key*. The Hearing Examiner Pro Tem deems it unnecessary to repeat all the points made by Staff, as those contentions are well-documented in this record. See *id.* However, some additional comments may assist the City Council in considering the matter.

The proposed rezone will clear the way for the development of approximately 250 new residential units and a handful of small commercial or retail uses. The proposal, therefore, facilitates high-quality, new housing, consistent with Housing Goal 1, as well as promotes a variety of housing densities and types, in furtherance of Housing Goal 2. There are five transit stops within and on the perimeter of the office park. *Testimony of L. Key*. Thus, the proposed housing will be located in a place where public transportation is available, in line with Housing Policy 8. The proposed mix of residential and smaller commercial uses is also supported by the Land Use Policy 2.

The 13.6-acre area in the northeast corner of the MTC sits vacant and undeveloped. See Exhibit 2 (Slide 3). If there was high market demand for use of that property for industrial purposes, perhaps that site would be developed by now. In any event, the CP encourages the development or redevelopment of vacant commercial and industrial land. See CP, Chapter 10, p. 86. The proposed rezone will facilitate that objective. In addition, the market for the existing buildings in the MTC has changed. One of the large call-center employers has advised the owner that it will not be renewing its lease. *Testimony of K. Schneidmiller*. Other tenants may follow suit in the coming years. See *id.* Employers' needs and

requirements are changing, and employees are increasingly working from home rather than working in offices. *See id.*

The CP suggests that the City should provide a regulatory environment that is flexible and responsive to market conditions. *See* Economic Development Policy 5. The plan incorporates the City's desire to retain existing businesses and to make contingency plans when employers are lost. *See* Economic Development Policies 4 & 8. The CP also favors a business climate that is conducive to new business. *See* Economic Development Policy 6. All of these policies would seem to compel approval of the proposed rezone. The proposal will put undeveloped land to productive use, provide housing for workers in the campus and others, create new commercial and retail businesses, and hopefully avoid the proliferation of empty offices or unproductive commercial sites.

Finally, the Hearing Examiner Pro Tem notes that the MTC already has many of the design features and characteristics of a community center. The Staff's comments discuss those features and characteristics in greater detail. *See* Exhibit 2 (Slide 10); *see also* Staff Report, pp. 8-10. Because the technology center is already developed with the amenities of a "campus," the transition from Light Industrial to Community Center makes sense, in the Hearing Examiner Pro Tem's view.

B. The proposed rezone is consistent with the standards and criteria set forth in the Liberty Lake Development Code and other applicable implementing ordinances. See LLDC 10-4J-3(B)(2).

The Applicant is proposing to rezone the MTC to M-2. There is no specific development proposal being made at this time. In other words, this proposal is a "non-project action." There is no reason, at this stage, to discuss the specific development standards that apply in the M-2 zone, as there is no project to review or analyze.

What is under review is only a proposal to rezone the land. The criteria that apply to site-specific rezone applications are set forth in LLDC 10-4J-3(B). The Hearing Examiner Pro Tem is not aware of any other criteria that apply specifically to site-specific rezones. The Staff Report does not identify any different criteria that govern these kinds of decisions. As a result, this recommendation primarily focuses on these criteria. *See* Paragraphs A-D. The Hearing Examiner Pro Tem ultimately concludes that the proposed rezone is consistent with the applicable criteria and, therefore, should be approved.

Although this is a non-project action, a SEPA analysis of the proposal is still required. It is primarily for this reason that the record includes a discussion of the Applicant's conceptual plans to develop/redevelop the MTC. Having a general idea of what the property may look like at build-out provides some basis to evaluate the probable impacts of the *rezoning decision*. This does not mean that further SEPA analysis will not occur. SEPA will be revisited at the time of any *project decision*. In any case, it is only the rezone decision that is under consideration at this stage.

If the proposed rezone is approved, the owner will have the option to develop the vacant, 13.6-acre area in the northeast corner of the campus with residential uses. *Testimony of L. Key*. There are approximately 3 to 4 additional acres of "opportunity zones" that could be redeveloped. *See id.* The portions of the site that may be redeveloped are shown on Comprehensive Plan/Zone Change Proposal map included in the Staff's presentation to the Hearing Examiner Pro Tem. *See* Exhibit 2 (Slide 3). The portions of the campus that

may be redeveloped include five distinct areas, shaded in orange. See *id.* Four of five of these areas would be redeveloped with retail or commercial uses operated by small businesses. *Testimony of K. Schneidmiller.* Only one of these areas, which is located centrally, closer to Molter and west of Building One, has potential for inclusion of some residential use. See *id.*

There is no maximum residential density standard in the M-2 zone. *Testimony of L. Key;* see also LLDC 10-2F-7(D). Theoretically, many more residential units could be developed than the Applicant considers realistic. *Testimony of M. Terrell, K. Schneidmiller.* Given factors such as total area available for development and the development standards applicable in the M-2 zone, the Applicant estimated that the approximately 250 residential units could be developed, at a reasonable density. *Testimony of K. Schneidmiller.* The Applicant's traffic engineer prepared its traffic estimates based upon this assumption. See Exhibit 1F (Traffic Generation and Distribution Letter [TGDL]). The Staff agreed that 250 residential units was a reasonable estimate of a full build-out of the site with residential uses. *Testimony of L. Key.* As a result, Staff based its SEPA review of the proposed rezone based upon this figure. See *id.*

On August 31, 2021, the City issued a DNS for the rezone proposal. See Exhibit 1C. Notably, no specific mitigation measures were attached to the DNS. In making its threshold determination, the City considered the TGDL, the SEPA checklist, the Applicant's concepts for further development, and other available information. On this record, the Hearing Examiner Pro Tem sees no basis to challenge the City's threshold determination. In addition, the DNS was not appealed. As a result, it appears that SEPA cannot form a proper basis to challenge the proposed rezone.

The Hearing Examiner Pro Tem concludes that the application is consistent with the standards and criteria of the development code. The criteria for a site-specific rezone have been properly addressed, as is discussed throughout this recommendation. In addition, the City followed the proper procedures under SEPA to evaluate a non-project action. If the ultimate development of the property gives rise to any environmental impacts, those matters can be addressed at the project stage. The standards and requirements applicable to a non-project rezone have been satisfied. Therefore, the Hearing Examiner Pro Tem recommends approval of the application.

C. The proposed rezone is justified by a change of conditions in the neighborhood or community. See LLDC 10-4J-3(B)(3).

The development code provides that a recommendation to approve, deny, or condition a quasi-judicial amendment shall be based, in part, on:

Evidence of change in the neighborhood or community or a mistake or inconsistency in the comprehensive plan or zoning district map regarding the property which is the subject of the application...

See LLDC 10-4J-3(B)(3).

There is no evidence of a "mistake or inconsistency in the comprehensive plan or zoning map" regarding the MTC. That was not the reason for the proposal to amend the CP map and change the zoning. Rather, the Applicant is seeking to amend the CP and reclassify

the property because of changed conditions affecting the current and future use of the property.

The Applicant explained that even prior to the pandemic, the needs and requirements of office users were changing. *Testimony of K. Schneidmiller*. The pandemic accelerated these changes. *See id.* Companies and employees have decided not to return to working in an office setting. *See id.* Many employees are now working from home. *See id.* A change in the economics of large technology campuses has occurred. *Testimony of M. Terrell*. These trends have led the Applicant to look for solutions and alternatives, in order to ensure that the MTC remains viable and successful. *Testimony of K. Schneidmiller & M. Terrell*.

The changing conditions described above are not just affecting other cities. These changes are being felt in Liberty Lake as well. The owners of the MTC have been notified by one call-center employer that it will not be renewing its lease. *Testimony of K. Schneidmiller*. Other tenants are likely to follow suit in the coming years, as their leases expire. *See id.* Changes are needed if the MTC is going to be a viable project going forward. *See id.* The MTC will likely be serving a greater number of tenants, who will utilize less space per tenant. *See id.* The style of campus will need to adjust to serve these types of tenants, providing them with the amenities they expect, such as availability of commercial businesses and services and housing options. *See id.* The revised vision for the MTC will also serve the surrounding community, providing commercial services and additional housing. *Testimony of K. Schneidmiller & M. Terrell*.

The Hearing Examiner Pro Tem concludes there is sufficient evidence of a change in the community or neighborhood to support the proposed rezone. The changes occurring are not just economic trends in the abstract. They are changes that directly impact the economic health of Liberty Lake. The proposed rezone seems to be an appropriate response to evolving market conditions. It also facilitates preservation of jobs, the establishment of new business, and the creation of more housing. The Hearing Examiner Pro Tem, therefore, concludes that changing conditions warrant approval of the proposed rezone.

D. The proposed rezone should be approved without imposing additional limitations or remedies because it does not significantly affect a transportation facility. See LLDC 10-4J-6(A).

The development code provides that a recommendation to approve, deny, or condition a quasi-judicial amendment should be based, in part, on “the provisions of Section 10-4J-6, as applicable.” *See* LLDC 10-4J-3(B)(3).

Section 10-4J-6 states that when a development application includes a CP amendment or zone change, the application must be reviewed to determine whether “it significantly affects a transportation facility.” *See* LLDC 10-4J-6(A). The term “significant affect” means one or more of the following:

1. *Change the functional classification of an existing or planned transportation facility. This would occur, for example, when a proposal causes future traffic to exceed the capacity of “collector” street classification, requiring an change in the classification to an “arterial” street, as identified by the Comprehensive Plan and Transportation Improvement Plan;*

2. *Change the standards implementing a functional classification system;*
3. *Allow types or levels of land use that would result in levels of travel or access [that] are inconsistent with the functional classification of a transportation facility; or*
4. *Reduce the level of service of the facility below the minimum acceptable level identified in the Comprehensive Plan and Transportation Improvement Plan.*

See LLDC 10-4J-6(A)(1)-(4). If there is a “significant affect” on a transportation facility, then the development must assure that the allowed uses are “consistent with the function, capacity, and level of service” of the impacted facility. See LLDC 10-4J-6(B). To accomplish this objective, certain remedies may be required, such as limiting the allowed land uses; amending the Transportation Improvement Plan (TIP) to ensure that adequate facilities exist to support the proposed use; or altering design requirements or densities to reduce demand for automobile travel, to name some of the examples. See *id.*

Based upon this record, the Hearing Examiner Pro Tem concludes that the proposed rezone does not “significantly affect a transportation facility” within the meaning of the LLDC. The MTC is adjacent to two arterials (Molter to the west and Mission to the south). These arterials handle all the traffic to or from the campus. There is no evidence in this record that the traffic likely to arise from the rezone will result in levels of travel or access that are inconsistent with the classification of these roads. The record does not support a conclusion that the proposed rezone will prompt a change to the classification of the adjacent roads or require a change to the standards for classifying the roads. No evidence suggested that the proposed rezone would reduce the levels of service of the roads below minimum acceptable levels.

If anything, the proposed rezone will result in a net decrease in traffic when compared to full development of the site under its current zoning. The TGDL compares the amount of traffic that could be generated if the property is developed in accordance with its current, Light Industrial (I) zoning, with the amount of traffic that could result if the property is developed under the proposed Community Center (M-2) zoning. See Exhibit 1F.

Under the current zoning, Light Industrial (I), the undeveloped areas could be developed with 250,000 square feet of office space. See *id.* Such a development would generate approximately 2,581 average daily trips, resulting in approximately 262 AM peak-hour trips and 272 PM peak-hour trips. See *id.* If the property is rezoned to Community Center (M-2), as proposed, the estimated number of residential units that would be developed on the property is 250. See *id.* If 250 residential units were developed on the site, the project would result in approximately 1,361 average daily trips, resulting in approximately 85 AM peak-hour trips and 107 PM peak-hour trips. See *id.*

Developing the property under the proposed zoning will result in 1,220 fewer average daily trips. See *id.* With respect to peak-hour traffic, development of 250 residential units will result in 177 fewer AM peak-hour trips and 165 fewer PM peak-hour trips. See *id.* Thus, the future development of the property following the proposed rezone is very likely to be materially lower than full build-out of the site under the current zoning.

The Hearing Examiner Pro Tem concludes that the proposed rezone does not “significantly affect a transportation facility,” as defined by LLDC 10-4J-6(B). In the absence of a significant effect, there is no basis to craft remedies or impose limitations to ensure that the impacted facilities have sufficient capacity, maintain proper levels of service, etc. Therefore, the Hearing Examiner Pro Tem recommends that the proposed rezone be approved without imposing additional remedies or limitations pursuant to LLDC 10-4J-6.

E. The Hearing Examiner Pro Tem recommends approval of the proposed rezone despite the legitimate concerns raised in the public comments.

The public testimony before the Hearing Examiner Pro Tem was very limited. However, the Hearing Examiner Pro Tem received two written comments about the proposed rezone. Those comments raised various concerns about the application. See Exhibit 1(E) (Comments of G. Cronin & T. Sahlberg). The record also included several written comments directed to the Planning Commission, which the Hearing Examiner Pro Tem also considered. See *id.* (Comments of Mai-Ling & R. Bell, K. Scott, M. Rubin, R. Siler, and R. Gray).

Having considered these comments, the Hearing Examiner Pro Tem determines that two issues, in particular, call for specific comment: (1) traffic impacts and mitigation; and (2) the need for specific development plans to support a rezone.

With respect to traffic, public comments included concerns about increased traffic loads, the risks from speeding vehicles, and reduced safety for children. See *e.g.* Exhibit 1(E) (Comments of Mai-Ling & R. Bell and M. Rubin). There was also a suggestion that traffic flow problems should be addressed through installation of a roundabout and additional pedestrian crossings. See *id.* (Comment of G. Cronin).

The proposed rezone will facilitate the development of the MTC with approximately 250 residential units, as well as a handful of smaller commercial sites. This will inevitably result in additional traffic on the adjacent arterials, as the TGD L describes. However, the potential for additional traffic does not support denial of the proposed rezone. There is no evidence in this record that the existing arterials cannot handle the anticipated traffic due to this proposal. As discussed elsewhere, the traffic load following buildout of this site with residential uses is lower than would be the case if the property is fully developed for industrial purposes. In any case, no agency or department reported that the transportation system was insufficient to handle the traffic anticipated from the proposed rezone. There was no testimony from a traffic expert suggesting that Molter, Mission, or any other roads lacked sufficient capacity to serve the site, even in fully developed under the M-2 zoning.

Two additional points should also be made. First, the MTC is already participating in Harvard Road Mitigation Plan, and thus has made and will continue to make contributions for its fair share of needed road improvements. *Testimony of M. Terrell.* Second, any future development of the site must still go through project-level review, and this may result in the imposition of specific mitigation measures or additional impact fees, depending upon the proposal. The Hearing Examiner Pro Tem concludes that, under the circumstances, it would not be appropriate to condition the rezone itself on the installation of a roundabout, pedestrian crossings, or other specific improvements. Such requirements are better considered at the project stage.

Another often-repeated criticism of the proposal was that there were insufficient project details to properly evaluate the proposal, including its potential impacts. See e.g. Exhibit 1(E) (Comments of M. Rubin, T. Sahlberg, and G. Cronin). This is understandable, given the public's desire to know what the future holds. However, there is no requirement to submit specific development plans in order to qualify for a rezone. The development code allows rezones to be considered on a non-project basis, without such submissions.

Testimony of L. Key. In addition, when a specific development proposal is made, there is a detailed, project-level review that will take place, including consideration of traffic and other potential impacts. It would not be proper to force the developer to submit detailed development plans solely to facilitate analysis of a potential development. See *Ullock v. City of Bremerton*, 17 Wn.App. 573, 581, 565 P.2d 1179 (1977) (holding that it would be “unreasonable to require every rezoning petition to be accompanied by a site plan solely to generate exact environmental consequence information.”).

DECISION

Based on the findings and conclusions above, the Hearing Examiner Pro Tem recommends that the City Council approve the proposed zone change.

DATED this 10th day of December 2021.



Brian T. McGinn
City of Liberty Lake Hearing Examiner Pro Tem

NOTICE OF RIGHT TO APPEAL

Both the Planning Commission and Hearing Examiner Pro Tem make recommendations to the City Council, who plan to hold a public hearing tentatively scheduled for early 2022. The City Council decision is final, subject to appeals by the applicant or persons having standing, as defined in RCW36.70C to Spokane County Superior Court filed within 21 calendar days of the date of the written decision. Additionally, appeal of matters subject to board review, as outlined in RCW 36.70A.280, shall be made by a petition to the Eastern Washington Growth Management Hearings Board as outlined in RCW 36.70A.290, or review may be directed to the Superior Court as outlined in RCW 36.70A.295.