

## Legislation Details (With Text)

**File #:** 18-390 **Version:** 1

**Type:** Public Hearings **Status:** Passed

**In control:** City Council

**On agenda:** 8/27/2018 **Final action:** 8/27/2018

**Title:** Appeal of the Planning Commission's decision on Comprehensive Plan Change / Zone Change / Urban Growth Preliminary Declaration Case No. CPC-ZC-UGA18-04 for property located at 4195 Aumsville Highway SE.

Ward(s): Ward 3  
Councilor(s): Nanke  
Neighborhood(s): SEMCA

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

**Attachments:** 1. Vicinity Map, 2. July 19 2018 Decision of the Planning Commission, 3. Appeal Letter, 4. June 19 2018 Staff Report, 5. July 17 2018 Supplemental Staff Report, 6. Letter from Colette Peters - Director of the Oregon Department of Corrections, 7. Request to Continue Hearing, 8. Applicant's Statement

Date	Ver.	Action By	Action	Result
8/27/2018	1	City Council	approved	Pass

**TO:** Mayor and City Council

**THROUGH:** Steve Powers, City Manager

**FROM:** Norman Wright, Community Development Director

**SUBJECT:**

Appeal of the Planning Commission's decision on Comprehensive Plan Change / Zone Change / Urban Growth Preliminary Declaration Case No. CPC-ZC-UGA18-04 for property located at 4195 Aumsville Highway SE.

Ward(s): Ward 3  
Councilor(s): Nanke  
Neighborhood(s): SEMCA

**ISSUE:**

Shall the City Council affirm, amend, or reverse the decision of the Planning Commission on Comprehensive Plan Change / Zone Change / Urban Growth Preliminary Declaration Case No. CPC-ZC-UGA18-04?

## **RECOMMENDATION:**

AFFIRM the decision of the Planning Commission.

## **SUMMARY AND BACKGROUND:**

On June 19, 2018, the Planning Commission opened a public hearing for Comprehensive Plan Change / Zone Change / Urban Growth Preliminary Declaration Case No. CPC-ZC-UGA18-04 and immediately continued the hearing to July 17, 2018 at the applicant's request to allow the applicant and staff additional time to address a large volume of written testimony received less than one hour prior to the hearing. After receiving the staff report and testimony at the hearing on July 17, 2018, the Planning Commission adopted an order on July 19, 2018 approving Comprehensive Plan Change / Zone Change / Urban Growth Preliminary Declaration Case No. CPC-ZC-UGA18-04 subject to 15 conditions of approval (**Attachment 2**). On August 3, 2018, Mark Shipman filed an appeal of the decision on behalf of Mark E. Krautmann (**Attachment 3**).

## **SUMMARY OF RECORD:**

The following items are submitted to the record and are available upon request: All materials submitted by the applicant, including any applicable professional studies such as traffic impact analysis, geologic assessments, and stormwater reports; any materials and comments from public agencies, City departments, neighborhood associations, and the public; and all documents referenced in this report.

## **FACTS AND FINDINGS:**

### Procedural Findings

1. On March 13, 2018, Brandie Dalton, Land Use Planner, on behalf of applicant Kenneth Rasmussen, submitted an application for a Comprehensive Plan Change, Zone Change, and Urban Growth Area Preliminary Declaration to the Community Development Department. The application was deemed complete on April 17, 2018.
2. On June 19, 2018, the Planning Commission opened the public hearing and immediately continued it to July 17, 2018 at the applicant's request to allow the applicant and staff additional time to address a large volume of written testimony received less than one hour prior to the hearing.
3. On July 17, 2018, the Planning Commission received the staff report, evidence, and testimony at the continued hearing.
4. On July 19, 2018, the Planning Commission issued a decision approving the application to change the Comprehensive Plan Map designation of the subject property from "Community Services-Government" to "Industrial Commercial" and to change the zoning from PH (Public and Private Health Services) to IC (Industrial Commercial) and to determine the facilities

required for development of the property, subject to 15 conditions of approval (**Attachment 2**).

5. On August 3, 2018, Mark Shipman of Saalfeld Griggs PC, filed an appeal of the Planning Commission's decision on behalf of Mark E. Krautmann (**Attachment 3**). The appeal states it is filed on behalf of the "Joseph Street Neighbors," which appears to be a group of individuals who own property or live near the subject property. This individuals are not individually named, nor is Joseph Street Neighbors a legal entity registered with the State of Oregon. Therefore, Mr. Krautmann is the sole appellant in this appeal. A public hearing before the City Council is scheduled for August 27, 2018.
6. On August 7, 2018, notice of the appeal hearing was sent to the appellant, SEMCA, surrounding property owners, and everyone who submitted comments on the proposal, pursuant to Salem Revised Code requirements. Notice of the appeal hearing was posted on the subject property on August 16, 2018.
7. The 120-day state mandated decision deadline for this case has been extended by 28 days, from August 15, 2018 to September 12, 2018.

#### Substantive Findings

8. The applicant is requesting to change the zoning of the subject property from PH (Public and Private Health Services) to IC (Industrial Commercial). The proposed zone change requires an amendment to the Salem Area Comprehensive Plan (SACP) Map to change the designation from "Community Services-Government" to "Industrial-Commercial," a designation which is implemented by the IC zone.

Because the subject property is outside of the Urban Service Area, an Urban Growth Preliminary Declaration must be obtained prior to, or concurrent or consolidated with, any application for development. The application for an Urban Growth Preliminary Declaration is necessary to determine the public facilities required under the Urban Growth Management Program to develop the property. The applicant has not submitted a development application.

The applicable criteria and considerations that must be satisfied for the consolidated application are found in SRC Chapter 64 (Comprehensive Planning), SRC Chapter 265 (Zone Changes), and SRC Chapter 200 (Urban Growth Management).

Findings establishing conformance with the applicable approval criteria are included in the Planning Commission decision order (**Attachment 2**).

9. The Staff Report dated June 19, 2018 is included as **Attachment 4** and the Supplemental Staff Report dated July 17, 2018 is included as **Attachment 5**. Findings from the applicant are included in the Staff Report. Additional findings from staff, a revised Public Works Department memorandum, the written testimony submitted on June 19, 2018, and staff's amended recommendations for conditions of approval are included in the Supplemental Staff Report.
10. The appeal letter (**Attachment 3**) states that the appellant opposes the approved application

because it fails to meet the mandatory approval criteria, as summarized below.

- a) The Planning Commission erred by applying a lower standard of review than is required by the Salem Revised Code. Because the proposed amendment would allow for a significant change in the types of uses permitted, including multifamily housing, the application is subject to a heightened burden of proof. The applicant failed to provide a proposed use and is not able to avoid its heightened burden of proof by doing so. There is no indication in the record that the applicant satisfied its heightened burden, nor that the Planning Commission evaluated and approved the application under this heightened level of scrutiny. The subject property has been purposely maintained in its current state by the State of Oregon for more than 100 years with the intention that it remain as open space, suitable for recreational purposes and the maintenance of endangered oak savanna, in harmony with the primarily rural residential nature of the surrounding area. The potential impact of the zone change is significant and the Planning Commission erred in failing to hold the applicant to a higher standard as required by the code.

**Staff response:** A specific development proposal, specific use, and site plan are not required with an application to change the comprehensive plan map designation. The Planning Commission evaluated the proposal in light of any possible uses that would be allowed in the proposed zone in comparison to any possible uses that would be allowed in the current zone. The Planning Commission adopted conditions of approval restricting driveway locations, imposing a trip cap, and increasing setbacks to mitigate the impacts of the proposed change on the surrounding area.

While the property contains oak savanna and it was used as open space while it was owned by the Oregon Department of Corrections, a letter submitted on July 17, 2018 and signed by Colette Peters, Director of the Oregon Department of Corrections, states that there were no conditions placed on the sale of the property from the Department to Corban University (**Attachment 6**). The Planning Commission adopted conditions of approval requiring a tree inventory prior to development; stating that significant trees (Oregon white oaks of 24 inches or more in diameter) could be removed only with a tree removal permit documenting that they are hazardous or a tree removal variance; and requiring that landscaped setbacks shall be designed to maximize retention of existing trees.

- b) The Code requires the applicant to demonstrate that each individual criterion is satisfied, and the Commission approved the application where not all criteria were met. The applicant has not met several criteria. The Planning Commission erred by approving the application without reasonably satisfying all of the applicable criteria. The code requires the applicant, not staff, to demonstrate that each criterion is met. The applicant failed to provide relevant evidence showing that the proposed zone change is equally or better suited for the property. The applicant relied on the Regional Economic Opportunities Analysis report of 2011 which was never adopted. City staff supplanted this lack of findings with their own by providing a different study and analysis of that study.

**Staff response:** The Planning Commission found that the applicant's findings and staff's

evaluation of those findings were adequate to demonstrate that the criteria were met.

- i. The Planning Commission erred in determining that all of the applicable approval criteria were met. The Planning Commission erred in finding that the applicant satisfied Policy G.5 of the Comprehensive Plan which requires that the size of a commercial center should be scaled and consistent with the character of surrounding and nearby residential development. The applicant's failure to identify the future use of the property means they cannot meet this criterion.

**Staff response:** A specific development proposal and specific use are not required with an application to change the comprehensive plan map designation.

- ii. The applicant failed to provide evidence demonstrating that the proposed plan map designation provides for the logical urbanization of land because the applicant did not propose any use for the property. The Commission erred in finding that the proposed designation would result in a logical urbanization because it relied only on speculation of potential uses.

**Staff response:** A specific development proposal and specific use are not required with an application to change the comprehensive plan map designation. The Planning Commission evaluated the proposal in light of any possible uses that would be allowed in the proposed zone in comparison to any possible uses that would be allowed in the current zone.

- iii. The proposed development of the subject property for any use beyond large acreage residential is out of sequence and not a logical urbanization. The subject property is surrounded by large acreage residential properties as well as Corban University and the State of Oregon Department of Corrections. The current use is decidedly rural in nature. Public facilities are not available.

**Staff response:** The surrounding large acreage residential properties are located outside of the city limits and outside of the Urban Growth Boundary. The subject property, inside the city limits and inside the Urban Growth Boundary, is available for urbanization. Large acreage residential development is not a permitted use in the current PH (Public and Private Health Services) zone but would be allowed as a conditional use in the proposed IC (Industrial Commercial) zone. The Urban Growth Preliminary Declaration determined that public facilities can be constructed in order to serve the property.

- c) The Commission incorrectly applied SRC 265.005. The code states that a zone change is justified upon the demonstration that the proposed zone is equally or better suited for the subject property if (1) the physical characteristics of the property are appropriate for the proposed zone and (2) the uses allowed by the proposed zone are logical with the surrounding uses. The Code proscribes a particular test for what is to be considered when evaluating uses that are equally or better suited. That test is whether the physical characteristics of the subject property are appropriate for the proposed zone and whether the uses allowed by the proposed zone are logical with the surrounding land uses. The

Planning Commission erred in determining that the applicant had satisfied these criteria.

- i. The applicant did not demonstrate that the physical characteristics are appropriate for the proposed use. The subject property is steeply sloped, making development subject to geological surveying. Staff states that the slope, elevation, and landslide hazards make commercial and industrial uses less feasible and these uses typically require more extensive areas of flat terrain which is unavailable due to the physical characteristics of the property. Even with the proposed conditions, the existing unsafe conditions in the vicinity will intensify under the proposed development. The applicant fails to meet the ordinary burden of proof and its heightened burden of proof.

**Staff response:** The Planning Commission found that the physical characteristics of the property and access to transportation facilities are as suitable to industrial or commercial development or multi-family residential development as they would be to uses allowed in the current PH zone. The property's physical characteristics including slope and geological hazards are similar to those of the Corban University property, which is in the PH zone and developed with student housing, office buildings, recreational facilities, educational buildings, concert halls, and other types of buildings.

- ii. The applicant did not provide evidence that the uses allowed by the proposed zone are logical. The proposed zone change would represent a drastic and illogical shift in the development of the vicinity. The majority of the vicinity is rural residential, agricultural, Corban University property, and property belonging to the DOC.

**Staff response:** The Planning Commission found that the range of housing, retail, office, and light industrial uses allowed in the proposed IC zone would be consistent with surrounding uses including the correctional facilities, industrial and commercial uses, Corban University, and large-acreage residential and agricultural uses, and the IC zone would provide a logical transition between the developing large industrial uses at the Mill Creek Corporate Center and the educational uses and residential uses.

- d) The applicant failed to provide evidence to demonstrate that the amendment would be of general benefit. Nothing in the applicant's statement indicates that a change in the comprehensive plan designation or the zoning would benefit anyone other than the applicant. As the applicant has provided no proposed use it is impossible for the applicant to argue that the change is necessary or that it provides a general benefit. In fact, there is evidence that this change would be detrimental to the public at large by impacting not only the health and safety of the "Joseph Street Neighbors" but creating potential hazards for the DOC by encroaching on the existing "soft perimeter."

**Staff response:** The Planning Commission found that the proposed change will help to encourage and promote the wider use of an existing property near a developing industrial area, and the wider range of uses allowed by the IC zone will allow for additional flexibility

for future use and development of the property benefiting the public.

## **ALTERNATIVES**

11. The City Council may affirm, amend, or reverse the decision of the Planning Commission for Comprehensive Plan Change / Zone Change / Urban Growth Preliminary Declaration Case No. CPC-ZC-UGA18-04.
  - I. **AFFIRM** the decision for Comprehensive Plan Change / Zone Change / Urban Growth Preliminary Declaration Case No. CPC-ZC-UGA18-04.
  - II. **MODIFY** the decision for Comprehensive Plan Change / Zone Change / Urban Growth Preliminary Declaration Case No. CPC-ZC-UGA18-04.
  - III. **DENY** the application for Comprehensive Plan Change / Zone Change / Urban Growth Preliminary Declaration Case No. CPC-ZC-UGA18-04.

## **RECOMMENDATION**

12. Based on the facts and findings within the July 19, 2018 decision, staff recommends that the City Council find that the proposed Comprehensive Plan Change / Zone Change / Urban Growth Preliminary Declaration Case No. CPC-ZC-UGA18-04 satisfies the applicable approval criteria of SRC Chapter 64, SRC Chapter 265, and SRC Chapter 200 and **AFFIRM** the decision of the Planning Administrator.

Pamela Cole  
Planner II

### Attachments:

1. Vicinity Map
2. July 19, 2018 Decision of the Planning Commission
3. Appeal Letter
4. June 19, 2018 Staff Report
5. July 17, 2018 Supplemental Staff Report
6. Letter from Colette Peters, Director of the Oregon Department of Corrections

08/27/2018