

NOTICE OF DECISION

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



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503-588-6173*

DECISION OF THE HEARINGS OFFICER

QUASI-JUDICIAL ZONE CHANGE CASE NO: ZC17-01

APPLICATION NO. : 17-102616-ZO

NOTICE OF DECISION DATE: MARCH 21, 2017

Summary: A proposal to re-zone the western portion of a split-zoned lot from RS (Single Family Residential) to CR (Retail Commercial) to match the remainder of the lot.

Request: A proposal to rezone approximately 3,249 square feet (0.08 acres) on the western portion of Block 1, Lot 7 of Bishop's Addition to Salem from RS (Single Family Residential) to CR (Retail Commercial), consistent with the CR zoning on the eastern half of the lot.

The subject property is approximately 6,497 square feet (0.15 acres) in size, zoned RS (Single Family Residential) and CR (Retail Commercial), and located at 2332 Saginaw Street S (Marion County Assessor Map and Tax Lot Number 073W34CB00400).

APPLICANT: Pacific Nation Development, Represented by Brandie Dalton with Multi-Tech Engineering, Inc


LOCATION: 2332 Saginaw Street S

CRITERIA: Salem Revised Code Chapter 265.005(e)

FINDINGS: The findings are in the attached Order dated March 21, 2017.

DECISION: The Hearings Officer **APPROVED** Quasi-Judicial Zone Change Case No. ZC17-01. A copy of the decision is attached.

Application Deemed Complete: February 4, 2017
Public Hearing Date: March 8, 2017
Notice of Decision Mailing Date: March 21, 2017
Decision Effective Date: April 6, 2017
State Mandate Date: June 4, 2017

Case Manager: Olivia Glantz, OGlantz@cityofsalem.net; 

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., April 5, 2017.** 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

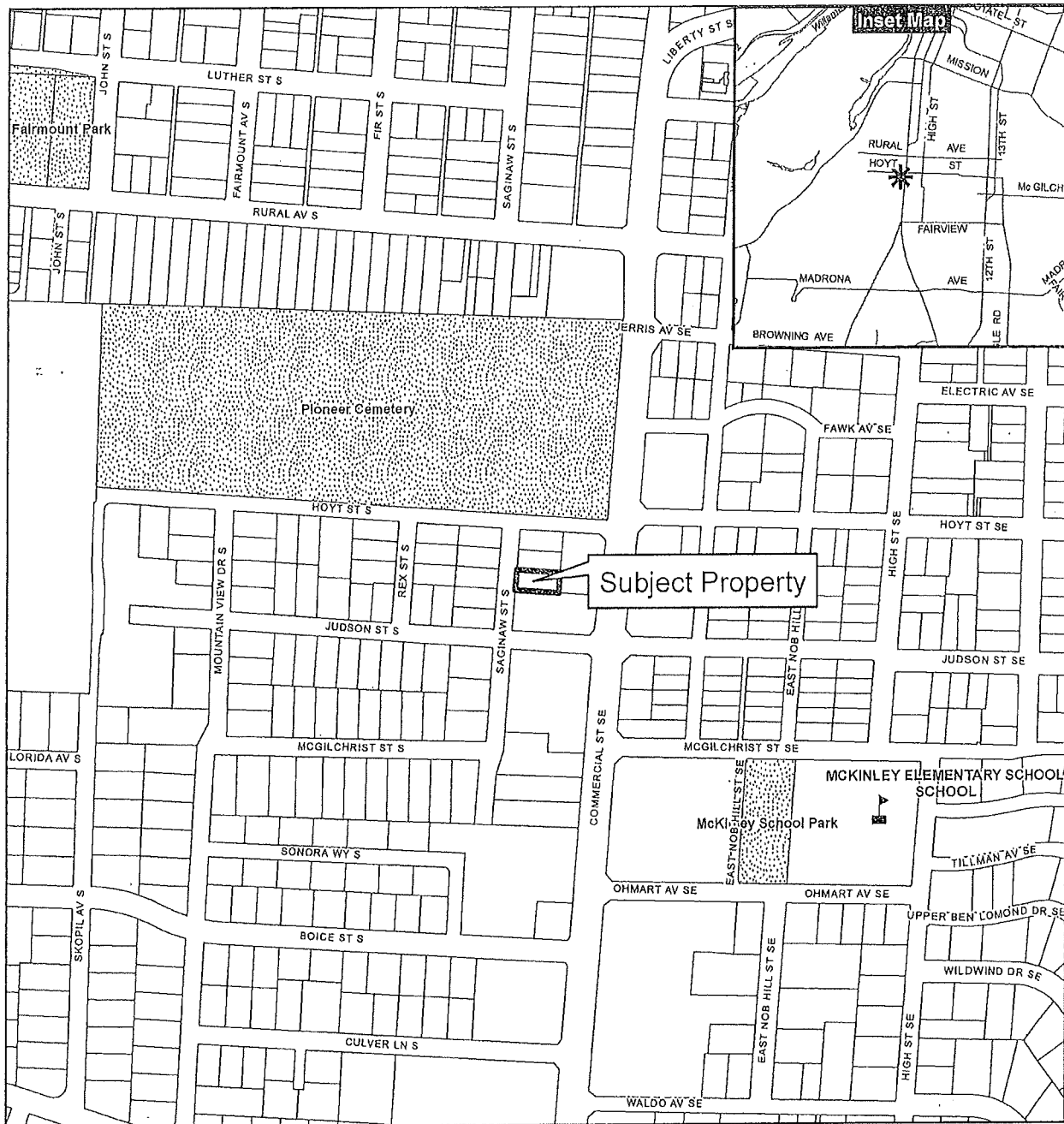
applicable code section in SRC Chapters 220 and 240. The appeal must be filed in duplicate with the City of Salem Planning Division. The appeal fee must be paid at the time of filing. If the appeal is untimely and/or lacks the proper fee, the appeal will be rejected. The Planning Commission will review the appeal at a public hearing. After the hearing, the Planning Commission may amend, rescind, or affirm the action, or refer the matter to staff for additional information.

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 2332 Saginaw Street S



Legend

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

Parks

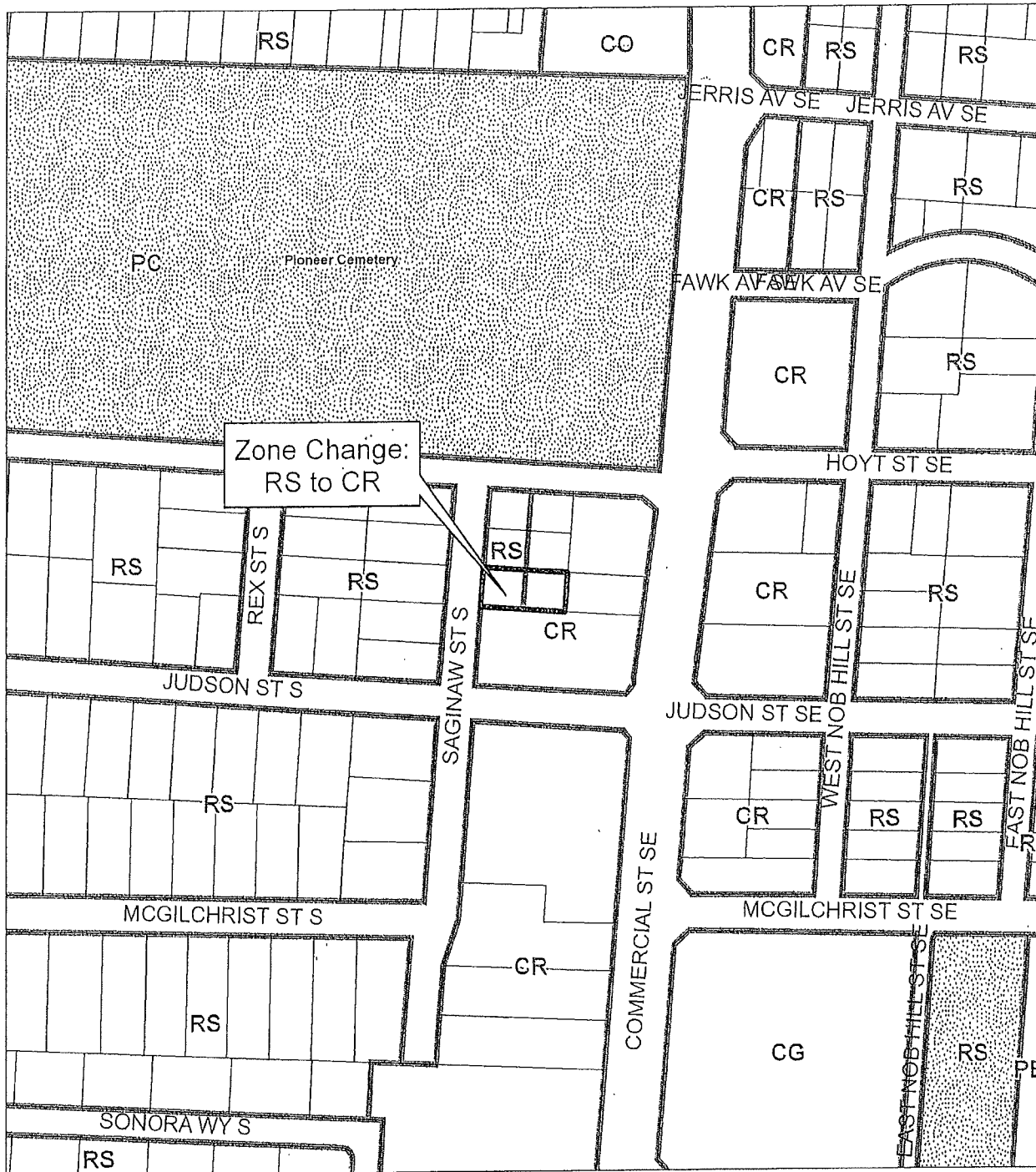
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Community Development Dept.

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Zoning Map - 2332 Saginaw Street S



Legend

- RS Base Zoning
- Urban Growth Boundary
- Outside Salem City Limits
- Taxlots
- Parks
- Schools

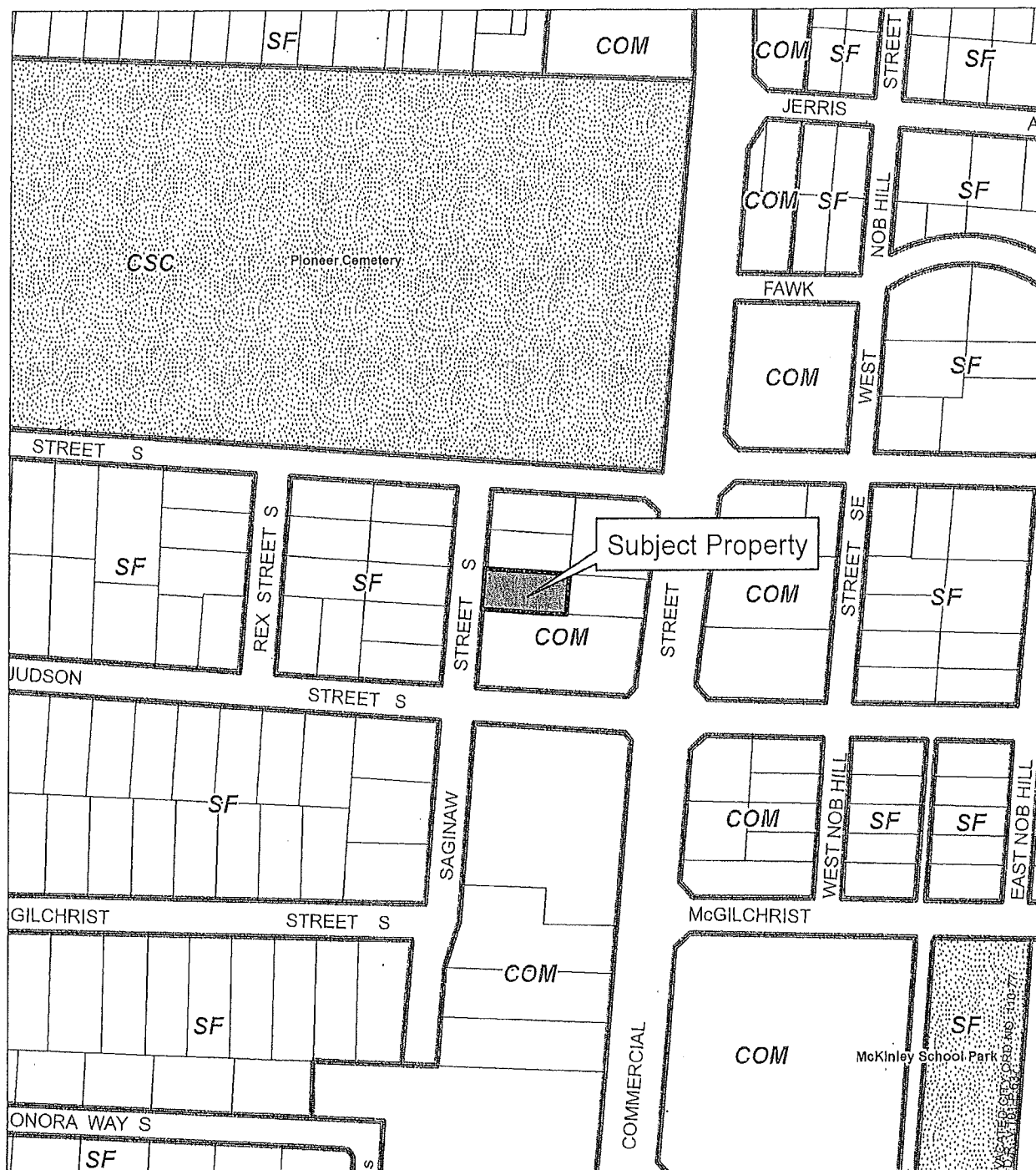
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Comprehensive Plan Map - 2332 Saginaw Street S



Legend

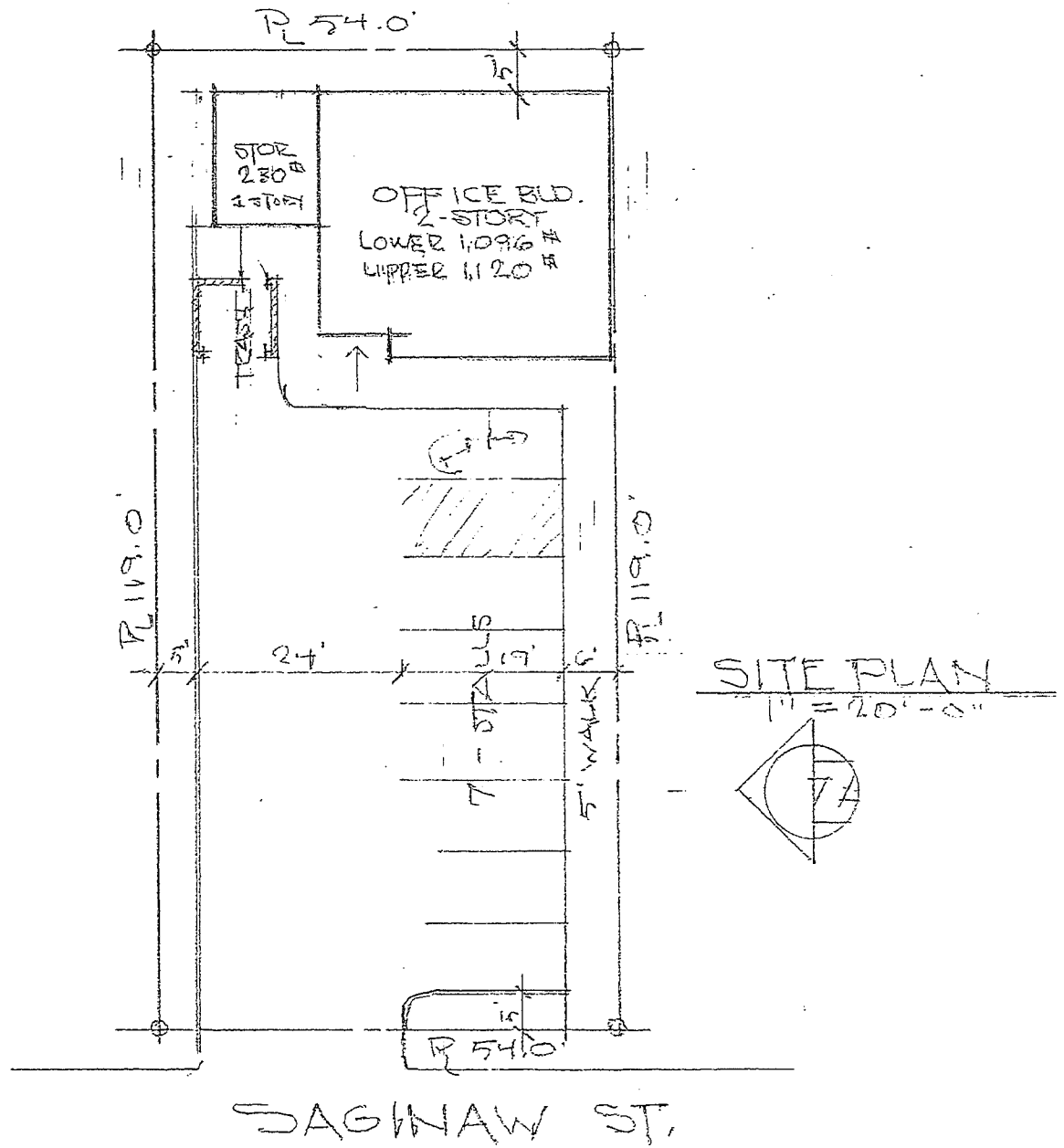
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|---------------------------|---------|
| Comprehensive Plan | Taxlots |
| Urban Growth Boundary | Parks |
| Outside Salem City Limits | Schools |

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**CITY OF SALEM
BEFORE THE HEARINGS OFFICER**

A PROPOSAL TO REZONE A 3,249-SQUARE FOOT (0.08 ACRE) PORTION OF A 0.15- ACRE PROPERTY LOCATED AT 2332 SAGINAW STREET S, SALEM OREGON FROM RS (SINGLE FAMILY RESIDENTIAL) TO CR (RETAIL COMMERCIAL).	}	CASE NO. ZC17-01 FINDINGS OF FACT, CONCLUSIONS, AND DECISION
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DATE AND PLACE OF HEARING:

March 8, 2017, at 5:30 p.m. Council Chambers, Room 240, Civic Center, 555
Liberty Street SE, Salem, Oregon.

APPEARANCES:

<u>Staff:</u>	Olivia Glantz, Planner II
<u>Neighborhood Association:</u>	N/A
<u>Proponents:</u>	Brandie Dalton with Multi-Tech Engineering, Inc., for the Developer, Pacific Nation Development
<u>Opponents:</u>	Opal Bontrager and Vera Bontrager (Oral testimony; 6 photographs with notes on reverse)

SUMMARY OF THE APPLICATION AND HEARING

BACKGROUND

The applicant submitted a zone change application requesting rezoning an approximately 3,249 square foot (0.08-acre) portion of the approximately 0.15-acre property located at 2332 Saginaw Street S from RS (Single Family Residential) to CR (Retail Commercial), in order to make the zoning on the entire property consistent with the Commercial Comprehensive Plan Designation. The property is currently split-zoned between RS (Single Family Residential) and CR (Retail Commercial).

FINDINGS OF FACT AND CONCLUSIONS

1. Salem Area Comprehensive Plan (SACP) Designation

The Salem Area Comprehensive Plan (SACP) map designates the subject property as "Commercial." The Salem Comprehensive Policies Plan describes the predominant use in the Commercial designation as commercial, and multifamily residential may be included where appropriate. The designation indicates commercial areas that provide shopping and service opportunities including regional shopping facilities, community and neighborhood shopping and service facilities, convenience stores, commercial offices, and specialized shopping and service facilities.

Because the proposed CR (Retail Commercial) zoning is consistent with the Comprehensive Plan designation, a concurrent Comprehensive Plan Map Amendment is not required.

The Comprehensive Plan designations of surrounding properties include:

North: "Commercial"
South: "Commercial"
East: "Commercial"
West: "Single Family Residential"-Across Saginaw Street S

The property is within the Urban Service Area.

2. Current Zoning and Zoning of Surrounding Properties

The property is split zoned with the eastern portion of the 0.15-acre subject property already zoned CR (Retail Commercial), and approximately 3,249 square feet of the western area zoned RS (Single Family Residential). Staff reports that printed zoning maps in 1953, 1976 and 1983 indicate that the 0.08-acre area of the subject property is split zoned RS and CR. Printed maps in 1989, 1990, 1993 and maps in land use cases through 1997 indicate that the entire 0.15-acre subject property and the adjacent properties were zoned RS (Single Family Residential) rather than split zoned RS and CR. Between 1999 and 2002, the zoning on the electronic GIS map was changed to reflect the split zoning of the property. Staff has found no land use decision or ordinance indicating that the zoning was officially changed from the 1953 printed zoning maps. The Hearings Officer finds that the request to change the zoning from RS (Single Family Residential) to CR (Commercial Retail) (rather than from some combination or for the entire property) is correct.

The zoning of surrounding properties follows:

North: RS (Single Family Residential) and CR (Retail Commercial)
South: CR (Retail Commercial)
East: CR (Retail Commercial)
West: (Across Saginaw Street S) RS (Single Family Residential)

3. Neighborhood and Citizen Comments

The subject property is located within the boundaries of Southwest Association of Neighbors (SWAN). Notification was sent on February 7, 2017 to the neighborhood association and surrounding property owners within 250 feet of the property. At the time of writing this staff report, no comments were received from either neighborhood association or from neighboring property owners. Opal Bontrager and Vera Bontrager, who live at 2335 Saginaw Street S provided testimony and photographs in opposition to the zone change at the hearing. They were concerned about the change in the use of the property from an attractive yard to a less attractive commercial use, traffic impacts, and the general negative impact that commercial uses would have on their residential property and use.

4. City Department and Public Agency Comments

- The Public Works Department, Building and Safety, Fire and Police reviewed the proposal and either identified no concerns or had no comments.

5. Criteria for Granting a Quasi-Judicial Zone Change

SRC Chapter 265.005(e) provides the criteria for approval for Quasi-Judicial Zone Changes. The Hearings Officer notes that the authority for the Hearings Officer to review a Quasi-Judicial Zone Change is limited to consideration of these criteria. To approve a quasi-judicial Zone Map amendment request, the Hearings Officer must make findings based on evidence provided by the applicant to demonstrate that all the following criteria and factors are satisfied. The extent of the consideration given to the various factors set forth below depends on the degree of impact from the proposed change. 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 finding relative to the amendment requested.

(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.**
- (ii) A demonstration that there has been a change in the economic, demographic, or physical character of the vicinity such that the zone would be compatible with the vicinity's development pattern.**
- (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 for the property 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 notes that the applicant does not assert that a mistake has been made in the application of the RS zone to the subject property. The Hearings Officer notes that there is a conflict between the Comprehensive Plan designation and the RS zone. Split-zoning a parcel, is not a common practice and where practical and consistent with the Comprehensive Plan, should be eliminated. As a further consideration, the Hearings Officer notes that the only access to the CR area is through the RS portion of the parcel, which is an undesirable zoning pattern.

The Hearings Officer notes that the Comprehensive Plan Map shows that the western area of the property, like the eastern area, is designated Commercial. The Hearings Officer agrees that the RS zoning conflicts with the Commercial designation.

The Hearings Officer notes the staff research showing that printed zoning maps from 1953, 1976 and 1983 indicate that the 0.08-acre area of the subject property is split zoned RS and CR, while printed maps in 1989, 1990, 1993 (and maps in land use cases through 1997) indicate that the entire 0.15-acre subject property and the adjacent properties were zoned RS (Single Family Residential) rather than split zoned RS and CR. Between 1999 and 2002, the zoning on the GIS map was changed to reflect the split zoning of the property. The Hearings Officer notes that staff has found no land use decision or ordinance indicating that the zoning was changed through any land use decision, ordinance or other formal action since the time of the 1953 printed zoning maps. The Hearings Officer concludes that the request to change the zoning from RS (Single Family Residential) to CR (Commercial Retail) correctly describes the status of the property at the time of the application and the applicant's desired result.

The Hearings Officer notes that the subject property is designated on the Salem Area Comprehensive Plan as "Commercial," and the proposed CR zone would be

consistent with the designation. The CR zone implements the Commercial Plan designation. The Hearing Officer notes that the RS zone is not consistent with the Commercial Plan designation. The Hearings Officer notes that the property to the immediate north has been developed with a single-family dwelling; the remaining properties are developed with commercial uses.

The Hearings Officer notes that that the split zoning on the property creates practical problems for development of either portion of the property. The Hearings Officer gives particular weight to the Comprehensive Plan designation, as zoning is intended to implement the Comprehensive Plan. The Hearings officer notes that because the RS zone conflicts with the Commercial designation, the alternative to a rezoning the RS zoned portion of the property would be to change the Comprehensive Plan designation to a Single Family Residential plan designation. The Hearings Officer notes that this is generally undesirable, as the Comprehensive Plan is supposed to have primacy over other planning documents.

The Hearings Officer notes that access to the CR area would need to be through the RS-zoned portion of the subject property. The Hearings Officer notes that the Planning Commission has determined, through a previous code interpretation, that an access way for a use may not cross property that would not allow that use, and a commercial use would not be allowed in the RS zone. Accordingly, accommodating the RS zone on the property would require changing the Comprehensive Plan designation from Commercial to Single Family Residential, but would also require rezoning the CR area to RS. The Hearings Officer notes that under the so called "Goal Post" rule, Oregon statutes require review of applications under the standards in place at the time of the application. The Hearings Officer finds that the Commercial Comprehensive Plan designation on the property is such a standard.

The Hearings Officer notes that applying the CR zone to the western area of the property is consistent with the current Comprehensive Plan designation for the subject property, will eliminate split-zoning that has precluded development of the site and will be logical with respect to surrounding uses. Accordingly, the Hearings Officer finds that the proposal meets this criterion.

- (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 the proposal is not a City-initiated zone change. Therefore, the Hearings Officer finds this criterion does not apply.

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

The Hearings Officer notes that the Comprehensive Plan Map designates the subject property as "Commercial." Goals and policies for Commercial Development are contained in section IV.G of the Salem Area Comprehensive Plan (SACP). The applicable goal from the Salem Area Comprehensive Plan and the related policies are addressed below. The Hearings Officer finds the proposal meets this criterion.

Goal G. To maintain and promote the Salem urban area as a commercial center.

The Hearings Officer notes the proposed zone change would allow construction of a commercial use on the property. The Hearings Officer finds that the proposed zone change is consistent with the applicable Commercial Development policies identified below.

Policy 2. Shopping and Service Facilities. Development of shopping and service facilities may be approved only after reviewing a development plan consisting of maps and written statements on the following: (a) Site plan; (b) Layout of all off-street parking and loading facilities; (c) Landscaping plan; (d) Surface stormwater plan; (e) Vehicular and pedestrian circulation plan; (f) Utility plans; (g) Impact on adjacent neighborhoods; (h) Impact on adjacent street networks; (i) Proposed use(s); (j) Transit service; and (k) Other information that may be required.

The Hearings Officer notes that there is no specific development proposal included with or consolidated with the proposed zone change. The Hearings Officer notes that the proposed zone change would make the western area available for commercial development, but development of shopping or service facilities on the property would be subject to building permit and site plan review. In the building permit and site review process, the maps and written statements identified in the policy would be required if applicable. The Hearings Officer notes that the applicant provided the Public Works Department with a Transportation Planning Rule analysis, and the Public Works Department found that the proposed zone change would result in no additional trips or transportation impacts. The Hearings Officer finds that the proposal conforms to this policy.

Policy 4. Community Shopping and Service Facilities. Community shopping and service facilities shall be located adjacent to major arterials and shall provide adequate parking and service areas. Land use regulations shall include provisions for siting and development which discourage major customer traffic from the outside the immediate neighborhoods from filtering through residential streets.

The Hearings Officer notes that there is existing commercial development adjacent to the subject property to the south and east and on Saginaw Street S near the intersection of Saginaw Street S and Hoyt Street S. Hoyt Street is designated as a

Collector in the Salem Transportation System Plan (TSP) Plan. The intersection of Hoyt Street and Saginaw Street is within 250-feet of Commercial Street SE which is designated as a Major Arterial in the Salem TSP Street Plan. The transportation planning rule analysis concludes that the trips generated by land uses that are likely to develop will not adversely impact the immediate area nor will the project have a measurable impact to the existing transportation system.

The subject property is well-served by the street network in the vicinity, which includes a Collector, Hoyt Street S and a Major Arterial, Commercial Street SE. The existing network of higher-classification streets will allow regional traffic to access the site without filtering through neighborhood residential streets. The Hearings Officer finds that the proposal conforms to this property.

Policy 5. Neighborhood and Community Shopping and Service Facilities. Unless the existing development pattern along arterials and collectors commits an area to strip development, new commercial development shall be clustered and located to provide convenience goods and services for neighborhood residents or a wide variety of goods and services for a market area of several neighborhoods.

The Hearings Officer notes that the subject property is adjacent to existing commercial development to the south and east and is located on Saginaw Street S, near the intersection of Saginaw Street S and Hoyt Street S.

The proposed Retail Commercial zoning of the site would facilitate the development of the subject property. The proposed Retail Commercial zoning would bring the zoning in conformance with the existing Comprehensive Plan designation. Depending on future specific use or development plans, the proposal could, when developed, provide goods or services for either the local neighborhood residents or for several neighborhoods, as well as the community. As the property currently is zoned, the portion of the property zoned CR cannot provide goods or services, due to the RS portion eliminating access.

(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 City's adopted Comprehensive Plan implements the Statewide Planning Goals and applicable administrative rules, and is acknowledged to comply with the Statewide Planning Goals. The proposed CR (Retail Commercial) zoning designation is consistent with the existing "Commercial" Comprehensive Plan Map designation, its intent and its applicable provisions. The proposed rezoning would bring the property into compliance with the Comprehensive Plan, and therefore into compliance with the Statewide Planning Goals. The Hearings Officer finds that the proposal satisfies this criterion.

- (E) If the zone change requires a comprehensive plan change from an industrial use designation to a non-industrial use 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 notes that the application is to apply the CR zone to a 3,249-square foot (0.08-acre) portion of the 0.15-acre subject property. The existing Comprehensive Plan designation of "Commercial" is not proposed to be altered. The Hearings Officer finds that this criterion does not apply.

- (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 the subject property has frontage on Saginaw Street S, which is designated as a Local Road in the Transportation System Plan. Pursuant to Oregon Administrative Rule 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 Hearings Officer finds that adequate urban services are available at the boundaries of the subject property. The Hearings Officer notes that infrastructure requirements to serve any development on the property would need to be addressed as part of the Site Plan Review process with future development. The Hearings Officer finds that 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 notes that water, sewer, and storm infrastructure are available within surrounding streets/areas and appear to be adequate to serve the future tenants. Site-specific infrastructure requirements required by development of the property will be addressed in the Site Plan Review process in SRC Chapter 220. The Hearings Officer finds that the proposal meets this criterion.

(2) The greater the impact of the proposed zone change on the area, the greater the burden on the applicant to demonstrate that the criteria are satisfied.

Finding: The applicant has provided a written justification for the zone change request and indicates that the purpose of the request is to rezone a 3,249- square foot (0.08-acre) portion of the .15-acre subject property.

In order to measure the impact of this request, staff considered the area of the land to be rezoned, the neighborhood compatibility of the uses allowed under the proposed zone as compared to the current RS zoning, and the character of the existing land uses immediately surrounding the property. The Hearings Officer agrees with the staff's approach.

The Hearings Officer notes that the proposed zone change would affect a small area of the subject property. The westerly RS-zoned area of the property subject to the zone change is approximately 50 percent of the overall subject property. The property is currently undeveloped; if the zone change is approved, minimum landscaped yards would be required abutting the adjacent property with future development.

The Hearings Officer notes that the proposed zone change would serve to remedy an existing conflict that has existed since 1953 between the Commercial Comprehensive Plan designation and the portion of the property now zoned RS. The Hearings Officer notes that conflicts between Comprehensive Plan designations and zones are supposed to be resolved in favor of the Comprehensive Plan. The Hearings Officer notes that the proposed change would have little impact on the existing land use pattern, transportation system, or utilities.

Considering the relatively small area subject to the zone change, and the minor impact on the surrounding area, the Hearings Officer finds that the level of information provided in the applicant's statement addressing the factors listed under SRC Chapter 265.005(e) corresponds to the anticipated impact of the zone change proposal.

The Hearings Officer notes the neighbors' concerns and understands that the change from a use as a landscaped residential yard to an undefined commercial development is unsettling. Like the Bontragers, the Hearings Officer hopes for attractive development on the site that is considerate of the neighboring residential properties. Nevertheless, the Hearings Officer finds that because the applicant proposes aligning the zone with the existing Commercial Comprehensive Plan designation, the applicant has met its burden and satisfied the relevant criteria.

DECISION

The Hearings Officer finds that the proposal is consistent with and in compliance with the applicable goals and policies of the Salem Area Comprehensive Plan, and the Statewide Planning Goals, and satisfies all applicable criteria. Based upon the above the Hearings Officer GRANTS the request to rezone a 3,249-square foot (0.08 acre) portion of a 0.15-acre property located at 2332 Saginaw Street S, Salem, Oregon from RS (single family residential) to CR (retail commercial).

DATED: March 21, 2017.



James K. Brewer, Hearings Officer