

MEMORANDUM

To: Mayor, Chris Grover

cc: City Administrator, Mark Schuller
Michael J. Kapan, WK Attorney

From: Stanley M. Schwartz

Date: February 4, 2022

Re: Consideration of Residential Use in Business Park (Industrial Zone)

BACKGROUND

The City Plan Commission has forwarded to the City Council a recommendation regarding residential uses within the business park zone ("**BP Zone**"). Currently, the BP Zone allows limited residential development for a "caretaker's quarters" or persons who engagement in 'home occupations.'"

DISCUSSION

At present, general residential development is not allowed in the business park area. The role of the business park is to "make sure a full range of job opportunities are available through the City." The BP Zone's development standards are created "to minimize the potential adverse impacts of industrial activities on established residential areas." CMC 21.36.010.

Existing development standards in the business park contain requirements for the I-L zone. Specifically, a buffer consisting of fencing or landscaping is deemed sufficient to screen between the I-L zone and adjoining residential lots. The code also has a number of specific requirements for development within the business park zone, such as: pedestrian connections (CMC 21.36.050(b)) and landscaping along property lines that abut residential property (CMC 21.36.050A(9)(d)). The landscaping requirements are more hardy than the I-L zone, for example there must be at least a 10-foot-wide buffer planted with mature evergreen shrubs to create a site obscuring screen.

MODIFICATION OF ZONING

By law, the City is required to adopt a Comprehensive Plan ("**CP**") which supports the zoning code. In this instance, the CP should be reviewed to determine if it supports multi-family development within the business park. If the CP does not address multi-family development in the BP Zone, a comprehensive plan amendment should be evaluated based upon the criteria in CMC 21.01.100.

In the absence of policy in the CP, or other precedent, the issue of "spot zoning" surfaces. According to the Washington Practice Real Estate treatise "spot zoning is a function of two independent variables, size of area and degree of inconsistency with surrounding area; it is the cumulative effect of both variables." 17 Wash. Prac., Real Estate § 4.18. Spot zoning case law contains numerous examples. For example, a Washington Court identified spot zoning as the industrial rezoning for aluminum smelter of land which is primarily zoned for rural residential purposes. Another example is two city lots in the middle of a residential area being rezoned for commercial development. One of the key elements for the spot zoning analysis is that it is not in accord with the comprehensive plan. *Save Our Rural Environmental v. Snohomish County*, 99 Wn. 2d 363 (1983).

In this instance it is important to recognize that an area adjacent to the Business Park is presently zoned for residential uses. It is reasonable to have between an industrial use and a residential area that includes more dense residential development that transitions to less dense residential development. Most arguments related to spot zoning complain that the use of the rezoned property is not in furtherance of public health, safety or welfare (by siting incompatible uses) or a discriminatory benefit is granted to an applicant who gets land rezoned for more intensive (and valuable use) to the detriment of others.

CONCLUSION

To advance this matter, the Comprehensive Plan must be reviewed to see whether it supports a mixed use or residential development within the business park (or similar area). Clearly, the Business Park versus the Industrial Zone has significantly more requirements related to aesthetics, buffering, and a less intense use of property than would be expected on industrial land. Those requirements are helpful and would provide support for less intense uses adjacent to or in the BP Zone. Ultimately, the transition between the industrial use and residential uses should be studied and mitigated to avoid incompatible development or spot zoning.

Note I have not reviewed Plan Commission records or documents that relate to the potential for residential use within the BP Zone, thus some of the conclusions in this memorandum may change.

[End of Memo]