

## Legislation Details (With Text)

**File #:** 22-169 **Version:** 1

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

**In control:** City Council

**On agenda:** 5/9/2022 **Final action:** 5/9/2022

**Title:** Appeal of the Planning Commission's decision approving Comprehensive Plan Map Designation and Zone change to Commercial and (CR) Retail Commercial zoning for property located at the southwest corner of the intersection for Kuebler Boulevard and I-5.

Ward(s): Ward 4  
Councilor(s): Leung  
Neighborhood(s): South Gateway Neighborhood Association  
Result Area(s): Welcoming and Livable Community

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Vicinity Maps, 2. South Gateway Neighborhood Association Appeal, 3. Planning Commission Decision for CPC-ZC21-04, 4. Staff Report to Planning Commission dated November 2, 2021, 5. Supplemental Staff Report to Planning Commission dated December 21, 2021, 6. Applicant Updated Proposal and Conceptual Map, 7. Public Comments received by 5:00 p.m., 5-4-2022.pdf, 8. Testimony received from South Gateway Neighborhood Association.pdf

Date	Ver.	Action By	Action	Result
5/9/2022	1	City Council	approved	Pass

**TO:** Mayor and City Council

**THROUGH:** Kristen Retherford, Interim City Manager

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

**SUBJECT:**

Appeal of the Planning Commission's decision approving Comprehensive Plan Map Designation and Zone change to Commercial and (CR) Retail Commercial zoning for property located at the southwest corner of the intersection for Kuebler Boulevard and I-5.

Ward(s): Ward 4  
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**SUMMARY:**

On February 3, 2022, the Planning Commission issued a decision approving a request to change the 24.66-acres subject property from RA (Residential Agriculture) to CR (Retail Commercial), subject to conditions of approval. (**Attachment 1**).

The South Gateway Neighborhood Association filed an appeal on February 7, 2022 (**Attachment 2**).

### **ISSUE:**

Shall the City Council deny Comprehensive Plan Map Designation and Zone change, Case No. CPC-ZC21-04?

### **RECOMMENDATION:**

DENY Comprehensive Plan Map Designation and Zone change, Case No. CPC-ZC21-04.

### **FACTS AND FINDINGS:**

#### Procedural Findings

1. On August 25, 2021, an application was filed for a Comprehensive Plan Map Amendment and Quasi-Judicial Zone Change by Mark Shipman of Saalfeld Griggs PC, on behalf of Boone Road Commercial LLC, to change the 24.66-acres subject property from RA (Residential Agriculture) to CR (Retail Commercial).
2. On June 10, 2021, the applicant's representative attended the South Gateway Neighborhood Association meeting, held virtually, to present their proposal, meeting the open house requirements of SRC 300.320.
3. The consolidated application was deemed complete for processing on September 23, 2021, and a public hearing to consider the application was scheduled for November 2, 2021. On September 24, 2021, notice was sent pursuant to ORS 197.610 and SRC 300.620(b)(1) to Oregon Department of Land Conservation and Development (DLCD). On October 13, 2021, notice of the consolidated application was provided to surrounding property owners, tenants and Neighborhood Associations, pursuant to Salem Revised Code (SRC) requirements.
4. On February 1, 2022, after conducting a public hearing on November 2, 2021, November 16, 2021, and December 21, 2021, the Planning Commission voted to approve the applications with conditions.
5. On January 25, 2022, the Planning Commission considered an Order with attached Facts and Findings prepared by staff. The applicant submitted an objection to the proposed Facts and Findings. The Commission voted to open the written record to review the applicant's objections to the written findings.
6. On February 1, 2022, the Planning Commission voted to approve the Order and Facts and

Findings prepared by staff after reviewing all evidence submitted into the record.

7. On February 7, 2022, the South Gateway Neighborhood Association filed an appeal. A hearing was scheduled before the City Council on March 28, 2022.
5. On March 8, 2022, notice of the hearing was sent to the South Gateway Neighborhood Association and surrounding property owners and tenants pursuant to Salem Revised Code requirements. Notice of the hearing was posted on the subject property on March 14, 2022.
6. Applicant submittals for case number CPC-ZC21-04, including the Transportation Planning Rule Analysis, and all evidence and testimony submitted into the record can be found [here <https://www.cityofsalem.net/Pages/proposed-comprehensive-plan-and-zone-change-near-](https://www.cityofsalem.net/Pages/proposed-comprehensive-plan-and-zone-change-near-)
7. On March 15, 2022, the applicant altered the proposal to change 14.55 acres of the property to a Commercial designation with Commercial Retail (CR) zoning and 9.8 acres of Mixed-Use designation with Mixed-Use II (MU-II) zoning. The applicants submittal can be found [here <https://www.cityofsalem.net/Pages/proposed-comprehensive-plan-and-zone-change-near-](https://www.cityofsalem.net/Pages/proposed-comprehensive-plan-and-zone-change-near-)
8. Testimony from the Public and Neighborhood Associations prior to March 28, 2022 can be found [here <https://www.cityofsalem.net/Pages/proposed-comprehensive-plan-and-zone-change-near-kuebler-blvd-and-27th-ave.aspx>](https://www.cityofsalem.net/Pages/proposed-comprehensive-plan-and-zone-change-near-kuebler-blvd-and-27th-ave.aspx).
9. On March 28, 2022, City Council opened the public hearing, took no oral testimony and continued the hearing until May 9, 2022.
10. Pursuant to Oregon Revised Statutes (ORS) 227.128, amendments to an acknowledged Comprehensive Plan are not subject to the 120-day rule. Pursuant to ORS 227.178(10), the additional applications have been filed concurrently, are being considered jointly with the proposed comprehensive plan amendment and are not subject to the 120-day rule.

### Substantive Findings

The applicant originally proposed a commercial retail development consisting of office, hotel, retail and housing, as shown in their conceptual plan (found as Attachment E of staff report November 2, 2021).

On March 15, 2022, the applicant altered the proposal change 14.55 acres of the property to a Commercial designation with Commercial Retail (CR) zoning and 9.8 acres of Mixed-Use designation with Mixed-Use II (MU-II) zoning. The applicant provided an amended conceptual plan (**Attachment 3**).

1. Proposed Mixed-Use II and Commercial Retail zone

The applicant submitted a letter changing the request of their proposal to 14.55 acres Commercial designation with CR zoning and 9.8 acres of Mixed-Use designated lands with MU-II zone. The applicant, in written statement, states the 'traffic counts' in relation to the Transportation Rule Analysis (TPR) are similar to the previous proposal of exclusive CR

zoning for the entire site and the TPR analysis will not be updated.

The applicant discusses the desire to have Mixed-Use III (MU-III) applied to portion of the property. The City of Salem Unified Development Code does not have a Mixed-Use III zone. As part of the 'Our Salem' project, MU-III is a proposed new zoning district. Since, the MU-III zone is not adopted, it cannot be applied to the subject property at this time. MU-III, as proposed, would allow substantially the same uses as the CR zone but would include design standards.

The conceptual plan submitted by the applicant, as shown in Attachment 3, would not be binding on the subject property either in design, building locations, specific uses or mix of uses. The development could include any of the uses allowed within the MU-II or CR zoning districts, respectively. The uses that have higher traffic counts, such as retail sales and services, short-term lodging, commercial entertainment - indoors and business and professional services, are allowed in both zones.

The CR zone does not have design standards regarding the development of a new building. The MU-II zone prohibits uses developed with a drive-thru and has additional development standards for pedestrian oriented design, building facades and articulation, building entrance standards and weather protection for new buildings.

Since many of the high trip generating uses are allowed in both zones, the traffic concerns listed below are the same. Staff does not believe the applicant has met their burden of proof addressing the decision criteria, specifically that the transportation system will not be degraded with the proposed Comprehensive Plan Change and Zone Change for Comprehensive Plan Change and Zone Change to 14.55 acres of Commercial designation with Commercial Retail (CR) zoning and 9.8 acres of Mixed-Use designation with Mixed-Use II (MU-II) zoning.

## 2. Impact to the Transportation System and Transportation Rule Analysis

The applicant submitted a letter changing their request to 14.55 acres of a Commercial designation with CR zoning and 9.8 acres of Mixed-Use designated lands with MU-II zone. The applicant, in written statement, states the 'traffic counts' in relation to the Transportation Rule Analysis are similar and the TPR analysis will not be updated. The evidence in the record only addresses the Commercial Designation and Retail Commercial (CR) zoning district.

A Transportation Planning Rule Analysis (TPR) is required for any change to the City's Comprehensive Plan Map. The analysis starts with reviewing the adopted Transportation System Plan, which is part of the Comprehensive Plan. The plan takes into account all relevant modes of transportation: automobile, mass transit, air, water, rail, highway, bicycle and pedestrian travel within the city. It also includes an expected traffic generation for every undeveloped property, based on the current Comprehensive Plan designation, which is in this case is Developing Residential.

Secondly, an applicant must look at the amount of traffic to be generated from the proposed designation, which in this case is Commercial. The TPR Analysis must demonstrate that the proposed Comprehensive Plan Amendment and Zone Change will not result in an increase in trip generation from the site over the existing designation and zoning in the Forecast Year of

the Transportation System Plan. If the proposal results in an increase in trip generation over the existing designation and zoning, a Traffic Impact Analysis (TIA) is required to determine if the proposal will adversely impact the overall transportation system. If there is an adverse impact, the TIA will provide recommended mitigation to restore traffic operations to accepted levels as defined in the City's Administrative Rules, Chapter 109, Division 006, Street Design Standards, Section 6.32 Traffic Impact Analysis (TIA) and must comply with the State Transportation Planning Rule (TPR) OAR 660-012-0060.

The applicant provided testimony that the proposed Commercial designation and Commercial Retail zoning will not degrade the transportation system to Planning Commission. Staff analysis of traffic concerns, errors and lack of mitigation are on pages 13-15 and 20-21 of the Planning Commission Staff Report dated November 2, 2021 (**Attachment 4**), and within the Planning Commission supplemental Staff Report dated December 21, 2021 (**Attachment 5**)., Several additional concerns with the data and testimony have been identified by the City Traffic Engineer.

The applicant has stated that all impacts will be mitigated with the conditions of approval, as listed in the Planning Commission decision (**Attachment 3**). Staff continues to have concerns and do not believe there is adequate evidence to approve the application. During the Planning Commission Hearings, the applicant relied heavily on Tables 9 and 10 of the applicant's TIA where the applicant indicates that the proposed TPR requirements are satisfied by the mitigation proposed in the TIA. The City Traffic Engineer disagrees based on discrepancies with this data, as follows:

- The intersection of Kuebler Boulevard and Commercial Street does not need mitigation due to a minimal increase of Volume-to-Capacity Ratio (v/c). The applicant's study based this assumption on a standard that applies to State Highways and not City of Salem streets. The Oregon Highway Plan, Action 1F.5 says increases in volume-to-capacity (v/c) ratios of 0.03 or less are not considered to be a "significant affect" to traffic operations on a State Highway. The City of Salem has not adopted this standard. For quasi-judicial land use actions, any increase in v/c ratios above adopted operating standards (v/c greater than 0.90) is considered a traffic impact.
- A Traffic Impact Analysis reviews a variety of items, some being Volume to Capacity (v/c), Level of Service (LOS) and delay (in seconds) which all measure traffic operations. Generally, as traffic is added to the transportation system, all of these measures increase. However, the applicant's TIA shows an inconsistency in the data where two of these measures increase and one decreases. The applicant's TIA shows that the intersection of Kuebler Boulevard and Battle Creek Road will have an increase in delay (from 77.6 second to 91.0 second) and have a Level of Service (LOS) from 'E' to 'F' between their project impacts and impacts after their proposed mitigation. However, they show the Volume-to Capacity (v/c) decrease from 1.58 after project to 1.14 after mitigation. The inconsistency raises concerns on whether the applicant meets the decision criteria.
- For the intersection of Kuebler Boulevard and 36th Avenue, the applicant's TIA shows a traffic impact, but the applicant is only proposing a share of cost towards a future

construction project to mitigate their traffic impacts. The applicant paying a portion towards the improvement does not meet the criterion of OAR Chapter 660, Division 12-0060 (3)(b): "Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development through one or a combination of transportations improvements or measures." The applicant's proposal is to contribute money toward the improvement, which is not constructing the improvement, which is needed to mitigate the impacts of the amendment, therefore not meeting the decision criteria. The project to improve Kuebler Boulevard at 36th Avenue would not be constructed for many years.

In this case, the applicant's traffic engineer and staff discussed following the same scope used for the Costco development. The Costco TIA included *weekend traffic* in both the 2006 version and the 2018 version. The applicant's TIA for this project does not. City of Salem Administration Rules - Design Standards, Division 006, Section 6.33 states that the City Traffic Engineer determines which peak hours are required for the study. That can include weekend peak hours depending on the development type, traffic generation, peak hour character of the development, and peak hour of the adjacent roadway. The peak traffic volumes for commercial retail development typically occurs on the weekend. Therefore, most of the proposed development traffic will be focused to the existing round-about on 27<sup>th</sup> Avenue and a large amount of Costco's traffic is also focused onto the round-about on 27<sup>th</sup> Avenue. The weekend traffic impacts must be analyzed to provide an accurate picture of the impacts to the transportation system.

Staff has expressed concern about the round-about on 27<sup>th</sup> Avenue with the applicant and Planning Commission. There is a high likelihood that the round-about will have such high vehicle queues backing up from the traffic signal at Kuebler Boulevard that traffic will likely back up into the round-about and will not distribute traffic as designed.

The existing round-about on 27<sup>th</sup> Avenue is approximately 400 ft from the intersection. This short spacing distance raises concern about the operation and traffic at the 27<sup>th</sup> Avenue round-about especially since the Costco property has several means in ingress and egress (direct access to Kuebler Boulevard, 27<sup>th</sup> Avenue, and Boone Road), whereas the subject property only has access to the round-about at 27<sup>th</sup> Avenue and Boone Road.

Staff does not believe the applicant has met their burden of proof addressing the decision criteria, specifically that the transportation system will not be degraded with the proposed Comprehensive Plan Change and Zone Change Comprehensive Plan Change and Zone Change to 14.55 acres of Commercial designation with Commercial Retail (CR) zoning and 9.8 acres of Mixed-Use designation with Mixed-Use II (MU-II) zoning.

## 2. Planning Commission's Decision

The Planning Commission approved the original application to apply Commercial Retail to the entire property with several conditions:

Condition 1: The subject property shall not contain more than three uses with drive through.

Condition 2: The subject property shall have no single retail store building that is constructed

with more than 70,000 sq. ft.

Condition 3: Mitigation as detailed in the Transportation Planning Rule analysis shall be completed as follows:

- Battle Creek Road SE at Kuebler Boulevard SE -
  - Construct a second southbound left turn lane on the Battle Creek Road SE approach.
- 27th Avenue SE at Kuebler Boulevard SE -
  - Construct a second northbound right turn lane on 27th Avenue SE. The additional right turn lane shall extend from the site at the roundabout to the intersection with Kuebler. The signal shall be modified to accommodate the right turn lanes and splitter island.
  - Construct a second northbound left turn lane on 27th Avenue SE. The additional left turn lane shall extend from the roundabout to the intersection with Kuebler Boulevard SE. The signal shall be modified to accommodate the two left turn lanes.
  - Extend the westbound left turn lanes on Kuebler Boulevard to provide 600 feet of vehicle queueing in each lane.
  - Additional widening, improvements, and signal modifications will be required on the north leg of 27th Avenue to ensure proper lane alignment and safe operation at the intersection.
- 36th Avenue SE at Kuebler Boulevard SE -
  - Construct a westbound right turn lane on Kuebler Boulevard SE at the intersection with 36th Avenue SE. The right turn lane shall provide for 100 feet of vehicle storage. Modify the traffic signal as required to construct the improvements.

The Planning Commission found that the applicant's testimony was more compelling than the analysis provided by staff and found that the applicant met the burden of proof and, with the conditions of approval, satisfied the approval criteria.

### 3. South Gateway Neighborhood Association Appeal

The Neighborhood Association's appeal application and supporting documentation are included as **Attachment 2**. The appeal raises the following issues:

Not Consistent with *Our Salem*:

*The proposal is not consistent with the City of Salem's effort to update the Comprehensive Plan and Zoning to Commercial Office (CO) as part of Our Salem.*

**Staff Response:** The *Our Salem* proposed Comprehensive designation is Commercial, as shown in Attachment A. The corresponding zoning proposed by the *Our Salem* project is CO (Commercial Office).

The difference between the applicant's original proposal of CR (Retail Commercial) and their updated proposal of CR (Retail Commercial) and MU-II (Mixed Use-II) and the *Our Salem* proposed CO (Commercial Office), is the amount of retail sales allowed. The applicant's proposed zone allows all types of retail sales, where the Commercial Office zone only allows newsstands, caterers, and retail sales of agricultural products with a 1,000 square footage building limit. The zone proposed by *Our Salem* generally allows office and professional services, along with a mix of housing and limited retail and personal services, where the applicant's proposal allows a wide array of retail sales and office uses. Commercial Office was selected by City staff in the *Our Salem* proposal as a recognition of the location of the subject property (along a parkway and adjacent to a freeway interchange) while seeking to minimize the transportation impacts that result from commercial retail uses. The *Our Salem* staff recommendations in *Our Salem* are not binding on City Council; the proposed changes are subject to City Council approval.

Mixed Use zoning preferred:

*The applicant attended the Neighborhood Meeting and discussed a mix of uses, including offices, restaurants, and housing. The applicant's requested Commercial Retail (CR) zoning would allow for more intense uses than the Mixed-Use zones. The mixed-use zones are more appropriate in the area due to residential neighborhoods and church properties in the area.*

**Staff Response:** The applicant was not originally proposing Mixed-Use I or Mixed-Use II as part of their application. The revised proposal includes 9.8 of Mixed-Use II though the applicant indicates they would prefer the proposed new Mixed-Use III zone, which is substantially similar to CR in respect to allowed uses. Mixed-Use III does not exist and cannot be applied to the subject property with this application. The proposal continues to include 14.55 acres of CR (Retail Commercial) zoned property which allows for more intense retail sales uses than the Mixed-Use or Commercial Office zones. Those more intense uses generally create traffic during the same parts of the day and/or week as surrounding retail uses. Staff agrees that uses allowed in the Mixed-Use zones or Commercial Office zones would be generally less traffic and have off-set timing from those intense retail uses, such as Costco across the street. However, the applicant has not updated their traffic study and has stated that the proposed mix of zones would not reduce the traffic that would be generated with development of the site.

Traffic Concerns:

*The potential traffic problems would be caused by rezoning the property to CR, especially with the addition of traffic from Costco across the street from the subject property. Addition of a shopping center will create more traffic problems and is undesirable on the property.*

**Staff Response:** The proposal would generate 20,000 trips to and from the site; 12,000 trips are new (people making a trip specifically to the site) and 8,000 diverted trips (people stopping by the site on their way to another destination). The applicant submitted a TIA that analyzed the traffic impacts the development will have on the surrounding street system. The TIA proposed street improvements to mitigate the impacts of the change; the Planning



Commission's approval requires the applicant to build that mitigation.

4. Other Comments Received from South Gateway Neighborhood Association, Morningside Neighborhood Association and the Public.

The Planning Commission decision addressed six comments from citizens, two from the South Gateway Neighborhood Association (SGNA) and one comment from Morningside Neighborhood Development Organization (Morningside) which were submitted in opposition. Comments raised issues related to incompatibility of the zone change, and increased traffic. These comments (**Attachment 6**) and Planning Commission responses are included in the Planning Commission's decision (**Attachment 3**).

## **ALTERNATIVES:**

The City Council may approve, approve with conditions or deny the application, Comprehensive Plan Map Designation and Zone Change, Case No. CPC-ZC21-04.

- I. **APPROVE** the application;
- II. **DENY** the application; or
- III. **REMAND** the application to the Planning Commission.

Olivia Dias  
Current Planning Manager

## **Attachments:**

1. Vicinity Maps
2. South Gateway Neighborhood Association appeal
3. Planning Commission Decision for CPC-ZC21-04
4. Staff Report to Planning Commission, November 2, 2022
5. Supplemental Staff Report to Planning Commission, December 21, 2022
6. Applicant updated Proposal and Conceptual Map