

Legislation Details (With Text)

File #: 16-365 **Version:** 1

Type: Public Hearings **Status:** Passed

In control: City Council

On agenda: 12/5/2016 **Final action:** 12/5/2016

Title: City Council review of Planning Commission's decision for Comprehensive Plan Change / Neighborhood Plan Change / Zone Change Case No. CPC/NPC/ZC 16-08 for property located at 560 Glen Creek Road NW and 585-635 9th Street NW - 97304.

Ward(s): Ward 1
Councilor(s): Bennett
Neighborhood(s): West Salem Neighborhood Association

Sponsors:**Indexes:****Code sections:**

Attachments: 1. Vicinity Map, 2. November 2, 2016 Recommendation of the Planning Commission, 3. November 2, 2016 Decision of the Planning Commission, 4. September 6, 2016 Staff Report, 5. October 4, 2016 Supplemental Report

Date	Ver.	Action By	Action	Result
12/5/2016	1	City Council	approved	Pass

TO: Mayor and City Council

THROUGH: Steve Powers, City Manager

FROM: Glenn W. Gross, Community Development Director

SUBJECT:

City Council review of Planning Commission's decision for Comprehensive Plan Change / Neighborhood Plan Change / Zone Change Case No. CPC/NPC/ZC 16-08 for property located at 560 Glen Creek Road NW and 585-635 9th Street NW - 97304.

Ward(s): Ward 1
Councilor(s): Bennett
Neighborhood(s): West Salem Neighborhood Association

ISSUE:

Shall the City Council affirm, amend, or reverse the decision of the Planning Commission for Comprehensive Plan Change / Neighborhood Plan Change / Zone Change Case No. CPC/NPC/ZC16-08?

RECOMMENDATION:

Staff recommends that the City Council AFFIRM the Planning Commission's November 2, 2016, decision.

SUMMARY AND BACKGROUND:

On September 6, 2016, the Planning Commission conducted a public hearing to receive testimony for Comprehensive Plan Map Change, Neighborhood Plan Map Change, and Zone Change Case No. 16-08. The hearing was continued to October 4, 2016 to allow the applicant and staff additional time to prepare supplemental findings addressing concerns raised by the West Salem Neighborhood Association. The Planning Commission adopted an order recommending approval of the Comprehensive Plan Change and Neighborhood Plan Change (Attachment 2) and approved the Zone Change application subject to conditions of approval (Attachment 3).

FACTS AND FINDINGS:

Procedural Findings

1. On July 15, 2016, an application for a consolidated Comprehensive Plan Change, Neighborhood Plan Change and Zone Change was submitted to the Community Development Department. The application was deemed complete on July 29, 2016.
2. A public hearing before the Planning Commission was held on September 6, 2016 and continued until October 4, 2016 in which testimony and evidence was received.
2. On November 2, 2016, the Planning Commission issued a recommendation that City Council accept first reading of an ordinance bill for the purposes of amending the designation of the subject property on the Salem Area Compressive Plan Map from "Industrial" to "Commercial" and amending the designation of the subject property on the West Salem Neighborhood Plan (WSNP) Generalized Land Use Map from "Employment without Residential" to "Commercial," and approved a Zone Change from IP (Industrial Park) to CG (General Commercial) subject to conditions of approval.
3. At the November 14, 2016 regular meeting, the City Council voted to initiate the review of the Planning Commission's decision, and scheduled a public hearing for December 5, 2016.
4. Notice of the appeal hearing was sent to the West Salem Neighborhood Association and surrounding property owners pursuant to Salem Revised Code requirements. Notice of the appeal hearing was posted on the subject property on November 21, 2016.
5. The 120-day state mandated decision deadline for this case is December 26, 2016.

Substantive Findings

1. The applicant is requesting to change the zoning of the subject property from IP (Industrial

Park) to CG (General Commercial). The proposed zone change requires an amendment to the Salem Area Comprehensive Plan (SACP) Map to change the designation from "Industrial" to "Commercial," a designation which is implemented by the CG Zone. A change to the WSNP Generalized Land Use Map from "Employment without Residential" to "Commercial" is also required.

The applicable criteria and considerations that must be satisfied for the Comprehensive Plan Change, Neighborhood Plan Change, and Zone Change are found in SRC Chapter 64 (Comprehensive Planning) and SRC Chapter 265 (Zone Changes).

Findings establishing conformance with the applicable approval criteria are included in the Planning Commission Recommendation and Decision (Attachment 2).

2. The Staff Report dated September 9, 2016 is included as Attachment 4 and the Supplemental Staff Report dated October 4, 2016 is included as Attachment 5. Findings from the applicant and written testimony received from the West Salem Neighborhood Association is included in the Supplemental Staff Report.
3. The West Salem Neighborhood Association raised several concerns in their testimony related to two issues: the proposed change to the WSNP map and the fact that the proposed zoning (CG - General Commercial) allows multi-family development as a Conditional Use. These two issues are addressed below:

WSNP Map

The WSNP adopted Generalized Land Use Map designation for the subject property is "Employment without Residential." In order for the City Council to adopt portions of the Neighborhood Plan, including the Generalized Land Use Map, it had to be consistent with the Comprehensive Plan. As stated in the WSNP, "the land use designations are consistent with the Salem Area Comprehensive Plan."

The WSNP does not provide an explanation for the "Employment without Residential" designation, but staff believes the designation applies to lands with an "Industrial" comprehensive plan designation and industrial zoning. Because "Employment without Residential" is not a designation that used in the Salem Area Comprehensive Plan, and "Industrial" is not a designation used in the WSNP, it has led to confusion for the appropriate term to use to define the designation for the property.

Pursuant to SRC 64.010(c), in the event of an ambiguity or conflict in the provisions or components of the Comprehensive Plan, all other components of the Comprehensive Plan shall take precedence over a Neighborhood Plan.

Regardless of the current designation in the WSNP, the requested Comprehensive Plan Map change and Zone Change necessitate a change to the WSNP Map. Zoning designations must be consistent with the Comprehensive Plan and the WSNP Map is part of the Comprehensive Plan.

The WSNP Generalized Land Use Map does have a “Commercial” designation and it is appropriate to apply that designation to the subject property. If the City Council approves a change to “Commercial” on the Comprehensive Plan Map, the WSNP Generalized Land Use Map should also be changed to “Commercial” to be consistent with the Comprehensive Plan designation.

The neighborhood association commented that legislative, not quasi-judicial procedures should apply to the proposed changes to the Comprehensive Plan map and the Neighborhood Association Plan map.

The neighborhood association appears to be relying on the Land Use Board of Appeals (LUBA) decision in *Housing Land Advocates v. City of Happy Valley*, issued in 2016. In this decision, LUBA held that changes to a city’s comprehensive plan map were legislative in nature, and must, pursuant to ORS Chapter 197, be approved by the city council. However, what LUBA also said was that even if an amendment to a comprehensive plan map is a “legislative act,” the process for reviewing, and the applicable criteria, may be quasi-judicial.

Multi-Family Development

The West Salem Neighborhood Association submitted testimony that multi-family residential is not an appropriate use of the subject property and would be in conflict with the adjacent industrial uses. Multi-family residential uses are allowed in the CG (General Commercial) zone as a conditional use, this requires a separate review of a specific development proposal to determine its compatibility with the surrounding area. The applicant stated that they did not intend to develop multi-family residential on the property and did not oppose a condition to prohibit multi-family development as proposed by West Salem Neighborhood Association. Although the subject property is adjacent to numerous CG (General Commercial) zoned properties that do not have this prohibition, the Planning Commission voted (6-2) to add a condition that prohibited multi-family development on the subject property.

Goal 1 Compliance

The neighborhood association commented that the city’s process did not comply with the citizen involvement requirements in statewide planning goal 1. The city’s comprehensive plan and land use procedures, including the city’s citizen involvement program, have been acknowledged by the Department of Land Conservation and Development (DLCD) to be in compliance with the statewide planning goals, including goal 1.

In order for a local government to violate goal 1, it must fail to follow its own acknowledged citizen involvement program. *Western PCS, Inc. v. City of Lake Oswego*. In this case, the city followed its program and the requirements set forth in the city’s land use procedures, by providing notice to the public and the neighborhood association of the proposed changes, providing an opportunity to comment on the proposed changes, and addressing the comments in the final decision. The neighborhood association has not made a claim that the city or the applicant violated those procedures, and therefore, there is no basis for a violation of goal 1.

4. The City Council may affirm, amend, or reverse the decision of the Planning Commission for Comprehensive Plan Change / Neighborhood Plan Change / Zone Change Case No. CPC/NPC/ZC16-08.

Alternative 1: Affirm the decision of the Planning Commission.

- A. Advance to first reading an ordinance bill for the purpose of amending the designation of the subject property on the Salem Area Comprehensive Plan Map from "Industrial" to "Commercial"; and
- B. Advance to first reading an ordinance bill for the purpose of amending the designation of the subject property on the West Salem Neighborhood Plan Generalized Land Use Map from "Employment without Residential" to "Commercial"; and
- C. AFFIRM the Zone Change from IP (Industrial Park) to CG (General Commercial) subject to the following conditions of approval:

Condition 1: Approval of the neighborhood plan change and zone change shall be contingent on the City Council's decision on the Comprehensive Plan Map Change.

Condition 2: Multi-family uses shall be prohibited on the subject property.

Alternative 2: Amend the decision of the Planning Commission.

Alternative 3: Deny the application:

- A. DENY the Comprehensive Plan Map Amendment from "Industrial" to "Commercial"; and
 - B. DENY the Neighborhood Plan Change from "Employment without Residential" to "Commercial"; and
 - C. DENY the Zone Change from IP (Industrial Park) to CG (General Commercial).
5. In conclusion, the proposed Comprehensive Plan Change, Neighborhood Plan Change, and Zone Change satisfies the applicable approval criteria of SRC Chapter 64 and 265 and staff recommends that the City Council choose Alternative 1 and AFFIRM the decision of the Planning Commission.

Aaron Panko
Planner III

Attachments:

1. Vicinity Map
2. November 2, 2016 Recommendation of the Planning Commission
3. November 2, 2016 Decision of the Planning Commission
4. September 6, 2016 Staff Report
5. October 4, 2016 Supplemental Staff Report

11/18/2016