

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

Regarding the Application to *Rezone* a 26+)
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. Z2024-101

**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 II REZONE APPLICATION –
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**GARY N. MCLEAN
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CITY HALL – 625 SWIFT BOULEVARD
RICHLAND, WASHINGTON 99352**

1 S2024-101. 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. A neighboring plat, known as Peach Tree Estates,
21 is owned by the same applicant, was approved last year with the same zoning applied
22 to the site, and is now under development.

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

25 *Short Answer:* Yes, because the rezone is consistent with the City's Comprehensive
26 Plan, and any future, project-specific proposal will have to meet city development
regulations, including SEPA, subdivision codes, traffic impact reviews, public
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

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).

1 applicant's proposed residential subdivision for the property. The current AG zoning
2 designation applied to the site is no longer appropriate or in the public interest.

3 **IV. RECORD.**

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

7 Public notices regarding the application and public hearing were mailed, posted, and
8 published as required by city codes prior to the public hearing, which occurred on April 8,
9 2024. *(Staff Report, page 13; Exhibit 5, noticing materials; Testimony of Mr. Stevens).*

10 **Hearing Testimony:** Only Planning Manager, Mike Stevens, asked to present
11 testimony under oath during the public hearing, held in person at Richland City Hall. There
12 were no applicant representatives present through the course of the public hearing, and Staff
13 indicated they did not know of a reason why they failed to appear at the hearing. Failure to
14 appear for an open record public hearing is sometimes grounds to deny a pending application.
15 However, in this instance, the Examiner finds and concludes that the application materials,
16 Staff Report, and lack of any opposition to the requested rezone following public notices
17 inviting comments, are reasons to move this matter forward for review and consideration by
18 the City Council.

19 **Exhibits:** The Development Services Division Staff Report for the requested Rezone,
20 including a recommendation of approval, was provided to the Examiner before the hearing,
21 although it was not posted on the city's website for public access and review until several
22 days before the public hearing. The Staff Report, and the following Exhibits, were all
23 accepted into the Record in their entirety without modification:

- 24 1. Application Materials for requested rezone
- 25 2. Zone Map
- 26 3. BMS Land Use Map
- 1 4. BLA2022-110, Recorded
- 2 5. Public Notices & Affidavits
- 3 6. Ordinance added to the record during public hearing, completing relevant subarea
4 plan amendments and map modifications

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

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1 **V. FINDINGS OF FACT.**

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

4 ***Application, Site Location and Conditions.***

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

9 2. Peach Tree Estates II is about a 26.3-acre site, located on portions of tax parcels
10 134982010595005 and 134982000005007. The purpose of this requested rezone is to enable
11 residential development to proceed in a manner consistent with the overlying Badger
12 Mountain South Subarea Plan Medium Density Residential (MDR) land use classification
that applies to the site. The adjoining property to the east, known as Peach Tree Estates, was
rezoned and subdivided under separate application processes completed last year.

13 3. The subject site was previously disturbed as it was part of a large apple orchard. The
14 site is gently sloped from north to south. The surrounding area is transitioning from
agricultural uses to single-family residential.

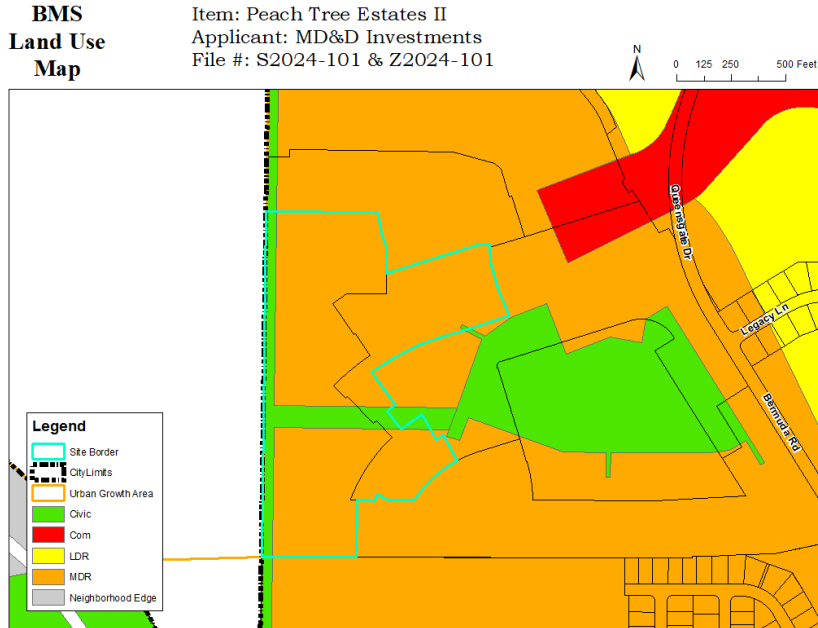
15 4. The Badger Mountain South Subarea Plan designates this parcel as Medium Density
16 Residential [MDR], which could allow for 5.1 -10 dwellings per acre. The current
17 Agricultural (AG) zone does not implement the BMS MDR land use designation. Per RMC
18 23.18.010, the R-2S Medium-Density Residential Small Lot zoning is intended to be applied
19 to land that is designated MDR (5.1-10 dwellings per acre) under the City’s Comprehensive
20 Plan, such as BMS MDR. No portion of this proposed rezone is in the Shoreline Management
Program’s jurisdiction. No portion of this proposed rezone is in a Critical Aquifer Recharge
Area (CARA). No other critical areas are in the vicinity of the rezone site to merit
consideration.

21 5. The Peach Tree Estates II site, addressed in this matter, was part of an almost 1,900-
22 acre annexation into the City of Richland that took effect in 2010, through passage of
23 Ordinance No. 41-10, which assigned the (AG) Agriculture zoning designation to the entire
24 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”).

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6. 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 II property outlined in blue, a copy of which is republished below on the following page:



7. The Peach Tree Estates II property at issue in this matter is west of Bermuda Road, immediately southeast of Badger Mountain. As one might imagine, this Peach Tree Estates II site is just west of the recently approved Peach Tree Estates Preliminary Plat, approved in 2023, and not undergoing site development just west of Bermuda Road and north of the Siena Hills Phase 3 Plat, located immediate south. (*Site visits*).

8. The Staff Report and testimony from Mr. Stevens credibly established that the map shown above designates virtually all of the applicant’s property 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.

9. 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 Staff in recent hearing presentations.

10. 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

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1 would eliminate the site's nonconformity with the City's Comp. Plan, by replacing the current
2 AG zone with the R-2S zone. Thus, the requested rezone is consistent with and will
implement policies in the City's Comp. Plan.

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

6 12. The Examiner concurs with the opinion of staff and finds that the proposed R-2S
7 zoning with its associated permitted residential land uses and types of housing, is compatible
8 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)*.

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

11 14. Because staff deemed the application to be consistent with the City's Comprehensive
12 Plan, which already designates the rezone site as suitable for medium density residential land
13 uses, and the City's plan was analyzed in an environmental impact statement at the time of
14 its adoption, the pending application is categorically exempt from SEPA review as provided
15 in WAC 197-11-800(6)(c). *(Staff Report; 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 15. The record does not include any evidence that the requested R-2S zone could allow
17 for any uses that would be incompatible with surrounding uses.

18 ***Summary of Public Hearing.***

19 16. The public hearing for this matter occurred on April 8, 2024. Mr. Stevens made a
20 brief presentation regarding the application, current site conditions, development on
21 surrounding sites, recent changes to the BMS Subarea Plan, and how the trail amenity through
the rezoned property will likely meander instead of following a straight line shown in some
planning documents.

22 17. As noted above, no one appeared during the public hearing on behalf of the applicant.
23 Accordingly, the applicant waived its opportunity to question or modify the analysis and
24 recommendation included in the Staff Report.

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1 18. No members of the general public asked to speak during the hearing, in person, by
2 phone or on a computer.

3 19. The Staff Report's analysis of this application stands un rebutted. The requested
4 rezone is consistent with land use policy goals in the City's Comprehensive Plan. (*Staff
5 Report, all findings and analysis regarding consistency with the BMS Subarea Plan, a part
6 of the City's Comp. Plan*).

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

8 20. As part of the review process, City staff confirmed that, adequate utilities, including
9 without limitation water, sewer, stormwater, irrigation, natural gas, and electricity, are in
10 place and/or readily available, some with connections needed, but all with adequate capacity,
11 to serve the parcel that is at issue in this matter. (*Staff Report, page 7*).

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

13 21. As explained elsewhere in this Recommendation, the rezone site is already designated
14 as "MDR" i.e. medium density residential, in applicable parts of the City's Comprehensive
15 Plan, and the request is to eliminate the AG classification for the site and replace it with one
16 of the City's medium density residential zoning designations, specifically the R-2S zone.

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

22 ***General findings.***

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

25 24. The Development Services Division Staff Report, prepared by City Planner, Kyle
26 Hendricks, and summarized at the hearing by Planning Manager, Mike Stevens, includes a
number of specific findings and explanations that establish how the underlying application
satisfies provisions of applicable law and is consistent with the city's Comprehensive Plan
and zoning regulations. Except as modified in this Recommendation, all Findings contained
in the Staff Report are incorporated herein by reference as Findings of the undersigned-
hearing examiner.

1 25. Any factual matters set forth in the foregoing or following sections of this
2 Recommendation are hereby adopted by the Hearing Examiner as findings of fact and
incorporated into this section as such.

3 VI. CONCLUSIONS.

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

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

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

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

12 4. The rezoned site will not be materially detrimental to uses or property in the
13 immediate vicinity of the subject property. In fact, the rezone will help facilitate residential
14 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.

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

18 6. As required by RMC 19.50.010(C), the transportation system is sufficient to
19 accommodate the type of development envisioned with the proposed rezone. The
20 surrounding road network is fully functional, and no transportation concurrency problems are
21 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.

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

24 8. Approval of this rezone will not and does not constitute, nor does it imply any

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1 expectation of, approval of any permit or subsequent reviews that may be required for
2 development or other regulated activities on the site of the subject rezone.

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

5 **VII. RECOMMENDATION.**

6 Based upon the preceding Findings and Conclusions, the Hearing Examiner
7 recommends that the Peach Tree Estates II application (File No. Z2024-101) to reclassify a
8 26+acre site from its current AG (Agriculture) zone to a Medium Density Residential (MDR)
9 land use designation, specifically the R-2S zoning district, which is consistent with the
10 Comprehensive Plan's MDR land use designation assigned to the area, should be
11 **APPROVED.**

12 ISSUED this 3rd Day of May, 2024

13 

14 _____
15 Gary N. McLean
16 Hearing Examiner