

JUN 08 2020

BEFORE the HEARING EXAMINER for the  
CITY of SAMMAMISH

CITY OF SAMMAMISH

DECISION <sup>1</sup>

FILE NUMBER: ZONR2019-00061

APPLICANTS: Frank & Maureen Santoni  
2957 224<sup>th</sup> Place SE  
Sammamish, WA 98075

TYPE OF CASE: Zone reclassification from TC-E to TC-B

STAFF RECOMMENDATION: Approve

EXAMINER DECISION: GRANT

DATE OF DECISION: June 8, 2020

INTRODUCTION <sup>2</sup>

Frank & Maureen Santoni (“Santoni” <sup>3</sup>) seek zone reclassification of a 2.39 acre site, owned by Santoni, from Town Center - Reserve (“TC-E”) to Town Center – Mixed Residential (“TC-B”).

Santoni refiled a Zone Reclassification Application on January 29, 2020. <sup>4</sup> (Exhibit 7 <sup>5</sup>) The Sammamish Department of Community Development (“Department”) deemed the application complete when filed. <sup>6</sup> (Exhibit 8) The Department issued a Notice of Application on February 13, 2020. (Exhibits 9; 10)

<sup>1</sup> This written Decision memorializes and expands upon an oral Decision rendered on the record after completion of the open record predecision hearing on June 5, 2020.

<sup>2</sup> Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.  
<sup>3</sup> To simplify references, the Santonis will be referred to herein in the singular; no disrespect is intended to either of the Santonis.

<sup>4</sup> Santoni had initially filed a Zone Reclassification application along with a Comprehensive Plan Amendment application on March 4, 2019. (Exhibit 11, PDF p. 5) Thus the 2019 file number.

<sup>5</sup> 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. 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. Exhibits were made available to the Examiner electronically as PDF documents. Page number citations herein use the PDF document page number without regard to original document page numbering.

<sup>6</sup> A “Letter of Complete Application” was issued on February 4, 2020. (Exhibit 8) Nothing in the letter suggests that additional materials were submitted after January 29<sup>th</sup>. Therefore, the Examiner concludes that the application was complete when filed on January 29<sup>th</sup> and that the Department documented that fact through the February 4<sup>th</sup> letter. (See also Exhibit 1, PDF p. 1, “Key Dates section.”)

The subject property is located at 22828 SE 6<sup>th</sup> Place, Sammamish. Its Assessor's Parcel Number is 124110-0042 ("Parcel 0042"). (Exhibits 1; 12)

The Sammamish Hearing Examiner ("Examiner") viewed the subject property on May 23, 2020.

The Examiner held a remote open record hearing on June 5, 2020. The Department gave notice of the hearing as required by the Sammamish Municipal Code ("SMC"). (Exhibit 19)

Subsection 20.05.100(1) SMC requires that decisions on zone reclassifications be issued within 120 net review days after the application is found to be complete. The open record hearing was held on or about net review day 116. (Testimony)

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

Exhibits 1 - 19: As enumerated in Exhibit 1, the Departmental Staff Report

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. On January 21, 2020, the City Council adopted Ordinance No. O2020-497 which became effective on January 29, 2020. Ordinance No. O2020-497, *inter alia*, amended the Comprehensive Plan's Future Land Use Map designation of Parcel 0042 from TC-E to TC-B contingent on approval by the Examiner of a zone reclassification of Parcel 0042 from TC-E to TC-B. (Exhibit 5, PDF p. 4, § 1)
2. The lengthy history of the Future Land Use Map change of Parcel 0042 is ably and thoroughly explained in Exhibits 1 (PDF pp. 2 & 3) and 11 (PDF pp. 2 – 5). Repetition of that history is unnecessary.
3. Parcel 0042 fronts on the east side of 228<sup>th</sup> Avenue SE. Parcel 0042 is bordered on its north by a parcel zoned TC-A (Mixed-Use) containing a 75-unit condominium development, on its east by undeveloped land zoned TC-B, and on its south by land zoned TC-E containing a small residence and a large church complex. (Exhibit 1, PDF p. 1, Fig. 1)
4. Sammamish's State Environmental Policy Act ("SEPA") Responsible Official issued a threshold Determination of Nonsignificance ("DNS") for the Santoni zone reclassification on May 5, 2020. (Exhibit 14) The DNS was not appealed. (Testimony)

5. No testimony or evidence was entered into the record by the general public either in support of or in opposition to the application.
6. Santoni submitted an analysis of zone reclassification criteria compliance. (Exhibit 15) The Department also performed a similar analysis which concludes that the requested zone reclassification complies with all applicable criteria for approval. The Department recommends approval. (Exhibit 1)
7. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

### **LEGAL FRAMEWORK <sup>7</sup>**

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

#### Authority

A zone reclassification “consistent with the interim comprehensive plan” is a Type 3 land use application which “may be considered by the examiner at any time.” [SMC 20.05.020, Exhibit A, Footnote 4] A Type 3 land use application requires an open record hearing before the Examiner. The Examiner makes a final decision on the application which is subject to the right of reconsideration and appeal to Superior Court. [SMC 20.05.020, 20.10.240, 20.10.250, and 20.10.260]

The Examiner’s decision may be to grant or deny the application or appeal, or the examiner may grant the application or appeal with such conditions, modifications, and restrictions as the Examiner finds necessary to make the application or appeal compatible with the environment and carry out applicable state laws and regulations, including Chapter 43.21C RCW and the regulations, policies, objectives, and goals of the interim comprehensive plan or neighborhood plans, the development code, the subdivision code, and other official laws, policies and objectives of the City of Sammamish.

[SMC 20.10.070(2)]

#### Review Criteria

“A zone reclassification shall be granted only if the applicant demonstrates that the proposal complies with the criteria for approval specified in SMC 20.10.200 and 20.10.210 and is consistent with the comprehensive plan.” [SMC 21A.110.060] The criteria for approval specified in SMC 20.10.200 are:

When the examiner renders a decision . . . , he or she shall make and enter findings of fact and conclusions from the record that support the decision, said findings and conclusions shall set forth and demonstrate the manner in which the decision . . . is consistent with, carries out, and

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

helps implement applicable state laws and regulations and the regulations, policies, objectives, and goals of the interim comprehensive plan, the development code, and other official laws, policies, and objectives of the City of Sammamish, and that the recommendation or decision will not be unreasonably incompatible with or detrimental to affected properties and the general public.

The criteria for approval specified in SMC 20.10.210 are:

When the examiner issues a decision regarding an application for a reclassification of property or for a shoreline environment redesignation, the decision shall include additional findings that support the conclusion that at least one of the following circumstances applies:

- (1) The property is potentially zoned for the reclassification being requested and conditions have been met that indicate the reclassification is appropriate; or
- (2) The adopted interim comprehensive plan or zoning specifies that the property shall be subsequently considered through an individual reclassification application; or
- (3) The applicant has demonstrated with substantial evidence that:
  - (a) Since the last previous area zoning of the subject property, authorized public improvements, permitted private development or other conditions or circumstances affecting the subject property have undergone substantial and material change not anticipated or contemplated in the plan or zoning;
  - (b) The impacts from the changed conditions or circumstances affect the subject property in a manner and to a degree different than other properties in the vicinity such that area rezoning is not appropriate; and
  - (c) The requested reclassification is required in the public interest.

#### Vested Rights

Sammamish has enacted a vested rights provision.

Applications for Type 1, 2, 3 and 4 land use decisions, except those that seek variance from or exception to land use regulations and substantive and procedural SEPA decisions shall be considered under the zoning and other land use control ordinances in effect on the date a complete application is filed meeting all the requirements of this chapter. The department's issuance of a notice of complete application as provided in this chapter, or the failure of the department to provide such a notice as provided in this chapter, shall cause an application to be conclusively deemed to be vested as provided herein.

[SMC 20.05.070(1)] Therefore, this application is vested to the development regulations as they existed on January 29, 2020.

#### Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof. [City of Sammamish Hearing Examiner Rule of Procedure 316(a)]

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.

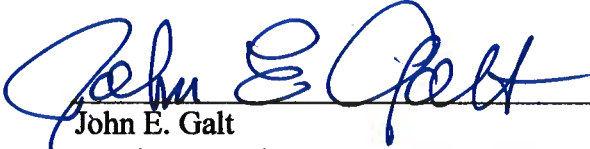
**CONCLUSIONS OF LAW**

1. The requested zone reclassification is consistent with the City's current comprehensive plan. This application is therefore properly within the Examiner's jurisdiction.
2. There can be no question whatsoever that the requested zone reclassification complies with the adopted Comprehensive Plan: The City Council amended the Future Land Use Map this past January to designate Parcel 0042 TC-B, the precise zone which Santoni now asks the Examiner to approve. The Santoni application complies with SMC 20.10.200.
3. A zone reclassification need comply with only one subsection of SMC 20.10.210 in order to comply with SMC 20.10.210. The Santoni application complies with SMC 20.10.210(2): Ordinance No. O2020-497 "specifies that the property shall be subsequently considered through an individual reclassification application" to fulfill the contingency of the Future Land Use Map designation change of Parcel 0042 from TC-E to TC-B. The Santoni zone reclassification request fulfills the stated contingency and thus complies with SMC 20.10.210.
4. 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, and the testimony and evidence submitted at the open record hearing, the Examiner **GRANTS** zone reclassification of Parcel 124110-0042, the legal description of which is found in Exhibit 12, from TC-E to TC-B.

Decision issued June 8, 2020.

  
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John E. Galt  
Hearing Examiner

**HEARING PARTICIPANTS <sup>8</sup>**

Frank Santoni  
Andrew Johnson

Maureen Santoni

**NOTICE of RIGHT of RECONSIDERATION**

This Decision is final subject to the right of any party of record to file with the Examiner (in care of the City of Sammamish, ATTN: Lita Hachey, 801 228<sup>th</sup> Avenue SE, Sammamish, WA 98075) a written request for reconsideration within 10 calendar days following the issuance of this Decision in accordance with the procedures of SMC 20.10.260 and Hearing Examiner Rule of Procedure 504. Any request for reconsideration shall specify the error which forms the basis of the request. See SMC 20.10.260 and Hearing Examiner Rule of Procedure 504 for additional information and requirements regarding reconsideration.

A request for reconsideration is not a prerequisite to judicial review of this Decision. [SMC 20.10.260(3)]

**NOTICE of RIGHT of JUDICIAL REVIEW**

This Decision is final and conclusive subject to the right of review in Superior Court in accordance with the procedures of Chapter 36.70C RCW, the Land Use Petition Act. See Chapter 36.70C RCW and SMC 20.10.250 for additional information and requirements regarding judicial review.

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."

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<sup>8</sup> The official Parties of Record register is maintained by the City's Hearing Clerk.