



# Public Services

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LISA H. FREUND – Director

July 15, 2024:

TO: Scenic Ranch, LLC, Joseph Calhoun & Parties of Record  
FROM: Casey Dunbar, Office Specialist  
RE: Hearing Examiner Recommendation – ZON2024-00002

On, July 12, 2024, the Yakima County Hearing Examiner issued his decision on the Minor Rezone to remove the subject parcel from the Master Planned Development Overlay (MPDO). The Examiner's recommendation is enclosed.

The Hearing Examiner's recommendation will be presented to the Board of County Commissioners for consideration at a closed record public hearing. You will be notified when this date has been set. If you have any questions on the recommendation, please contact Aaron Cohen at 574-2300.

Encl.: *Hearing Examiner Recommendation*  
Cc: *Parties of Record*

**County of Yakima, Washington  
Hearing Examiner's Recommendation**

**July 12, 2024**

|                                          |   |                      |
|------------------------------------------|---|----------------------|
| <b>In the Matter of a Rezone</b>         | ) |                      |
| <b>Application Submitted for:</b>        | ) |                      |
|                                          | ) | <b>ZON2024-00002</b> |
| <b>Scenic Ranch, LLC, Property Owner</b> | ) |                      |
|                                          | ) |                      |
| <b>For a Minor Rezone to Remove</b>      | ) |                      |
| <b>A Master Planned Development</b>      | ) |                      |
| <b>Overlay District from a 0.39-Acre</b> | ) |                      |
| <b>Parcel located on the North Side</b>  | ) |                      |
| <b>Of Scenic Drive in the 7100 Block</b> | ) |                      |

**A. Introduction.** The Hearing Examiner conducted an open record public hearing on June 27, 2024. A staff report presented by Aaron Cohen, Yakima County Planner III – Long Range, recommended approval of this nonproject minor Rezone application subject to the applicant providing sufficient evidence at the open record public hearing to enable the Hearing Examiner to find that substantial changes in circumstances exist to warrant an amendment of the current zone. This is a request for a nonproject Rezone because no specific use is requested and a request for a minor Rezone because no Comprehensive Plan amendment is required for its approval. The applicant/property owner's agents and representatives for this matter, Joseph Calhoun and Eric Herzog of HLA Engineering and Land Surveying, Inc., testified in favor of approval of the requested Rezone and answered questions at the hearing. No other testimony and no written comments from the public were submitted regarding the requested Rezone. This Recommendation is being issued within ten business days of the open record public hearing.

**B. Summary of Recommendation.** The Hearing Examiner agrees with the Planning Division's reasons for recommending approval of this Rezone subject to a showing of changed circumstances and finds that a sufficient showing of changed circumstances was presented by the applicant's representatives at the open record public hearing to warrant a recommendation that the Board of Yakima County Commissioners approve this Rezone which requests removal of Planned Development Overlay District zoning from a parcel.

**C. Basis for Recommendation.** Based upon a view of the site without anyone else present on June 26, 2024; the information contained in the staff report, the application, the exhibits, the testimony and the other evidence presented at the open record public hearing on June 27, 2024; and a review of both the Yakima County Comprehensive Plan (Horizon 2040) and the Yakima County Zoning Ordinance which is Title 19 of the Yakima County Code (YCC), the Hearing Examiner makes the following:

## **FINDINGS**

**I. Applicant/Property Owner/Agents.** The applicant and property owner is Scenic Ranch, LLC., 3748 State Highway 97A, Wenatchee, WA 98801. The applicant's agents and representatives for this application who testified at the hearing are Joseph Calhoun and Eric Herzog of HLA Engineering and Land Surveying, Inc., 2803 River Road, Yakima, WA 98902.

**II. Location.** The 0.39-acre parcel subject to this Rezone request is north of Scenic Drive in the 7100 block about 1/4 of a mile east of the intersection of Vertner Road/ Scenic Drive and about 400 feet north of the City of Yakima city limits. It is described as Tract C of the Plat of Canyon View Estates and Assessor's Parcel No. 181317-13446.

**III. Rezone Application.** The reason for this Rezone application is to allow Tract C of the Plat of Canyon View Estates to be added to the adjacent parcel on the west by means of a future boundary line adjustment which would allow both parcels west of Tract C to be increased in size and would allow the eastern boundary of the enlarged parcel to be moved to the east of the driveway entrance to the development. The adjacent parcel west of Tract C cannot be enlarged by means of a future boundary line adjustment without approval of this Rezone because that parcel would then be split-zoned in violation of YCC §19.34.020(5)(j). That enlarged parcel would be split-zoned because it is currently within the Single-Family Residential (R-1) zoning district without also being within the Planned Development Overlay District. Approval of the Rezone would leave Tract C only with its current underlying R-1 zoning so that including it within the adjacent R-1 parcel to the west would no longer result in a split-zoned parcel. The future boundary line adjustment application is not consolidated with this Rezone request.

**IV. Jurisdiction.** The jurisdictional aspects of this application may be summarized as follows:

(1) According to YCC §19.36.030 entitled Minor Rezone – Map Amendment, Rezone applications consistent [or potentially consistent] with Table 19.36-1 and not dependent upon a comprehensive plan or sub-area plan amendment shall be considered minor rezones. These quasi-judicial actions, when site-specific, may be processed at any time under Type 4 review pursuant to YCC §16B.03.030. YCC §16B.03.030(1)(d) states that Type 4 Project permit applications are quasi-judicial actions which require an open record public hearing before the Hearing Examiner. The Examiner’s written decision constitutes a recommendation to the Board of Yakima County Commissioners. The Board’s Decision will constitute the final Decision, which will be subject to appeal to Superior Court under RCW 36.70C (Land Use Petition Act, LUPA).

(2) The Pre-Application Conference required by YCC §16B.04.010(1) for minor Rezones was held on March 26, 2024 (File No. EAC2024-00010).

**V. Processing of Application.** The steps to process this Rezone application have been and will be completed as follows:

(1) After this application was submitted, the Building and Fire Safety Division, Water Resources Division, Yakima Health District, Yakima County Roads Department, Code Enforcement Division, Current Planning Section, Long Range Planning Section and Utilities Division were notified of the opportunity to provide comments on the proposal. Comments were received from the Building and Fire Safety Division, the Yakima County Roads Department and the Long Range Planning Section.

(2) Other steps required in order to process this application have been or will be accomplished on the following dates:

|                                                              |                 |
|--------------------------------------------------------------|-----------------|
| Application Submitted:                                       | April 8, 2024   |
| Application Determined Complete:                             | May 9, 2024     |
| Notice of Application/Completeness/Future Public Hearing:    | May 13, 2024    |
| Notice of Open Record Public Hearing mailed:                 | May 30, 2024    |
| Notice of Open Record Public Hearing published:              | May 30, 2024    |
| Notice of Open Record Public Hearing posted on the property: | June 5, 2024    |
| Open Record Public Hearing held:                             | June 27, 2024   |
| Board of County Commissioners Closed Record Hearing:         | To be scheduled |

(3) One comment was received from an outside agency. The Washington State Department of Ecology (DOE) commented that historical aerial photos indicate that this property was occupied by orchard during the period when the pesticide lead arsenate was applied, often resulting in shallow soil contamination from lead and/or arsenic. Because of that, the comment encourages the applicant to get the soil tested and indicates that DOE will assist in free soil testing and remediation, if required. Since this proposal is to rezone property with no physical development occurring at this time, the applicant has the option to reach out to DOE for this purpose if desired.

**VI. State Environmental Policy Act (SEPA).** This request for a nonproject minor Rezone is not subject to review under the State Environmental Policy Act (SEPA) per WAC 197-11-800(6)(c)(i).

**VII. Comprehensive Plan.** The subject parcel and all surrounding parcels are within the Urban Residential (UR) designation of the Yakima County Comprehensive Plan

(Horizon 2040). The Comprehensive Plan Land Use Element, Chapter 5, page 23, states that the intent of the UR designation is to provide for a full range of urban housing types, from single and multi-family development to high density family housing. The Urban Residential land use designation is a general designation intended to accommodate all the urban residential land use designations listed in each of the fourteen cities' and towns' future land use maps.

**VIII. Zoning.** The zoning considerations relative to this Rezone application may be summarized as follows:

(1) The subject Tract C of Canyon View Estates is currently vacant and is currently within both the Single-Family Residential (R-1) zoning district and the Master Planned Development Overlay (MPDO) District. The properties to the north are also within the R-1 Zoning District and the MPDO District. The properties to the west and east are within the R-1 zoning district without having the MPDO District overlay zoning. The properties to the south across Scenic Drive are within the Suburban Residential (SR) zoning district. All surrounding properties are approximately one acre in size and either are vacant or contain single-family residences.

(2) YCC §19.17.040(1) states that the Master Planned Development Overlay is intended to allow larger scale, mixed-use developments in selected areas within Urban Growth Areas where certain development requirements may be modified to promote an integrated approach to planning and site design. The County finds that such developments require special review and conditioning to ensure adjacent areas are preserved and protected. A Master Planned Development Overlay is a comprehensive development plan intended to provide flexibility in design and building placement, promote attractive and efficient environments that incorporate a variety of uses, densities and/or dwelling types, provide for economy of shared services and facilities, and economically utilize the land, resources, and amenities.

(3) YCC §19.12.010(1)(c) states that the legislative intent of the R-1 zoning district is to protect single-family neighborhoods from encroachment by potentially incompatible non-residential land uses or impacts and to establish new residential neighborhoods and preserve existing residential neighborhoods for detached single-family dwellings free from other uses, except those which are compatible with and serve the residents of this district.

**IX. Rezone Review Criteria.** YCC §19.36.030(4) provides that this Recommendation regarding this minor Rezone application must be based upon a consideration of the following criteria:

**(1) The testimony at the public hearing (YCC §19.36.030(4)(a)):** All of the testimony presented at the open record public hearing by Aaron Cohen, Planner III – Long Range, and by the representatives/agents of the applicant/property owner, Joseph Calhoun and Eric Herzog of HLA Engineering and Land Surveying, Inc., was in favor of approval of the requested Rezone. No testimony was presented and no written comments were submitted in opposition to approval of this requested Rezone.

**(2) The suitability of the property in question for uses permitted under the proposed zoning (YCC §19.36.030(4)(b)):** Tract C of the Plat of Canyon View Estates is found to be suitable for uses permitted under R-1 zoning for the following reasons:

(a) Tract C of Canyon View Estates is suitable for Single-Family Residential (R-1) uses permitted by its underlying zoning district because those R-1 uses are permitted on the parcels that are zoned R-1 to the east and west of the Tract C parcel. According to the evidence in the record, the only reason that Tract C was included within the MPDO District was that it was not intended to be built upon when the subdivision was developed. Even though Tract C cannot currently be built upon because it does not satisfy the MPDO District requirements to allow for its development, it would be a suitable location for an R-1 use and for a type of infill development which could not occur absent the requested Rezone.

(b) Fewer uses and less dense uses are permitted in the R-1 zoning district identified by Table 19.14-1 (Allowable Land Use Table) in YCC Chapter 19.14, than are permitted in the current Master Planned Development Overlay District zoning of Tract C. Approval of the requested Rezone would not allow more uses or denser uses on Tract C than would already be allowed by its underlying R-1 zoning.

**(3) The recommendation from interested agencies and departments (YCC §19.36.030(4)(c)):** The only agency or department that submitted a recommendation regarding this Rezone is the Yakima County Planning Division which recommended that it be approved.

**(4) The extent to which the proposed amendments are in compliance with and/or deviate from the goals and policies as adopted in the Comprehensive Plans, adopted neighborhood plans and the intent of this Title (YCC §19.36.030(4)(d)):**

(a) There are no adopted neighborhood plans applicable to the proposed Rezone, but the following Policy of Yakima County Comprehensive Plan (Horizon 2040) is applicable to the Rezone request:

Policy LU-U 1.5: Development should be located within designated urban growth areas in the following priority:

(i) First, in areas already characterized by urban growth that have existing public facilities and service capacities to serve such development;

(ii) Second, in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources; and

(iii) Third, in the remaining portions of the urban growth areas.

(b) The removal of the MPDO District and the R-1 development that would result would occur in an area which is already characterized by urban growth where existing water facilities exist. The R-1 development that would result after approval of a future boundary line adjustment that would utilize Tract C to increase the size of Parcel Nos. 181317-24412 and 181317-24413 would be a type of infill development that would comply with the intent of the R-1 zoning district.

**(5) The adequacy and availability of public facilities, such as roads, sewer, water and other required public services (YCC §19.36.030(4)(e)):** The Yakima County Roads Department comments indicated that a change in the average daily trips upon County roads is not expected as a result of approval of the Rezone. The applicant intends that individual septic systems will serve the property when they are developed and provided a letter indicating that the Nob Hill Water Association can serve the subject parcel in accordance with YCC Chapter 19.25 relative to water and sewer facilities.

**(6) The compatibility of the proposed zone change and associated uses with neighboring land uses (YCC §19.36.030(4)(f)):** The proposed Rezone would take Tract C out of the Master Planned Development Overlay District, thus leaving it only within the R-1 zoning district. The properties to the west and east are within the R-1 zoning district. The properties to the north are within the R-1 zoning district and the MPDO District. The proposed zone change to leave Tract C only within the R-1 zoning district would be compatible with the neighboring single-family residential zoning and land uses.

**(7) The public need for the proposed change. Public need shall mean that a valid public purpose, for which the Comprehensive Plan and this Title have been adopted, is served by the proposed application. Findings that address public need shall, at a minimum, document;**

**(i) Whether additional land for a particular purpose is required in consideration of the amount already provided by the plan map designation or current zoning district within the area as appropriate; and,**

**(ii) Whether the timing is appropriate to provide additional land for a particular use (YCC §19.36.030(4)(g));**

As previously stated, it is the intent of the property owner to request a future administrative boundary line adjustment to increase the size of the two lots west of Tract C by including Tract C within the adjacent lot to the west. If the boundary line adjustment were submitted at this time, the Yakima County Planning Division would have to deny it because a boundary line adjustment cannot allow split zoning of a lot that would give it two different zoning classifications. The timing of the requested rezoning of Tract C is appropriate to provide additional land in Tract C to be used for an R-1 use.

**(8) Whether substantial changes in circumstances exist to warrant an amendment to the current designation or zone (YCC §19.36.030(4)(h)):** Tract C did not receive a lot number because the developers did not initially intend to develop the tract as part of the subdivision (see SUB2020-00004, ZON2020-00001, & SEP2020-00005). The change in circumstances is that the developers now wish to create larger lot sizes for Parcel Nos. 181317-24412 and 181317-24413 by including Tract C within Parcel No. 181217-24413 to be developed with an R-1 use in the manner permitted on adjacent properties. Since the original overlay district was applied to Tract C because of the intent and desire of the developers at that time, the present change as to their intent and desire relative to the development of Tract C is a change in circumstances equivalent to the only reason for the original Tract C zoning and is a substantial change in circumstances that supports this Rezone request.

**X. Consistency of the Rezone with Development Regulations and the Comprehensive Plan under the Criteria Required by Section 16B.06.020 of the Yakima County Code.** YCC §16B.06.020 (Project Consistency) requires that the County shall incorporate the elements of RCW 36.70B.040 in its project review. RCW 36.70B.040 (Determination of Consistency) requires that the consistency of a proposed

project with local development regulations or, in the absence of applicable development regulations, the appropriate elements of the Comprehensive Plan, shall be decided during the project review by consideration of four criteria. These criteria apply to this Rezone request in the following ways:

**(1) The types of land uses permitted at the site** through the requested Rezone would be R-1 single-family residential uses on Tract C of the Plat of Canyon View Estates which either exist or are permitted on surrounding properties. R-1 uses will be consistent with the Urban Residential Comprehensive Plan designation for Tract C. The R-1 use proposed for the lot that will include Tract C in the future will have to be consistent with the R-1 zoning classification and regulations applicable to the enlarged lot.

**(2) The density of residential development or the level of development such as units per acre or other measures of density** is not affected by this application because residential density will not be affected by approval of this Rezone. Any use permitted under R-1 zoning of the enlarged lot that will include Tract C in the future will be consistent with the density allowed by the Comprehensive Plan and zoning ordinance.

**(3) The availability and adequacy of infrastructure and public facilities** is not an issue because Scenic Drive and the private drive from that road provide adequate access to the enlarged lot. The enlarged lot will be served with water from the Nob Hill Water Association and will be developed with an individual septic system.

**(4) The characteristics of any development resulting from this rezone** will be a use permitted in the Single-Family Residential (R-1) zoning district which will be consistent with the Comprehensive Plan land use designation for the property and which will be consistent with the applicable development regulations for the R-1 zoning district.

## **CONCLUSIONS**

Based on the foregoing Findings, the Hearing Examiner reaches the following Conclusions:

(1) The Hearing Examiner has jurisdiction to make a Recommendation to the Board of Yakima County Commissioners regarding this Rezone application.

(2) The zoning ordinance public hearing notice requirements set forth in YCC Chapter 16B (Project Permit Administration) have been satisfied.

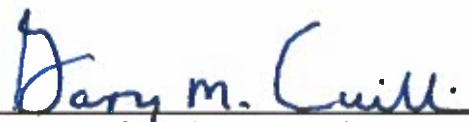
(3) YCC Table 19.36-1 provides that the proposed Rezone of the subject Tract C parcel by removing its Master Planned Development Overlay District in order to leave its existing underlying Single-Family Residential (R-1) zoning in effect would be potentially consistent with the Urban Residential (UR) Comprehensive Plan designation, and the evidence presented for this matter establishes that the requested Rezone would actually in fact be consistent with the UR Comprehensive Plan designation of the subject parcel.

(4) The requested Rezone of the subject Tract C parcel by removing its Master Planned Development Overlay District in order to leave its existing underlying Single-Family Residential (R-1) zoning in effect would satisfy the criteria and requirements for a Rezone set forth in YCC §19.36.030(4) as well as the consistency criteria set forth in YCC §16B.06.020.

### **RECOMMENDATION**

Based upon the findings and conclusions set forth above, the Hearing Examiner recommends that the Board of Yakima County Commissioners **APPROVE** this nonproject minor Rezone of Tract C of the Plat of Canyon View Estates, Parcel Number 181317-13446, so as to remove its Master Planned Development Overlay District and leave its underlying Single-Family Residential (R-1) zoning in effect for the reasons described in the Planning Division staff report, the testimony at the hearing, this Recommendation and the documents that are contained in the record of the Planning Division file number ZON2024-00002.

**DATED** this 12<sup>th</sup> day of July, 2024.

  
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Gary M. Cuillier, Hearing Examiner