

**BEFORE the HEARING EXAMINER for the
CITY of LYNNWOOD**

DECISION ¹

FILE NUMBER: RZN-010058-2023

APPLICANT: Scan Design Foundation
C/o Mithun
1201 Alaskan Way, #200
Seattle, WA 98010

TYPE OF CASE: Site-specific reclassification of 0.77± acres from Multiple Residential Medium Density (RMM) to Alderwood-City Center Transition (ACC)

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: GRANT

DATE OF DECISION: August 18, 2023

INTRODUCTION ²

Scan Design Foundation (“Scan Design”), on behalf of Countryside Apartments, LLC (“Countryside”) seeks a site-specific reclassification,³ not involving a change to the adopted comprehensive plan nor done in conjunction with adoption of a sub-area plan, of 0.77± acres from Multiple Residential Medium Density (RMM) to Alderwood-City Center Transition (ACC). This application has been referred to during staff processing as the “Countryside Apartments Rezone,” a reference which will be maintained herein.

Scan Design filed the Countryside Apartments Rezone application on March 21, 2023. (Exhibit 1, PDF 1; 10⁴) The Lynnwood Development and Business Services Department, Community Planning Division (“Planning”), deemed the application complete on April 18, 2023. (Exhibits 8; 10) Planning issued a Notice of Application on April 19, 2023. (Exhibit 9)

¹ This written Decision memorializes and expands upon an oral decision rendered on the record at the close of the August 17, 2023, open record hearing.

² Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

³ Reclassification is commonly referred to as a “rezone,” a shorthand terminology which will be used herein interchangeably with “reclassification.”

⁴ Exhibit citations are provided for the reader’s benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. Citations to exhibits that are available electronically in PDF use PDF page numbers, not source document page numbers. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner’s Decision is based upon all documents in the record.

The subject property is a portion of the Countryside Apartments site which consists of 13 4-unit apartments whose street addresses range from 19301 to 19325 36th Avenue W. The Assessor's Parcel Number of the entire parcel is 00372600200805 ("Parcel 0805").⁵ (Exhibit 1, PDF 1; and testimony)

The Lynnwood Hearing Examiner ("Examiner") viewed the subject property via Google Earth imagery: Overhead imagery dated August 23, 2022; Street View imagery dated July 2022.

The Examiner held a hybrid open record hearing on August 17, 2023. Planning gave notice of the hearing as required by the Lynnwood Municipal Code ("LMC"). (Exhibit 10)

The following exhibits were entered into the hearing record during the hearing:

- Exhibits 1 - 10: As enumerated in Exhibit 1, the Planning Staff Report
- Exhibit 11: Ordinance 2627, Establishing a street grid system for City Center, adopted July 14, 2006

Section 1.35.025 LMC requires that decisions on project permit applications be issued within 120 calendar days after the application is found to be complete; subsection 1.35.025(A) LMC lists four exclusions from the 120-day count, one of which is an extension mutually agreed upon by Planning and the applicant. The open record hearing was held on day 121. (Exhibit 1, PDF 2) Scan Design agreed to waive the timeline. (Testimony)

The action taken herein and the requirements, limitations and/or conditions imposed by this decision are, to the best of the Examiner's knowledge or belief, only such as are lawful and within the authority of the Examiner to take pursuant to applicable law and policy.

FINDINGS OF FACT

1. The subject of this rezone application is the north 60 ± feet of Parcel 0805. Parcel 0805 is owned by Countryside. Scan Design owns the abutting property to the east, Assessor's Parcel Number 00372600200801 (Parcel "0801"). Scan Design has received authorization from Countryside to file an application to rezone the northern 60± feet of Countryside's property from RMM to ACC. (Exhibit 2; and testimony)
2. Scan Design seeks a site-specific reclassification, not involving a change to the adopted comprehensive plan nor done in conjunction with adoption of a sub-area plan, of the north 60± feet of Parcel 0805, comprising approximately 0.77 acres,⁶ from RMM to ACC. (Exhibits 2; 3)

⁵ The portion subject to the rezone application is not a separate parcel and does not have a separate Assessor's Parcel Number.

⁶ 60' x 561' = 33,660 square feet ÷ 43,560 square feet per acre ≈ 0.77 acres

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3. Parcel 0805 is located on the east side of 36th Avenue W opposite 194th Street SW and contains the Countryside Apartments. The abutting Scan Design property to the east fronts on 33rd Avenue W and contains a three-story furniture store. (Exhibit 4; and testimony)
4. Scan Design is evaluating the redevelopment potential of Parcel 0801. As part of that evaluation, Scan Design became aware that the RMM zoning on the north edge of Parcel 0805 could impose development limitations on its Parcel 0801 which would not exist were Parcel 0805 entirely zoned like surrounding properties. Scan Design approached Countryside and received permission to seek this requested rezone. (Testimony)
5. Parcels 0805 and 0801 are located within the City Center Sub-Area Plan area. The north 60± feet of Parcel 0805 are designated Alderwood-City Center Transition Area (ACCTA) as are the properties to its north and east on the adopted Sub-Area Plan. The Scan Design property to the east and the remainder of Parcel 0805 to the south is designated City Center-North (CC-N). (Exhibit 7, PDF 2) The Alderwood-City Center Transition (ACC) zone is an implementing zone for ACCTA designated lands; the RMM zone is not an implementing zone for any of the City Center Sub-Area Plan designations involved in this case. (Exhibit 1, PDF 2; 7)
6. The area to be rezoned is the only RMM zoned property in the immediate vicinity. The Scan Design property to the east, the remainder of Parcel 0805 and the parcels further south are zoned City Center-North (CC-N). The properties to the north of Parcels 0805 and 0801 are zoned ACC. The area west of 36th Avenue W is zoned City Center-Core (CC-C). Once the RMM-zoned portion of Parcel 0805 is rezoned to ACC, the line between ACC and CC-N zoned property on the east side of 36th Avenue W will be a straight east-west line. (Exhibit 7, PDF 1)
7. In July of 2006 the City adopted Ordinance 2625 to amend the official zoning map to implement the City Center Sub-Area Plan. That ordinance changed Parcel 0805's zoning from RMM to ACC except for the northerly 60± feet. (Exhibits 1; 6)

Also in July of 2006 the City adopted Ordinance 2627 establishing a street grid for the City Center Sub-Area Plan. One element of that adopted grid is extension of 194th Street SW easterly of 36th Avenue W. The adopted route extends east-southeasterly from 36th Avenue W to 33rd Avenue W. (Exhibits 6, PDF 5; 11, Ordinance 2627, § 1, PDF 2)

The RMM-zoned portion of Parcel 0805 is believed to be the only property that could be affected by future rights-of-way listed in Ordinance 2627 which was not rezoned to an appropriate City Center implementing zone during the 2006 process. (Testimony)

8. The criteria for approval of a reclassification are set forth at LMC 21.22.600. Those criteria and the facts disclosed by the evidence (especially Exhibits 1 and 3) and testimony in the hearing record regarding each are:

“The city may approve or approve with modifications an application for a reclassification of property if:

“A. The reclassification is substantially related to the public health, safety, or welfare; and”

Facts: This criterion is essentially conclusory in nature and can best be addressed in the Conclusions of Law, below.

“B. The reclassification is warranted because of changed circumstances or because of a need for additional property in the proposed land use zone classification or because the proposed zoning classification is appropriate for reasonable development of the subject property; and”

Facts: The three elements of this criterion are each separated by the word “or.” Compliance with any one or more of the three thus constitutes compliance with the criterion.

The remnant RMM zoning on Parcel 0805 exists for unknown reasons. The old zoning of the anticipated future right-of-way was not changed when the City Center Sub-Area Plan implementing zoning was adopted. The RMM zoning is not appropriate. Circumstances have changed.

The remnant RMM zoning on Parcel 0805 is inconsistent with surrounding zoning, is inconsistent with the adopted City Center Sub-Area Plan, and would create an unnecessary burden on any redevelopment of the area. The rezone is appropriate for reasonable development of the area.

“C. The subject property is suitable for development in general conformance with zoning standards under the proposed zoning classification; and”

Facts: Eliminating the remnant, inconsistent RMM zoning will simplify land use regulation in the area,

“D. The reclassification will not be materially detrimental to uses or property in the immediate vicinity of the subject property; and”

Facts: Eliminating the remnant, inconsistent RMM zoning will simplify land use regulation in the area,

“E. The reclassification has merit and value for the community as a whole; and”

Facts: This criterion is essentially conclusory in nature and can best be addressed in the Conclusions of Law, below.

“F. The reclassification is in accord with the comprehensive plan; and”

Facts: The requested rezone will bring the subject portion of Parcel 0805 into conformance with the City Center Sub-Area Plan.

“G. The reclassification complies with all other applicable criteria and standards of the Lynnwood Municipal Code.

Facts: The record contains no evidence of any conflict between the requested ACC zone and other provisions of the LMC

9. The requested rezone is categorically exempt from the threshold determination requirements of the State Environmental Policy Act. (Exhibit 1, PDF 6)
10. Planning recommends approval of the requested rezone subject to two conditions: 1) Requiring that the official zoning map be amended to reflect the rezone; and 2) Stating that all future development must comply with all code requirements. (Exhibit 1, PDF 6)
11. No testimony or evidence was entered into the record by the general public either in support of or in opposition to the application.
12. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK ⁷

The Examiner is legally required to decide this case within the framework created by the following principles:

Authority

A site-specific reclassification, not involving a change to the adopted comprehensive plan nor done in conjunction with adoption of a sub-area plan, is a modified Process I application (open record hearing before the Examiner, final decision by the Examiner, and right of reconsideration); “provided, that any appeal of the hearing examiner’s decision will be to the city council under Process VII.” [LMC 1.35.100 and .168; LMC 21.22.400(D); quotation from LMC 21.22.400(D)]

Review Criteria

The review criteria for reclassifications are set forth in Finding of Fact 8, above.

A “consistency determination” is required for every project permit application. [LMC 1.35.070] Although a reclassification is a Process I application, it is not a project permit application. A consistency determination is not required since there is no project to evaluate.

⁷ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

Vested Rights

The City has no vesting regulations for land development applications. “Vesting” serves to “fix” the regulations against which a development application is judged. [*Potala Village Kirkland, LLC v. City of Kirkland*, __ Wn. App. __ (Div. I, 2014)] Since a rezone, by definition, seeks to change the regulations which would govern development of a parcel, the vested rights doctrine has no applicability.

Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof. [LMC 1.35.155]

Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

CONCLUSIONS OF LAW

1. The facts summarized in Finding of Fact 8, above, clearly and unequivocally demonstrate compliance with five of the seven criteria for approval of a reclassification.

With respect to Criteria A (“public health, safety, and welfare”) and E (“merit and value for the community as a whole”), eliminating the remnant RMM zoned area serves the public welfare by bringing all zoning in the area into conformance with the City Center Sub-Area Plan and, for the same reason, serves the community as a whole.

The requested reclassification should be granted.

2. The record contains no plans for future development of the new ACC zoned area, nor are any required.
3. No need exists to require a concomitant zoning agreement as a condition of the requested rezone. (See LMC 21.22.800.)
4. No need exists to impose a development time limit as a condition of the requested rezone. (See LMC 21.22.900.)
5. The requirement in Ordinance 2627 for “[a]ll development” to dedicate right-of-way (See Exhibit 11, Ordinance 2627, § 2, PDF 3.) does not apply to this application: The five actions defined in the Ordinance as “development” which would trigger the dedication requirement do not include a rezone. Therefore, this rezone is not subject to that requirement.
6. The Examiner generally does not favor special conditions which merely recite mandatory requirements of the City’s codes. Such conditions are unnecessary: Compliance with adopted City,

state, and federal regulations is required whether or not individually enumerated as “special” conditions of approval. Recommended Condition 1 merely restates the requirement of LMC 21.22.700 that the City (not the applicant) must amend the official City zoning map to reflect the rezone. That need not be a special condition of rezone approval; the LMC requires City staff to make the map change.

Likewise, Recommended Condition 2 merely summarizes the fact that any future development must comply with all applicable City regulations. That need not be a special condition of rezone approval. If Scan Design and/or Countryside didn’t realize that fact before, they do now.

7. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, the testimony and evidence submitted at the open record hearing, and the Examiner’s site view, the Examiner herewith **GRANTS RECLASSIFICATION** of approximately 0.77 acres of Assessor Parcel Number 00372600200805 (being all that portion of the Parcel currently zoned RMM) from RMM to ACC.

Decision issued August 18, 2023.

John E. Galt

John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ⁸

Fidelma McGinn
Karl Almgren

Phillip Chubb

NOTICE of RIGHT of RECONSIDERATION

This Decision is final subject to the right of any party of record to file with the Lynnwood Development and Business Services Department a written request for reconsideration within seven calendar days following the issuance of this Decision in accordance with the procedures of LMC 1.35.168. Any request shall specify the

⁸ The official Parties of Record register is maintained by CDD.

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error of law or fact, procedural error, or new evidence which could not have been reasonably available at the time of the hearing conducted by the Examiner which forms the basis of the request. See LMC 1.35.168 for additional information and requirements regarding reconsideration.

NOTICE of RIGHT of APPEAL

This Decision is final subject to the right of a party of record (See LMC 1.35.148.) with standing, as provided in RCW 36.70C.060, to appeal “the hearing examiner’s decision ... to the city council under Process VII.” [LMC 21.22.400(D)] See LMC 1.35.700 - .740 for information about Process VII appeals.

<p>The following statement is provided pursuant to RCW 36.70B.130: “Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.”</p>
