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**ORDINANCE NO. 418 - DENYING A REQUEST BY DARWIN ODGAARD AND LYNNE K. HOFFMAN TO CHANGE LAND USE AND ZONING DESIGNATIONS FROM RESIDENTIAL TO COMMERCIAL IN THE BURBANK URBAN GROWTH AREA BY AMENDING COMPREHENSIVE PLAN MAP LU-1 AND BSA-1, ALONG WITH APPLICABLE COUNTY ZONING MAPS**

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Legal description (i.e.: lot and block or section township and range)

**N/A**

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Assessors Parcel Number

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**BOARD OF COUNTY COMMISSIONERS  
WALLA WALLA COUNTY, WASHINGTON**

**ORDINANCE NO. 418**

**DENYING A REQUEST BY DARWIN ODGAARD AND LYNNE K. HOFFMAN TO CHANGE LAND USE AND ZONING DESIGNATIONS FROM RESIDENTIAL TO COMMERCIAL IN THE BURBANK URBAN GROWTH AREA BY AMENDING COMPREHENSIVE PLAN MAP LU-1 AND BSA-1, ALONG WITH APPLICABLE COUNTY ZONING MAPS .**

**WHEREAS**, the Growth Management Act requires that the County take legislative action to review and revise, if necessary, its comprehensive land use plan to ensure that it complies with the requirements of the Growth Management Act, as described in RCW 36.70A.130; and

**WHEREAS**, the Growth Management Act requires that updates, amendments, or revisions to the Comprehensive Plan may not be considered more frequently than once a year except for certain limited circumstances; and

**WHEREAS**, RCW 36.70A.470 requires that the County include a procedure for any interested person to suggest amendments to the Comprehensive Plan or development regulations, and that the amendments must be docketed and considered on at least an annual basis.

**NOW THEREFORE,**

**BE IT ORDAINED**, by the Walla Walla County Board of County Commissioners that:

**Section I. The Board of County Commissioners Makes the Following Findings of Fact:**

1. Darwin Odgaard and Lynne K. Hoffman requested the proposed amendment on March 30, 2012.
2. The subject property currently has a land use designation of Residential Single Family and is zoned Burbank Residential. The applicant has proposed to amend the land use designation to Commercial and the zoning district to Burbank Commercial.
3. On May 2, 2012 the Planning Commission held a public workshop.
4. On May 22, 2012 the Board of County Commissioners held a public workshop.
5. On May 24, 2012 a Notice of Public Hearing was published in the Waitsburg Times, Walla Walla Union-Bulletin, and Tri-City Herald.
6. On June 6, 2012 the Planning Commission held a public hearing and recommended the proposed amendment be included on the County's 2012 final docket.



7. On June 11, 2012 the Board of County Commissioners concurred in the recommendation of the Planning Commission.
8. On June 14, 2012 the Department of Commerce acknowledged receiving the proposed amendment.
9. No comments were received from the Department of Commerce or any other public entity during the 60 day comment period.
10. The amendment was placed on the 2012 final docket; however, it was not acted on as the amendment required additional analysis related to population projections for Walla Walla County.
11. The amendment was carried over onto the 2013 final docket by Board Resolution 13-038.
12. Originally, the application consisted of an additional 6.98 acres that is owned by Walter and Judy Massengale. In December of 2012 staff received a request from that Massengales that their property be excluded from the proposed amendments.
13. On August 13, 2013, the Walla Walla Joint Community Development Agency issued a SEPA determination of non-significance. No appeal was filed.
14. On August 22, 2013 a Notice of Informational Public Meeting and Public Hearing was published in the Waitsburg Times, Walla Walla Union Bulletin, and Tri-City Herald.
15. On September 4, 2013 an Informational Public Meeting and Planning Commission Public Workshop were held.
16. On September 19, 2013 a Notice of Public Hearing was published in the Waitsburg Times, Walla Walla Union Bulletin and Tri-City Herald.
17. On October 2, 2013, the Planning Commission held the 2013 Comprehensive Plan and Development Regulations Amendment Final Docket hearing.
18. On October 7, 2013, the Planning Commission issued Resolution 13-03, recommending denial of the proposed amendment.
19. On November 7, 2013 the Notice of Public Hearing was published in the Waitsburg Times, Walla Walla Union-Bulletin and Tri-City Herald.
20. The Board of County Commissioners held the 2013 Comprehensive Plan and Development Regulations Amendment Final Docket Hearing on November 25, 2013.

**Section II. The Board of County Commissioners Makes the Following Conclusions of Law:**

1. With regard to the criteria in WWCC 14.10.070(B)(3):
  - a. *The proposal meets a definable public need.*

Discussion: Planning staff reports that the property in question is currently being used for a single family residence, outbuildings and growing alfalfa.

The original application consisted of the Massengale property to the east which provided connectivity to the existing Burbank Commercial property.

Other than the land to the north, which is zoned Public Reserve and to the south where it is bordered by Highway 12, the site in question is surrounded by land zoned Burbank Residential.

Access to the site is via East Maple Street which is designated as a local access road.

As the application currently exists it is a spot zone, which is disfavored in the state. It has been established by case law that spot zones usually consist of the following:

- The rezone primarily serves a private interest.
- The rezone is inconsistent with the comprehensive plan or surrounding territory.
- The rezone constitutes an arbitrary and capricious action.

At the present time, planning staff is unable to identify a clear public need for changing the zoning on this property. The Board concurs in the staff's analysis.

*b. The public need was not recognized in the existing Comprehensive Plan due to: a change in circumstances in the community not anticipated or contemplated when the applicable section(s) of Comprehensive Plan was last adopted; or an error in development of the Comprehensive Plan as it currently exists.*

Discussion: Since 2002, when the property in question was designated as Burbank Residential, approximately 2-3 acres of Burbank Commercial zone property has been lost to the Highway 12 improvements.

Staff was not aware of any errors in the development of the Comprehensive Plan as it currently exists. As noted earlier, there does not appear to be a public need for commercial zoning in that location.

*c. The defined need conforms to the policy directives of the Comprehensive Plan and countywide planning policies.*

Discussion: No clearly defined public need can be identified at this time. The Board agrees with planning staff's analysis.

*d. The proposed amendment does not require amendment of policies in other areas of the Comprehensive Plan except to resolve inconsistencies or unnecessary duplication among policies.*

Discussion: Additional amendments to the Comprehensive Plan would not be required if the proposed amendment was approved.

*e. The proposed amendment is consistent with the Growth Management Act (Chapter 36.70A RCW), any other applicable inter-jurisdictional policies or agreements, and any other state or federal laws.*

Discussion: As discussed above, the act of spot zoning has been established by Washington State case law as not being a favored action. It does not appear that the proposed land use change to commercial is supported by the public interest at this time.

2. With regard to the criteria in WWCC 14.15.070(B)(4):

*Site-Specific Amendments. For each site-specific proposal to amend the comprehensive plan land use map, the [Board shall determine whether] a proposed amendment be approved, approved with modifications, or denied based on the review criteria set forth above and the following additional review criteria:*

*a. The subject parcel(s) is suitable for development under the requested land use designation and the zoning standards of one or more potential implementing zoning district(s); and*

Discussion: The property is directly adjacent to residential and public reserve properties. The closest commercially zoned property is roughly 330 feet to the east of the site. Commercial activities do not take place on the surrounding residentially zoned properties. The site will have access onto East Maple Street, which is a local access road. Arterial roads are the preferred access type for commercial properties. Humorist Road is the closest arterial road to the site; the property in question does not have direct access onto Humorist Road.

*b. The proposed site-specific amendment will not create pressure to change the land use designation of other properties in the area; and*

Discussion: It is unknown if the proposed amendment will create pressure to change the land use designation of other adjacent properties; however, the Board finds that there is a possibility that would happen.

*c. The proposed site-specific amendment does not adversely affect the adequacy of existing or planned public facilities and services in the immediate area or the applicable urban growth area.*

Discussion: Planning Staff was unaware of any additional public facilities planned for the area of the proposed amendment. East Maple Street is the only existing public facility utilized by the site. At this point it is unknown what type of impact it would on the existing access roads; it would depend on the uses that take place in the area.

3. With regard to the criteria in WWCC 14.15.070(B)(3)

*For each proposed amendment, the [Board shall review whether] a proposed amendment be approved, approved with modifications, or denied based on the following criteria:*

*a. The amendment is consistent with the Comprehensive Plan; and*

Discussion: The Board concludes that the proposed amendment would not be consistent with the Comprehensive Plan because the site would be an island of commercial property surrounded mainly by residential property.

b. *The amendment meets a definable public need; and*

Discussion: The Board concludes there is not a definable public need to change zoning from Burbank Residential to Burbank Commercial at this time.

c. *The amendment is in the long term interest of the county.*

Discussion: The amendment does not appear to be in the long-term interest of the County at this time.

4. The Board concludes the proposed amendment is not in compliance with the criteria in Walla Walla County Code Sections 14.10.070(B)(3) (4) and 14.15.070(B)(3), outlined above.
5. The proposed amendment is not consistent with the Walla Walla County Comprehensive Plan at this time.
6. As proposed, the amendment will not have a significant adverse impact on public welfare and safety.
7. The proposed amendment is not in compliance with RCW 36.70A at this time.

### **Section III. Denial of the Proposed Change from Residential Single Family and Burbank Residential to Commercial and Burbank Commercial.**

Based on its review of the requirements of RCW 36.70A and the Walla Walla County Code, the proposed amendment prepared by the applicant, staff analysis and the recommendation proposed by the Planning Commission, the Board of County Commissioners hereby denies Comprehensive Plan amendment CPA2012-005/REZ2012-004.

### **Section IV. Effective Date and Savings.**

This Ordinance is effective upon signing.

### **Section V. Severability.**

If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this ordinance.

### **Section VI. Publication.**

This Ordinance will be published by an approved summary consisting of the title.



PASSED by the Walla Walla County Board of County Commissioners in regular session at Walla Walla, Washington, then signed by its membership and attested by its Clerk in authorization of such passage this 16<sup>th</sup> day of December, 2013.

Attest:

*Connie R Vinti*

Connie R. Vinti, Clerk of the Board

*Perry L Dozier*

Perry L. Dozier, Chairman, District 2

*absent*

James K. Johnson, Commissioner, District 1

*Gregory A. Tompkins*

Gregory A. Tompkins, Commissioner, District 3

*Constituting the Board of County Commissioners  
of Walla Walla County, Washington*

Approved as to form

*Jesse D Nolte*

Jesse D. Nolte, Deputy Prosecuting Attorney

