

**Criteria and Findings for Proposed Comprehensive Plan Map Amendment for an approximately 0.57-acre site encompassing Tax Lot 600 and the northern portions of Tax Lots 400 and 500 at 1011 Lancaster Drive NE from “Single Family Residential” to “Commercial”**

**Procedural Findings**

On February 2, 2017, Mark D. Shipman of Saalfeld Griggs PC, on behalf of applicants Seaman Real Estate Investments, LLC and McDonald’s Corporation, filed a consolidated application for a Comprehensive Plan Change, Zone Change, Class 3 Site Plan Review, Class 2 Adjustment, and Class 2 Driveway Approach Permit. On February 23, 2017, the applicant responded to written notice by the City of missing information in the application with some of the requested information and written notice that no further information would be provided at that time. Pursuant to ORS 227.178(2)(b), the application was deemed complete for processing on February 23, 2017. The applicant submitted additional information, including revised site plans, in a series of supplemental filings in March and April of 2017.

The consolidated application (CPC-NPC-ZC-SPR-ADJ-DAP17-03) was deemed complete for processing on February 23, 2017. The original notice did not include reference to the proposed Neighborhood Plan Map Change. A revised notice was sent on April 19, 2017.

Notice of the consolidated proposal was distributed to City departments and public and private service providers on March 21, 2017 and was mailed to the owners of all property within 250 feet of the subject property on April 5, 2017. The original notice did not include reference to the proposed Neighborhood Plan Map Change. A revised notice was sent on April 19, 2017. The property was posted in accordance with the posting provision outlined in SRC 300.620.

State law (ORS 197.610) and SRC 300.602(b)(1) require the City to provide the Oregon Department of Land Conservation and Development (DLCD) a minimum 35-day notice when an applicant or the City proposes an amendment to an acknowledged Comprehensive Plan or land use regulation or to adopt a new land use regulation. The City sent notice of this proposed Comprehensive Plan and Zone Change to DLCD on March 14, 2017.

Pursuant to ORS 197.010(1), an amendment to the Comprehensive Plan Map must be approved by the City Council. Therefore, on April 25, 2017, the Planning Commission held a public hearing on the consolidated applications and recommended to the City Council that they approve the proposed Comprehensive Plan Map Change. Additionally, the Planning Commission approved the applications for Zone Change, Class 3 Site Plan Review, Class 2 Adjustment, and Class 2 Driveway Approach Permit contingent on the City Council’s approval of the Comprehensive Plan Map Change.

**FINDINGS APPLYING THE APPLICABLE SALEM REVISED CODE CRITERIA FOR A COMPREHENSIVE PLAN AMENDMENT**

Salem Revised Code (SRC) 64.025(e)(2) establishes the approval criteria for Comprehensive Plan Map amendments. In order to approve a quasi-judicial Plan Map

amendment request, the decision-making authority shall make findings of fact based on evidence provided by the applicant that demonstrates satisfaction of all of the applicable criteria. The applicable criteria are shown below in **bold** print. Following each criterion is a finding relative to the amendment requested.

**SRC 64.025(e)(2)(A): The Minor Plan Map Amendment is justified based on the existence of one of the following:**

- (i) ***Alteration in Circumstances.*** Social, economic, or demographic patterns of the nearby vicinity have so altered that the current designations are no longer appropriate.
- (ii) ***Equally or Better Suited Designation.*** A demonstration that the proposed designation is equally or better suited for the property than the existing designation.
- (iii) ***Conflict Between Comprehensive Plan Map Designation and Zone Designation.*** A Minor Plan Map Amendment may be granted where there is conflict between the Comprehensive Plan Map designation and the zoning of the property, and the zoning designation is a more appropriate designation for the property than the Comprehensive Plan Map designation. In determining whether the zoning designation is the more appropriate designation, the following factors shall be considered:
  - (aa) **Whether there was a mistake in the application of a land use designation to the property;**
  - (bb) **Whether the physical characteristics of the property are better suited to the uses in the zone as opposed to the uses permitted by the Comprehensive Plan Map designation;**
  - (cc) **Whether the property has been developed for uses that are incompatible with the Comprehensive Plan Map designation; and**
  - (dd) **Whether the Comprehensive Plan Map designation is compatible with the surrounding Comprehensive Plan Map designations.**

**Finding:** The proposal is justified based on (ii); the proposed designation is equally or better suited for the property than the existing designation. Although the Plan Map designation and zoning of Tax Lots 400 and 500 are currently split zoned, there is no conflict between the existing “Single Family Residential” designation and RS (Single Family Residential) zoning. The applicant does not assert that an alteration in social, economic, or demographic patterns of the nearby vicinity has rendered the current designation inappropriate.

The proposal would alleviate a number of unsuitable conditions on the remaining “Single Family Residential” designated lots within the applicant’s overall holding. The

split Plan Map designation and zoning of Tax Lots 400 and 500, which has been in place since zone change case ZC86-03 was approved in 1986, has rendered the northern, RS-zoned portions of these lots undevelopable in the decades since. Tax Lots 400 and 500 also have their primary frontage facing D Street NE, a minor arterial, and the Lancaster Mall across the street. These existing conditions make these lots relatively unsuitable for future development consistent with the “Single Family Residential” designation.

Although Tax Lot 600 remains configured towards a local street and entirely within the “Single Family Residential” designation and RS zone, it is also bordered by existing commercial development on adjoining boundaries to the south and east. While impacts from these abutting commercial uses do not make Tax Lot 600 inherently unsuitable for residential use, the applicant’s proposal to make it part of a contiguous commercial development centered on the nearby intersection of Lancaster Drive and D Street is equally suitable for the lot, which has stood vacant for several decades.

Therefore, the Commercial designation proposed by the applicant is equally or better suited to the subject portion of the property as the existing Single Family Residential designation.

The proposal meets this criterion.

**SRC 64.025(e)(2)(B): 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 plan map designation;**

**Finding:** As described in comments from the Public Works Department, public water, sewer, and storm lines are located at the perimeter of the subject property, and are adequately sized to handle an expansion of the area designated for commercial development. The portion of the property that is subject to the requested Plan Map change forms part of a larger contiguous holding oriented toward the corner of D Street NE, a Minor Arterial, and Lancaster Drive NE, a Major Arterial. The proposal meets this criterion.

**SRC 64.025(e)(2)(C): The proposed plan map designation provides for the logical urbanization of land;**

**Finding:** The proposed Commercial designation for the subject property would result in a logical pattern of development in the vicinity. Specifically, the proposal would result in a uniform, rectangular area centered on the intersection of Lancaster Drive and D Street, rather than the irregular boundaries between designations and the split-zoned lots that exist on the site today. Therefore, the proposal meets this criterion.

**SRC 64.025(e)(2)(D): The proposed land use designation is consistent with the Salem Area Comprehensive Plan and applicable Statewide planning goals and administrative rules adopted by the Department of Land Conservation and Development; and**

**Finding:** The applicable Goals and Policies of the Comprehensive Plan are addressed as follows:

Salem Urban Area Goals and Policies, Residential Development Goal (Page 30, Salem Comprehensive Policies Plan):

*Policy E.8. Residential areas shall be protected from more intensive land use activity in abutting zones.*

**Finding:** In 2011, the Planning Commission approved Comprehensive Plan and zone change case CPC-NPC-ZC11-03, which changed the Plan Map designation of 3885 D Street NE to “Commercial” and changed the zoning to CO (Commercial Office). Accordingly, only two residential properties would abut the area proposed to be designated “Commercial”; 1098 39<sup>th</sup> Avenue NE is on the east side of 39<sup>th</sup> Avenue, directly north of Tax Lot 600, and 1077 39<sup>th</sup> Avenue NE is on the west side of the street, directly across from Tax Lot 600.

While the proposal would potentially bring more intensive commercial uses into closer proximity with these abutting lots, the existing residentially-designated areas on Tax Lots 400, 500, and 600 are currently less protected from commercial uses in the area. Under the existing configuration of Plan Map and zoning district boundaries, portions of Tax Lots 400 and 500 occupy the same lot as the parking area for the existing McDonald’s, and Tax Lot 600 is bordered by retail uses on CR-zoned properties on two sides, rather than one. 39<sup>th</sup> Avenue NE provides a 60-foot-wide right-of-way, including landscaped setbacks, as a buffer between 1077 39<sup>th</sup> Avenue NE and commercial uses on Tax Lot 600. Zone-to-zone setbacks set forth in SRC Chapter 522, Table 522-4, require a minimum 15-foot-wide landscaped and screened setback between 1098 39<sup>th</sup> Avenue NE and commercial uses on Tax Lot 600. Because of the longstanding pattern of intense commercial development centered on the intersection of Lancaster Drive and D Street, a transition between single family residential development and more intense commercial uses will take place somewhere in the vicinity of the subject property. The proposal would result in greater protection for residential areas than afforded by the current boundary between commercial and residential uses.

The proposal is consistent with this policy.

Salem Urban Area Goals and Policies, Commercial Development Goal (Page 34, Salem Comprehensive Policies Plan):

*Policy G.3. Redevelopment of existing shopping and service facilities should be encouraged where appropriate to provide neighborhood services or as part of mixed-use development with multifamily housing. The City may use financial and other tools to encourage redevelopment of existing shopping and service facilities, especially in Urban Renewal Areas.*

**Finding:** The consolidated application includes proposed redevelopment of the existing fast-food restaurant and surrounding site, and by expanding the potential site area, the proposed Plan Map change would facilitate this redevelopment. The purpose of the redevelopment is to update and improve the site specifically for the existing use, and is not anticipated to result in the introduction of new neighborhood services, mixed-use development, or multifamily housing into an otherwise underserved area. The subject

property is not located within an Urban Renewal Area. Because the redevelopment would facilitate investment in building updates and more efficient circulation within an existing commercial area, the proposal is consistent with this policy.

*Policy G.4. 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 that discourage major customer traffic from outside the immediate neighborhoods from filtering through residential streets and provisions for connectivity to the facilities for pedestrians and bicyclists from residential neighborhoods.*

**Finding:** The proposal would consolidate driveway access to the subject property to two locations; the existing driveway on Lancaster Drive NE and a relocated driveway along 39<sup>th</sup> Avenue NE. Although the proposed driveway relocation on 39<sup>th</sup> Avenue would bring the driveway approach slightly closer to residentially-designated property, the most visible driveway would remain along the Lancaster Drive frontage, and the filtering of traffic between the 39<sup>th</sup> Avenue driveway and the surrounding arterial network would be limited to a single residential frontage of approximately 80 feet in length. Internal walkways proposed by the applicant would connect to bicycle and pedestrian facilities lining the street network in the vicinity. The proposal is consistent with this policy.

The proposal is consistent with the applicable Goals and Policies of the Comprehensive Plan.

**Finding:** 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.*

**Finding:** A public hearing notice was mailed to the affected property owners, all property owners within 250 feet of the subject property and to the Northeast Salem Community Association (NESCA) and the East Lancaster Neighborhood Association (ELNA). 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.*

**Finding:** 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.

**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.*

**Finding:** There are no known scenic, historic, natural, or cultural resources on the affected parcels. Through the consolidated 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 proposal is consistent with Goal 5.

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

**Finding:** There are no other known natural hazards existing on the subject property. The City's tree protection, landslide, and floodplain development standards have been applied during review of the consolidated application through the Site Plan Review process. The proposal is consistent with Goal 7.

**Statewide Planning Goal 9 – Economic Development:** *To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.*

**Finding:** The split zoning of Tax Lots 400 and 500, and longstanding presence of commercial developments abutting Tax Lot 600 constrain future development of the site for uses generally allowed under the current Single Family Residential designation. The lots have remained vacant for several decades. The proposal to expand the "Commercial" designation to the entire holding would allow economically productive use of currently vacant areas, and facilitate redevelopment of a high-volume commercial establishment on a centrally-located, easily accessible location for customers and employees.

The range of permitted uses of the subject property in zones implementing the Commercial designation better take into account the location of the subject property, within the same holding as a commercial development focused towards on a prominent, high-traffic corner. The proposal promotes redevelopment of the site, including modernization of the restaurant building, vehicle circulation, and parking areas in an economically productive manner, consistent with the intent of Goal 9. The proposal is consistent with Goal 9.

**Statewide Planning Goal 10 – Housing:** *To provide for the housing needs of the citizens of the state.*

**Finding:** The subject property for the Comprehensive Plan map and zone change consists of one full lot and portions of two other lots, which in theory provide a total of 0.54 acres of land for single family residential development. However, Tax Lots 400 and 500 are split-zoned between CR (Retail Commercial) and RS (Single Family Residential), with existing development contiguous with the McDonald's site occupying the southern half of each lot. Aerial photographs indicate that the entire area of the proposed Comprehensive Plan Map and zone change has been vacant since at least 1992. The subject property could be developed with one single family residential dwelling under its current designation.

The City has accepted a Housing Needs Analysis (HNA) prepared in 2015 which includes a Buildable Land Inventory identifying a surplus of approximately 1,975 acres for single family residential development and a deficit of land available for multifamily residential development. In order to address the deficit in land for multifamily development, the City is conducting the first of three phases identified in an accepted work plan. The proposal would convert less than one acre of land away from a single family designation, where the accepted, but not adopted HNA identifies a surplus. The proposed commercial designation and CR zoning does not preclude multifamily residential development, which is allowed as a Conditional Use. The proposal does not affect the City's ability to provide for its housing needs, and is therefore consistent with Goal 10.

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

**Staff Response:** 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.). Where there is a “significant effect” on a facility, the local government must ensure that any new allowed land uses are consistent with the capacity of the facility. In the context of a site-specific comprehensive plan change request, such as this proposal, a “significant effect” is defined under Oregon Administrative Rule (OAR) 660-012-0060(1) as either an amendment that “allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility,” or an amendment that would “reduce the performance standards of an existing or planned facility below the minimum acceptable level identified in the TSP.”

The applicant for a comprehensive plan change is required to submit a Transportation Planning Rule (TPR) analysis to demonstrate that their request will not have a “significant effect” on the surrounding transportation system, as defined above.

The applicant submitted a Transportation Planning Rule (TPR) Analysis in consideration of the requirements of the Transportation Planning Rule (OAR 660-012-0060). The TPR analysis demonstrates that the proposed Comprehensive Plan Change and Zone Change will not have a significant effect on the transportation system if total traffic generated by the site does not exceed 2,346 trips per day. The Assistant City Traffic Engineer has reviewed the proposal and finds that it would not exceed the maximum amount of traffic allowed under the TPR analysis. The proposal complies with Goal 12.

**Statewide Planning Goal 14 – Urbanization:** *To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.*

**Applicant Statement:** This proposal does not include land located outside of the UGB or include the extension of services to properties outside the UGB, thus, Goal 14 is not applicable to this application.

**Staff Response:** The Planning Commission concurs with the applicant's statement, which states in relevant part:

*"This proposal does not include land located outside of the UGB or include the extension of services to properties outside the UGB, thus, Goal 14 is not applicable to this application."*

The proposal complies with Goal 14.

**SRC 64.025(e)(2)(E): The amendment is in the public interest and would be of general benefit.**

**Finding:** The Planning Commission concurs with the applicant's statement, which states in relevant part:

*"The amendment is in the public interest and will be of general benefit because it will allow for the redevelopment of a longstanding Restaurant at a central location next to a commercial center and adjacent to many residential neighborhoods. The location of the Subject Property is consistent with the intent to establish residential neighborhoods in proximity to such services. The Subject Property is located along the major access routes to the surrounding residential areas, and the availability of services at this location will decrease travel distance from the neighborhoods to commercial services, which are currently located along Commercial Street. As a result of its proximity to the surrounding neighborhoods, the Subject Property will be accessible by alternate means of transportation and provide the opportunity to decrease usage of private motor vehicles."*

The proposed "Commercial" designation would allow for suitable redevelopment of an existing site which meets locational criteria for a commercial services use, as well as abutting properties that has remained vacant for decades. The expansion of the "Commercial" designation and subsequent redevelopment of the site would allow for important upgrades, including closure and relocation of driveway accesses to safer locations, increased parking lot and perimeter landscaping, and on-site stormwater disposal. The proposal meets this criterion.