

BEFORE THE CITY OF OLYMPIA HEARINGS EXAMINER

IN RE:)	HEARING NO. 15-0130
)	
BRANBAR REZONE,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
)	DECISION AND RECOMMENDATION
Applicant.)	TO CITY COUNCIL

APPLICANT: BranBar, LLC
P. O. Box 7157
Covington, Washington 98042

REPRESENTATIVES:

Brandon Anderson
BranBar, LLC
P. O. Box 7157
Covington, Washington 98042

SUMMARY OF REQUEST: Rezoning of the "BranBar" Property from Residential 1 Unit per 5 Acres (R1/5) to Residential Low Impact (RLI).

PROJECT LOCATION:

The BranBar Property consists of approximately five acres at the west terminus (the 4,000 Block) of Crestwood Place NW, Parcel No. 12808110200.

SUMMARY OF DECISION:

The Hearing Examiner recommends to the City Council:

1. That the BranBar Property be rezoned to RLI.
2. That any further development of the BranBar Property rely on primary access from an extension of Road 65th NW.

DESCRIPTION OF SITE

The BranBar Property, owned by BranBar, LLC, consists of one tax parcel located on approximately five acres immediately west of the "Crestwood" Subdivision. The site is currently forested and undeveloped. There are no internal roads. Currently the only road access to the site is via Cooper Crest Drive NW/Crestwood Place NW, but the City's future planning maps

1 propose a northerly extension of Road 65th NW to the site and beyond. The project site is
2 located at the northwest corner of the City and its north and west boundaries serve as City limits.
3 Properties to the east and south are within the City and are zoned RLI. Properties to the north
4 and west are outside the City, are within Thurston County, and are zoned R1/5. The project site
5 and surrounding properties are hilly and include drainages for Green Cove Creek.

6 The subject property was annexed into the City as the "Harper Annexation" on November 3,
7 2006, along with another parcel slightly to the north and east referred to as the "Sunberg
8 Annexation". At the time of their annexation both properties had a zoning designation of R1/5,
9 which is generally regarded as a rural zoning designation. The property's current zoning
10 designation allows only one residence on the site. The proposed change in zoning would allow
11 up to four units per acre, or approximately ten to twenty units assuming all other development
12 and environmental requirements are met.

13 PUBLIC HEARING

14 Prior to the public hearing I undertook a site examination consisting of a lengthy walk
15 through the adjoining Crestwood and Cooper Crest neighborhoods, followed by a drive through
16 these neighborhoods as well as nearby neighborhoods along 20th Avenue NW and Road 65th
17 NW.

18 The public hearing commenced at 6:30 p.m. on Monday, July 25, 2016, in the Council
19 Chambers in City Hall. The hearing adjourned at approximately 10:30 p.m. The City appeared
20 through Nicole Floyd of the Planning Department and David Smith of Traffic Engineering.
21 Ownership of BranBar, LLC appeared through Brandon Anderson. A large number of residents
22 were present and most provided testimony. A verbatim recording was made of the public
23 hearing and all testimony was taken under oath. In advance of the hearing, Michelle Sadlier of
24 Planning Staff prepared a Staff Report including attachments 1-13 (collectively "Exhibit 1").¹
25 An additional nine exhibits were received prior to or during the hearing. A full list of the
exhibits presented before and during the hearing is attached.

City Staff Presentation. Nicole Floyd testified briefly in support of the City's position
but relief largely on the Staff Report earlier prepared by Michelle Sadlier. Ms. Floyd confirmed
that City Staff recommends approval of a change in the site's zoning designation to RLI. Ms.
Floyd stated that the change would satisfy the requirements of OMC 18.59.050(a)-(e) for rezone
approval. More specifically, Ms. Floyd stated that the change in zoning designation would be
consistent with the Comprehensive Plan; would maintain public health, safety or welfare; is
consistent with Development Regulations; would result in compatible adjacent zoning districts
and that there are adequate planned or existing public facilities and services.

¹ The author of the Staff Report, Michelle Sadlier, was unable to be present during the public hearing and Nicole
Floyd appeared in her place.

1 Ms. Floyd confirmed that the primary effect of the change would be to increase
2 residential density on this property from the current one residence to a maximum of four
3 residential units per acre, or ten to twenty total residential units. For purposes of this rezoning
analysis City Staff has assumed the maximum number of possible new residential units, or
twenty units.

4 Ms. Floyd confirmed that there has been a great deal of public opposition to the rezone
5 request, most of it coming from the adjoining Cooper Crest and Crestwood neighborhoods
6 (collectively referred to as the "Cooper Crest Neighborhood"). City Staff received a petition
7 opposing the rezone signed by more than one hundred and fifty residents of Cooper Crest. More
8 than thirty of these residents appeared at the public information meeting on this rezone held
9 December 10, 2015, and reiterated their opposition. Many of these individuals also provided
10 written comment in opposition to the SEPA Determination of Nonsignificance ("DNS") issued
June 22, 2016, although none of the nearby landowners appealed the DNS. City Staff recognizes
that the adjoining neighborhood is greatly concerned about traffic impacts. It responds that such
concerns will be fully addressed if/when development is proposed, and that this issue should not
get in the way of proper zoning.

11 Ms. Floyd concluded by noting that the R1/5 zone is a holdover of the site's earlier
12 zoning in the County, and that this zoning designation is generally not considered appropriate for
13 property located within City limits. By comparison, the RLI zone would increase the site's
14 intensity of development but at the lowest level of intensity possible, thus assuring
15 environmental protection and compatibility with surrounding neighborhoods. Ms. Floyd adds
that the property is located within the Green Cove Creek Basin and is regulated by the Green
Cove Creek Basin Drainage Plan. The rezone of this property to RLI will allow for it to be
developed to urban standards but in a less dense, more protected fashion consistent this Plan.

16 **Applicant's Presentation.** Following Ms. Floyd's testimony Brandon Anderson of
17 BranBar, LLC spoke briefly in support of the application. His testimony was also presented in
18 written form (Exhibit 2). In response to the five requirements for rezoning found in OMC
18.59.050, Mr. Anderson responds as follows:

19 a. Consistency with Comprehensive Plan. Mr. Anderson agrees with both
20 City Staff and the Planning Commission that the rezone is consistent with the City's new
Comprehensive Plan for the reasons set forth in the Staff Report.

21 b. Maintenance of Public Health, Safety or Welfare. Mr. Anderson asserts
22 that the separate Traffic Impact Analyses undertaken by both his company and the City
23 confirm that traffic impacts will not endanger the public, and that there is existing
24 capacity for sewer, water, solid waste and emergency services. He adds that the City's
25 future traffic improvement plans recognize additional public streets serving this site in the
future.

1 c. Consistency with Development Regulations. Mr. Anderson concurs with
2 City Staff that development will be consistent with existing Development Regulations for
the reasons noted in the Staff Report.

3 d. Compatible Adjacent Zoning Districts. If rezoned the property will have
4 the same zoning designation as all surrounding City property.

5 e. Adequacy of Planned or Existing Public Facilities and Services. Mr.
6 Anderson again notes that there is existing capacity for sewer, water, solid waste and
7 emergency services to the site. In addition, the site is served by Fire Station No. 2 and
the fire marshal has not expressed any concerns with providing services to the site.

8 Mr. Anderson concludes that all of the requirements of OMC 18.59.050 have been met
and joins City Staff in recommending rezoning to RLI.

9 **Public Participation.** As earlier noted, in advance of the public hearing there was
10 significant public participation in the form of a petition signed by more than one hundred fifty
11 residents of Cooper Crest opposing the rezone; by participation of more than thirty residents of
Cooper Crest in a December public meeting on the proposed rezone; and a significant response
12 to the SEPA DNS. Many of these same individuals appeared at the public hearing to again voice
their opposition to the requested rezone.

13 Fourteen individuals testified during the public hearing, including eleven residents of the
Cooper Crest Neighborhood. As discussed more fully below, one witness expressed general
14 concerns about additional development in the Cooper Point area, while the remaining thirteen
witnesses expressed opposition to the rezone. There was no public testimony supportive of the
15 rezone. The following is a brief summary of the public testimony:

16 Dave Burdick. Mr. Burdick resides nearby on County Club Loop and appeared on behalf
17 of the County Club Estate Water Association. Mr. Burdick did not testify in opposition to the
rezoning but merely wished to express his Association's concern about more increased
18 development throughout this area and its potential impact on the many private water systems in
the Cooper Point area.

19 Jamie Glasgow. Mr. Glasgow is affiliated with "Wild Fish Conservancy". Mr. Glasgow
20 testified regarding his concerns over future development in the Green Cove Basin and its impacts
upon the Green Cove Creek environment. He explained how two endangered species, the Puget
21 Sound Steelhead and the Olympic Mud Minnow, are found in the Green Cove Creek Drainage,
and that continued development within the Drainage is likely to have a negative impact upon
22 both species. Mr. Glasgow argues that the proposed rezone may be consistent with the "letter" of
the Green Cove Creek Drainage Plan, but that it is not consistent with its intent. He concludes
23 that by denying the requested rezone there will be no intensive development of the site and,
24 therefore, no significant impacts to the Green Cove Basin.

1 Lisa Riener. Ms. Riener appeared on behalf of the nearby Burbank/Elliot Neighborhood
2 Association. She testified that the Burbank/Elliot Neighborhood Association stands with the
3 Cooper Crest Neighborhood in opposing the requested rezone. Ms. Riener argues that the rezone
4 would constitute "spot zoning"; that the site has significant stormwater and other environmental
5 issues which preclude its development; and that the requested rezone's impact upon traffic in the
6 20th Avenue areas has not been sufficiently enough studied.

7 Cooper Crest Residents. All of the remaining witnesses reside in or very near the Cooper
8 Crest Neighborhood. Although each provided a somewhat difference perspective, they
9 collectively offered a common position opposing the rezone due to its anticipated negative
10 impact upon the Cooper Crest Neighborhood. In addition to these witnesses, several more
11 residents of the Cooper Crest Neighborhood submitted written letters before or during the
12 hearing. The points identified in these letters are consistent with the testimony of the Cooper
13 Crest residents. The following is a summary of that testimony, both oral and written:

14 ● The traffic/parking design for Cooper Crest and Crestwood is unique to the City.
15 The neighborhood was the first "progressive" neighborhood to be designed for the City and was
16 intended to have a smaller environmental footprint by, among other things, discouraging vehicle
17 traffic. The only access from 20th Avenue NW is via Cooper Crest Street which then quickly
18 splits into three parallel roads: Cooper Crest Drive, Cooper Crest Street and Cooper Crest Place
19 ("CC Drive", "CC Street" and "CC Place"). These three parallel streets then recombine at the
20 neighborhood's north end as CC Drive, which then travels west to the adjoining Crestwood
21 Neighborhood. All of these streets are unusually narrow and contain numerous "bump outs" to
22 reduce vehicle speed and minimize street parking. In most locations two-way traffic is not
23 possible and drivers must wait for oncoming traffic to clear before proceeding. These problems
24 are especially acute on CC Place as it is the narrowest of the streets. Unfortunately, this layout
25 invites all of the residents of Crestwood to use CC Place to get to and from 20th Avenue NW as
it is the shortest and most direct access to their neighborhood. The net result is that CC Place,
which was never designed for significant traffic, is arguably the most traveled road within
Cooper Crest.

● The problems with traffic on CC Place are compounded by the associated use of a
private fire lane which, in effect, extends CC Place to near the neighborhood entrance at 20th
Avenue NW. This fire lane was never dedicated to the City and was never intended to be used as
a means of public access. Unfortunately, for the same reasons that make CC Place a popular
route, especially for Crestwood residents, the fire lane provides a convenient shortcut. As a
result, a large percentage of the entire neighborhood's traffic relies upon CC Place and the fire
lane although neither road was intended for this purpose. Traffic counts find that currently there
are more than four hundred vehicle trips per day on these roads.

● The street design restricts the amount of available street parking but,
unfortunately, the neighborhood's residents have far more vehicles than available parking. The
result is a great deal of illegal parking on sidewalks, "No Parking" areas, etc. Complaints have

1 been made to the City but the police department has indicated that it will not intervene. The
2 homeowner's association has worked to minimize the problem but not always with success.
3 Illegal parking remains a problem and often further restricts the flow of traffic.

4 • The Cooper Crest Neighborhood was designed with small yards and no common
5 play areas. The natural result is that neighborhood children often find the streets to be the best
6 place to play.

7 • Most of the neighborhood is unusually hilly and there is a steep ravine separating
8 Cooper Crest from Crestwood. As a result, the portion of CC Drive connecting the two
9 neighborhoods is correspondingly steep. In poor weather, especially icy conditions, this portion
10 of the roadway becomes impassible and traffic cannot get to or from Crestwood Place.

11 In light of these and other site conditions the residents of Cooper Crest have the
12 following objections to rezoning of the BranBar site:

13 1. The Cooper Crest and Crestwood streets are already overwhelmed and performing
14 poorly. They simply do not have the capacity to add additional traffic.

15 2. If the BranBar neighborhood is connected to the current terminus of Crestwood
16 Drive, common sense suggests that all of its traffic - up to two hundred trips per day - will want
17 to take the shortest, most direct route to and from 20th Avenue NW, just as is currently done by
18 the residents of Crestwood. If so, CC Place could experience traffic counts far in excess of its
19 500-trip limit. And the fire lane, which was never intended for public access, could experience
20 up to six hundred traffic trips per day.

21 3. The only reason the existing road system works at all is because of a shared sense
22 of community by the neighborhood residents, perhaps with some "encouragement" by the
23 homeowners association. But residents of the BranBar property will not share in this sense of
24 community nor feel any need to respect the rights of Cooper Crest residents. At the same time,
25 residents of BranBar will have to travel through two neighborhoods to get to and from their
neighborhood, increasing their frustration and impatience, and causing them to want to drive
faster and with less regard for the needs and safety of Cooper Crest residents.

 4. During poor weather CC Drive leading to Crestwood is often impassible. If this
road also provides sole access to BranBar then its residents, too, will be unable to get in and out
during poor weather.

 5. The design of Cooper Crest invites children to play in the streets. As noted
above, impatient drivers coming from another neighborhood increase the possibility of a tragic
accident.

1 At the same time, I disagree with the Cooper Crest residents and their suggestion that
2 rezoning be deferred until such time as Road 65th NW has been constructed to the site. I believe
3 that this remedy is too draconian and that it is likely to *discourage* the extension of Road 65th
4 NW. A rezoning of the BranBar property to RLI, together with a clear directive that its
development rely upon access from Road 65th NW, will be more likely to spur the necessary
road extension.

5 To restate all of this somewhat differently, the Cooper Crest Neighborhood recommends
6 that the R1/5 zoning be maintained indefinitely. I believe that this recommendation is
7 inconsistent with the GMA. R1/5 is a rural designation and is not meant to be indefinitely relied
8 upon in an urban setting barring exceptional circumstances. Although the traffic problems with
the BranBar property are problematic they are not exceptional, and are not sufficient reason to
indefinitely maintain a rural zoning designation.

9 For these reasons I recommend that the BranBar property be rezoned to RLI, but with the
10 further recommendation that, when developed, its primary access comes from an extension of
11 Road 65th NW and not through the Cooper Crest Neighborhood. Its roads should, however, be
connected to the Cooper Crest roads to enhance overall traffic movement and to increase
neighborhood connectivity.

12 I am not persuaded by the suggestion of Mr. Glasgow, seconded by the Cooper Crest
13 Neighborhood, that the BranBar property be left undeveloped for further protection of the Green
14 Cove Creek Drainage. To accept this suggestion would be to arbitrarily impose a higher
15 standard on one property than on all surrounding properties. Development of the BranBar
16 property to urban levels is not inconsistent with the goals and policies of the Green Cove Creek
Drainage Basin Plan, especially when zoned RLI. The key will be careful implementation of
necessary stormwater and other environmental controls.

17 I am not at all persuaded by objections to rezoning based upon the Applicant being from
18 out of town, or profit motivated, or difficult to work with. These objections simply are not
19 relevant to rezoning issues. Similarly, I am not persuaded by objections based upon concerns
20 that development within the BranBar property will be an imposition to the adjoining Crestwood
21 Neighborhood. Having neighbors is a fundamental aspect of urban living.

22 Based upon the above Analysis, I make the following Findings/Conclusions with respect
23 to the five zoning criteria found in OMC 18.59.050:

24 1. **OMC 18.59.050(a). The rezone is consistent with the Comprehensive Plan
25 including the Future Land Use Map.** The Staff Report, commencing at page 5, contains
Findings relating to the project's consistency with the Comprehensive Plan and the Future Land
Use Map. I have reviewed those Findings and adopt them as my own Findings of Fact. The
proposed change to RLI is consistent with the property's designation as Low Density
Neighborhood. It is also consistent with the City's new Comprehensive Plan, including Goals

1 GL1 and GL16 and their associated Policies. It should be added that the Planning Commission
2 has also considered this question and did not find any inconsistency between the proposed rezone
and the Comprehensive Plan.

3 2. **OMC 18.59.050(b). The rezone will maintain the public health, safety or**
4 **welfare.** It is undisputed that there is existing capacity for sewer, water, solid waste and
5 emergency services to this parcel. The more significant question is whether the public health,
6 safety or welfare is impaired by gaining access to the site via the Cooper Crest street system. As
7 noted earlier, City Staff found that this issue is premature since the intensity of development, and
likely traffic routes, are currently unknown. While that may be true, I believe that the better
conclusion to reach is that the rezoning will not impact the public health, safety or welfare if
primary access to the property is established by an extension of Road 65th NW.

8 3. **OMC 18.59.050(c). The rezone is consistent with other development**
9 **regulations that implement the Comprehensive Plan.** The proposed RLI zoning is intended
10 for sensitive drainage basins like the Green Cove Basin. It is also consistent with the Tree
11 Protection and Replacement Plan, Chapter 18.54 OMC. I concur with City Staff that the
proposed zoning satisfies all requirements of OMC 18.59.055 for consistency with development
regulations.

12 4. **OMC 18.59.050(d). The rezone will result in a district that is compatible**
13 **with adjoining zoning districts.** This requirement has clearly been met. Rezoning to RLI will
14 provide the BranBar property with the same zoning designation as all adjoining and nearby
property within City limits.

15 It should be noted that several witnesses objected to the proposed rezoning on the basis
16 that it constituted "spot zoning". I believe that this argument was based upon a misunderstanding
17 of this term. Spot zoning may occur when an island of property is zoned differently and
inconsistently than all surrounding properties. Again, the proposed rezone is the opposite of spot
zoning as it would eliminate differences in zoning status between adjoining properties.

18 5. **OMC 18.59.050(e). Public facilities and services existing and planned for the**
19 **area are adequate and likely to be available to serve potential development allowed by the**
20 **proposed zone.** The Staff Report, commencing at page 9, provides a detailed examination of
21 public facilities and services available to the site including fire protection, emergency services,
water, sewer, stormwater, solid waste, parks, and schools. I have reviewed these Findings and
adopt them as my own Findings of Fact.

22 For the reasons set forth in my Analysis of OMC 18.59.050(b) I also conclude that there
23 are adequate planned road systems necessary to provide access to the site by means of an
extension of Road 65th NW.

24 It may be worth noting that compliance with OMC 18.59.050(a) through (c) is mandatory
25 for rezone approval, while compliance with (d) and (e) is optional. Nonetheless, I conclude that
the requested rezone to RLI complies with (a) through (e).

1 ADDITIONAL RECOMMENDATION

2 The traffic concerns expressed by the residents of the Cooper Crest and Crestview
3 Neighborhoods are legitimate. Their neighborhood streets are ill-equipped to become the
4 primary access for any development within the BranBar property. I therefore make the further
5 recommendation that any future development of the BranBar property rely on primary access by
6 a source other than the Cooper Crest roads, with an extension of Road 65th NW being the most
7 likely option.

8 DATED this 4 day of AUGUST, 2016.

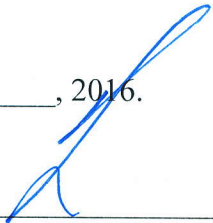
9 
10 _____
11 Mark C. Scheibmeir
12 City of Olympia Hearing Examiner
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT "A"

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- Exhibit 1 Staff Report (including attachments 1-13)
- Exhibit 2 Applicant's Written Testimony
- Exhibit 3 James Jason and Christine Elizabeth Warren Written Statement
- Exhibit 4 Prabakar Mano Written Statement
- Exhibit 5 Jerry Lee Dierker, Jr. Written Statement
- Exhibit 6 Notice of Public Hearing and State Environmental Policy Act Determination of Nonsignificance (SEPA DNS) dated June 22, 2016
- Exhibit 7 Scott K. Thalhamer Written Statement
- Exhibit 8 Lisa Riener, President of Burbank/Elliot Neighborhood Association, Written Statement
- Exhibit 9 Nancy A. Parkes Email Statement
- Exhibit 10 Scott and Anna Trippi Written Statement
- Exhibit 11 Russell S. Horton, MPA Written Statement