BEFORE THE COUNCIL OF SNOHOMISH COUNTY
STATE OF WASHINGTON

In re the Appeal of PBSS INVESTMENTS, LLC, Appellants, Of the Hearing Examiner Decision for PBSS Rural Business Rezone and Variance; Applicant: PBSS Investments, LLC.	File No. 25-105874 REZO and 25-105880 VAR APPLICANT PBSS INVESTMENTS, LLC'S APPEAL OF SNOHOMISH HEARING EXAMINER DECISION

Applicant PBSS Investments, LLC ("PBSS") hereby submits this limited appeal of the Hearing Examiner's decision on PBSS's application for a rezone of its property (the "Decision") located at 19125 State Route 9 SE known as tax parcel numbers 270514-003-010-00 (the "Property"). Because the rezone application concerns the activities of McClure and Sons, Inc., this appeal statement references McClure and Sons in place of PBSS. The two entities share ownership and there is no material difference between the two entities for the purposes of this appeal.

The Decision included discussion of a separate but related request for a variance from certain code criteria as part of its submission. This aspect of the hearing Decision is not relevant for the purposes of this appeal. McClure and Sons respectfully requests the Council reverse the Decision or remand to the Hearing Examiner for further proceedings.

I. FACTUAL BACKGROUND

The Property has been used for various contracting and construction-related activities dating back to at least 1974. The initial owner of the Property, Duncan "D.E." McAllister,

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engaged in construction work, equipment repair and maintenance, and storage of equipment and other items on the Property throughout his ownership. Mr. McAllister also leased space on the Property to other contractors for work including metal fabrication, wood fabrication, and the storage of construction equipment. Mr. McAllister's use likely dates back to 1974 when he initially purchased the property, although records from that time are difficult to procure. The first available County records McClure and Sons was able to obtain regarding use of the Property date back to 1987, when Snohomish County approved permitting for the construction of a new metal building "shop" (a large two-story building that includes an overhead crane and work stations) to aid with Mr. McAllister's construction work. Exhibit A.7 at 4-5. Prior to this construction, Mr. McAllister primarily used an existing brick building for his work and other wooden outbuildings that were present on the site when purchased by McClure and Sons. Mr. McAllister also used outdoor space for the storage of equipment and materials in the same manner as McClure and Sons today.

Les McClure originally purchased the Property from Duncan MacAllister in 1993 for storage of materials and equipment storage and repairs for his family-run company, McClure and Sons, Inc ("McClure and Sons"). When Les McClure and his wife Judy formed PBSS, Property ownership shifted from McClure and Sons to PBSS. This transfer in ownership had no material effect on the use of the Property by McClure and Sons.

McClure and Sons was founded as a small family construction firm based out of Mill Creek. All of McClure and Sons' contracting and business operations are conducted out of the Mill Creek office. The Property is and has been used by McClure and Sons solely for the storage and maintenance of vehicles and construction equipment related to its business operations. Since its creation, McClure and Sons has served the local community, conducting

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numerous projects in the area over the years. Exhibit M.3. A significant portion of these projects involve local public works infrastructure, such as water treatment plants, reservoirs, pump stations, extensive landscaping, and other necessary community rural and urban infrastructure. *Id.* McClure and Sons' primary work focuses on public works projects, for which it is routinely audited by the State to ensure strict compliance with government contracting requirements. Accordingly, McClure and Sons is stringently limited to the type of work and classification of employees permitted to work on the Property and only 3 to 6 employees work on site. Decision at 6.

McClure and Sons consistently operated on the same section of the Property since purchasing the Property 33 years ago with the understanding that its commercial activities on site were permitted under Snohomish County Code. McClure and Sons' understanding was primarily based on a series of County determinations and approvals spanning the course of several decades.

The first documented County action related to the Property occurred when Mr. McAllister applied for and received a development permit to construct a large 2-story "shop" in 1987. Exhibit A.7 at 4-5. McClure and Sons continue to use the constructed "shop" in their operations to this day. As illustrated further below, McClure and Sons have vested nonconforming use rights. Snohomish County Planning and Development Services (PDS) acknowledged these rights on two separate occasions since approving the development permit. The first instance occurred as the result of an anonymous code enforcement complaint in 2016 under enforcement action 16-112234 CT, when an anonymous individual alleged that McClure and Sons was conducting illegal business on site. After the PDS investigated the complaint, the investigating code enforcement officer closed the case in 2018, noting "[u]se of the

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property as a construction staging/storage yard likely "grandfathered" due to longevity of use at the property." Exhibit M.1. PDS once again received an anonymous complaint in 2018 regarding commercial equipment storage and alleged property encroachment under enforcement action 19-103943 CT. PDS again dismissed the complaint, noting that "commercial equipment storage is a non-conforming use." Exhibit M.2. McClure and Sons continued with their County-approved operations until 2022 when an employee made an unfortunate mistake. Sometime during the fall of 2022, an employee cleared a portion of the Property to make additional room for storage of overflow equipment and material storage on the Property. Unbeknownst to the employee and other McClure and Sons employees at the time, the site-clearing activity was outside the historic footprint of McClure and Son's established operations stemming from the same footprint as established by Mr. McAllister during his activities on site. McClure and Sons' understanding is the entire Property was "grandfathered" for its current use. Upon realizing the mistake, McClure and Sons promptly took steps to rectify the issue, installing screens and barriers to reduce and minimize the activity in the disturbed area, and to protect the neighboring properties from associated sounds and commercial on-site activity. PDS issued a Notice of Violation in October of 2023 and McClure and Sons has been working to establish a legal pathway to correct the issue ever since.

To address the noted issues in the NOV, McClure and Sons engaged with the County regarding an Administrative Conditional Use Permit (ACUP) and Land Disturbing Activity (LDA) permit. During this process, PDS maintained that McClure and Sons had a vested right to operate its business, noting that the activity was "considered a legally non-conforming use" in a response to public comment dated July 8, 2024. Exhibit M.4. While initially receptive to McClure and Sons' applications, PDS reversed its years-long position that its activities were

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considered a non-conforming use without explanation. To address this unexpected reversal, McClure and Sons determined the best path forward would be a rezone to RB as that would appropriately account for the existing business, define the area within which the business can operate, and allow the Applicant to then proceed with an LDA to address revegetating areas that were disturbed by the expansion. Importantly, McClure and Sons' RB rezone application is for a smaller overall footprint than the use established on the Property up until 2022.

The County's enforcement action and abrupt change in attitude regarding McClure and Sons' nonconforming use status appears to be the result of a few complaints from a few neighboring property owners. While McClure and Sons is sympathetic to neighboring property owners' concerns, the commentary and actions by neighbors indicate their desire to see the business removed entirely. Many of these neighbors moved in long after the business was established and it would be inequitable to require a longstanding community-driven business to move based on a few neighbors' desire to see it so. During McClure and Sons' ongoing discussions with County Officials regarding compliance with County Code, neighbors have taken it upon themselves to rectify the situation, in one case shooting at and damaging equipment and other company property necessary for its operations.[1] Based on the timeline of events, the PDS appears to have reversed their non-conforming use position based on neighbor's complaints and issued the NOV, leading to the rezone application before the Hearing Examiner. It is well established law that community displeasure cannot be the basis of permit denial, and, similarly, should not be the basis for code enforcement actions. *Maranatha Min., Inc. v. Pierce Cnty.*, 59 Wn. App. 795, 804, 801 P.2d 985 (1990).

Mr. McClure established his family business with the intent to one day hand over operations to his sons. Indeed, this was the foundational principle of McClure and Sons when

[1] Damage reported to the Snohomish County Sherriff's Office on December 10, 2024.

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initially established. Now, because PDS has abruptly changed its mind regarding use of the Property, that plan is in jeopardy.

II. LEGAL BACKGROUND

A. Creation of the Rural Business Zone.

Snohomish County created the Rural Business (RB) zone via Ordinance 98-121, adopted on December 16, 1998. Exhibit A.7 at 3. Adoption of Amended Ordinance 98-121 was preceded by approval of revised Motion 96-389, setting the 1996 Final Docket, wherein the Council directed PDS to prepare plan text and county code amendments to "provide a general policy and regulatory framework concerning rural commercial development" in response to the submission of seventy-five proposals to amend the comprehensive plan and implementing development regulations (inclusive of proposed zoning code amendment) that were largely requests from rural residents and businesses concerned about the impacts of zoning and regulations on rural areas and businesses. In the lead up to Amended Ordinance 98-121, requests by attorneys for CCH Construction (Richard & Charlene Imus) and the Blooms (a/k/a Three B's Construction) sought relief to address zoning issues encountered by their existing contracting businesses. Exhibit A.1 at 3. In the case of CCH Construction, a construction contractor that had been cited by the County for illegally operating a contracting use in the Rural-5 zone, requested the Council amend the proposed Rural Business zone to allow building contractor as a permitted use and provide a rezone option that would allow a use that existed before adoption of the Rural Business zone to seek a rezone. Exhibit D.1 at 68. As a result of the lobbying efforts by CCH Construction, the Blooms, and others, Amended Ordinance 98-121 included the following provisions to allow existing uses to seek a rezone to Rural Business:

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> For properties that contain a commercial use **permitted or otherwise allowed in the RB zone** that existed on or before the effective date of this section, a rezone to RB may be approved only for that portion of the site containing the existing use and may not expand beyond the location of the existing commercial use **unless the location criteria** of SCC 18.65.020(2) are met with respect to the expansion area. The locational criteria contained in SCC 18.65.020(2) and the maximum building footprint requirements of SCC 18.65.040(2) and (3) need not be met for that portion of the site containing the existing uses.

SCC 18.65.020(3). Presently, this provision is located in SCC 30.31F.020(4) and it reads:

> For properties that contain **a commercial use permitted or otherwise allowed in the RB zone that existed on or before the effective date of this section**, a rezone to RB may be approved only for that portion of the site containing the existing use and may not expand beyond the location of the existing commercial use unless the locational criteria of subsection (2) of this section are met with respect to the expansion area. The locational criteria contained in subsection (2) of this section and the maximum building footprint requirements of SCC 30.31F.110 and 30.31F.120 need not be met for that portion of the site containing the existing use.

The RB zoning classification can only be applied to properties that meet certain locational criteria, subject to a key exception for properties with a commercial use that is "permitted or **otherwise allowed** in the RB zone that existed on or before the effective date" of the code language adopted by Ordinance 98-121. SCC 30.31F.020(4) (emphasis added). The adoption of RB zoning was explicitly intended for addressing unpermitted uses located throughout rural areas, as evidenced by the carve-out language for pre-existing uses prior to the establishment of the zone in 1998. Exhibit A.3 at 1-2.

The inclusion of the phrase "otherwise allowed" was expressly interpreted by Snohomish County Council when it overturned a rezone denial by the Snohomish County Hearing Examiner for Three B's Construction. The County Council found that its own adopted language was intended to exempt businesses from location and distancing requirements for "all existing uses, whether or not they were legal nonconforming uses a (sic) the time of

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application for a rezone to Rural Business." *Three B's Construction,* Hearing Examiner Decision on Remand by Motion 99-384 at 16-17 (Exhibit D.2); *see* Exhibit A.3 at 2. Longstanding principles of statutory interpretation require "each word of a statute to be accorded meaning" and be construed to avoid statutory language rendered "superfluous, void, or insignificant." *HomeStreet, Inc. v. State, Dep't of Revenue*, 166 Wn.2d 444, 452, 210 P.3d 297, 301 (2009) (quoting *State ex rel. Schillberg v. Barnett*, 79 Wash.2d 578, 584, 488 P.2d 255 (1971); *Kasper v. City of Edmonds*, 69 Wn.2d 799, 804, 420 P.2d 346 (1966)). Further, courts are "required to assume the Legislature meant exactly what it said and apply the statute as written." *Id.* (quoting *Duke v. Boyd*, 133 Wn.2d 80, 87, 942 P.2d 351 (1997)). Because the County adopted and then interpreted its own code, the intent of the language "otherwise allowed" clearly contemplates use that would not be encompassed under the term "permitted."

B. Nonconforming Use

An important factor in this proceeding is McClure and Son's nonconforming use rights on the Property. As such, it seems appropriate to provide some background regarding nonconforming use right standards and their application to the Property.

McClure and Sons has a legally established nonconforming use right that predates the County's zoning change and would meet the County's definition of "otherwise allowed." SCC 30.91N.070 defines a nonconforming use as "a use of land or a structure which was lawful when established and which does not now conform to the use regulations of the zone in which it is located." McClure and Sons continuation of Mr. McAllister's use of the Property predates many of the zoning and use standards that exist today.

"Non-conforming uses are vested property rights which are protected." *Van Sant v. City of Everett*, 69 Wn. App. 641, 649, 849 P.2d 1276 (1993). The nonconforming rights and the

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vested rights doctrines go hand in hand. "A nonconforming use is a use which lawfully existed prior to the enactment of a zoning ordinance, and which is maintained after the effective date of the ordinance." *Seven Hills, LLC v. Chelan Cnty.*, 198 Wn.2d 371, 398, 495 P.3d 778 (2021) (quoting *Rhod-A-Zalea & 35th, Inc. v. Snohomish Cnty.*, 136 Wn.2d 1, 6, 959 P.2d 1024 (1998)). "once a non-conforming use is established, the burden shifts to the party claiming abandonment or discontinuance of the non-conforming use to prove such." *Van Sant*, 69 Wn. App. at 648. In this case, McClure and Sons and its predecessors established its right of nonconforming use by using the Property for commercial construction activities for nearly a half-century. As discussed above, the County agreed on multiple occasions that McClure and Sons had established nonconforming use rights on the Property. Therefore, the burden is on the County to show McClure and Sons does not have an established nonconforming use right to the Property. The Examiner did not determine whether the Property is a legal nonconforming use. Decision at 12.

III. STANDARD OF REVIEW

Under Snohomish County Code, any aggrieved party of record can appeal the Hearing Examiner's decision based on the following grounds: "(a) The decision exceeded the hearing examiner's jurisdiction; (b) The hearing examiner failed to follow the applicable procedure in reaching the decision; (c) The hearing examiner committed an error of law; or (d) The hearing examiner's findings, conclusions, and/or conditions are not supported by substantial evidence in the record." 30.72.080(2). PBSS appeals the Decision on the grounds that the Hearing Examiner committed an error of law and that his findings were not supported by substantial evidence in the record. Indeed, substantive portions of the Decision appear to be based on findings contrary to the established record before the Hearing Examiner.

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As the Appellant in this proceeding, PBSS has the burden of proving the Examiner's findings, conclusions, or conditions are not supported by substantial evidence in the record. SCC 30.72.080(1). "Substantial evidence is evidence that would persuade a fair-minded person of the truth of the statement asserted." *Cingular Wireless, LLC v. Thurston Cnty.*, 131 Wn. App. 756, 768, 129 P.3d 300, 306 (2006), *amended on reconsideration* (May 23, 2006).

IV. ARGUMENT AND AUTHORITY

SCC 30.42A.100 requires rezone applications to meet the following 4 criteria for approval:

1. The proposal is consistent with the comprehensive plan;
2. The proposal bears a substantial relationship to the public health, safety, and welfare;
3. The proposal is justified based on a change of circumstance since the site was previously zoned; and
4. Where applicable, minimum zoning criteria found in chapters 30.31A through 30.31F SCC are met.

The Hearing Examiner erred in finding McClure and Son's rezone application did not meet these criteria for the reasons set forth herein.

A. <u>The Hearing Examiner's finding that McClure and Sons' rezone application is inconsistent with the comprehensive plan is not supported by substantial evidence in the record.</u>

As the Hearing Examiner correctly notes in the Decision, Rural Business is an authorized implementing use for the Property. Decision at 7-8. While not dispositive, it does show that the use is contemplated within the land use policies created by the comprehensive plan and is consistent with the overall goals of the comprehensive plan. Longstanding Washington law has clearly established that comprehensive plans serve as guidelines or blueprints when making land use decisions, rather than requiring strict compliance. *Woods v.*

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Kittitas Cnty., 162 Wn.2d 597, 613, 174 P.3d 25, 33 (2007). "A comprehensive plan does not directly regulate site-specific land use decisions" and a proposed land use decision must only "generally conform, rather than strictly conform to the comprehensive plan." *Id.* Moreover, zoning ordinances and codified county code govern land use applications, not comprehensive plans. *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 873, 947 P.2d 1208 (1997). "A specific zoning ordinance will prevail over an inconsistent comprehensive plan." *Id.* McClure and Sons provided extensive evidence that it serves the immediate rural population with necessary services pursuant to Comprehensive Land Use Objective 6.E. For example, McClure has completed multiple projects for the local community, including water and sewage projects for the Silver Lake Water and Sewer District, waste water treatment plants in Marysville, Lynwood, and Monroe, and other needed infrastructure projects in the area. Exhibit M. The primary source of McClure's on-site activities supports projects and residents in the area. *See* Exhibit A.6; A.3 at 10-14.

The Hearing Examiner focuses extensively on Comprehensive Plan Goal LU 6 regarding the protection and enhancement of the character, quality, and identity of rural areas to support his finding that the rezone proposal is inconsistent with the comprehensive plan. However, the facts upon which the Examiner bases this finding is counter to the facts established in the record.

The Examiner and neighbors acknowledged that the noise and impacts from activity were not noticeable until after the additional clearing occurred outside the established footprint for on-site activity. The Examiner explicitly found that "[p]rior to 2022, [McClure and Sons'] operations were not noticeable or visible to adjacent property owners." Decision at 6. Further, the Examiner stated that McClure and Sons' site activity "changed in 2022 and disturbed and

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disrupted the rural character of the neighborhood since then." Decision at 7. As outlined above, McClure and Sons' rezone application is to establish a footprint smaller than the historic use of the Property dating back several decades. The Examiner noted that allowing a "commercial operation that disturbs the neighborhood" is not in keeping with Comprehensive Plan Goal LU 6. However, the record clearly shows that there was no neighborhood disturbance prior to the clearing that occurred in 2022. Decision at 6-7. Therefore, the Examiner's finding on this basis is not supported by substantial evidence in the record.

Similarly, the Examiner focuses his analysis regarding McClure and Son's outside business operations rather than the on-site activity and specific support to the local community. While McClure and Sons does conduct business in other parts of the State, the machinery stored on site serves the local community largely due to transportation constraints. If McClure and Sons is forced to relocate from the Property based on a denial of this rezone request, it will make local projects more difficult, if not impossible, to complete because transporting machinery to and from the project sites may no longer be feasible. While McClure and Sons completes some construction work outside the immediate area, those projects are wholly unrelated to this proceeding. *See* Decision at 10. The only consideration relevant to the rezone application is the use of the Property for projects in the area. As demonstrated, McClure and Sons uses the Property for local projects to benefit the local community. Accordingly, the Examiner's finding on this basis is not supported by substantial evidence in the record.

B. <u>The Hearing Examiner's finding that McClure and Sons' rezone application does not bear a substantial relationship to the health, safety, and welfare of the public is not supported by substantial evidence in the record.</u>

The Examiner provides little analysis regarding this rezone criterion, except to assert that the neighbors "provided credible evidence of substantial noise and disruption caused by

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[McClure and Sons'] activities" finding that the "noise and disruption are inconsistent with rural character." Decision at 11. As previously discussed, the "noise and disruption" noted by the neighbors occurred AFTER the additional clearing took place in 2022. The record established before the Examiner conclusively shows that there was no "noise and disruption" resulting from McClure and Sons' activities over the approximately 30 years prior. McClure and Sons' rezone request is not a "rezone to legalize the current use" as stated by the Examiner, but rather to rezone the historic use at levels determined not to have a detrimental impact on neighbors. Further, McClure and Sons provides a tremendous benefit to the local community through its work on local water and sewer utility infrastructure, among others. Exhibit M.3.

Because McClure and Sons' rezone request is for an area of the Property upon which McClure and Sons' activities were explicitly found to not disturb neighbors, the Examiner's finding is contrary to the established record and his finding is accordingly unsupported.

C. The Hearing Examiner committed an error of law in finding that McClure and Sons' rezone application is not justified based on a change of circumstances since the site was previously zoned and the Examiner's finding is not supported by substantial evidence in the record.

As a preliminary matter, a demonstration of changed circumstances is not required if the rezoning is consistent with an adopted comprehensive plan. *Save Our Rural Environment v. Snohomish County*, 99 Wash.2d 363, 370–71, 662 P.2d 816 (1983); *Bjarnson v. Kitsap County*, 78 Wash.App. 840, 845–46, 899 P.2d 1290 (1995). As outlined above, McClure and Sons' rezone proposal was consistent with the comprehensive plan. As the Examiner acknowledges, the proposed RB zoning is an authorized implementing use for the Property as contemplated in the future land use map in the comprehensive plan. Decision at 8. The Examiner correctly notes that a proponent of a rezone has "the burden of proof demonstrating

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that conditions have changed since the original zoning[,]" when this criteria is required. Decision at 11 (quoting *Phoenix Dev., Inc. v. City of Woodinville*, 171 Wn. 2d 820, 834, 256 P.3d 1150, 1156-57 (2011), citing *Citizens for Mount Vernon v. City of Mount Vernon,* 133 Wn.2d 861, 874–2 75, 947 P.2d 1208 (1997)). However, when the rezone request is merely an alternative, available, and consistent implementation of the approved Comprehensive Plan, the Courts have said that a change in circumstances is not necessary. While yes, County Code includes a change in circumstances as a criteria, *see* SCC 30.42A.100, this is clearly intended to be a codification of state law, and should not be invoked to preclude a rezone that is in every other respect consistent with the Comprehensive Plan. Requiring McClure and Sons to demonstrate changed circumstances on this basis is an error of law.

Assuming *arguendo* that McClure and Sons is required to show changed circumstances, the Examiner erred in finding that it did not meet this standard. "A variety of factors may indicate a **substantial** change in circumstances, including changes in public opinion, in local land use patterns, and on the property itself. *Henderson v. Kittitas Cnty.*, 124 Wn. App. 747, 754, 100 P.3d 842, 845 (2004) (emphasis added). The *Henderson* Court provides some insight into how courts have traditionally viewed a change in circumstances. The *Henderson* Court reviewed and approved a rezone from Agricultural 20 to Agricultural 3 lots (20 and 3 acre lots respectively). *Id.* The rezone request was based, in part, on development pattern shifts in the area that created smaller surrounding parcels and were subsequently developed. *Id.* Part of the Court's reasoning for upholding the rezone decision is a comment from the planning commission, stating that "the proposed amendment is appropriate because of changed circumstances due to the fact that once the area was used as a cattle ranch grazing area and over a period of time residential areas have grown up around it." *Id.* The two changes

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in circumstances present in this case are: (1) the County created a pathway to compliance for Rural Business that met the proper criteria and; (2) PDS changed its mind regarding McClure's longstanding business operations it had deemed a nonconforming use on multiple occasions based on what appears to be a change in public opinion.

i. Pathway to Compliance.

The 3 B's rezone decision evidences the pathway to compliance intent of the County envisioned for pre-existing businesses. The use of the language in SCC 30.31F.020(4) for "permitted or otherwise allowed" is ambiguous language that requires delving into the legislative intent. There is no clear definition of the term in code and PBSS has been unable to locate additional language that would help shed light on the matter.

Snohomish County Council made its intent abundantly clear when it stated that its intent was "to apply the exception language to all existing uses, whether or not they were legal nonconforming uses at the time of application for a rezone to Rural Business." Exhibit D.2. PDS agreed with this statement when adopting the language establishing the RB zone, noting that the code exception language did not distinguish between legal and illegal nonconforming uses. Exhibit D.2 at 47. Additionally, it would be impossible to have a permitted RB zone use, prior to the existence of the RB zone itself. The "otherwise allowed" language pertains to the rural business zone TODAY as we seek the rezone. The only logical way to read this language is precisely as the County stated in its intent adopting the ordinance establishing the RB zone, as well as in its decision in the 3 B's case. The Council's decision also makes sense in the context of the adopting ordinance. There are 75 motions included in 1998 final docket. Exhibit D.1. Snohomish County Council was essentially looking to harmonize comp plans and the drastic zoning changes to rural areas within the County.

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ii. Nonconforming Use Status.

PDS noted on numerous occasions that the site was a nonconforming use. Exhibit M.1, M.2, and M.4. PDS has not provided a reason for the sudden change, but the record seems to indicate the change was based on comments received from neighboring property owners. As extensively shown, McClure and Sons has proposed a rezone on the site for a smaller footprint than it previously used over the past several decades, yet PDS has not recommended approval for the rezone. It would appear to be based on community pressure, which cannot be the basis for denial alone. As the Henderson court established, changes in public opinion can constitute a SUBSTANTIAL change in circumstances, a higher standard that the Phoenix Court or County Code requires for just a change in circumstances.

The Examiner committed an error of law requiring McClure and Sons to show a change in circumstances as part of its rezone application as the proposal complies with the Comprehensive Plan. However, if McClure and Sons must show a change in circumstances, it has adequately done so, and the Examiner's contrary finding is unsupported by substantial evidence in the record.

D. The Hearing Examiner's finding that McClure and Sons' rezone application does not meet minimum zoning criteria in SCC 30.31A through 30.31F is not supported by substantial evidence in the record.

The Examiner found that McClure and Sons complied with all requisite zoning criteria under Code except for SCC 30.31F.020(2)(c) and (g). Therefore, this appeal will only focus on compliance with these code provisions.

SCC 30.31F.020(2)(g) requires that "the size and configuration of the proposed site must be capable of accommodating applicable setbacks, buffers, and critical area protection pursuant to chapters 30.62A, 30.62B and 30.62C SCC." The Examiner bases his decision on

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this criterion on the fact that McClure and Sons also applied for a variance from this code provision. This is an inappropriate basis upon which to deny McClure and Sons' application. While the variance requests are related to the rezone request, they are not integral to the application. In other words, the rezone application can be approved while denying the variance requests.

McClure and Sons has demonstrated that the area of the rezone is within the historic boundaries of use on the Property. The proposed Rural Business boundary is an overall reduction of the historic use of the Property and meets the setback and locational requirements found in Code. There was some confusion in the hearing before the Hearing Examiner regarding the boundaries of the historic use and McClure and Sons' proposed rezone, as the rezone request does not cover the entire Property. Small portions of the historic boundaries of the use were changed to accommodate for the appropriate setbacks under Code. To the extent that further analysis is required, McClure and Sons would request a reversal and remand to the Hearing Examiner to determine the appropriate boundaries of the rezoned area.

Similarly, McClure and Sons is not required to meet the distancing requirements under SCC 30.31F.020(2)(c). Code language states "[t]he proposed new site shall be located no closer than two and one-half miles from an existing RB, RFS, or commercial designation in the rural area." As written, this provision does not appear to impact the McClure and Sons' application as the Property is not a "new site," but rather an existing nonconforming use as further outlined above. The Examiner did not substantively resolve the nonconforming use matter in the Decision, but the established record supports this reading.

Accordingly, the Examiner's finding is unsupported by substantial evidence in the record.

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V. CONCLUSION

Based on the foregoing, McClure and Sons respectfully requests this Council reverse the Decision or remand to the Hearing Examiner for further proceedings.

DATED this 10th day of April, 2026.

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