

BEFORE THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU

RICHARD HARRIS,

Appellant,

v.

CBJ PLANNING COMMISSION,

Appellee,

Appeal of:

AME2013 0006

An Request for a zone change from D-10 –
LC at 9050 Atlin Drive or 2600 Mendenhall
Loop Road

APPELLANT’S REPLY BRIEF

The issue in this case is whether substantial evidence supports the Planning Commission’s failure to find that light commercial zoning is in substantial conformance with the Comprehensive Plan’s designation of Medium Density Residential (MDR).

The question is not what zoning district most closely matches the Comprehensive Plan’s MDR designation. Thus, the Planning Commission’s discussions of the uses authorized in various zoning districts in comparison to Comp Plan designations are simply immaterial. It may be that other zoning districts substantially conform to the MDR designation, but again that is immaterial to the question here at issue. Rather, what the Assembly must determine in this case is if light commercial zoning substantially conforms to the MDR designation. Because MDR provides for multifamily residential and commercial uses consistent with such a residential neighborhood, and the light commercial zone provides for commercial use adjacent to residential areas, there is substantial conformance between the MDR and the light commercial zone.

The Planning Commission in its Appellee’s Brief does not dispute Appellants’ position set forth at page 2 of Appellant’s Brief that determinative of “substantial conformance” is whether the uses allowed in the proposed rezone district, are in the main, essentially the uses authorized by the Comprehensive Plan maps.

1. DENSITY DOES NOT DEFEAT SUBSTANTIAL CONFORMANCE

That the MDR calls for 5-20 residential units per acre, while light commercial, with the recent Assembly action, provides for up to 30 residential units per acre, does not mean that light commercial does not substantially conform to the MDR designation. Simply put, 30 units is not sufficiently in excess of 20 to defeat light commercial

substantially conforming to MDR provides for multifamily residential uses. In comparison to other zones which allow for unlimited residential density and up 50 or 80 units per acre, 30 versus 20 units is substantial conformance. Further, to focus only on density ignores the critical component of both the Comprehensive Plan MDR designation and light commercial zoning, that multifamily residential is to be adjacent to light commercial uses.

The 2008 Comprehensive plan describes MDR as follows:

These lands are characterized by urban residential lands for multi-family dwelling units at densities ranging from 5 to 20 units per acre. Any commercial development should be of a scale consistent with a *residential neighborhood*. (Emphasis added)

Critical to the substantial conformance analysis is that the MDR neighborhood is intended for multifamily

The CBJ Land Use Code 49.25.230 (a) describes Light Commercial as follows:

The LC, light commercial district, is intended to accommodate commercial development that is less intensive than that permitted in the general commercial district. Light commercial districts are primarily located adjacent to existing residential areas. Although many of the uses allowed in this district are also allowed in the GC, general commercial district, they are listed as conditional uses in this district and therefore require commission review to determine compatibility with surrounding land uses. A lower level of intensity of development is also achieved by stringent height and setback restrictions.

As can be seen from the description of the light commercial zone, the commercial usage it envisions is to be tailored to the surrounding uses, the same as MDR requiring commercial usage be of a scale consistent with a multifamily neighborhood. Because the light commercial zone provides many of its commercial uses are conditional uses, that some uses listed in the light commercial zone are not consistent with a residential neighborhood does not defeat substantial conformance, because the Planning Commission in granting a conditional use for a light commercial zone must determine the use is compatible with surrounding residential uses.

2. THE COMPREHENSIVE PLAN SUPPORTS THE REZONE

The Comprehensive Plan Supports Light Commercial Zoning of 9050 Atlin Drive. What the staff report supplied to the Planning Commission and the Appellee's Brief both

fail to do is to cite any provision of the Comprehensive Plan which definitively states that light commercial zoning is not in substantial conformance with the MDR designation. That failure establishes that the Comprehensive Plan does not support finding that substantial evidence supports the Planning Commission's finding that light commercial is not in substantial conformance with the MDR designation.

The staff report, pages P6, P7 and P8 identifies many of the policies, guidelines, standard operating procedures, and general discussion that relate to this rezone request. So does Appellant's Brief. None of the cited provisions conclusively establish that light commercial is not in substantial conformance with the MDR designation.

Guideline one cited by the staff report was missing a few key descriptive words and is a bit misleading. "Affordable housing" only comes with higher densities.

Guideline 1: Maintain the density of existing neighborhoods while encouraging in-fill development of low- to moderate-income affordable housing.

Guideline 7 is relevant because it further supports the need for and describes an obvious problem in Juneau, encroachment of nonindustrial uses into industrial zones due to a lack of enough commercially zoned land. The reason commercial is encroaching onto industrial lands, is that there is not enough commercial land.

Guideline 7: Seek new industrial zoning districts to compensate for the encroachment of existing industrial districts by retail, office and other non-industrial commercial uses. Designate the industrial districts that have visual connection from and vehicular access to major thoroughfares and that have already been encroached upon by retail and office uses as heavy commercial/light industrial districts within which industry may remain and nonindustrial commercial uses can expand. In other industrial districts, prohibit retail, office, residential and other non-industrial or non-Public uses.

Guideline 8 strongly encourages the requested rezone because it encourages mixed uses which is what light commercial and the MDR envision. The type of development described in Guideline 8 cannot be done in D-10 zoning.

Guideline 8. Expand the Mixed Use District in the Mendenhall Mall vicinity that would incorporate general commercial uses, high density residential use and public transit services. Make the most efficient use of parking by incorporating housing over a garage with retail shops wrapping around the ground floor. Student or senior housing within the Mall or over the garage should not be required to provide parking spaces.

Guideline 9 encourages the mixed uses envisioned by light commercial zoning and the MDR designation.

Guidline 9. Consider the transportation improvements for this subarea discussed in Chapter 8 of this Comprehensive Plan (see below) and provide for pedestrian and bicycle access to schools, parks and shopping areas. The CBJ Area Wide Transportation Plan identifies ten priority improvements for the Mendenhall Valley/Nugget Mall and Airport area, none of which have been included in the 2006 to 2008 State Transportation Improvement Plan (STIP) funding. As such, local support for improved capacity of the transportation system will be needed to accommodate new development. Such new development should focus on medium-to-high density residential, commercial and employment centers that can be largely serviced by public transit. A Transit Oriented Corridor with transfer stations at the Malls and/or the Airport should be able to accommodate this new, compact in-fill development.

Comprehensive plan Chapter 8 -Transportation

The Mendenhall Valley and Auke Bay

For the past three decades, the Mendenhall Valley has been the most rapidly growing suburban area in the CBJ. Many of the un-signalized intersections serving this area are now heavily congested, reflecting levels of Service (LOS) D, E and F that indicate noticeable (LOS D) to irritating (LOS E) to unacceptable (LOS F) delays for motorists seeking to enter those intersections. This congestion affects both public transit and the single-occupancy-vehicle (SOV). Until these traffic conditions are improved to LOS C or better, further development on parcels served by these intersections should be limited to small, in-fill homes or developments whose occupants would primarily use public transit, or developments whose occupants would travel primarily during off-peak periods. **Elsewhere within the Mendenhall Valley, future development should be characterized as medium-to-high density residential, mixed use or commercial developments when contained within transit corridors, defined as lands within a quarter mile of bus routes** with headways of no more than one-half-hour during the peak travel periods. Additionally, the Mendenhall Valley intersections that experience LOS E and F should be improved to facilitate transit service therein: This could include bus pull-out lanes, travel lanes exclusive to transit and high-occupancy-vehicles (HOVs) during peak morning and evening traffic periods, or other improvements. Pedestrian pathways are incomplete in much of the Mendenhall Valley area and need to be connected. Emphasis added.

When viewed as a whole, the standards, policies, and guidelines of the Comprehensive

Plan support the rezone. The thrust of the Plan is for commercial development at the intersection of Loop Road and Atlin Drive adjacent to the commercial development in the Mendenhall Mall area.

The Comprehensive Plan seeks to: 1.) Provide for more commercial mixed use property 2.) Increase densities to allow for more affordable housing, 3.) Direct commercial and high density residential growth to areas along major roads and intersections, and in the area of the lower east Mendenhall valley near the Mendenhall mall 4.) Provide adequate lands for economic development. 5.) Provide for the highest and best use of land through the zone change process. This rezone request meets those requirements.

3. DEVELOPMENT OF THE LOWER MENDENHALL VALLEY AND THE ATLIN NEIGHBORHOOD SUPPORT LIGHT COMMERCIAL ZONING

The Appellee's Brief does not dispute the actual facts on the ground. The Brief acknowledges the mixed use development. Appellant's Brief acknowledges that the Commission failed to consider the 69.43 acre parcel as part of the neighborhood. Acknowledging the mixed use development and the failure to consider the large vacant parcel, are grounds for reversing the Commission's refusal to grant the rezone.

The existing mixed use development supports the rezone since the neighborhood is not and has not been exclusively residential. That the vacant parcel was not considered means that the Commission failed to consider the entirety of the neighborhood so substantial evidence does not support the Commission's refusal to rezone. The development of that parcel will impact the entire neighborhood, yet the Commission ignored it. The large vacant parcel establishes that the neighborhood is not built out and fully developed. There is just as much if not more undeveloped as developed land.

The Comprehensive Plan, according to Appellee's Brief is to reflect future land use. If that is so, then the future development of the vacant lot cannot be ignored.

The Comprehensive Plan itself gives guidance on rezoning requests. The staff at the Planning Commission meeting, quoted the following section of the Comprehensive Plan (T. 7-8).

In considering re-zoning requests, the Planning Commission and Assembly should aim to promote the highest and best use of the land under consideration: in some cases, the highest and best use may be increased density or more intensive use of the land; in other cases, the highest and best use may be preservation in an undisturbed state for purposes of habitat preservation, flood control, or providing a buffer between development and areas subject to natural hazards.

The highest and best use here is light commercial which substantially conforms to the MDR designation of multifamily and residential uses adjacent to each other. Lesser zoning designations are not the highest and best use of this property which sits at the corner of one of the busiest intersections in the Borough, and catty corner to the Mendenhall Mall commercial area.

4. COMMENTS OF THE PLANNING COMMISSIONERS DO NOT SUPPORT DENIAL OF LIGHT COMMERCIAL ZONING

The comments of the Planning Commissioner's discussed in the Appellee's Brief do not support denial of the light commercial rezone request. None of the Commissioner's in their comments even mention substantial conformance, yet that is the critical test for granting the rezone.

Commissioner Bishop's discussion of density, fails to discuss what constitutes substantial conformance with respect to density. As pointed out above, a difference of 20 versus 30 units substantially conforms in comparison to unlimited density or 50 or 80 units allowed in other districts.

Commissioners Bishop, Medina and Satre in their discussion of commercial uses in the light commercial zone, totally failed to discuss the fact that Title 49 significantly limits the intensity of commercial development thru conditional use permits and height and setback requirements. Failing to recognize those limitations makes meaningless the Commissioners discussion of commercial uses mixed with residential uses in the zone. As spelled out above we know that L.C. is consistent with a residential neighborhood, and is generally adjacent to residential. We also know that the Commission has control through the conditional use permit process

Commissioner Grewe's comments that the Plan was on the side of the neighborhood, lacks support in the Plan. See the discussion above and in Appellant's Brief of the support for commercial development in the lower Mendenhall Valley and in particular at the Atlin/Loop Road intersection.

Commissioner Satre claimed there was a hardline along Loop Road between commercial and residential, but nothing in the Plan or Land Use Plan provides for such a hard line. Appellee's Brief cites to no authority for such a hard line. Contrary to Commissioner Satre's comments, failing to provide for mixed residential and commercial uses such as in the light commercial zone, only exacerbates conflicts between commercial and residential uses since the actual physical land area for either is limited if there is no mixed use.

Utilizing a major road as a hard boundary not only lacks authorization in the Plan

and Land Use Code, but the Commission has not followed that logic in another situation. At the most recent zone change meeting in Auke Bay that was not the case (Auke Bay post office re-zone request (AME 2013-0009). The Auke Bay applicant sought zoning on the opposite side of Glacier Hwy. to be extended over one parcel and across the highway to the applicant's property. Staff was questioned on whether the highway is considered any type of boundary or hard line between uses and or zonings. Staff answered "No", it is not considered a boundary, and that planners view these situations as the centerline of the road being the line between zoning making the two parcels contiguous.

Mr. Satre indicated there are many commercial uses that would have far less impact on the neighborhood than residential development, but again it is his own fear of the unknown which caused his vote to deny the rezone is based. Mr. Satre's reasoning fails to account for the fact that the conditional use process places control of the commercial development in the hands of the Commission, along with stringent height and setback restrictions as stated above CBJ Land Use Code 49.25.230 (a) Light Commercial.

5. CONCLUSION

The rezone sought here, light commercial, substantially conforms to the Comprehensive Plan because the residential and commercial uses in the light commercial zone (as limited by the conditional use process and height and set back restrictions) are the uses contemplated in the MDR designation, the MDR designation providing for commercial uses consistent with multifamily residential use.

Dated this __16th__ day of December, 2013.

By: Richard Harris
Appellant

CERTIFICATION

I HEREBY CERTIFY that on December 16th 2013, a true and correct copy of the foregoing was emailed to:

Laurie Sica
City Clerk
Laurie_sica@ci.juneau.ak.us

Richard Harris

DUPLICATE - SIGNATURE PAGE

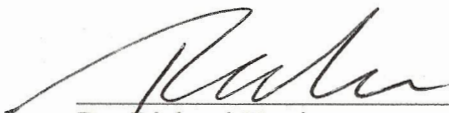
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