

November 28, 2016

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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**REPORT AND RECOMMENDATION TO THE
METROPOLITAN KING COUNTY COUNCIL**

SUBJECT: Department of Permitting and Environmental Review file no. **LUT4150002**
Proposed ordinance no.: **2016-0522**

DARREN HUDDLESON
Rezone Application

Location: 1511 SW 107th Street, Seattle

Applicant: Darren Huddleson
represented by **Lee Michaelis**
2737 78th Avenue SE Suite 100
Mercer Island, WA 98040
Telephone: (206) 624-6239
Email: lmichaelis@rwta.com

King County: Department of Permitting and Environmental Review
represented by **Kevin LeClair**
MS: SNO-DP-0210
Snoqualmie, WA 98065
Telephone: (206) 477-2717
Email: kevin.leclair@kingcounty.gov

SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Approve
Department's Final Recommendation:	Approve
Examiner's Decision:	Approve

EXAMINER PROCEEDINGS:

Hearing Opened: November 22, 2016
 Hearing Closed: November 22, 2016

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Hearing Examiner’s Office.

FINDINGS AND CONCLUSIONS:

1. General Information:

Request: Zone reclassification of approximately 1.12 acres from O (office) to CB (community business).

Applicant: Darren Huddleson
 2629 185th Avenue E
 Lake Tapps, WA 98391

Consultant: RW Thorpe & Associates
 2737 78th Avenue SE, Suite 100
 Mercer Island, WA98040

Location: 1511 SW 107th Street, Seattle, WA 98146
 Parcel: 345100-0230 and a portion of 345100-0235
 Section/Township/Range: 6-23-4

Current Zoning: O (office)
 Requested Zoning: CB (community business)
 Acreage: 1.12 acres

SEPA Threshold Determination: Determination of Non-Significance (DNS)
 Date Issuance: October 20, 2016

Comprehensive Plan Designation: ac (Unincorporated Activity Center: White Center)
 Community Plan: Highline

2. Except as modified herein and with the corrections listed in this Finding/Conclusion, the Examiner finds the facts set forth in Sections A-L and M.1 in the report of the Department of Permitting and Environmental Review (DPER) to the Examiner (Staff Report, Exhibit 2), and testimony from DPER to be correct and incorporates them herein by reference.

A. References in Sections C and J to the “proposed subdivision” should refer to the “requested rezone.”

B. The reference in Section J to RCW 58.17.110, a provision in the subdivision statute, is misplaced. No subdivision is proposed at this time.

3. Huddleson Management LLC is the record owner of Parcel 345100-0230, located at 1511 SW 107th Street in unincorporated King County in the White Center Unincorporated Activity Center (White Center UAC), approximately 0.25 mile north of the Burien city limits. Darren Huddleson applied for a reclassification to change the zoning designation of this parcel property from Office (O) to Community Business (CB).
4. Parcel 345100-0235 to the west of the Huddleson property is zoned CB and O. In order to provide a logical zone boundary, DPER has recommended that the O-zoned portion of Parcel 345100-0235 be considered for reclassification to CB as well Parcel 345100-0230.
5. Section M.2 of the Staff Report discusses King County Code (KCC) 20.22.150, which specifies the findings the examiner must make when issuing a recommendation on a zone reclassification. The recommendation must include findings on whether the application meets both of the following:
 - A. The proposed rezone is consistent with the King County Comprehensive Plan; and
 - B.
 1. The property is potentially zoned for the reclassification being requested;
 2. An adopted subarea plan or area zoning specifies that the property shall be subsequently considered through an individual reclassification application; or
 3. The requested reclassification is based on changed conditions.

Consistency with the Comprehensive Plan

6. The CB zone classification is one of the zone classifications implementing the White Center UAC. Exhibit 2, Attachment B. *See also*, KCC 21A.04.100.
7. In addition to the Comprehensive Plan policies discussed in the Staff Report, Policy U-150 provides:

Unincorporated activity centers in urban areas should provide employment, housing, shopping, services, and leisure-time amenities to meet the needs of the regional economy.

It then lists nine categories of uses that are appropriate in unincorporated activity centers. The CB zone allows a broader range of the following listed uses: health, human service, and public safety facilities; retail stores and services; professional offices; and light manufacturing. The CB and O zone classifications allow a similar range of the following listed uses: multifamily housing as part of mixed-use developments; parks and open space; and farmers' markets. Exhibit 4, Answer to Question 16.

Potential Zoning

8. Neither parcel is potentially zoned Community Business (CB). Exhibit 4, Answer to Question 1; LeClair testimony.

Community Plan

9. DPER testified that the reclassification is consistent with KCC 20.22.150.B.2. To find consistency with this code provision, the examiner would have to find that the applicable community plan specifies that these parcels were intended to be subsequently considered through an individual reclassification application.
10. The applicable community plan is the 1994 White Center Community Action Plan (WCAP). Exhibit 4; LeClair testimony; KCC 20.12.240.
11. The Applicant provided substantial evidence that the proposed reclassification is *consistent* with the WCAP. Exhibit 4, Answer to Question 16. However, neither DPER nor the Applicant presented evidence that the WCAP specifies that these parcels should be *subsequently considered through an individual reclassification application*. The record before the Examiner does not support a finding that the proposed rezone satisfies KCC 20.22.150.B.2.

Changed Conditions

12. KCC 20.22.150.B.3 is akin to the changed circumstances test which our courts have applied in considering rezones. In applying the changed circumstances test, courts have looked at a variety of factors, including: changed public opinion, changes in land use patterns in the area of the rezone, and changes on the property itself. *Bjarnson v. Kitsap County*, 78 Wn. App. 840, 846–847 (1995).
13. DPER's Rezone Application Form (Exhibit 4) indicates that the following should be considered in determining whether there have been changed conditions:

Since the last area zoning of the subject property, have authorized public improvements, private development, or other circumstances materially or significantly affected to property?

Exhibit 4, Question 11.
14. The Applicant provided the following examples of public and private development since the adoption of the 1994 WCAP:
 - A. Mount View Elementary School to the east - 2005.
 - B. Office/retail to the north across SW 107th – 2005.
 - C. 30,000 square of apartments at 10790 16th Ave SW – 2009.
 - D. White Center Library directly to the east – 2016.
15. The requested zone reclassification is consistent with the policies of the King County Comprehensive Plan and satisfies KCC 20.22.150.A.

16. In order to recommend approval of the requested reclassification, the examiner must find that one of the three factors in KCC 20.22.150.B is satisfied. Neither of the first two factors (potential zoning or a community plan provision for future reclassification) is satisfied. However, the Applicant has presented sufficient evidence of changed conditions. The requested rezone complies with the criteria for a zone reclassification.

RECOMMENDATION:

1. APPROVE the requested zone reclassification from office (O) to community business (CB) for all of parcel 345100-0230 and the office-zoned portion of parcel 345100-0235.

DATED November 28, 2016.



Alison Moss
Hearing Examiner pro tem

AM/ed

NOTICE OF RIGHT TO APPEAL

A person appeals this Examiner decision by following the steps described in KCC 20.22.230, including filing with the Clerk of the Council a sufficient appeal statement and a \$250 appeal fee (check payable to the King County FBOD). Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal. KCC 20.22.230 also requires that the appellant provide copies of the appeal statement to the Examiner and to any named parties listed on the front page of the Examiner's decision.

Prior to the close of business (4:30 p.m.) on *December 22, 2016*, an electronic copy of the appeal statement must be sent to Clerk.Council@kingcounty.gov and a paper copy of the appeal statement must be delivered to the Clerk of the Council's Office, Room 1200, King County Courthouse, 516 Third Avenue, Seattle, Washington 98104. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. If the Office of the Clerk is not officially open on the specified closing date, delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

Unless both a timely and sufficient appeal statement and filing fee are filed by *December 22, 2016*, the Examiner's decision becomes final.

If both a timely and sufficient appeal statement and filing fee are filed by *December 22, 2016*, the Examiner will notify all parties and interested persons and provide information about "next steps."

MINUTES OF THE NOVEMBER 22, 2016, HEARING ON THE REZONE APPLICATION OF DARREN HUDDLESON, DEPARTMENT OF PERMITTING AND ENVIRONMENTAL REVIEW FILE NO. LUT4150002, PROPOSED ORDINANCE NO. 2016-0522.

Alison Moss was the Hearing Examiner in this matter. Participating in the hearing were Kevin LeClair, Lee Michaelis, and Darren Huddleson.

The following exhibits were offered and entered into the hearing record:

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|----------------|---|
| Exhibit no. 1 | Department of Permitting and Environmental Review file no. LUT4150002 |
| Exhibit no. 2 | Preliminary department report to the Hearing Examiner, dated November 7, 2016 |
| Exhibit no. 3 | Land use application, received August 20, 2015 |
| Exhibit no. 4 | Revised rezone application, received May 26, 2016 |
| Exhibit no. 5 | State Environmental Policy Act (SEPA) checklist, received May 26, 2016 |
| Exhibit no. 6 | SEPA threshold determination of non-significance, issued October 20, 2016 |
| Exhibit no. 7 | Affidavit of posting indicating a posting date of September 25, 2015, received September 25, 2015 |
| Exhibit no. 8 | Notice of application, mailed September 26, 2015 |
| Exhibit no. 9 | Revised site plan map, received May 26, 2016 |
| Exhibit no. 10 | Applicant's response to King County review comments, received May 26, 2016 |
| Exhibit no. 11 | Notice of SEPA threshold determination and public hearing, mailed October 21, 2016 |
| Exhibit no. 12 | Zoning map from original rezone application, received August 20, 2015 |
| Exhibit no. 13 | Original Rezone application, received August 20, 2015 |