

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

Regarding the Application to *Rezone* a 19+)
acre site from AG (Agriculture) to R-2S,)
which is consistent with Comprehensive)
Plan’s Medium Density Residential (MDR))
land use designation assigned to the area,)
submitted by)

ALEX RIETMANN, ON BEHALF THE)
PROPERTY OWNER **MD&D INVESTMENTS,**)
LLC,)

Applicant)
_____)

File No. Z2022-106

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

I. SUMMARY OF RECOMMENDATION.

The applicant, Alex Rietmann, on behalf the property owner, MD&D Investments, LLC, can meet its burden of proof to demonstrate that its requested rezone merits approval.

The site is now designated as suitable for Medium Density Residential land uses under applicable provisions of the City’s Comprehensive Plan but it is currently zoned AG (Agriculture), limiting development opportunities for the property and perpetuating a nonconformity between the City’s Comprehensive Plan and Zoning map. The pending application would rezone the site to one of two available Medium Density Residential zoning districts found in current City codes, specifically, the R-2S zone, a medium density residential zone as described in RMC 23.18.010(D).

This requested rezone does not approve any development activity on the site. As with all development proposals, City Development Regulations, including without limitation subdivision codes, will apply to any specific projects that may eventually be proposed on the site. The same applicant is pursuing a preliminary plat application for the rezone property, which is subject to a separate review and approval by the Hearing Examiner, under File No.

**FINDINGS OF FACT, CONCLUSIONS AND
RECOMMENDATION OF APPROVAL FOR PEACH
TREE ESTATES REZONE APPLICATION –
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RICHLAND, WASHINGTON 99352**

1 S2022-104. If this rezone is denied, the proposed plat would be null and void.

2 Because applicant's only vest to zoning and development regulations in effect at the
3 time of a complete application for a preliminary plat proposal, the applicant has assumed all
4 risk associated with pursuing approval of a plat that is dependent on the Council's legislative
5 discretion to approve or deny this requested rezone. This Recommendation should not be
6 read to create any expectation or assumption on the applicant's part that applicable law
7 mandates approval of their requested rezone. It does not. To the contrary, the City Council
8 holds full discretion and authority to reach its own decisions regarding site-specific rezones.
9 For example, in this matter, City codes include at least two zoning designations that are
10 considered Medium Density Residential, the requested R-2S zone, and the R-2 zone, which
11 was previously assigned to the Sienna Hills development site immediately south of the parcel
12 addressed in this Recommendation.

13 In any event, for reasons explained below, the Hearing Examiner respectfully
14 recommends that the City Council approve the applicant's pending request to rezone their
15 parcel from AG to the R-2S zoning district.

16 **II. BACKGROUND and APPLICABLE LAW.**

17 In this matter, the Hearing Examiner has jurisdiction to conduct an open record public
18 hearing on the site-specific rezone application at issue and is directed to issue a written
19 recommendation for consideration and final action by the Richland City Council. See
20 Richland Municipal Code (RMC) 19.20.010(D)(identifies "site-specific rezones" as Type
21 IIIA permit applications); RMC 23.70.210(A)("The hearing examiner shall conduct an open
22 record public hearing as required by RMC Title 19 for a Type IIIA permit application."); and
23 RMC 19.20.030(granting jurisdiction to Hearing Examiner to conduct public hearing and
24 issue recommendation to City Council); RMC 19.25.110(authority for Examiner actions,
25 including conditions of approval on applications or appeals); and RCW 35A.63.170(state
26 statute regarding hearing examiner system).

27 The applicant bears the burden of proof to show that its application conforms to the
28 relevant elements of the city's development regulations and comprehensive plan, and that
29 any significant adverse environmental impacts have been adequately addressed. RMC
30 19.60.060.

31 Finally, Washington Courts apply three basic rules when reviewing appeals of rezone
32 applications: (1) there is no presumption favoring the rezone request; (2) the proponent of a
33 rezone must demonstrate that there has been a change of circumstances since the original
34 zoning, PROVIDED if a proposed rezone implements the policies of a comprehensive plan,

1 a showing of changed circumstances is usually not required¹; and (3) the rezone must have a
2 substantial relationship to the public health, safety, morals, or general welfare. *Woods v.*
3 *Kittitas County*, 162 Wn.2d 597 (2007), citing *Citizens for Mount Vernon*, 133 Wn.2d 861,
4 at 875 (1997); *Parkridge v. City of Seattle*, 89 Wn.2d 454, 462 (1978).

5 III. QUESTIONS PRESENTED.

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

7 A. Whether the requested rezone implements applicable policies of the City's
8 Comprehensive Plan, and/or whether there has been a change of circumstances since the
9 current AG (Agriculture) zoning was adopted for the site?

10 *Short Answer:* Yes to both. The site is already designated for Medium Density
11 Residential uses in applicable provisions of City's Comprehensive Plan, specifically
12 those found in the Badger Mountain South Subarea Plan, which applies to properties
13 where the applicant's land is located. The rezone would effectuate that
14 Comprehensive Plan and eliminate a nonconformity that currently exists between
15 such Plan and city zoning maps. The requested R-2S zone is a Medium Density
16 Residential zone that allows for various residential uses not currently available in the
17 AG zone. The applicant is pursuing a separate application for a preliminary plat that
18 is designed under R-2S zoning standards, and residential development is occurring on
19 surrounding properties at a rapid pace, vividly showing a change of circumstances
20 that supports this requested rezone.

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

23 *Short Answer:* Yes, because the rezone is consistent with the City's Comprehensive
24 Plan, and any future, project-specific proposal will have to meet city development
25 regulations, including SEPA, subdivision codes, traffic impact reviews, public
26 infrastructure concurrency reviews, and payment of any impact fees in effect at the
time of an application. Vacant, undeveloped, Residential-designated property in an
area already served with newer transportation and utility infrastructure is not
consistent with state and local policies that encourage residential development in
designated urban growth areas, like those in the Richland City limits. The proposed
rezone is an effort to expedite development potential for the site, as shown in the
applicant's proposed residential subdivision for the property. The current AG zoning
designation applied to the site is no longer appropriate or in the public interest.

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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IV. RECORD.

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

Public notices regarding the application and public hearing were mailed, posted, and published as required by city codes prior to the public hearing, which occurred on March 25, 2023. (*Staff Report, page 10; Exhibit 5; Testimony of Mr. Howie*).

Hearing Testimony: Only Senior Planner, Matthew Howie, and the applicant’s project engineer, Jason Maddox, asked to present testimony under oath during the public hearing, held in person at Richland City Hall.

Exhibits: The Development Services Division Staff Report for the requested Rezone, including a recommendation of approval, was provided to the Examiner in the week before the hearing. The Staff Report, and the following Exhibits, were all accepted into the Record in their entirety without modification:

- 1. Rezone Application Materials
- 2. Zoning map
- 3. Badger Mountain South Subarea Plan, Land Use Map
- 4. Boundary Line Adjustment recently recorded showing modifications to applicant’s parcel boundaries to accomplish agreement with Richland School District on site where new school might be located, assigned Recording No. BLA2022-110.
- 5. Public Notices & Affidavits

The Examiner has visited the road network and vicinity of the proposed rezone on multiple occasions over the past few years in connection with other applications and conducted another site visit in the hours before the public hearing, and is fully advised on matters at issue herein, including without limitation adjacent developments and land uses, applicable law, application materials, and relevant comprehensive plan provisions.

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V. FINDINGS OF FACT.

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

Application, Site Location and Conditions.

1. In this application, the applicant and property owner, MD&D Investments, LLC, through its designated representative, Alex Rietmann, requests a rezone of a parcel of property from Agriculture (AG) to R-2S, a medium density residential classification. (*Ex. 1, Application materials*). The applicant refers to the property at issue in this rezone application as “Peach Tree Estates.”

2. Peach Tree Estates is a single 19.47-acre parcel, assigned Parcel No. 134982000005006, which is a small portion of the much larger Badger Mountain South Subarea, an almost 2,000-acre area located south and east of the Badger Mountain Centennial Preserve and north of Interstate 82. (*Badger Mountain Subarea Plan, Introduction on page 1*).

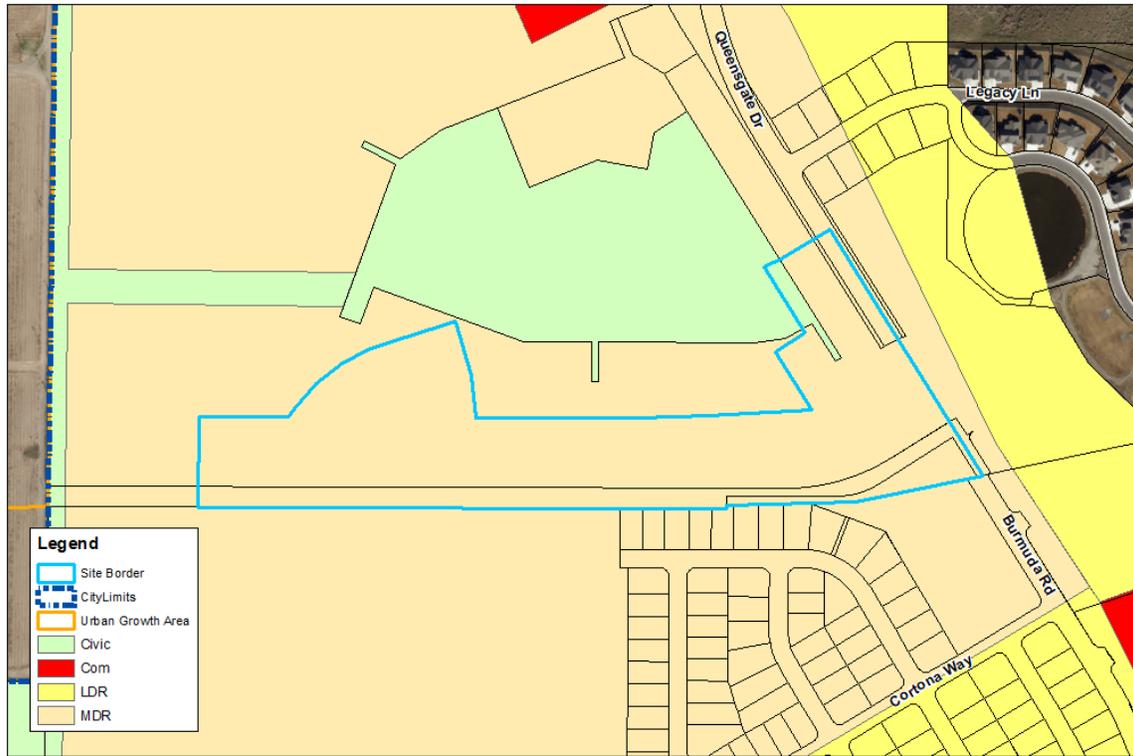
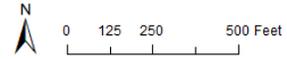
3. The Peach Tree Estates site, addressed in this matter, was part of an almost 1,900-acre annexation into the City of Richland that took effect in 2010, through passage of Ordinance No. 41-10, which assigned the (AG) Agriculture zoning designation to the entire northeast portion of the annexation area where Peach Tree Estates, and its neighboring Sienna Hills site, are located. (*See Ord. No. 41-10, Sec. 6, and Ex. B thereto, labeled “Zoning Designations for Annexation Area”*).

4. The Comprehensive Plan Land Use Map for the area is found in the Badger Mountain South Subarea Plan. The Staff Report includes an image, marked Figure 2, enlarged to show site borders for the Peach Tree Estates property outlined in blue, a copy of which is republished below on the following page:

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**BMS Land Use
Map**

Item: Peach Tree Estates
Applicant: Alex Rietmann
File #: S2022-105 & Z2022-106



5. The Peach Tree Estates parcel at issue in this matter is just west of Bermuda Road, immediately southeast of Badger Mountain. As shown above, the parcel has about 825-feet of frontage on its east side abutting Bermuda Road, with about 2,700 feet fronting the Siena Hills Phase 3 Plat, located immediate south. (*Staff Report, page 3*). The illustration provided above also shows property boundaries that do not align with those included in the City’s mapping system, and that is because the applicant recently recorded a boundary line adjustment (BLA) establishing the specific parcel boundaries used in this rezone application, assigned recording number BLA2022-110, included in the record as *Ex. 4*. The applicant’s boundary line adjustment followed discussions and agreements reached with the Richland School District, which will someday develop a new school on land north of this rezone site. (*Testimony of Applicant’s engineer, Mr. Maddox*).

6. The Staff Report (and testimony from Mr. Howie) credibly established that the map shown above designates virtually all of the applicant’s newly-drawn parcel for “MDR” land uses, i.e. medium density residential uses, and that the requested R-2S zone is one of the two medium density residential zones available under City codes.

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1 7. The applicant fully acknowledges that future development plans for additional lands
2 owned by the same entity will require Comprehensive Plan amendments and other possible
3 land actions, in order to bring school property boundaries into alignment with those reflected
4 in part of the recent boundary line adjustment. (*Testimony of Mr. Maddox*).

5 8. The Staff Report and this Recommendation puts the applicant/owner on notice that
6 the BMS Land Use Map, shown above, reflects a “Civic” designation, which is in place for
7 a future, proposed Richland School District elementary school location, just north of the
8 current rezone area, and that the applicant’s recently recorded boundary line modified the
9 original boundaries of the School District’s holdings to bring it in line with the owner’s
10 proposed preliminary plat request – but, such change is not yet reflected in City land use
11 maps, so, additional rezones, comprehensive plan amendments, and/or other land actions may
12 be required to bring the BMS Civic boundaries for this area into proper alignment with
13 residential zoned areas. (*Staff Report, page 5*).

14 9. The Washington Supreme Court has long held that, absent controlling language to the
15 contrary, it will generally resolve any conflict between a city's comprehensive plan and
16 specific zoning regulation in favor of the zoning regulation. *Citizens for Mount Vernon v.*
17 *City of Mount Vernon*, 133 Wn.2d 861, 873, 947 P.2d 1208 (1997). With the exception of
18 the small sliver of land currently shown in green, for “Civic” uses, the applicant’s requested
19 rezone is fully consistent with the City’s Comprehensive Plan language applicable to the
20 rezone area. Even with the small area of green being re-designated for the requested medium
21 density residential use, the school district and the applicant already reached agreement on
22 property line changes that served their respective interests and needs. There is adequate land
23 in the area to develop the elementary school, and this rezone will not prevent or make school
24 development more difficult, but should in fact, facilitate, its eventual development. The
25 school district did not submit any comments expressing opposition or concern about this
26 requested rezone.

10. The rezone site was previously used as an orchard, but agricultural uses of the
property have been discontinued for some time. The site is located in a part of the city that
is now experiencing steady development of new homes, helping to address the housing
shortage problems mentioned by Mr. Howie during his hearing presentation.

11. There is no dispute that the property at issue is currently designated for medium
density residential uses in applicable provisions of the City’s Comprehensive Plan,
specifically the BMS Subarea plan that applies to the applicant’s property. This application
would eliminate the site’s nonconformity with the City’s Comp. Plan, by replacing the current
AG zone with the R-2S zone. Thus, the requested rezone is consistent with and will
implement policies in the City’s Comp. Plan.

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12. Changed circumstances also support the requested rezone from the AG to R-2S zone. Since annexation in 2010, rapid residential development has occurred to the east and south of the rezone site. The current Agriculture zoning does not serve a useful purpose in this location.

13. The Examiner concurs with the opinion of staff and finds that the proposed R-2S zoning with its associated permitted residential land uses and types of housing, is compatible with the vicinity and that the site's proximity to a future new school, well-built roadways, utilities, and recreational amenities in the area, should make the property a highly desirable site for future homebuyers. (*Site visits*).

14. Through the public comment and hearing process, no one submitted any comments, evidence, or legal authority that would serve as a basis to seriously question or deny this requested rezone.

15. Because staff deemed the application to be consistent with the City's Comprehensive Plan, which already designates the rezone site as suitable for medium density residential land uses, 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 10; Official notice from record of previous rezone matters re: City SEPA process(es) undertaken when Comprehensive Plan, and BMS Subarea Plan, were adopted and amended*).

16. The record does not include any evidence that the requested R-2S zone could allow for any uses that would be incompatible with surrounding uses.

Summary of Public Hearing.

17. The public hearing for this matter occurred on March 23, 2023. Mr. Howie made a brief presentation regarding the application, current site conditions, development on surrounding sites, changes to the parcel reflected in the boundary line adjustment, and public benefits provided if the site can be used to provide more housing for local residents in the region. The applicant's hearing representative, Mr. Maddox, confirmed that he accepted the analysis and recommendation included in the Staff Report, and acknowledged that this rezone request is only for a smaller part of a much larger area owned by the applicant, and that the larger area not included as part of this rezone request may require Comprehensive Plan Amendments and public reviews before development is likely to occur. No members of the general public asked to speak during the hearing, in person, by phone or on a computer.

18. The Staff Report's analysis of this application stands un rebutted. The requested rezone is consistent with land use policy goals in the City's Comprehensive Plan. (*Staff Report, page 5*).

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1 ***Public services and utilities are adequate and readily available to serve the site.***

2 19. As part of the review process, City staff confirmed that, adequate utilities, including
3 without limitation water, sewer, stormwater, irrigation, natural gas, and electricity, are in
4 place and/or readily available, some with connections needed, but all with adequate capacity,
5 to serve the parcel that is at issue in this matter. (*Testimony of Mr. Howie; Staff Report, page*
6 *7, 8*).

7 ***Consistency with City Codes and Comprehensive Plan.***

8 20. As explained elsewhere in this Recommendation, the rezone site is already designated
9 as “MDR” i.e. medium density residential, in applicable parts of the City’s Comprehensive
10 Plan, and the request is to eliminate the AG classification for the site and replace it with one
11 of the City’s medium density residential zoning designations, specifically the R-2S zone. ,

12 21. Standing alone, the requested rezone conforms to the Comprehensive Plan, because
13 the plan already identifies the property as suitable for medium density residential uses. There
14 is nothing in this record to justify holding the property as an AG zoned site, as might be the
15 case where certain unique uses are needed in the immediate area in order to best serve the
16 public interest.

17 ***General findings.***

18 22. The requested rezone bears a substantial relationship to the public health, safety, and
19 general welfare. The requested rezone is appropriate in the context of adjacent properties.

20 23. The Development Services Division Staff Report, prepared by Mr. Howie, includes
21 a number of specific findings and explanations that establish how the underlying application
22 satisfies provisions of applicable law and is consistent with the city’s Comprehensive Plan
23 and zoning regulations. Except as modified in this Recommendation, all Findings contained
24 in the Staff Report are incorporated herein by reference as Findings of the undersigned-
25 hearing examiner.

26 24. 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.

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VI. CONCLUSIONS.

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

1. The applicant met its burden to demonstrate that the requested rezone conforms to, and in fact implements objectives of, the City’s Comprehensive Plan. *Findings; Staff Report.*

2. The applicant met its burden to demonstrate that the requested rezone bears a substantial relationship to the public health, safety, or welfare.

3. The Staff Report and testimony in the record demonstrate that the proposed rezone will not require new public facilities and that there is capacity within the transportation network, the utility system, and other public services, to accommodate all uses permitted in the R-2S zone requested herein.

4. The rezoned site will not be materially detrimental to uses or property in the immediate vicinity of the subject property. In fact, the rezone will help facilitate residential development on the property, thereby implementing City goals and policies, including without limitation those that seek to provide a variety of lifestyles and housing opportunities.

5. While the pending rezone application is categorically exempt from formal SEPA review, the record demonstrates that the potential for adverse impacts is very unlikely. And, after public notices issued for the application, no one spoke or submitted any written comments opposing the pending rezone request.

6. As required by RMC 19.50.010(C), the transportation system is sufficient to accommodate the type of development envisioned with the proposed rezone. The surrounding road network is fully functional, and no transportation concurrency problems are likely to arise as a result of the rezone for the site. Development regulations, including without limitation those detailing frontage improvements, limited access, roadway improvements, impact fees, setbacks, and the like, will apply to any future project built on the site.

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

8. Approval of this rezone will not and does not constitute, nor does it imply any expectation of, approval of any permit or subsequent reviews that may be required for development or other regulated activities on the site of the subject rezone.

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

3 **VII. RECOMMENDATION.**

4 Based upon the preceding Findings and Conclusions, the Hearing Examiner
5 recommends that the Peach Tree Estates application (File No. Z2022-106) to reclassify a
6 19.47-acre site from its current AG (Agriculture) zone to a Medium Density Residential
7 (MDR) land use designation, specifically the R-2S zoning district, which is consistent with
8 the Comprehensive Plan's MDR land use designation assigned to the area, should be
9 **APPROVED.**

10 ISSUED this 14th Day of April, 2023

11 

12 _____
13 Gary N. McLean
14 Hearing Examiner