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503-588-6173*

DECISION OF THE HEARINGS OFFICER

QUASI-JUDICIAL ZONE CHANGE CASE NO.: ZC18-03

APPLICATION NO.: 18-113189-ZO

NOTICE OF DECISION DATE: NOVEMBER 15, 2018

SUMMARY: A Quasi-Judicial Zone Change from SWMU (South Waterfront Mixed-Use) to CB (Central Business District).

REQUEST: An application for a Quasi-Judicial Zone Change from SWMU (South Waterfront Mixed-Use) to CB (Central Business District), for property approximately 4.07 acres in size that is currently vacant, and located at 230 Front Street SE (Marion County Assessors Map and Tax Lot number: 073W27BA01700, 073W27BA01490, and 073W27BA01800).

APPLICANT: Toni Whitler, City of Salem Public Works

LOCATION: Southwest Portion of Riverfront Park

CRITERIA: Salem Revised Code (SRC) Chapter 265.005(e)

FINDINGS: The findings are in the attached Order dated November 15, 2018.

DECISION: The Hearings Officer **APPROVED** Quasi-Judicial Zone Change ZC18-03.

A copy of the decision is attached.

Application Deemed Complete:	<u>September 19, 2018</u>
Public Hearing Date:	<u>October 24, 2018</u>
Notice of Decision Mailing Date:	<u>November 15, 2018</u>
Decision Effective Date:	<u>December 1, 2018</u>
State Mandate Date:	<u>January 17, 2019</u>

Case Manager: Britany Randall, brandall@cityofsalem.net; 503.540.2304

This decision is final unless written appeal from an aggrieved party is filed with the City of Salem Planning Division, Room 305, 555 Liberty Street SE, Salem OR 97301, no later than **5:00 p.m., November 30, 2018.** Any person who presented evidence or testimony at the hearing may appeal the decision. The notice of appeal must contain the information required by SRC 300.1020 and must state where the decision failed to conform to the provisions of the applicable code section, SRC Chapter(s) 265.005(e). The appeal must be filed in duplicate with the City of Salem Planning Division. The appeal fee must be paid at the time of filing. If the appeal is untimely and/or lacks the proper fee, the appeal will be rejected. The City Council will review the appeal at a public hearing. After the hearing, the City Council may amend, rescind, or affirm the action, or refer the matter to staff for additional information.

NOTICE OF DECISION

PLANNING DIVISION
555 LIBERTY ST. SE, RM 305
SALEM, OREGON 97301
PHONE: 503-588-6173
FAX: 503-588-6005

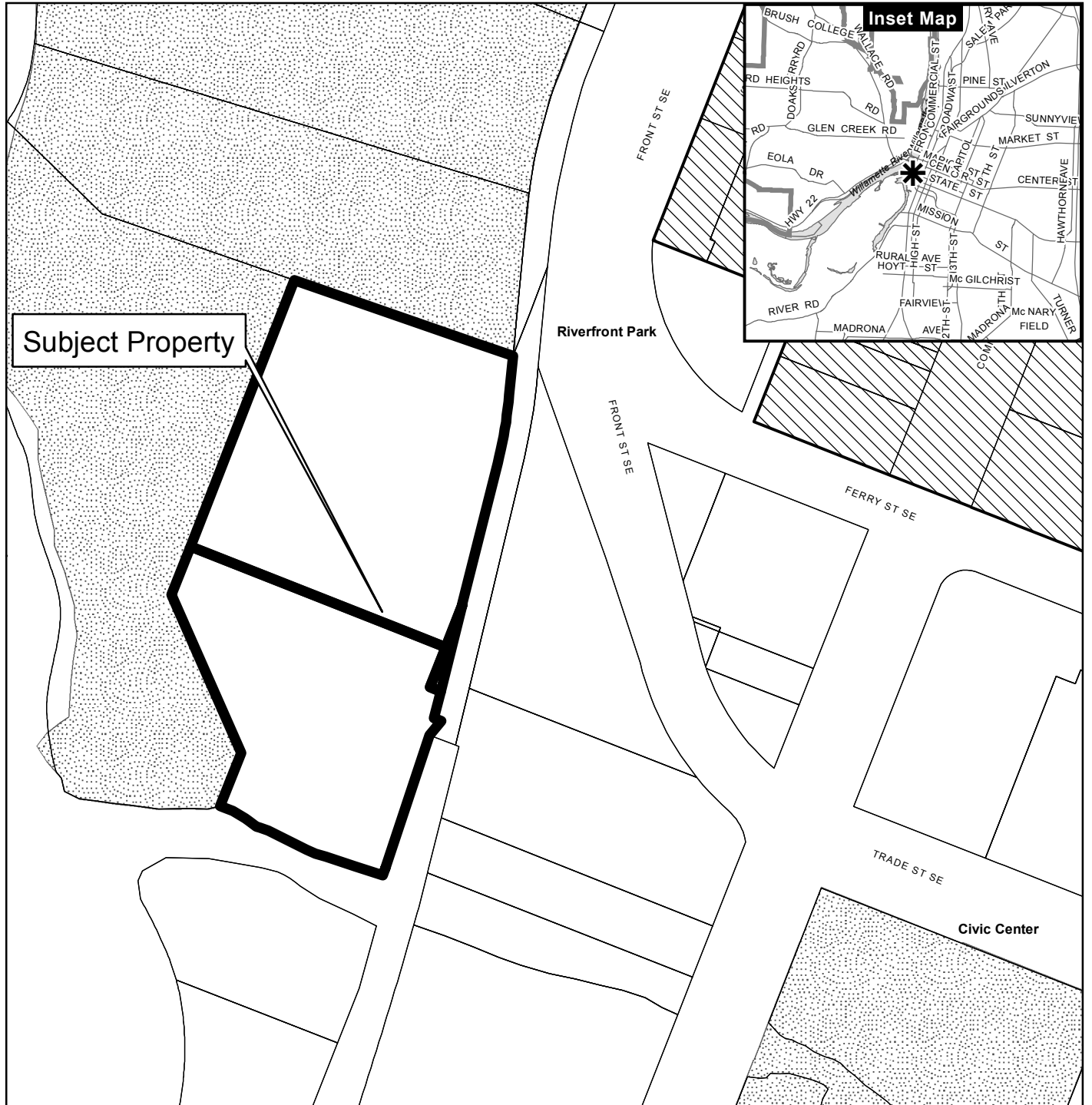
CITY OF Salem
AT YOUR SERVICE

The complete case file, including findings, conclusions and conditions of approval, if any, is available for review at the Planning Division office, Room 305, City Hall, 555 Liberty Street SE, during regular business hours.








<http://www.cityofsalem.net/planning>

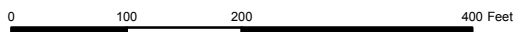
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Vicinity Map Southwest Corner of the Waterfront Park



Legend

-  Taxlots
-  Urban Growth Boundary
-  City Limits
-  Outside Salem City Limits
-  Historic District
-  Schools
-  Parks

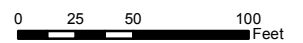


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Legend			
	Proposed Structures		AO
	Historic District		COE
	Park Boundaries		IFH-A
	Zoning		IFH-FW
	Contours		X5
	Creeks		A
	Willamette River		AE
	Taxlot		AH
			AE
			AH
			IFH-FW
			X5

Zone Change Application
Existing Conditions Map
June 19, 2018
City of Salem - Riverfront Park



**CITY OF SALEM
BEFORE THE HEARINGS OFFICER**

A REQUEST FOR A QUASI-JUDICIAL ZONE }
CHANGE FROM SWMU (SOUTH } Case No. ZC18-03
WATERFRONT MIXED-USE) TO CB }
(CENTRAL BUSINESS DISTRICT), FOR }
PROPERTY APPROXIMATELY 4.07 ACRES } FINDINGS OF FACT, CONCLUSIONS, AND
IN SIZE THAT IS CURRENTLY VACANT AND } DECISION
LOCATED AT THE SW PORTION OF }
RIVERFRONT PARK (MARION COUNTY }
ASSESSORS MAP AND TAX LOT NUMBER: }
073W27BA01700, 073W27BA01490, AND }
073W27BA01800. }

DATE AND PLACE OF HEARING:

October 24, 2018, Salem City Council Chambers, Room 240, Civic Center, 555
Liberty Street SE, Salem, Oregon.

APPEARANCES:

Staff: Britany Randall, Planner II

Neighborhood Association: None

Proponents: Toni Whittler, City of Salem Parks Planner,
Applicant

Opponents: N/A

SUMMARY OF THE APPLICATION AND HEARING

BACKGROUND

The City of Salem held a duly authorized and noticed public hearing on
October 24, 2018, regarding a zone change application requesting to change the
zoning designation for the property that makes up the Southwest portion of
Riverfront Park from SWMU (South Waterfront Mixed-Use) to CB (Central Business
District). The subject property is approximately 4.07 acres in size and is currently
vacant. The applicant indicated the reason for the proposed zone change is to keep
the zoning consistent throughout the Riverfront Park and to be able to implement the
elements of the Park Master Plan once it is adopted. At the commencement of the
hearing, the Hearings Officer identified the applicable criteria and outlined the
procedures. The Hearings Officer accepted the staff report and presentation into the

ZC18-03

November 15, 2018

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record. Prior to the close of the public hearing, the applicant waived the additional 7-day period for final written argument.

FINDINGS OF FACT AND CONCLUSIONS

1. Salem Area Comprehensive Plan (SACP) designation

The Salem Area Comprehensive Plan (SACP) map designates the subject property as ROM (River Oriented Mixed Use). The Salem Comprehensive Policies Plan describes the predominant use in the River Oriented Mixed-Use designation as commercial, commercial industrial, or industrial. This designation includes a mixture of commercial, office and high-density residential uses.

Because the proposed CB (Central Business District) zoning is consistent with the “River Oriented Mixed Use” Comprehensive Plan designation, a concurrent Comprehensive Plan Map Amendment is not required.

The Comprehensive Plan designations of surrounding properties include:

North: “River Oriented Mixed Use”

South: Across Pringle Creek - “River Oriented Mixed Use”

East: Across the train tracks - “River Oriented Mixed Use”

West: “River Oriented Mixed Use”

The property is within the Urban Service Area.

2. Zoning of Surrounding Properties

The subject site is currently zoned SWMU (South Waterfront Mixed-Use).

The zoning of surrounding properties is described as follows:

North: CB (Central Business District)

South: Across Pringle Creek - SWMU (South Waterfront Mixed-Use)

East: Across the train tracks - SWMU (South Waterfront Mixed-Use)

West: CB (Central Business District)

3. Neighborhood and Citizens Comments

The subject property is located within the boundaries of the Central Area Neighborhood Development Organization (CAN-DO). Notification was sent on

October 4, 2018 to the neighborhood association and surrounding property owners within 250 feet of the property. At the time of the the staff report, no comments were received from the neighborhood association or from adjoining property owners.

One clarifying question was received from the SCAN Historic Preservation, Parks & Gardens Committee regarding why the proposed change was not being reviewed by the City Council. Staff clarified, pursuant to Salem Revised Code (SRC) Chapter 300, the review authority for zone change applications is the Hearings Officer.

4. City Department and Public Agency Comments

The Public Works Department has reviewed the proposal and provided a memo which is included as Attachment C in the staff report.

The Building and Safety Division reviewed the proposal and indicated no concerns with the zone change request.

The Fire Department reviewed the proposal and indicated no concerns with the zone change but will have comments on items such as Fire Department access and water supply at the time of site plan review and building permit plan review.

5. Public Agency and Private Service Provider Comments

Staff received a comment from PGE stating the following: Development cost per current tariff and service requirements. Maintain and protect existing PGE facilities. Electrical load information will need to be provided to determine any required changes to the distribution system.

Staff received a comment from ODOT Rail & Public Transit Division stating the following: The property is adjacent to the railroad tracks. Presently, there is no public access across the tracks. If any development of this parcel is planned, a barrier should be considered to restrict any access over the tracks. This section of track is part of the recent Quiet Zone. Any access point could jeopardize the quiet zone.

6. Criteria for Granting a Quasi-Judicial Zone Change

The following analysis from the staff report addresses the proposed zone change for the subject property from SWMU (South Waterfront Mixed-Use) to CB (Central Business District).

SRC Chapter 265.005 provides the criteria for approval for Quasi-Judicial Zone Changes. In order to approve a quasi-judicial Zone Map amendment request, the review authority shall make findings based on evidence provided by the applicant demonstrating that all the following criteria and factors are satisfied. The extent of the consideration given to the various factors set forth below will depend on the degree of impact of the proposed change, and the greater the impact of a proposal on the area, the greater is the burden on the applicant to demonstrate that, in weighing all the factors, the zone change is appropriate.

The applicable criteria and factors are stated below in **bold** print. Following each criterion is a response and/or finding relative to the amendment requested.

SRC 265.005(e)(1)(A). The zone change is justified based on one or more of the following:

(i) A mistake in the application of a land use designation to the property;

The Hearings Officer notes that the applicant does not identify a mistake in the application of a land use designation to the property, so this criterion does not apply.

(ii) A demonstration that there has been a change in the economic, demographic, or physical character of the vicinity such that the proposed zone would be compatible with the vicinity's development pattern; or

The Hearings Officer notes that the applicant does not identify a change in the economic, demographic, or physical character of the vicinity, so this criterion does not apply.

(iii) A demonstration that the proposed zone change is equally or better suited for the property than the existing zone. A proposed zone is equally or better suited than an existing zone if the physical characteristics of the property are appropriate for the proposed zone and the uses allowed by the proposed zone are logical with the surrounding land uses.

The Hearings Officer finds that this is appropriate review criterion for the proposal. The application is based on(iii), a demonstration that the proposed zone change is equally or better suited for the property than the existing zone.

The Hearings Officer notes that the subject property is the only portion of the Riverfront Park that is not zoned CB (Central Business District). The subject property was not part of the park when the current zone, SWMU (South Waterfront Mixed Use), was applied. It has since been acquired by the City with the goal of expanding Riverfront Park onto this property. The SWMU zone requires a minimum of 15 percent of each development site to be household living uses. The Hearings Officer notes that this requirement is not compatible with the Riverfront Park. The CB zone allows a compact arrangement of retail and commercial enterprises together with office, financial, cultural, entertainment, governmental, residential and parks uses. The CB zone is a more appropriate zone to be able to implement the Riverfront Park Master Plan once it is adopted. The CB zone will allow the future development of this portion of the Riverfront Park to be consistent with the existing park areas to the north.

The Hearings Officer finds that based on the reasons from the staff report, the proposed zone change is equally or better suited to the property than the existing SWMU zone.

(B) If the zone change is City-initiated, and the change is for other than City-owned property, the zone change is in the public interest and would be of general benefit.

The Hearings Officer notes that though the property is City owned, the proposal is not a City-initiated zone change as the Public Works Department is the applicant. Therefore, this criterion does not apply.

(C) The zone change complies with the applicable provisions of the Salem Area Comprehensive Plan.

The Hearings Officer notes the applicable Goals and Policies of the Comprehensive Plan are addressed as follows:

Salem Urban Area Goals and Policies, General Development (Page 24, Salem Comprehensive Policies Plan):

To ensure that future decisions concerning the use of land within the Salem urban area are consistent with State Land Use Goals.

Development Compatibility B.12

Land use regulations which govern the siting of any development shall encourage development to reduce its impact on adjacent properties by screening, landscaping, setback, height, and mass regulations.

The Hearings Officer finds that future development of the site will be required to conform to the development standards of the CB (Central Business District) zone. The future use of the subject property is planned to be an extension of the existing Riverfront Park. The remainder of the park to the north is already zoned CB. There are natural breaks in the land where properties have differing zoning. To the south of the subject site, the property is bordered by Pringle Creek. On the south side of the creek, the property will remain SWMU (South Waterfront Mixed Use) which has similar setbacks, screening, landscaping, height and mass regulations making the proposed zone change compatible with surrounding designations and uses.

Designated Open Space B.13

Land use regulations shall encourage public spaces, both natural and manmade for either active or passive enjoyment, including natural areas, open plazas, pedestrian malls, and play areas.

The Hearings Officer finds the subject property is part of the Riverfront Park and the proposed zone change is intended to implement elements of the park master plan once it is adopted. At the time of future development of the site, the applicant will be required to go through the site plan review process where staff will have an opportunity to ensure the proposed will meet this goal.

Salem Urban Area Goals and Policies, Urban Growth Goal (Page 26, Salem Comprehensive Policies Plan):

To ensure that the rate, amount, type, location and cost of development will preserve or enhance the City's quality of life and promote the City's efficient delivery of services.

Development Compatibility C.4

Development of land with existing urban services shall be encouraged before the conversion of urbanizable lands to urban uses.

The Hearings Officer notes that the subject property is located within the Urban Service Area. The Hearings Officer notes that development of the proposed site does not require the extension or development of new public services. City services, including water, sewer, streets and storm drainage are available to serve the subject property. The Hearings Officer finds that the proposal is consistent with this policy.

Salem Urban Area Goals and Policies, Growth Management Goal (Page 27, Salem Comprehensive Policies Plan):

To manage growth in the Salem urban area through cooperative efforts of the City of Salem and Marion and Polk Counties, to ensure the quality of life of present and future residents of the area, and to contain urban development and to preserve adjacent farm lands.

Infill on Facilities D.9

New development shall be encouraged to locate in areas where facilities are already available and in areas which require the least public costs to provide needed facilities and services.

The Hearings Officer notes the subject property is located within the Urban Service Area. The Hearings Officer notes development of the proposed site does not require the extension or development of new public services. City services, including water, sewer, streets and storm drainage are available to serve the subject property. The Hearings Officer finds the proposal is consistent with this policy.

(D) The zone change complies with applicable Statewide Planning Goals and applicable administrative rules adopted by the Department of Land Conservation and Development.

The Hearings Officer notes that the applicable Statewide Planning Goals are addressed as follows:

Statewide Planning Goal 1 – Citizen Involvement: To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

The Hearings Officer notes that a public hearing notice was mailed to the affected property owners, all property owners within 250 feet of the subject property and to the Central Area Neighborhood Development Organization (CAN-DO). The Hearings Officer finds this satisfies Citizen Involvement described in Goal 1.

Statewide Planning Goal 2 – Land Use Planning: To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

The Hearings Officer notes that the City has complied with the Goal requirements for establishing and maintaining a land use planning process. The Oregon Land Conservation and Development Commission have acknowledged the Salem Area Comprehensive Plan to be in compliance with the Statewide Planning Goals. The Hearings Officer finds that the proposal satisfies this Goal.

Statewide Planning Goal 5 – Open Spaces, Scenic and Historic Areas, and Natural Resources: To protect natural resources and conserve scenic and historic areas and open spaces.

The Hearings Officer notes that Staff concurs with the applicant's written response which states the following: The site is an addition to Riverfront Park. The proposed zone change will be consistent with the existing park facility and will further enhance the public uses at the park. There are no known historic or cultural resources on the affected parcels. The City's tree preservation ordinance, Willamette Greenway ordinance, and any applicable wetland and floodplain standards will continue to apply to the affected parcels as applicable.

The Salem Area Comprehensive Plan lists the Willamette Greenway as a resource and as such, measures to protect, conserve, enhance, and maintain the natural scenic, historical, agricultural, economic, and recreational qualities of lands along the Willamette River, are in place. Through a future application for site plan review, the application will be reviewed for compliance with the City's tree preservation ordinance, historic preservation ordinance, and applicable wetland standards.

The Hearings Officer finds that the proposal is consistent with Goal 5.

Statewide Planning Goal 7 – Areas Subject to Natural Disasters and Hazards: To protect people and property from natural hazards.

The Hearings Officer notes that Staff concurs with the applicant's written response which states the following: A portion of the site proposed for zone change is within the floodway and the 100-year floodplain. Any development on this site is managed through, and will be in adherence to, Salem Revised Code Chapter 601, Floodplain Overlay Zone, to ensure there is no hazard to users.

The portion of the site where this is applicable is the most southerly portion of Tax Lot 073W27BA01700, where the site abuts Pringle Creek. At the time of future development of park amenities, DLCD (Department of Land Conservation and Development) and the Army Corps of Engineers will be notified and the applicant will be required to meet all requirements for development on properties with such hazards. Because the floodway and floodplain areas appear to be limited to the southerly most portion of the subject property, staff believes the future development of the site can take place on the remaining portions of the site with little or no disturbance to this area.

The Hearings Officer finds that the proposal is consistent with Goal 7.

Statewide Planning Goal 8 – Recreational needs: To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

The Hearings Officer notes that the subject property abuts the existing Riverfront Park. The subject parcels are planned to be used for the expansion of the park, which meets the objective of this goal.

The Hearings Officer finds that the proposal is consistent with Goal 8.

Statewide Planning Goal 11 – Public Facilities and Services: To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

The Hearing Officer notes that the subject property is within the Urban Service area. Comments from the Public Works Department indicate that the water, sewer, and storm infrastructure are available within surrounding streets/areas and appear to be adequate to serve the proposed development. The Hearing Officer finds that the proposal is consistent with Goal 11.

Statewide Planning Goal 12 – Transportation: To provide and encourage a safe, convenient and economic transportation system.

The Hearings Officer finds that Goal 12 is implemented by the Transportation Planning Rule (TPR). In summary, the TPR requires local governments to adopt Transportation System Plans (TSPs) and requires local governments to consider transportation impacts resulting from land use decisions and development. The key provision of the TPR related to local land use decisions is Oregon Administrative Rule (OAR) 660-012-0060. This provision is triggered by amendments to comprehensive plans and land use regulations that “significantly affect” a surrounding transportation facility (road, intersection, etc.).

Pursuant to OAR 660-012-0060(9), this request is exempt from the Transportation Planning Rule determination of significant affect. The proposed zone change will not trigger analysis or improvements to the surrounding transportation system. The Hearing Officer finds that the proposal is consistent with Goal 12 and the Transportation Planning Rule.

Statewide Planning Goal 15 – Willamette River Greenway: To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural,

economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.

The Hearings Officer notes that the subject property is not within the Willamette Greenway, however, a portion of the site does fall within the Willamette Greenway Compatibility Review Boundary. Any future development of the subject site will be required to meet the provisions of SRC Chapter 600 – Willamette Greenway, if it impacts the portion of the site that is within the Willamette Greenway Compatibility Review Boundary.

(E) If the zone change requires a comprehensive plan change from an industrial designation to a non-industrial designation, or from a commercial or employment designation to any other use designation, a demonstration that the proposed zone change is consistent with the most recent economic opportunities analysis and the parts of the Comprehensive Plan which address the provision of land for economic development and employment growth; or be accompanied by an amendment to the Comprehensive Plan to address the proposed zone change; or include both the demonstration and an amendment to the Comprehensive Plan.

The Hearings Officer finds that a change to the Comprehensive Plan map designation for the property is not required for the proposed zone change, therefore this criterion is not applicable.

(F) The zone change does not significantly affect a transportation facility, or, if the zone change would significantly affect a transportation facility, the significant effects can be adequately addressed through the measures associated with, or conditions imposed on, the zone change.

The Hearings Officer notes that pursuant to Oregon Administrative Rules 660-012-0060(9), the proposed zone change request is exempt from the Transportation Planning Rule determination of significant affect. The proposed zone change will not require analysis or improvements to the surrounding transportation system. Adequate urban services are available at the boundaries of the subject property. The Hearing Officer finds the proposal satisfies this criterion.

(G) The property is currently served, or is capable of being served, with public facilities and services necessary to support the uses allowed by the proposed zone.

The Hearings Officer finds that the water, sewer, and storm infrastructure are available within surrounding streets and are adequate to serve future

development under the proposed zone. Site-specific infrastructure requirements will be addressed in the Site Plan Review process pursuant to SRC Chapter 220.

DECISION

The Hearings Officer APPROVES the request for a quasi-judicial zone change from SWMU (South Waterfront Mixed-Use) to CB (Central Business District) for property approximately 4.07 acres in size that is currently vacant and located at the SW Portion of Riverfront Park.

DATED: November 15, 2018



James K. Brewer, Hearings Officer