

Notice to Parties of Record

Project Name: Pioneer Industrial Rezone

Case Number: OLR-2020-00059

The attached decision of the Land Use Hearing Examiner is final unless a motion for reconsideration is filed or an appeal is filed with Superior Court.

See the *Appeals* handout for more information and fees.

Motion for Reconsideration:

Any party of record to the proceeding before the hearings examiner may file with the responsible official a motion for reconsideration of an examiner's decision within fourteen (14) calendar days of written notice of the decision. A **party of record** includes the applicant and those individuals who signed the sign-in sheet or presented oral testimony at the public hearing, and/or submitted written testimony prior to or at the Public Hearing on this matter.

The motion must be accompanied by the applicable fee and identify the specific authority within the Clark County Code or other applicable laws, and/or specific evidence, in support of reconsideration. A motion may be granted for any one of the following causes that materially affects the rights of the moving party:

- a. Procedural irregularity or error, clarification, or scrivener's error, for which no fee will be charged;
- b. Newly discovered evidence, which the moving party could not with reasonable diligence have timely discovered and produced for consideration by the examiners;
- c. The decision is not supported by substantial evidence in the record; or,
- d. The decision is contrary to law.

Any party of record may file a written response to the motion if filed within fourteen (14) calendar days of filing a motion for reconsideration.

The examiner will issue a decision on the motion for reconsideration within twenty-eight (28) calendar days of filing the motion for reconsideration.

Mailed on: March 12, 2021

DS1333

Revised 7/15/13



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contact the Clark County
ADA Compliance Office.
Phone: (360)397-2322
Relay: 711 or (800) 833-6384
E-mail: ADA@clark.wa.gov

**BEFORE THE LAND USE HEARING EXAMINER
OF CLARK COUNTY, WASHINGTON**

Regarding an application by Pioneer) **FINAL ORDER**
Industrial, LLC to rezone a 2.69-acre parcel)
located at 7511 NE 101st Street from IL to IR) **OLR-2020-00059**
in unincorporated Clark County, Washington) **(Pioneer Industrial Rezone Remand)**

A. SUMMARY

1. Pioneer Industrial, LLC (the “applicant”) requests approval of a zone change from IL (Light Industrial) to IR (Railroad Industrial) for a roughly 2.69-acre parcel located at 7511 NE 101st Street; also known as tax assessor parcel 119480-000 (the “site”). The site is improved with an existing residence, which will be removed pursuant to demolition permit DEM-2019-00247. The site is located at the east end of NE 101st Street, sharing a property boundary with the Chelatchie Prairie Railroad along its southeasterly property line.

2. The site is located in an industrial area, with newer industrial development to the north and existing industrial uses to the south and east. County GIS systems identify wetlands in the northeast corner of the site, but no priority habitat or species areas, slope stability issues or geological hazards. The site is served by Fire District #5, the Clark Regional Wastewater District for public sewer, the City of Vancouver for potable water service.

3. The site and all surrounding properties are designated “Industrial” on the County's Comprehensive Plan and currently zoned IL. The existing IL zoning and the proposed IR zoning are both consistent with the Industrial comprehensive plan designation. If the rezone is approved the site can be developed with certain additional uses allowed in the IR zone, in addition to many of the light industrial uses permitted in the existing IL zone.

4. The County issued a Determination of Nonsignificance ("DNS") for the application pursuant to the State Environmental Policy Act ("SEPA"). Hearing Examiner Joe Turner (the "examiner") conducted a public hearing regarding the application on June 25, 2020, and issued a decision denying the application on August 6, 2020. (Exhibit 29).

5. The applicant appealed the examiner’s denial pursuant to the Land Use Petition Act (LUPA) and CCC 40.510.030.I. Following the appeal, the applicant and Clark County entered into a settlement agreement requiring that the applicant record a restrictive covenant limiting the uses that would be allowed on the site under the IR zoning; establishing special review criteria and requiring a Conditional Use Permit under Type II-A processing standards for those certain uses (Exhibits 32 & 33). The Court remanded the case to the examiner for further proceedings consistent with the parties settlement agreement. The applicant recorded the covenant on February 2, 2021. The covenant provides that it shall become effective if the examiner approves the rezone request on remand.

6. County staff recommended that the examiner approve the remanded application based on the findings in Exhibit 36. The applicant's representative accepted the County's findings. No one else testified orally or in writing other than public agency staff.

7. Based on the findings provided or incorporated herein, the examiner finds that the applicant demonstrated that the zone change complies with all of the applicable zone change approval criteria. Therefore, the examiner approves the proposed rezone request.

B. HEARING AND RECORD HIGHLIGHTS

1. The examiner received testimony at the online public hearing about the remanded application on February 25, 2021. That testimony and evidence, including a video recording of the public hearing and the casefile maintained by the Department of Community Development ("DCD"), are included herein as exhibits, and they are filed at DCD. The following is a summary by the examiner of selected testimony and evidence offered at the hearing.

2. County planner Amy Wooten summarized the history of the case and her February 10, 2021 Memorandum (Exhibit 36). She noted that the applicant and the County entered into an agreement and the applicant recorded a covenant to limit the types of uses allowed on the site in order to reduce potential adverse impacts on adjacent properties. She argued that the protections in the covenant better implement the comprehensive plan.

3. Attorney LeAnne Bremer testified on behalf of the applicant, Pioneer Industrial, LLC. She noted that the examiner's August 6, 2020 Final Order found that the application complies with three of the four approval criteria for a zone change. She requested the examiner reaffirm the prior affirmative findings and find that the application, as modified by the covenant, complies with the remaining approval criterion. The proposed zone change, as limited by the covenant, better implements the comprehensive plan, because the zone change allows uses that can be better served by rail access while the covenant restricts certain allowed uses that could impact surrounding properties.

4. At the end of the hearing the examiner held the record open for three weeks, subject to the following schedule:¹

a. For two weeks, until March 11, 2021, to allow anyone to submit written testimony and evidence; and

b. For a third week, until March 18, 2021, to allow the applicant an opportunity to respond to anything submitted during the first two weeks of the open record period.

¹ The purpose of the open record period was to ensure that any interested parties who were unable to participate in the hearing due to technical issues with the online hearing format had the opportunity to submit written testimony and evidence.

5. The applicant submitted a Memorandum on March 9, 2021 (Exhibit 41). No other testimony or evidence was submitted during the first open record period. Therefore, the examiner closed the record in this case at 5:00 p.m. on March 11, 2021.

C. DISCUSSION

Only issues and approval criteria raised in the course of the application, during the hearing or before the close of the record are discussed in this section. All approval criteria not raised by staff, the applicant, or a party to the proceeding have been waived as contested issues, and no argument with regard to these issues can be raised in any subsequent appeal. The examiner finds those criteria to be met, even though they are not specifically addressed in these findings. The following issues relate to the mandatory applicable approval criteria for this proposal and were addressed by County staff in their reports, by agency comments, and by the applicant. The examiner adopts the following findings with regard to each:

Finding 1 – Approval Criteria

The applicant requests approval to change the subject site’s existing zoning from IL (light industrial) to IR (railroad industrial). Both zones are included in the I (Industrial) comprehensive plan designation; therefore, a Type III Map Amendment (rezone) is required.

In accordance with Section 40.560.020.F, zone changes may be approved only when all of the following criteria are met:

1. Requested zone change is consistent with the comprehensive plan map designation.

Applicant statement: The applicant asserts that both the existing IL and the proposed IR zones implement the site’s Industrial comprehensive plan designation. The IR zone is intended to provide for those industrial uses that are most suited for and can take advantage of locations along the County’s rail line. As the site is located and abutting the County’s rail line, the request is fully consistent with the comprehensive map designation.

The examiner concurs with the applicant’s statement and finds that the application complies with CCC 40.560.020(F)(1). This criterion is met.

2. The requested zone change is consistent with the plan policies and locational criteria and the purpose statement of the zoning district.

The applicant cites to the following relevant plan policies:

Policy 5.4.5: Improve mobility and access for the movement of goods and services on the short line railroad to enhance and promote economic opportunity throughout the county.

Policy 9.6.2: Develop compatible land uses that promote the long-term economic viability of the county railroad.

The applicant further states that the request is fully consistent with the locational criteria as there are few properties located along the rail line that could support development served by rail as contemplated by the comprehensive plan.

CCC 40.230.085.B.1.c provides the following purpose statement for the IR zone:

Railroad Industrial District (IR). The railroad industrial district is intended to provide for those industrial uses that are most suited for and can take advantage of locations along the county's rail line.

The examiner finds that the proposed IR zone is consistent with the plan policies and locational criteria and the purpose statement of the zoning district. The site abuts the railroad, allowing future uses on the site to utilize the railroad for transportation. Development on this site that utilizes the railroad will implement plan policies 5.4.5 and 9.6.2, by allowing the site to develop with a variety of industrial uses that could utilize the railroad for transporting goods and materials to and from the site. Therefore, the examiner finds that the application complies with CCC 40.560.020(F)(2).

In the initial proceeding for this application, staff argued that the application does not comply with CCC 40.560.020(F)(2), because some uses in the IR zone may be incompatible with residential uses and zoning on properties east of the site. Pursuant to the remand agreement with the County, the applicant recorded a covenant that limits the types of uses allowed on the site, eliminating staff's concerns. In addition, as discussed in the August 6, 2020 Final Order, the examiner finds that compatibility is not relevant to this approval criteria or any of the applicable plan policies. As used in Policy 9.6.2 the term "compatible" refers to compatibility with the railroad. It does not require compatibility with other surrounding uses.

The examiner finds that this criterion is met.

3. The zone change either:
 - a. Responds to a substantial change in conditions applicable to the area within which the subject property lies;
 - b. Better implements applicable comprehensive plan policies than the current map designation; or
 - c. Corrects an obvious mapping error.

The examiner finds that the proposed IR zoning will better implement applicable comprehensive plan policies than the current IL zoning, specifically Policies 5.4.5 and 9.6.2. Rail transportation (482) and support activities for rail transportation (4882) are

permitted in the existing IL zone. However, the proposed IR zone will expand the range of uses allowed on the site, allowing more uses that involve the use and/or processing of bulk materials that can be efficiently transported by rail. Permitting more potential rail supported uses increases the likelihood that uses on the site will utilize the railroad abutting the site, thereby promoting the long-term economic viability of the county railroad.

The proposed zone change will prohibit certain uses that are allowed in the current IL zone. However, with the possible exception of “building material and supplies dealers” and “scenic and sightseeing transportation,” the majority of such uses are less likely to utilize the adjacent rail line compared to the additional uses that are allowed in the IR zone but prohibited in the IL zone.

The examiner finds that this criterion is met.

4. There are adequate public facilities and services to serve the requested zone change.

Applicant statement: The applicant indicates that the site can be served by public water and sewer and an adequate transportation system, including the adjacent rail line, is provided to serve uses permitted by the railroad industrial zone, which meets this criterion.

The examiner finds that adequate public facilities and services are available to serve the requested zone change. There is no evidence that uses allowed in the IR zone require any additional public facilities and services beyond those that are currently available to serve uses permitted in the existing IH zone. This criterion is met.

Conclusion (Land Use)

The examiner concludes that the applicant demonstrated that the proposed zone change complies with all of the applicable approval criteria in CCC 40.560.020(F).

Transportation Concurrency

Finding 1 - Applicability

Concurrency staff has reviewed the Pioneer Industrial Rezone Remand request application. The applicant is proposing to rezone the site from Light Industrial to Railroad Industrial. Because the proposed rezoning of the property is not proposing a site-specific development, the rezone itself is not anticipated to exceed ten peak hour trips. Therefore, Concurrency has no further comments. A future site-specific development application will require reevaluation of transportation impacts on the surrounding road network and may require a traffic study.

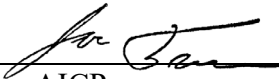
Conclusion (Concurrency)

The examiner concludes that the proposed rezone meets transportation concurrency requirements of the Clark County Code.

D. CONCLUSION AND DECISION

Based on the above findings, discussion, and conclusions provided or incorporated herein and the public record in this case, the examiner hereby approves OLR-2020-00059 (Pioneer Industrial Rezone Remand) for IR zoning.

DATED this 12th day of March, 2021.



Joe Turner, AICP
Clark County Hearing Examiner

Role	Company Name	Name	Address 1	Address 2	City	State	Zip Code	Email Address
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Utility Contact								
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POR		Daran Wilson						daran228@yahoo.com



EXHIBIT LIST

Project Name:	PIONEER INDUSTRIAL REZONE
Case Number:	OLR-2020-00059

EXHIBIT NUMBER	DATE	SUBMITTED BY	DESCRIPTION
1	3/23/20	Applicant	Application Package
2	4/14/20	CC Land Use	Fully Complete
3	5/19/20	CC Land Use	Notice of Type III Application
4	5/19/20	CC Land Use	Affidavit of Mailing - Exhibit 4
5	6/3/20	CC Land Use	Comment letter from Ecology
6	6/5/20	CC Land Use	Concurrency comments
7	6/5/20	CC Land Use	Fire comments
8	no date	CC Land Use	map
9	6/10/20	CC Land Use	Email_Jessig
10	6/12/20	Applicant	Sign Posting Affidavit
11	no date	CC Land Use	Abridged Table 40.230.085-1
12	6/23/20	CC Land Use	Staff Report and Recommendation
13	6/23/20	CC Land Use	Affidavit of Mailing - Exhibit 12
14	6/25/20	Applicant	Railroad Industrial - Urban Reserve Map
15	6/25/20	Applicant	Railroad Industrial - Urban Reserve Aerial
16	6/25/20	Applicant	County Aerial Photo
17	6/25/20	CC Land Use	PCL_ETemple
18	6/26/20	CC Land Use	Email_ETemple
19	6/30/20	CC Land Use	Hearing Transcript
20	7/1/20	CC Land Use	Email_AQayoumi
21	7/2/20	Applicant	Applicant Memo to HE and attachments
22	7/2/20	CC Land Use	Memo to the HE
23	7/9/20	CC Land Use	PCL_TDeWitt
24	7/9/20	Applicant	MillerNash Rebuttal
25	7/9/20	CC Land Use	Response to Exhibit 21
26	7/16/20	CC Land Use	PCL_ETemple
27	7/23/20	Applicant	Final Rebuttal
28	7/28/20	CC Land Use	Affidavit of Publication - The Columbian
29	8/6/20	CC Land Use	Hearing Examiner Decision
30	8/6/20	CC Land Use	Affidavit - Exhibit 29

Copies of these exhibits can be viewed at:
 Department of Community Development
 Development Services Division
 1300 Franklin Street
 Vancouver, WA 98666-9810

EXHIBIT NUMBER	DATE	SUBMITTED BY	DESCRIPTION
31	10/26/20	CC Land Use	Hearing Presentation 2020-06-25
32	1/15/21	CC Land Use	Settlement Agreement
33	2/2/21	CC Land Use	Covenants, recorded
34	2/4/21	CC Land Use	Notice of Type III Remand
35	2/4/21	CC Land Use	Affidavit of Mailing - Exhibit 34
36	2/10/21	CC Land Use	Memo to the HE
37	2/10/21	CC Land Use	Affidavit of Mailing - Exhibit 36
38	2/24/21	Applicant	PVJR Decision
39	2/25/21	CC Land Use	Hearing Transcript
40	2/25/21	CC Land Use	Hearing Presentation 2021-02-25
41	3/9/21	Applicant	Final Rebuttal
42	3/12/21	CC Land Use	Hearing Examiner Decision
43	3/12/21	CC Land Use	Affidavit of Mailing - Exhibit 42

Copies of these exhibits can be viewed at:
Department of Community Development
Development Services Division
1300 Franklin Street
Vancouver, WA 98666-9810