

COUNCIL OF THE TOWN OF INDIAN HEAD
Resolution No. 08-01-17

Introduced By: Mayor and Council
Date Introduced: August 7, 2017
Amendments Adopted: None
Date Adopted: August 7, 2017
Date Effective: August 7, 2017

A RESOLUTION concerning

Rezoning – Cook Inlet Region, Inc., Property

FOR the purpose of granting, subject to certain conditions, the application of Cook Inlet Region, Inc., for the reclassification of a portion of the property known as Parcel 609 on Charles County Tax Map 11, Grid 15, located on the north side of Maryland Route 210, in the Town of Indian Head.

EXPLANATORY STATEMENT: Cook Inlet Region, Inc. (“CIRI” or “Applicant”), is the owner of the property known as Parcel 609 on Charles County Tax Map 11, Grid 15 (“Parcel 609”), consisting of 19.3638 acres, more or less. Parcel 609 is split zoned, the southern portion being classified on the Town of Indian Head zoning map as Town Center Mixed Use (“TCMX”) and the remaining approximately 7 acres northern portion being classified as Open Space (“OS”).

In November, 2016, CIRI filed an application and exhibits with the Town for the reclassification of the northern approximately 7 acres of Parcel 609 to the Town’s TCMX zoning district. CIRI’s application seeks a reclassification based upon a mistake allegedly made by the Town Council when it split zoned the property and placed the northern portion in the OS classification. The application makes no assertion that there has been a change in the character of the neighborhood in which the property is located since the last zoning of the property.

The Town of Indian Head Planning Commission conducted a public hearing on the application on February 15, 2017, and a subsequent review on March 15, 2017. During the review the Planning Commission heard and received evidence from Town staff and the Applicant. On March 15 the Planning Commission recommended that the application for reclassification be granted subject to conditions. The conditions recommended by the Planning Commission are acceptable to the Applicant.

On June 15, 2017, the Town Council conducted a duly advertised public hearing on the application. At the public hearing the Town Council received a presentation and report from the Applicant and testimony from members of the public. A Staff Report and Planning Commission recommendation were part of the record. At the conclusion of the public hearing the Town Council held the record open for post-hearing submittals by interested parties. No post-hearing submittals were made.

FINDINGS: The Town Council makes the following findings based upon the record made at the public hearing, including Applicant’s application and exhibits, the Staff Report and the Planning Commission recommendation:

1. The Explanatory Statement is incorporated into these Findings.
2. The Applicant obtained title to Parcel 609 in November, 1987.
3. Parcel 609 is located on the north side of Maryland Route 210, adjacent to the Town’s Village Green Pavilion, Town recreational facilities, an elementary school, a U.S. Navy

base (including single-family military housing), townhouse housing developments and MD Route 210 (Indian Head Highway).

4. Parcel 609 is undeveloped and unimproved, and a majority of the property is forested.

5. Parcel 609 is served by public water and sewer facilities and other utilities, including natural gas. All of these utilities are within close proximity to Parcel 609, available for extension to serve the proposed development and have adequate capacity to serve development of the property.

6. The far northern area of Parcel 609, substantially less than the entire portion of Parcel 609 that is zoned OS, contains a stream, stream bed and a small area of moderately steep slopes. The remainder of the OS zoned portion of Parcel 609 contains no physical features of environmental significance or sensitivity. Parcel 609 does not contain any 100 year mapped floodplains, non-tidal wetlands or Chesapeake Bay Critical Areas. According to the Natural Resources Conservation Service the property's soils outside the steep slopes, are suitable for development. Parcel 609 contains no unusual topography that would make it unsuitable for TCMX development. Overall, subject to regulatory protections for environmentally significant features, Parcel 609 in its entirety is suitable for development under the TCMX zoning classification.

7. The OS zoning classification was placed on substantially more land than is necessary to protect the environmental features of the land from future development. Steams, stream beds and steep slopes on private property typically are protected from development by land use regulations other than an OS zoning classification. Restriction of the non-environmentally sensitive portion of the rear 7 acres of Parcel 709 to OS public or quasi-public type uses is unnecessary and inappropriate.

8. CIRI proposes to develop Parcel 609 into an approximately 164 unit townhouse development, as shown on Exhibit "H" to the CIRI's application, the "Community Concept Plan" approved by the Town of Indian Head Planning Commission on August 17, 2016. This Concept Plan is the basis for CIRI's rezoning application. The proposed development's gross density of 8.3 units/acre is consistent and compatible with surrounding properties.

9. The proposed development will access two locations at Dr. Andrews Way, which then intersects with MD Route 210, an arterial highway. According to a traffic study performed by CIRI's traffic expert, all affected intersections will operate at satisfactory levels A or B at full buildout of CIRI's proposed townhouse development on Parcel 609 and anticipated 3% growth in background traffic volumes.

10. The Town's current population is approximately 3,857 people. Full buildout of the proposed development in 4-6 years will add approximately 452 persons to the Town's population, an 11.7% increase. This population increase is within levels anticipated in the Town's 2009 Comprehensive Plan.

11. The projected population increase from the development is projected to generate 35 elementary school students, 21 middle school students, and 31 high school students. Public schools are expected to have adequate capacity to absorb these students without resulting in overcrowding.

12. The proposed reclassification to TCMX and development of Parcel 609 in a manner contemplated by the Concept Plan is consistent in many respects with the Town's Comprehensive Plan, Zoning Ordinance and land use policies. Parcel 609 is located in a portion of the Town designated for high density residential development, and classifying the entire Parcel 609 as TCMX furthers that objective. Retaining the 7 acres portion of Parcel 609 as OS is inconsistent with the Comprehensive Plan objective. Applicant submitted as Exhibit J of its application a thorough and detailed Consistency Analysis addressing these issues. The Town Council adopts and incorporates by reference the provisions of Applicant's Consistency Analysis.

13. Parcel 609 is the only significant parcel, or portion of a parcel, of privately owned undeveloped land in the Town of Indian Head that is zoned Open Space. Typically, Open Space zoning is confined to publicly or quasi-publically owned lands for use as parks and other public purposes. As stated in Section 905 of the Indian Head zoning ordinance, the purpose of the Open Space zone is to identify open spaces that are significant features of the landscape, protect them from future development and preserve them for future enjoyment of the community. The uses allowed in the Open Space zone exemplify that the purpose of the OS zone is to identify open spaces and establish public or quasi-public uses of those open spaces.

14. CIRI has not dedicated any portion of its privately owned Parcel 609 to public use and has not consented to the use of the property by the general public.

15. The development of Parcel 609 under the TCMX zoning classification will result in greater taxes, utility fees and impact fees than if 7 acres were retained as OS zoned land. Impact fees from the project are expected to generate approximately \$1,700,000. While the Town will receive additional revenues from the project, the Town will be required to maintain public roads and provide other public services. However, the Town still would need to incur these expenses, albeit at a smaller amount, if the 7 acre portion of Parcel 609 remained in the OS zoning classification.

16. The Town Planning Commission recommended approval of reclassification of the OS zoned portion of Parcel 609 to TCMX, subject to three conditions, set forth as Conditions 1-3 below.

Based upon the foregoing Findings, the Town Council makes the following conclusions of law:

1. Sections 2000, *et seq.*, of the Indian Head Zoning Ordinance regulate the reclassification of land. Section 2003(c) requires that in order to grant a reclassification the Town Council must find that either there has been a substantial change in the character of the neighborhood since the last comprehensive zoning of the property for which a reclassification is sought, or that the Town Council erred when it last comprehensively zoned the property. A reclassification of land is discretionary even if the Town Council determines that a change has occurred in the character of the neighborhood or that a mistake occurred in the last comprehensive zoning.

2. Section 2003(c) also requires that the Council make findings of fact in each specific case, including but not limited to the following matters: population change, adequacy of public facilities, present and future transportation patterns, compatibility with existing and proposed development for the area, the recommendation of the Planning Commission, the relationship of the proposed rezoning to the Comprehensive Plan, fiscal impact upon the Town government and suitability of the property in question for uses allowed under the existing and proposed zoning classifications. These findings are made in the Findings above.

3. The Town Council concludes that it made an error as a matter of law when it classified the approximately 7 acre portion of Parcel 609 as OS. As discussed above in the Findings, only a small portion of the 7 acres is environmentally sensitive and regulatory tools are available to protect those lands during the development process. In essence, the Council placed a zoning classification on this land that had the effect of dedicating the land to public enjoyment and prohibiting economically viable private use without any compelling need. Furthermore, when the Town Council zoned the 7 acres as Open Space the Council was under the erroneous assumption that the land would be placed under public dominion, control, use or enjoyment.

4. Reclassification of the 7 acre portion of Parcel 609 to TCMX is warranted because the reclassification will provide for fuller utilization of the land and provide enhanced revenues and economic benefits to the Town.

5. Reclassification of the approximately 7 acre portion of Parcel 609 to TCMX is appropriate based upon the inappropriate classification of that portion as OS for uses that are public or quasi-public in nature, the zoning classification of the remainder of Parcel 609 as TCMX, the uses of surrounding lands, the Town's Comprehensive Plan that supports the

reclassification to TCMX as implementing many of the Plan’s goals and objectives, and the Planning Commission’s endorsement of the reclassification.

NOW, THEREFORE, based upon the foregoing findings and conclusions of law,

SECTION 1. BE IT RESOLVED BY THE COUNCIL OF THE TOWN OF INDIAN HEAD that the application of Cook Inlet Region, Inc., for the reclassification of all that approximately 7 acres portion of the property known as Parcel 609 on Charles County Tax Map 11, Grid 15, from the OS Open Space zoning classification to the TCMX Town Center Mixed Use zoning classification is granted and the Town’s zoning map shall be modified to reflect the zoning classification of the entire Parcel 609 as TCMX. The reclassification of Parcel 609 is subject to the following conditions:

1. Based upon a topographic survey of the property, environmental analysis by the Applicant and input from the Maryland Department of Natural Resources, all forest areas, streams and their buffers, and steep slopes not proposed for development on Parcel 609 shall be placed in a perpetual conservation easement, the form and content of which shall be subject to approval by Town staff and the Town Attorney.

2. A natural buffer shall be preserved along the entire common boundary between Parcel 609 and the Navy Base during the development of Parcel 609.

3. The development of Parcel 609 shall comply with the Town’s reforestation ordinance and any required reforestation, to the maximum extent practicable, shall be implemented on land within the Town of Indian Head.

4. Development of Parcel 609 shall be undertaken substantially in accordance with Exhibit “H” to the Applicant’s application, the “Community Concept Plan” approved by the Town of Indian Head Planning Commission on August 17, 2016.

INDIAN HEAD TOWN COUNCIL



Brandon Paulin, Mayor



Ron Sitoula, Vice Mayor



Curtis Smith, Councilman

ATTEST:



Andrea Brady, Town Clerk

Date 8/7/17