

**8441**

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE sustaining the appeal of Dr. Beth Jackson, et. al, and deny the proposed reclassification of certain property from SR 9600 to B-N upon the application of JAMES L. GATSOS/ARCO, designated Building and Land Development File No. 217-87-R.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. This ordinance adopts and incorporates by reference the findings, conclusions and decision in Attachment A concerning the application for a rezone from SR 9600 of 1.5 acres on the southwest quadrant of S.E. 208th Street and 132nd Avenue S.E., designated by the building and land development division, department of planning and community development file no. 217-87-R. Based upon errors of fact and errors of judgment made by the hearing examiner, the examiner's recommendation is reversed, the applicant's request for a rezone from SR 9600 to B-N is denied, and the appeal of Dr. Beth Jackson, et al is sustained.

INTRODUCED AND READ for the first time this 4<sup>th</sup> day  
of May, 1987.  
PASSED this 14<sup>th</sup> day of March, 1988.

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

Gary Grant  
Chair

ATTEST:

Janet M. Owens  
Clerk of the Council

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ATTACHMENT APROPOSED SUBSTITUTE ORDINANCE NO. 87-343FINDINGS, CONCLUSIONS AND DECISION

Having reviewed the entire record in this matter including the report of the hearing examiner dated June 26, 1987, and having heard oral presentations by the proponents and opponents of the proposal, and having questioned the hearing examiner regarding his recommendation, the King County Council now makes and enters the following:

FINDINGS

1. The applicant owns 1.5 acres of property on the southwest corner of S.E. 208th Street and 132nd Avenue S.E. It is currently classified SR 9600 (single-family residential, 9600 square foot minimum lot size) and the applicant seeks a reclassification to B-N (neighborhood business) in order to develop a gasoline station and mini-market as generally described in attachment 1 to the building and land development division staff report dated June 11, 1987, and in exhibits 15, 16 and 17. The area is in School District No. 415, Fire District No. 37, with sewage disposal provided by the Cascade Water District and Water Supply no. 58.
2. On April 28, 1987 the building and land development division issued a mitigated declaration of non-significance (MDNS). Therefore, an environmental impact statement was not required.
3. The examiner erred in finding a significant change of circumstances based on the population growth of the Soos Creek Plateau "outstripping" the predictions and assumptions of the Soos Creek Community Plan ("SCCP").  
Finding No. 5; Conclusion No. 1.
  - a. The SCCP predicted average annual growth rates of 3.3 to 4.5 percent for 1980 through 1990. Population growth rates have been from 2.2 percent to 4.5 percent per year.
  - b. The SCCP projects that the fully developed population density of the Soos Creek Plateau will reach 420,000. This population goal has not yet been reached and therefore the projections of the plan cannot have "outstripped" growth rates.

4. The examiner erred in interpreting the SCCP and the minutes of the King County Council to encourage commercial development at the proponent's site. Findings 6A through 6D; Conclusion No. 2.
  - a. The SCCP employs permissive language regarding the future possibility of a retail business at one of the quadrants of S.E. 208th Street and 132nd Avenue S.E. which proponents of the rezone mistakenly relied upon to establish a mandatory retail use at the southwest quadrant.
  - b. The SCCP designates existing business zones, proposed business zones and other possible business locations. The proponent's site is not within any of these designated businesses.
  - c. The SCCP states that there is more than enough commercial and business zoning available through "existing" and "proposed" zones to serve the area through 1990 assuming a population expansion of up to 420,000. Since the Soos Creek Plateau's population is not yet at that level, it is an error to further expand the designated business zones.
  - d. The examiner erred in relying on the existence of "loop roads" to advance the theory that a neighborhood center should be permitted specifically in the southwest quadrant of S.E. 208th Street and 132nd Avenue S.E. "Loop roads" were proposed when commercial zoning was anticipated for this location. A commercial zone was never designated and no loop roads were ever constructed.
5. The examiner erred in finding that the proposed development would be consistent with the SCCP and the King County Comprehensive Plan ("KCCP") policies regarding the location of neighborhood centers. Findings 7; 8C; 8I; Conclusion 3.
  - a. Neighborhood centers should be within a one to three mile radius of each other. The nearest commercial center to this site is at S.E. 308th Street and Benson Highway which is 1.5 miles to the west. Within three miles of this intersection there are already twelve convenience stores, seven 24-hour grocery stores and 15 service stations, with three new grocery stores under construction.

- b. The proponents of the rezone erroneously used population numbers based on the Panther Lake study to assess the market area. Panther Lake has a higher density population which is not entirely in the market range of this intersection. It was an error in judgment for the examiner to disregard the impact of the existing businesses on the available market population.
- c. The proponent's theory that business centers occur with a certain regularity along 132nd Avenue S.E. and 108th Avenue S.E. and that this site should be developed since it is the only "missing" corner logically results in "strip retailing" which is not supported by any community plan. See Exhibit 13 (Commercial Nodes).
- d. A neighborhood center is not consistent with the rural nature of the area stretching to the west of the proponent's property. This area is primarily comprised of single family residences on one to five acre parcels.

The examiner erred in judgment by characterizing this concern as mere "social impact" (Finding 8C) since the SCCP recognizes that the rural and semi-rural character of portions of the plateau are prized.

- e. It is unclear from the record whether the heaviest concentration of traffic at this intersection is in a north to south or east to west direction. However, the examiner erred in finding that most projected trips associated with the mini-market would be "diverted". Finding 8G. The proponents of the rezone stated in the hearing that only 50 percent of the projected trips are, by industry standards, to be considered "diverted".
- 6. The examiner erred in judgment in not considering at all the effect of the proposed mini-market on the schools which were obviously within its projected market area and the general public. Findings 8A; 8B; Conclusion 7.
  - 7. The examiner erred in considering proposed street improvements for 1990 as a basis for the rezone. Currently, the site does not have the services required for zoning of this nature. Finding 4. The lack of safe walkways to the site is a major traffic/pedestrian safety issue which remains unresolved.

Based on the foregoing Findings of Fact, the council hereby makes and enters the following:

CONCLUSIONS

1. Any changes in circumstances affecting the subject property which may have occurred since the adoption of the Soos Creek Community Plan or area zoning were either anticipated by the community plan or area zoning or are not sufficiently substantial or material to justify reclassification of the subject property from SR 9600 to B-N.
2. Major traffic/pedestrian issues which remain unresolved emphasize the fact that a zoning change at this site, at best, would be premature.
3. The Soos Creek Community Plan does not direct or require that a new neighborhood center be established at this intersection or the southwest quadrant of this intersection. The permissive language used in the plan does not compel approval of this request. Finally, no presumption of validity favoring such a rezone exists.
4. Numerous errors in fact and judgment exist in the findings and conclusions advanced by the hearing examiner which warrants reversal of his recommendation in accordance with KCC 20.24.220B.

DECISION

The appeal of Dr. Beth Jackson, et al. is sustained, the hearing examiner's recommendation reversed, and the applicant's request denied.