

Docket Item (D.I.) #4  
Location: 18407 SR-169  
Parcel ID Nos.: 3223069052 and 3223069070

*“Reclassify zoning on two parcels from NB (Neighborhood Business) to I (Industrial). The land use would remain Rural Area. Combined size is 3.54 acres. The purpose for the request is to provide consistency with the actual land use activity (recycling center) that has been in operation for over 25 years. An industrial use (grandfathered) – a metal recycling facility. The use and zoning will be consistent with what is actually developed in the immediate vicinity and on these specific properties.”*

## INTRODUCTION

The D.I. states the site’s existing business is an “*industrial use*” that is “*grandfathered.*” The D.I. request is to rezone the site from Neighborhood Business (NB) to Industrial (I). If the existing “*metal recycling*” business is indeed “*grandfathered,*” then no change in zoning is necessary.

Of critical concern is that should the site be rezoned, the *next* owner could propose a *different* industrial use (much like the proposed Asphalt Facility on a parcel along SR-169, which was the subject of a successful rezoning request through the D.I. process). [Note; The site in question was not evaluated earlier this year in KC DPER’s *Cedar River Sites Industrial Moratorium (CRSIM) Study* as part of the KC Council’s Asphalt Facility discussions, because it was not zoned “*Industrial.*”]

## BACKGROUND

The D.I. specifically refers to the adjoining site to the south and its “*I*” zoning as justification for the site in question to be rezoned to “*I*”. Attached is the final Zoning and Subdivision Examiner’s Decision and the BALD Report 124-88-R— (Note: The Building and Land Development Division is the predecessor to present-day DPER), which supported the 1989 rezone of the adjoining site to “*I-P*” (“*I*” zoned, but with a *P-suffix*—which imposed express limitations on future use).

The “*I-P*” zoning for the adjacent site was adopted by the KC Council as Ordinance 8865 and incorporated into subsequent Comprehensive Plans (and *Tahoma-Raven Heights Subarea Plan* by Ordinance 12824 in 1997). The uses of that “*I-P*” zoned site are limited to those allowed in the Regional Business (RB) zone and “*vehicle interior refurbishing and re-upholstering.*”

## DISCUSSION

The 1989 rezone was *unique* and cannot, and should not, constitute grounds for rezoning the site in question from “*NB*” to a general “*I*” without any *P-suffix* to substantially limit its future use. The attached BALD Report gives an extensive history of this area and land uses that existed in that vicinity for many years. D.I. #4’s assertion that a “*rezone of their property to ‘I’ - Industrial would be consistent with the zoning and use of the property to the south*” simply is not accurate.

We remain highly skeptical and very concerned that a rezone to a generic “*I*” could result in another debacle, as has been encountered with the proposed Asphalt Facility on a parcel along SR-169. As with the former rezone of that parcel to simply a generic “*I*”, rezoning of the site to allow lawful continuation of an *existing nonconforming use* has severe and, perhaps, unintended consequences, where such rezone is not limited in scope to allow only that particular existing use and any other uses that are in fact consistent with such existing use. In fact, since the existing business can continue under *existing* zoning, no rezone is necessary.

Finally, any proposed site-specific rezone (e.g., from “*NB*” to “*I*”) *inconsistent* with the KC Comprehensive Plan (KCCP) must be considered and resolved **first** through a Hearing Examiner following a public hearing (KCC 20.20.020(E) and KCC 20.22). Annual amendments to the KCCP are deemed *legislative*; whereas, a site-specific rezone is *quasi-judicial* and must be reviewed as a Type 4 permit application. Clearly, an annual D.I. request should not be part of any *bifurcated* process (i.e., KC Council amends zoning designation, refers it to Hearing Examiner, who, sends recommendation back to KC Council for a final decision).

## RECOMMENDATION

D.I. #4 should be denied.

Attachment: Final Zoning and Subdivision Examiner’s Decision and the BALD Report 124-88-R, 1989.