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Memorandum

To: Clark County Planning Commission
From: LeAnne M. Bremer, P.C., on behalf of Martin and Cherie Nye
Subject: Objection to Proposed Zoning from R-10 to R-20
Date: May 18, 2017

I represent Martin and Cherie Nye who own the following properties
currently zoned R-10:

APN	ZONING	ACREAGE
180069000	R-10	41.25
216463000	R-10	30.00
216240000	R-10	20.00
216462000	R-10	8.00
216241000	R-10	47.00
216242000	R-10	73.00
Totals:		219.25

See Exhibit A for a map of the Nye Properties. NW 209th Street is to the south and NW 51st Avenue is to the east of the Nye Properties.

Staff is proposing that the Nye Properties revert back to R-20 as shown in Exhibit B.

The Nyes object to the rezone for the following reasons:

1. In its staff report to the Planning Commission dated May 18, 2017, staff states:

As part of the [comp plan] update, 283 parcels were changed from R-20 to R-10 in conjunction with the resource lands upzoning. *Though this change was not challenged*, the R-10 parcels that have not been further subdivided are proposed to be changed back to R-20, because the original R-20 designation was itself part of an action taken on remand from the GMHB, by which the lands were to act as buffers to Natural Resource designated lands.¹

Because neither Futurewise argued, nor did the Hearings Board rule, that the R-10 is in error, the County is under no compulsion to make this change.

2. Specifically, in its Petition for Review, Futurewise took issue with a single Rural comprehensive plan designation arguing that the rural element failed to provide for a variety of rural densities and rule uses.² To that point, GMA requires the comprehensive plan to include a rural element that:

....shall permit rural development, forestry, and agriculture in rural areas. *The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses.* To achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character.

The Hearings Board agreed that a variety of rural densities is required by GMA, and that this a mandatory requirement for the comprehensive plan. The County cannot simply rely on its zoning regulations to provide this variety of densities by having only one Rural comp plan designation. Having one comp plan designation would encourage rezones within the rural categories without corresponding plan amendments. The Nyes do not disagree with the Board's finding that there should be more than one Rural comp plan designation, but this can be achieved without rezoning the Nye Properties back to R-20. The comp plan designation and zoning can be R-10 for the Nye Properties.

¹ Staff Report, at 2.

² Petition for Review, at 4.

Furthermore, R-10 zoning, in addition to R-5 and R-20 zoning, will provide that variety of densities that GMA requires.

3. There is significant parcelization north and south of the Nye Properties, which areas are zoned R-5. Instead of having R-5 properties next to R-20 properties, which abut natural resource lands on the west and east of the Nye Properties, a better transition would be achieved if there is a succession of R-5, then R-10 and then R-20 zoning.

4. Because no party challenged the R-10 zoning in the Growth Board appeal, it is valid, and there is no reason to rezone the Nye Properties. Rezones can only be approved if certain criteria are met included in UDC 40.560.020(G)³:

Zone changes may be approved only when all of the following are met:

1. Requested zone change is consistent with the comprehensive plan map designation.
2. The requested zone change is consistent with the plan policies and locational criteria and the purpose statement of the zoning district.
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.
4. There are adequate public facilities and services to serve the requested zone change.

The prior Board of County Councilors made a reasoned decision to rezone the Nye Properties to R-10, and there has been no change of circumstances or demonstration of the other factors being met that would justify a rezone back to R-20.

³ It is not clear from the code if these criteria apply to County-initiated rezones, but case law require legislative rezone decisions to be in the public interest and not arbitrary and capricious. *Westside Hilltop Survival Comm. v. King Cty.*, 96 Wash. 2d 171, 176, 634 P.2d 862, 865 (1981)

We respectfully request that the Planning Commission not recommend that the Nye Properties be rezoned to R-20.

Exhibit A
Nye Properties

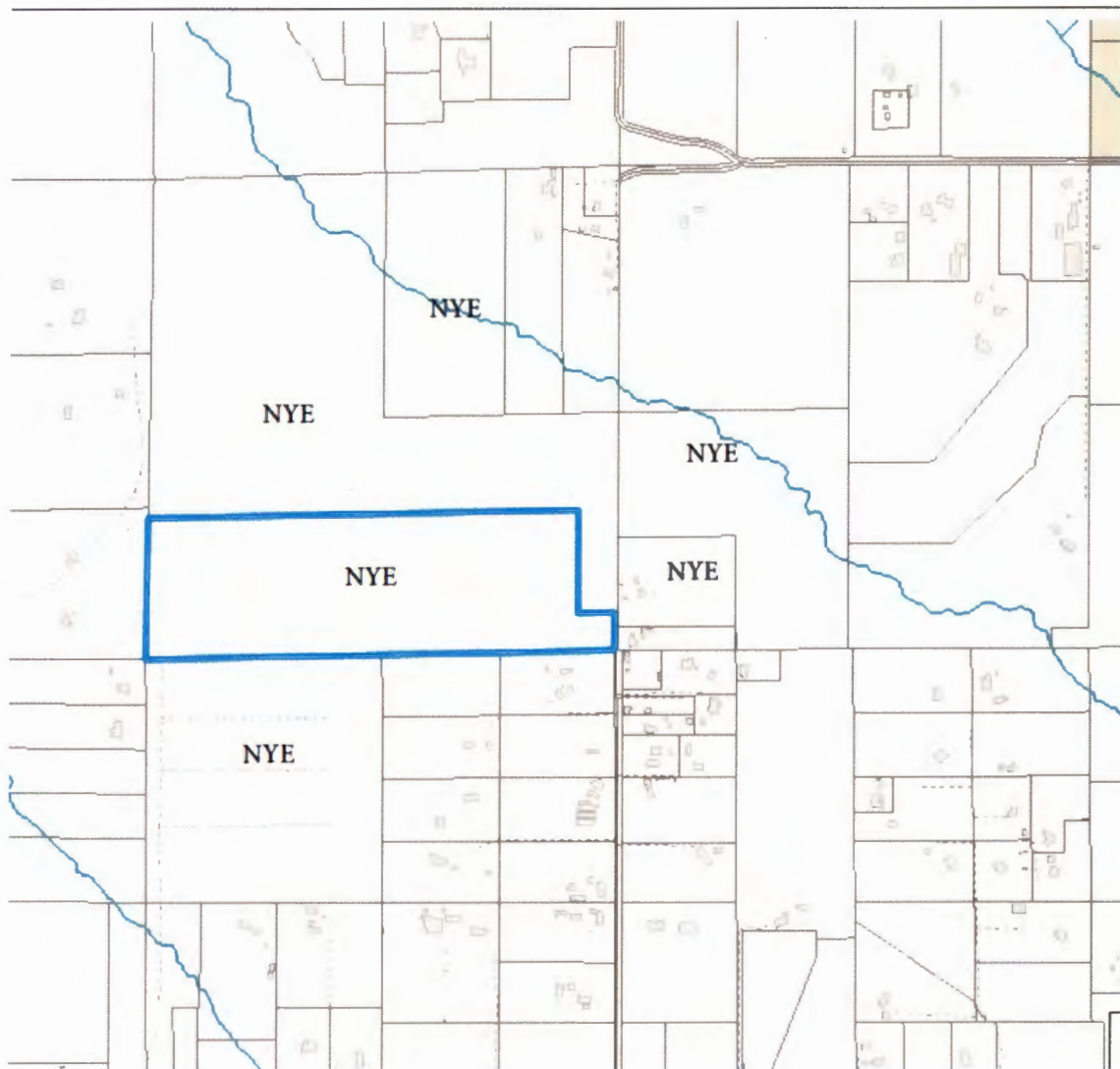
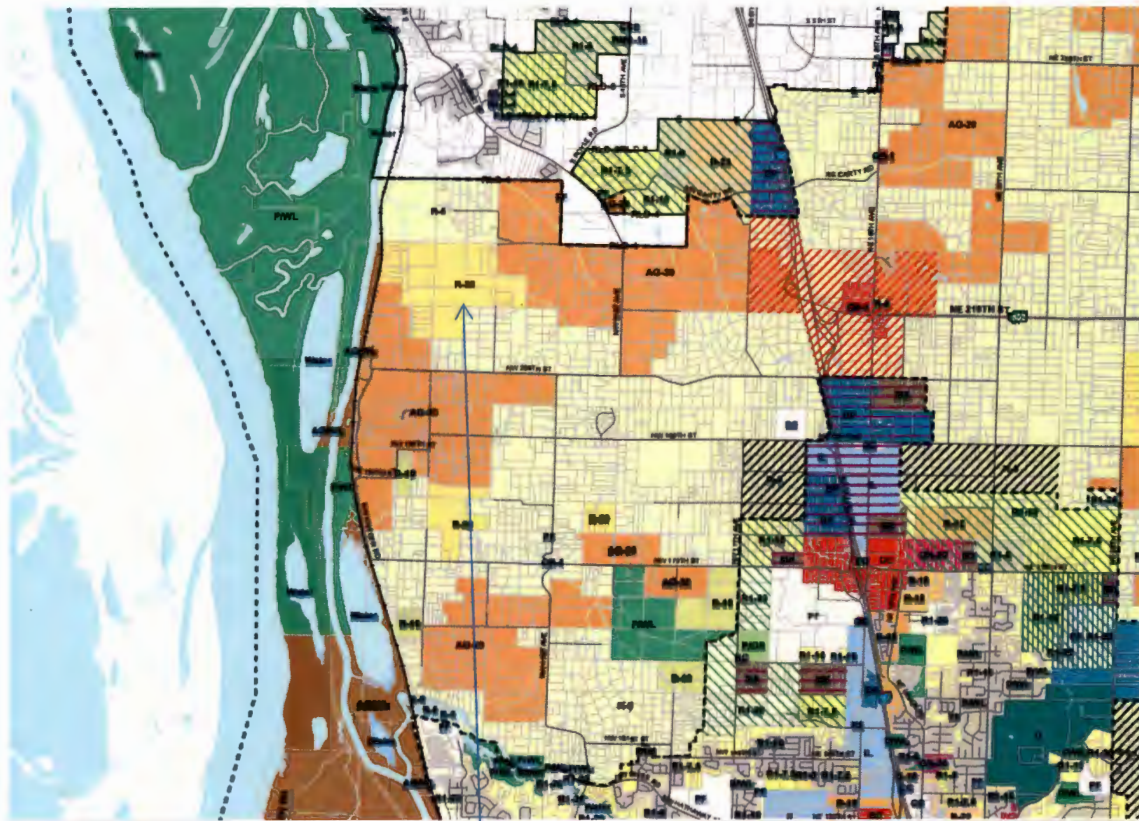


Exhibit B
Proposed Zoning Map



Nye Property
Proposed to be R-20
Surrounded on two sides by R-5