

BOARD OF YAKIMA COUNTY COMMISSIONERS

ORDINANCE NO. 10 - 2010

**AN ORDINANCE AMENDING THE YAKIMA COUNTY ZONING ORDINANCE MAP  
(YCC TITLE 15)**

WHEREAS, the Board of Yakima County Commissioners (hereinafter "Board") adopted the Yakima Zoning Ordinance on February 8, 2000 (Ordinance 1-2000, codified as YCC Title 15); and,

WHEREAS, the Board adopted the Yakima Comprehensive Plan, *Plan 2015*, in 1997; and,

WHEREAS, an application (ZON10-02) was submitted by Ron Valicoff requesting a minor rezone from VR (Valley Rural) to HC (Highway Commercial) on a 2.5 acre parcel at the southeast corner of Birchfield Road and SR 24; and

WHEREAS, Yakima County issued a Determination of Non-Significance for ZON10-02 on April 20, 2010 in fulfillment of environmental review requirements of the State Environmental Policy Act (SEPA); and,

WHEREAS, an expedited review for the 60-day notice of the proposed rezone was provided to the Department of Commerce (formerly – Department of Community, Trade, and Economic Development - CTED) in accordance with RCW 36.70A.106 by Yakima County and accepted by Commerce on July 8, 2010 in fulfillment of Growth Management Act requirements; and,

WHEREAS, the Hearing Examiner, in accordance with YCC Title 15 and YCC Title 16B, conducted an open record public hearing to consider the requested rezone on May 6, 2010 and issued a recommendation for approval dated May 16, 2010; and,

WHEREAS, Yakima County provided notice of a closed record public hearing by the Board in accordance with YCC 16B.05 to consider the proposed rezone; and,

WHEREAS, the Board held said public hearing in accordance with YCC Title 15 on July 6, 2010 at which time it considered the proposal and provided a full and complete opportunity for all persons desiring to speak for, against, or in relation to the proposed rezone to be heard during the hearing process; and,

WHEREAS, the Board, having deliberated on the matter, has determined that the proposed rezone should be adopted; and,

WHEREAS, based on the public hearing record in this matter, the Board finds that it is in the best interest of the County to enact the following;

IT IS HEREBY ORDAINED BY THE BOARD OF YAKIMA COUNTY COMMISSIONERS AS FOLLOWS:

**SECTION 1. Adoption of Hearing Examiner's Recommendation.** The Hearing Examiner's recommendation in this matter dated May 16, 2010 (attached hereto as Exhibit 1) is hereby adopted.

**SECTION 2. Amending Yakima County Zoning Map.** The official zoning map for Yakima County, referred to in YCC 15.16, is hereby amended as follows: The Subject Site indicated on the attached Map "A" is amended from VR (Valley Rural) to HC (Highway Commercial).

**SECTION 3. Severability.** If any section, phrase or provision of this ordinance is held illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

**SECTION 4. Effective Date.** This ordinance shall become effective immediately upon adoption.

**SECTION 5. Instructions to Clerk.** The Clerk of the Board shall:

- (1) Transmit a copy of this ordinance to the Washington State Department of Commerce within ten (10) days of its adoption pursuant to RCW 36.70A.106.
- (2) Promptly publish notice of adoption of this ordinance pursuant to RCW 36.70A.290.

ADOPTED this 27<sup>th</sup> day of July, 2010.

Attest: Christina Steiner

Clerk of the Board

Tiera L. Girard

Deputy Clerk of the Board

Approved as to Form:

Deputy Prosecuting Attorney

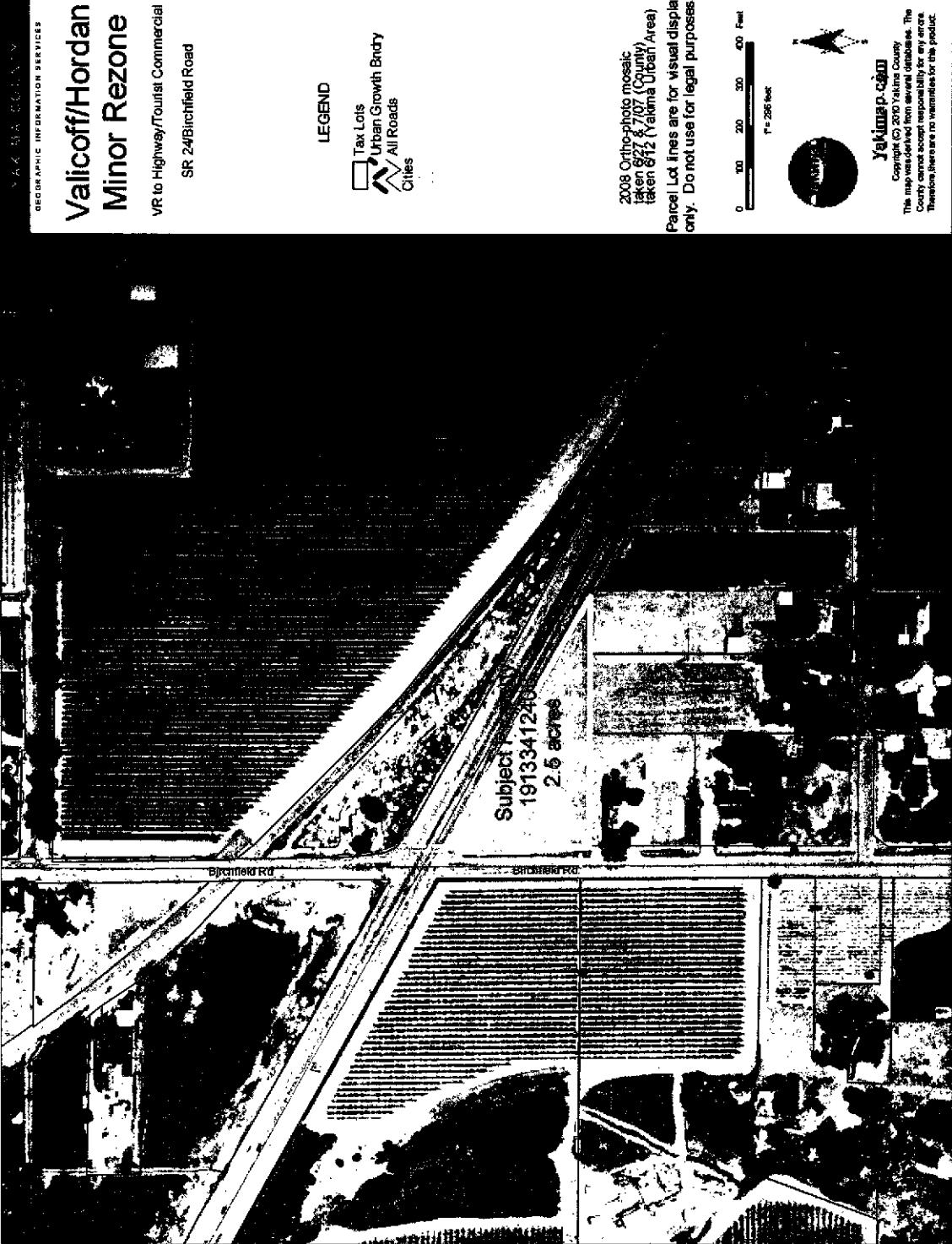


Michael D. Leita, Chairman

J. Rand Elliott, Commissioner

Kevin J. Bouchey, Commissioner

*Constituting the Board of County Commissioners  
for Yakima County, Washington*



**County of Yakima, Washington  
Office of the Hearing Examiner**

<b>Application for a Minor Rezone</b>	<b>)</b>	<b>Yakima County File Nos. ZON 2010-02</b>
	<b>)</b>	
<b>By Ron Valicoff, by and through Hordan</b>	<b>)</b>	
<b>Planning Services,</b>	<b>)</b>	
	<b>)</b>	<b>HEARING EXAMINER</b>
<b>To Rezone Certain Property at the</b>	<b>)</b>	<b>RECOMMENDATION</b>
<b>Intersection of Birchfield Road and</b>	<b>)</b>	
<b>Highway 24 from Valley Rural to</b>	<b>)</b>	
<b>Highway/Tourist Commercial.</b>	<b>)</b>	
	<b>)</b>	

**I. INTRODUCTION.**

Hordan Planning Services filed an application to rezone property from Valley Rural to Highway/Tourist Commercial on January 20, 2010. The application is for a non-project rezone, so that any subsequent development proposal would be subject to additional project review consistent with the zoning ordinance. The Hearing Examiner conducted an open record hearing on the application on May 6, 2010. Prior to the hearing, The Public Services Department issued public notice of the completion of the application and invited public comment. Several comment letters were received in response to the notice. Prior to the hearing, the property owner contacted persons providing comment letters and offered responses to the concerns raised in the letters. Public Services provided a set of exhibits to the Hearing Examiner prior to the hearing. The exhibits included copies of the owner's written responses sent to the comment letter authors. At the hearing, one person provided public comment concerning the need to address irrigation system easements on the west boundary of the subject property. The Hearing Examiner made an unaccompanied visit to the subject property on May 15, 2010.

**II. SUMMARY OF RECOMMENDATION.**

This application should be approved.

Based on the staff report and exhibits, the viewing of the site and comments received at the open record hearing and in writing, and a review of pertinent development regulations and *Plan 2015*, the Hearing Examiner makes the following

**III. FINDINGS.**

**1. APPLICANT AND PROPERTY OWNER.**

The application was filed by Hordan Planning Services, 410 N 2nd Street, Yakima, WA 98901 on behalf of property owner Ron Valicoff, P.O. Box 1109, Moxee, WA 98936.

**2. LOCATION.**

The 2.5 acre subject property is located at the southeast corner of Birchfield Road and State Route 24, approximately one half mile west of the City of Moxee and a mile and a half east of the City of Yakima.

**3. PARCEL NUMBER(S).**

The Yakima County Assessors Tax Parcel Number for the subject property is 191334-12403.

**4. APPLICATION.**

The application is for an amendment the zoning map to change to zoning of the subject property from Valley Rural (VR) to a Highway/Tourist Commercial (HC). The HC zoning district is a zoning classification consistent with the Rural Self-sufficient future land use designation for the property in *Plan 2015*. This consistency is indicated in Table 15.76 in the zoning ordinance. Rezones that are consistent with existing *Plan 2015* land use designation and Table 15.76 are subject to review as Minor Rezones. While the application materials indicate that the owner intends to pursue commercial development of the property in the future, no specific development proposal has been applied for. The application is for a non-project rezone.

**5. NEIGHBORING ZONING AND LAND USE.**

The current *Plan 2015* future land use designations, zoning, and land uses for nearby parcels are indicated in table below:

<u>Location</u>	<u>Zoning</u>	<u>Comprehensive Plan</u>	<u>Land Use</u>
Subject Property (Parcels 19133412403)	VR	Rural Self-Sufficient	Undeveloped
North (Parcel 19133412006)	I	Urban	Residential
Northeast (Parcel 19133421007)	M1	Urban	Ag Production
South (Parcel 19133413421)	VR	Rural Self-Sufficient	Residential
South (Parcel 19133413417)	VR	Rural Self-Sufficient	Residential
South (Parcel 19133413418)	VR	Rural Self-Sufficient	Residential
Southeast (Parcel 19133413428)	VR	Rural Self-Sufficient	Residential

West (Parcel 19133424001)	VR	Rural Self-Sufficient	Ag Production
West (Parcel 19133421002)	M1	Urban	Ag Production
Northwest (Parcel 19133421007)	AG	Agricultural Resource	Ag Production

## **6. ENVIRONMENTAL REVIEW.**

The SEPA Responsible Official issued a determination of nonsignificance (DNS) for this non-project minor rezone on April 2, 2010 in accordance with State Environmental Policy Act rules. No appeals of the DNS were filed.

## **7. REZONE ANALYSIS**

### *a. Review Criteria.*

The applicable review criteria for a minor rezone are set out in YCC 15.76.036 (3).

### *b. Application of the Review Criteria*

The review criteria and their application to the proposed modification of the Development Agreement are set out as follows:

- (1) Consistency with the goals, objectives, mapping criteria and policies adopted in the Comprehensive Plan and the intent of Title 15 YCC.

Table 15.76 indicates a policy determination that the HC Zoning District is consistent with the underlying *Plan 2015* land use designation of Rural Self-Sufficient. The establishment of HC uses is a means of promoting *Plan 2015* recreation and tourism related economic development goals such as Goal ED 5 and ED 5.3. Goal ED 5.4 provides specifically for allowing highway commercial zoning in order to serve the needs of the traveling public at selected limited access highway interchange areas.

The highway/tourist commercial (HC) zoning district is intended to provide areas for commercial establishments which offer accommodations, supplies, services or recreational opportunities to the traveling public. The HC zoning district is also intended to provide appropriate space and, in particular, sufficient depth from the street to satisfy the needs of modern commercial development where access is almost entirely dependent on motor vehicles; and, to encourage the development of the zoning district with such uses and in such a manner as to minimize traffic hazards and interference from highway oriented businesses. This zoning district is further intended to permit only those uses which promote and enhance the recreation and tourism industry and to prevent the intrusion of incompatible, non-tourist uses which would be overly

disruptive or would directly compete with shopping areas of nearby communities. The zoning district shall only be located at freeway interchanges, along or at the intersections of state highways or generally recognized tourist routes and the approaches thereto. YCC 15.41.010. The intent of the zoning district is served by the application of specific standards in the review of specific projects. Since this is a non-project rezone, the key question is whether the necessary proximity to generally recognized tourist routes of is present. Since the property is at the intersection of State Route 24 and Birchfield Road, the rezone would be consistent with the intent of the zoning ordinance, assuming it otherwise meets the review criteria discussed below.

- (2) The adequacy of public facilities, such as roads, sewer, water and other public services required to meet urban or rural needs.

The subject property is located adjacent to State Route 24 and Birchfield Road. Both roadways are hard-surfaced and the intersection is signalized. The site is outside the urban growth area of Yakima and Moxee, and therefore must be served by individual well and septic. Some otherwise allowable uses in the HC zone may be precluded or limited by the necessary reliance on individual systems, but not all potential uses would be so limited. Electricity, cable and telephone services are available at the site. The site is served by the Yakima County Sheriff and the East Valley Fire District. Subject to the noted water and sewer limitations, all necessary public services can be accommodated at this site.

- (3) The public need for the proposed change.

“Public need” means that a valid public purpose, for which the Comprehensive Plan and Title 15 YCC have been adopted, is served by the proposed application. The zoning district was established to provide safe and convenient access to, and from, the highway system for necessary conveniences to the travelling public. There is no highway/tourist commercial zoning outside the urban areas in the Moxee Valley. State Route 24 is one of the primary access routes to the Columbia Basin from the City of Yakima and its vicinity. The motoring traffic uses State Route 24 for access to the Columbia River for recreational activities and to access Hanford, Mattawa, Othello and the Tri-Cities. The route is also used to access the wine tourism destinations over Konnowac Pass. Providing HC zoning would serve the traveling public in the area, and thus meet a public need.

Other State Route 24 intersections in the area do not dispel the unmet need for travel and tourist services in the area. For example, the intersection at South 33<sup>rd</sup> Street is completely built-out on the south side with the Terrace Heights Sewer District lift station and Fiscus Motor Freight. Properties to the north are zoned Light Industrial and located within the 100-year floodplain of the Yakima River. The potential for commercial development that would provide services at this intersection is limited due to the current zoning and location within the floodplain.

The nearest commercial property to the east is at the intersection of State Route 24 and Beaudry Road. This intersection is similar to the subject property. Properties to the north are zoned Industrial and contain Olympic Fruit and the Moxee City Shop and maintenance yard. Properties to the south are residential and commercial. The commercial properties contain the East Valley

Market and an espresso stand. It is located at a signalized intersection, but is very limited for future development because of the its limited access and irregular shaped intersection of Beaudry Road and Postma Road. Thus, commercial development at this intersection is severely limited based on roadway constraints.

The timing of this proposal is appropriate due to the lack of adequate highway/tourist commercial facilities along this corridor and the continuing interest in development of recreation and tourism in the area, consistent with *Plan 2015* goals.

- (4) Whether substantial changes in circumstances exist to warrant an amendment to the current designation or zone.

Anticipated development of an industrial corridor north of the site will need highway commercial support for those traveling to, and from, the industrial corridor. In addition, State Route 24, from Interstate 82 to Riverside Road was widened and a new bridge over the Yakima River was constructed. This has encouraged the traveling public to use State Route 24 to enter the East Valley and Terrace Heights. The construction of University Park Way (South 33rd Street), also promotes traffic to be served by HC development on the subject property.

The applicant's narrative response also mentions the population growth of Moxee. The addition of 575 new homes within Moxee has generated growth in vehicle trips between Yakima and Moxee. Additionally, the establishment of the Ace Hardware Distribution Center in Moxee, which employs 300 workers, generates around the clock vehicular traffic which promotes a need for additional highway commercial services.

Since the adoption of the current zoning district, the intersection of State Route 24 and Birchfield Road has been signalized to improve safety. This was done in 2001. The applicant points out that, based on the WSDOT Annual Traffic Report, there has been a 13.4 percent increase in traffic on State Route 24 east of the State Route 24/Birchfield Road intersection between 1997 and 2008. This gives the best representation of the increase in traffic due to changes in circumstances.

This route has also become a major access route to wine country. In 2006, the Rattlesnake Hills Wine Trail was created. It was created because the Rattlesnake Hills wineries became an American Viticultural Area. Konnowac Pass Road is an entry way into the Rattlesnake Hills area and is shown on winery maps.

- (5) The testimony at the public hearing.

One public comment identified concerns with the protection of the irrigation ditches on the west boundary of the subject property. Rezoning the property is not dispositive of the rights of the owner with regard to easements or rights of way across the property. Any development proposal will presumably have to address means of access to the property consistent with the ditch owners' rights.

(6) The compatibility of the proposed change with neighboring land uses.

Several comment letters raised concerns about the compatibility of a convenience store built on the site with neighboring land uses. The comments did not reflect an awareness that the application for a non-project rezone. However, the comments did associate some of the potential uses possible from the rezone with impacts to neighboring residential properties. The comments raise concerns about a minimart adding to litter, traffic safety, nighttime activity and lights, and criminal activity in the vicinity. The comments identify current traffic safety problems at the State Route 24 and Birchfield Road intersection, and note neighbors' frustration with littering that already occurs in the area. The neighbors further express a desire to retain the residential character of the area.

Letters sent by the owner to neighbors providing public comment indicated that any development of the property would be subject to public notice and hearing examiner review. Permitted HC uses are set out in the permitted land use table adopted in YCC 15.18.015. Uses allowed in the HC zone that are not allowed in VR zone include, generally:

- a) Campgrounds and RV parks;
- b) Recreational equipment sales and rentals;
- c) Theaters and bowling alleys;
- d) Fraternal Organizations, lodges and clubs;
- e) Guard or watchman's quarters related to non-residential uses;
- f) An array of general automotive maintenance, repair and service uses;
- g) Truck repair shops;
- h) Towing and vehicle storage services;
- i) Specialty retail food stores;
- j) Beauty and barber shops;
- k) Convenience and general merchandise stores (subject to special regulatory requirements noted below);
- l) Souvenir, antique, florist and clothing shops;
- m) Heavy equipment service, storage and repair shops;
- n) Dry cleaners;
- o) Fuel and oil distributors;
- p) Restaurants and drive-ins;
- q) Overnight lodging;
- r) Transportation brokerages;
- s) Financial Institutions;
- t) Vehicle rental services; and
- u) Residential mini-storage facilities.

Special regulations related to convenience and general merchandise stores include:

- a) Access, traffic turning movement, off-street parking and public service needs shall be provided in a safe, convenient, and efficient manner.
- b) Retail goods and services are primarily provided to local residents or tourists.

- c) The use does not exceed a maximum of 4000 square feet, and is clearly appropriate in scale, design and function with surrounding uses and environment.

The listed uses include those for which public notice is required (Type II and III uses) and those for which YCC 16B.05.010(2) indicates that public notice is not required (Type I). For any future application for a convenience store, the issues raised in the comment letters would be subject to review by the Administrative Official regarding compliance with the special regulations and other provisions of the zoning ordinance. However, convenience stores are Type I uses in the HC district, and public notice of a Type I use does not appear to be required unless it is part of a master application involving Type II, III or IV review, or requiring SEPA review. Commercial facilities in the HC district that are less than 12,000 square feet in area (along with parking for up to 40 vehicles) are not subject to SEPA review. YCC 16.04.100(3)(b)(iii). Accordingly, the owner's letters in response to public comments on the rezone were not precisely accurate with respect additional hearing opportunities for specific development proposals.

As noted, any convenience store proposal would be subject to review to address traffic safety and appropriateness "in scale, design and function with surrounding uses and environment." Any such proposal can be conditioned by the Administrative Official to assure that the zoning district standards are met. The affected intersection is signalized and traffic flow addressed by the limited access to the affected roads within 300 feet of the intersection. The size of the subject property affords some flexibility in facility siting. Additional site screening from neighboring residential uses could address appropriateness.

From a non-project rezone perspective, compatibility of potential Type I uses with existing neighboring uses is a key consideration, since they would not be reviewed for compatibility with neighboring uses once a rezone is effective. The properties to the south and east are developed with residential dwellings on large acreages (average lot size: 2.5 acres). Most of the properties which abut this parcel on the south are used for pasturing livestock (where the properties and the subject property actually abut one another). The distance between the subject parcel and the residences located on these properties is substantial (ranging from 100 to 500 feet) because all the lots in the area exceed one (1) acre in size and the residences are generally located on the south end of the properties. The nearest property is screened from the subject property by a row of large arborvitae.

Properties to the southwest and northwest are both planted in agricultural crops. Additionally, these properties are zoned industrial and future allowable uses would be compatible with a commercial development of the subject property. The property to the northeast is developed and contains a ranch and farm business. This is the only commercial endeavor located at the intersection. The property is completely built-out and would not be affected by this proposal. The only other commercial use is the Birchfield Manor, a restaurant/bed & breakfast. It is also fairly far removed from the subject property and should not be clearly impacted by any future rezoning of the property.

Concerns about littering and other unlawful activity are not an obvious basis for evaluating compatibility, since unlawful activity is not compatible with any land use and is a matter for law enforcement.

It should be noted also that the allowable uses in the VR district are not limited to residential uses. It is not evident that the rezone would present substantially different compatibility issues from those presented by the existing zoning. Considering the limitations on uses in the HC zone, the distance to existing residences, and the nature of existing neighboring agricultural and industrial uses, compatibility issues do not indicate that the rezone should be rejected.

(7) The suitability of the property for uses that would be allowed in the HC zoning district.

As provided in the Plan 2015 Goal ED 5.4, HC uses would be allowed where:

- a) the uses do not conflict with adjacent city business areas;
- b) adjacent land uses are buffered from the commercial area;
- c) the site is not designated as an agricultural, forest or mineral resource area, and resource lands are not materially affected by the use;
- d) the operation and effectiveness of the interchange is not impacted by the commercial use; and
- e) the uses can be accommodated without the extension of urban level services to the site.

There are no adjacent city businesses or business areas near the subject property. The property is flat. It has good visual quality from Birchfield Road and State Route 24. The property is located at a signalized intersection and can provide access to, and from, Birchfield Road from the southwest boundary of the subject property. This provides access to the property away from the functional limits of the intersection, which ensures no disruption will occur at the intersection. The parcel is large enough (over 2 acres) to place a structure and its improvements a substantial depth from the street to satisfy the needs of a modern commercial development, where access is almost entirely dependent on motor vehicles. Since the site is vacant, any future improvements can be placed as far away from existing uses, so that compatibility between uses can be achieved. The property is not encumbered by a floodplain or any critical area. All necessary public services, such as police, fire, water, septic etc., can be provided by others, or can be accommodated on-site to serve uses allowable in the HC zone as indicated in Table 15.18 in the zoning ordinance.

(8) The recommendation from interested agencies and departments.

The only comments received from interested agencies and departments pertained to future development requirements. No agency opposition to the request was received.

From the foregoing findings, the Hearing Examiner makes the following

**IV. CONCLUSIONS.**

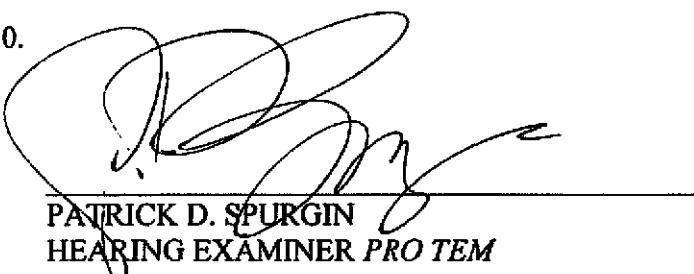
1. The Hearing Examiner has jurisdiction to conduct an open record hearing on the application for a minor rezone and make a recommendation to the Board of County Commissioners.
2. The proposed rezone is consistent with *Plan 2015* goals related to Rural Self-sufficient land uses and economic development, and with the intent of the zoning ordinance.
3. Many of the potential uses in the HC zone identified in Table 15.18 can be served with on-site water and waste water systems. Other facilities and utilities are present to meet HC zone use requirements.
4. Based on changes in the area tourism and recreation economy, development plans for properties served by State Route 24, and improvements to State Route 24 made subsequent to the original zoning of the subject property as VR, a public need will be served by facilities that are supported by HC zoning, and changed circumstances support the rezone application.
5. The potential Type I and II uses of the subject property that would be allowable and feasible on the subject property if it were zoned HC do not present a likelihood of substantial incompatibilities with neighboring uses that cannot be mitigated.
6. The subject property is suitable for uses allowed in the HC zone.
7. Any finding in this recommendation that should be more properly considered a conclusion should be construed as such, and any conclusion or other information in this recommendation that should properly be considered a finding should be construed as such.

Based on the foregoing Findings and Conclusions, the Hearing Examiner makes the following

**V. RECOMMENDATION.**

The application by Ron Valicoff, by and through Hordan Planning Services to rezone Mr Valicoff's property at the intersection of State Route 24 and Birchfield Road from Valley Rural to Highway/Tourism Commercial, as specified in the application materials (File No. ZON 2010-02), should be APPROVED.

DATED THIS 16<sup>TH</sup> DAY OF MAY, 2010.



PATRICK D. SPURGIN  
HEARING EXAMINER PRO TEM