



## Staff Report

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**File #:** 19-495

**Version:** 1

**Date:** 10/28/2019

**Item #:** 4.a.

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**TO:** Mayor and City Council

**THROUGH:** Steve Powers, City Manager

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

### **SUBJECT:**

Appeal of the Planning Commission September 5, 2019 decision approving a consolidated application to change the Comprehensive Plan Map designation and/or zoning for several tax lots to accommodate future commercial and mixed-use development of property located at 2465, 2499, 2501, and 2519 Wallace Road NW and 1221 River Bend Road NW

Comprehensive Plan Change / Zone Change / Zone Change Case No. CPC-ZC-ZC19-10 - 3030  
Riverbend LLC (Scott Martin)

Ward(s): 8

Councilor(s): Lewis

Neighborhood(s): West Salem

Result Area(s): Welcoming and Livable Community

### **ISSUE:**

Shall the City Council affirm, amend, or reverse the Planning Commission's decision for Comprehensive Plan Map Change and Zone Change Case No. CPC-ZC-ZC19-10?

### **RECOMMENDATION:**

Staff recommends that the City Council AFFIRM the September 5, 2019 Planning Commission Decision.

### **SUMMARY:**

The subject properties are located west of Wallace Road NW and north of Riverbend Road NW (**Attachment 1**). The Planning Commission approved the consolidated application for a Comprehensive Plan Map Change and Zone Change application subject to conditions of approval (**Attachment 2**). The West Salem Neighborhood Association filed an appeal on September 20, 2019 (**Attachment 3**).

## FACTS AND FINDINGS:

### Procedural Findings

1. On March 28, 2019, an application was submitted for a Comprehensive Plan Map Change and Zone Change. On June 28, 2019, an application was submitted for a Zone Change. On August 1, 2019, the application was deemed complete after additional requested materials were submitted.
2. On September 3, 2019, the Planning Commission held a public hearing and voted to approve the application subject to conditions of approval. On September 5, 2019, the Planning Commission issued a decision to approve the application.
3. On September 20, 2019, the West Salem Neighborhood Association filed an appeal. A public hearing before the City Council is scheduled for October 28, 2019.
4. The 120-day State mandated deadline for final decision is November 29, 2019.

### Substantive Findings

1. The applicable criteria and considerations that must be satisfied for the approval of the Comprehensive Plan Map Change in this case are included within SRC Chapter 64 under section 64.025(e)(2), and the Zone Change (SRC Chapter 265) under section SRC 265.005.

Findings for the proposed Comprehensive Plan Map Change and Zone Change with the applicable approval criteria are included in the September 5, 2019 decision, which is included as **Attachment 2** to this report and incorporated by reference.

2. Change in Social, Economic, or Demographic Patterns and Equally or Better Suited Designation

The Planning Commission approved the applications after review of the applicable decision criteria and found that the social, economic, and demographic patterns of the area have altered, as evidenced by the findings from the 2015 HNA/EOA which found a need for additional commercial and multi-family residential land to meet demand over the next 20 years while conversely finding that the City has a surplus of available single family residential land, and the site is equally or better suited for the proposed designations of "Mixed-Use" with MU-II (Mixed Use-II) zoning and "Commercial" with CR (Retail Commercial) zoning. The findings and conclusions from the EOA show that West Salem has a large residential area that is underserved by retail commercial development. It is recommended that the City identify nodes for development of neighborhood retail uses to surrounding neighborhoods. The proposed changes in designations would allow for a commercial and/or mixed-use

development of the property which will better help to contribute needed neighborhood commercial services and housing to meet the projected needs of the Salem urban area.

The subject property is located on a major arterial (Wallace Road NW) near the intersections with a collector street (River Bend Road NW) and minor arterial (Brush College Road NW), which is a logical place to designate land for mixed use and commercial use. The proposed zoning designations for the property are the MU-II (Mixed Use-II) zone and CR (Retail Commercial) zone. The MU-II zone would permit development of needed multi-family housing as well as commercial uses to serve existing and future residences.

The northern area of the subject property (2499, 2501, and 2519 Wallace Road NW) proposed for "Mixed-Use" and MU-II (Mixed Use-II) designations abuts Wallace Road NW and is proposed to be developed with vehicular access and pedestrian access connecting to the property to the south at 1221 River Bend Road NW, which is also owned by the applicant.

The property at 1221 River Bend Road NW was previously approved as "Commercial" in the comprehensive plan and zoned CO (Commercial Office) and is under construction with a mixed-use development. The eastern area of 1221 River Bend Road NW is proposed for a Zone Change to CR (Retail Commercial).

The small property at 2465 Wallace Road NW proposed for "Commercial" and CR (Retail Commercial) designations abuts Wallace Road NW and is surrounded by the property at 1221 River Bend Road NW.

The proposed designations would result in logical urbanization of land and provide for a mixed-use development with internal vehicular and pedestrian circulation.

### 3. Salem Economic Opportunities Analysis

In 2014, the City conducted a study called the Salem Economic Opportunities Analysis (EOA). The EOA examined Salem's needs for industrial and commercial land through 2035 and concluded that Salem has a projected commercial land shortage of 271 acres. The EOA provides strategies to meet the projected employment land needs in the Salem area. In 2015, the City Council voted to adopt the EOA; the City now uses the EOA and its findings to inform policy decision, including how to respond to requests for rezoning land.

One strategy outlined in the EOA for addressing the commercial land deficit includes rezoning land for commercial use in or near neighborhoods. Specifically, residential areas within West Salem are identified as lacking neighborhood retail development. It is recommended that the City identify sites that are 2-5 acres in West Salem for retail development to serve the surrounding neighborhood.

The proposed mixed-use and commercial designations for the subject property are consistent with the findings and recommendations of the EOA. Granting the comprehensive plan changes allows the property to provide economic opportunities for needed neighborhood commercial

services for West Salem and the greater urban area into the future.

#### 4. Housing Need Analysis (HNA)

In 2014, the City conducted a Housing Needs Analysis (HNA) to develop strategies for the community to meet housing needs through 2035 and to inform policy decision related to residential land. The HNA concluded that Salem has a projected 1,975-acre surplus of land for single-family detached housing, and that there is a deficit of approximately 207 acres of available multi-family zoned land. The current single-family residential designation of most of the property does not allow the possibility for higher density, multi-family housing to be provided on the property. The proposed changes from single-family residential designation to a mixed-use or commercial designation will allow the potential for multi-family residential development on the property as a permitted use in the proposed MU-II (Mixed Use-II) zone or through the conditional use permit process in the CR (Retail Commercial) zone.

#### 4. West Salem Neighborhood Plan

The property is located within the boundaries of the West Salem Neighborhood Association. The West Salem Neighborhood Plan was adopted in 2004 and is in effect pursuant to SRC Chapter 64.

The West Salem Neighborhood Plan Generalized Land Use Map identifies the subject property as an area that is recommended for land use changes. The Recommended Changes to the Generalized Land Use Map designates the subject property as "Center." The "Center" designation is intended to promote a variety of uses, including residential, neighborhood retail, restaurant, employment, public space, and/or civic uses. The proposed "Mixed-Use" comprehensive plan designation with MU-II (Mixed Use-II) zoning designation and "Commercial" comprehensive plan designation with CR (Retail Commercial) zoning offer a similar list of permitted uses for the property, and thereby assist in implementing the goals and policies of the West Salem Neighborhood Plan.

The West Salem Neighborhood Plan also notes,

Centers should be developed in such a manner as to provide a sense of place, a compact urban form, neighborhood vitality, and innovative design. Within Centers, buildings should be oriented to the pedestrian, there should be accessibility to transit and major roads, and there should be connectivity with the surrounding neighborhood, while still accommodating the use of the automobile.

The proposed designations would allow an expansion of, and vehicular and pedestrian connectivity with, the previously approved mixed-use development at 1221 River Bend Road NW, which is also owned by the applicant.

The proposal meets the applicable criteria in the Neighborhood Plan such that the proposed

Mixed-Use and Commercial Comprehensive Plan Map designations of the subject property are consistent with these neighborhood plan policies.

5. Comments Received Prior to the Close of the September 3 Public Hearing

Comments and testimony were received prior to the close of the September 3 public hearing requesting a condition for permanent public access to the proposed open space in the development, requesting a development moratorium in West Salem due to cumulative traffic impacts, questioning the applicant's Transportation Planning Rule Analysis and requesting conditions for mitigation of impacts to the transportation system, and requesting conditions that could require SDCs for this project to be allocated to go first to mitigate traffic impacts for the Wallace Road system and, further, to be allocated to projects in the West Salem area.

The Planning Commission responded through the findings in the September 5, 2019 decision:

The applicant's conceptual plan for the development in Phase 2 is not being approved with this decision. The applicant's representative stated that the applicant intends to make open space and pedestrian paths in the development available to the public as long as public behavior is acceptable. The Planning Commission declined to impose the requested condition to make the open space permanently available to the public, as that condition would have the effect of taking private property for public use.

Oregon Administrative Rules (OAR 660-012-0060) requires that an amendment to the functional plan, acknowledge comprehensive plan, or a land use regulation (including a zoning map) demonstrate that the amendment will not have a "significant effect" on existing or planned transportation facilities. The applicant's Traffic Engineer submitted a Traffic Impact Analysis dated December 23, 2018 for the Riverbend Phase 2 Comprehensive Plan Amendment and Zone Change (CPC-ZC) to both the City of Salem and the Oregon Department of Transportation (ODOT). Both agencies reviewed the December 23, 2018 study and provided comments back to the applicant's Traffic Engineer. A response memorandum dated February 7, 2019 was submitted to both agencies. Both the City and ODOT reviewed the proposal and concurred that the proposed CPC-ZC complies with the requirements of the Transportation Planning Rule (OAR 660-0012-0060) and will not have a significant effect on the transportation system.

The entire length of Wallace Road NW within the City limits is under the jurisdiction of ODOT; therefore, the operating standards and policies of ODOT apply. The Oregon Highway Plan Policy, Action 1F.5 identifies a procedure to evaluate amendments to transportation system plans, acknowledged comprehensive plans, and land use regulations subject to OAR 660-12-0060, in situations where the volume to capacity ratio is above the mobility targets. The traffic analysis submitted for this project shows that River Bend Road NW is operating below the ODOT mobility standards in the TSP horizon year before and after the project, so there is not a significant affect at that location. The analysis also indicates that the intersection of Wallace Road NW and Glen

Creek Road NW operates above the mobility standards both before and after the project. The change in the volume to capacity ratio at the Glen Creek Road NW intersection is only 0.01. The ODOT threshold for significant is 0.03. By ODOT's definition, a change of 0.01 is not considered significant and meets the requirements of the Oregon Highway Plan policies and therefore meets the TPR.

Wallace Road NW through West Salem is under the jurisdiction of the Oregon Department of Transportation (ODOT). Any major improvement to increase capacity along the corridor would need to be clearly identified in the Salem Transportation System Plan (TSP) and in Mid-Willamette Valley Council of Governments Regional Transportation System Plan.

The cumulative impacts of development in West Salem were discussed in the Salem River Crossing Draft Environmental Impact Statement. The Draft Environmental Impact Statement was not adopted by the City and therefore does not have any bearing on this or any future land use action.

Congestion Relief Task Force recommendations were adopted by City Council on April 22, 2019. The application under review was submitted prior to that date; therefore, any recommendations adopted by City Council are not applicable to this application. In addition, any Council recommendations are not applicable to this application as those recommendations would first need to be adopted into the Transportation Systems Plan and zoning code.

Halting development in an area of the city would require City Council to declare a "Moratorium of Construction or Land Development." The State of Oregon has a specific process that local jurisdictions must follow in order to enact a moratorium. Oregon Revised Statute (ORS) 197.505 describes the manner of declaring a moratorium and the time limit associated with a moratorium. The law also requires that housing and economic development needs are accommodated as much as possible. The City Council has not declared a moratorium of construction and therefore, it is inappropriate to apply those considerations to this land use application.

Additionally, when land is developed, case law (Nolan and Dolan) prohibits the City from assessing mitigation that is not commensurate with its impacts.

Therefore, the Planning Commission declined to impose the requested condition for mitigation of traffic impacts.

All new development in the City pays a required Transportation System Development Charge (TSDC) that was adopted by City Council. The TSDC fee is collected to partially fund growth-related transportation projects that are identified on the eligible projects list. These projects are distributed throughout the City, and it would be unlikely to reallocate all of the TSDC funds collected from West Salem developments to

improvements in West Salem. Allocation of TSDC's is a City Council decision and is not appropriate consideration to this land use case.

Therefore, the Planning Commission declined to impose the requested condition for designation of SDCs toward Wallace Road NW and West Salem projects.

## 6. Appeal

The West Salem Neighborhood Association letter (**Attachment 3**) states that they voted to appeal the decision because the three points offered in their testimony before the Salem Planning Commission were not adequately addressed as to points of fact and detail per applicable rules and regulations. The written testimony submitted by Steven Anderson for the West Salem Neighborhood Association at the September 3 hearing is included as Attachment D of the Planning Commission decision (**Attachment 2**). The Planning Commission's response to Mr. Anderson's testimony is included in Section 5 of this report.

Staff notified the Oregon Department of Transportation of the appeal and received a response reiterating that ODOT finds that the project would not have a significant impact on ODOT facilities as that term is used in OAR 660-012-0060 (**Attachment 4**).

Pamela Cole  
Planner II

### Attachments:

1. Vicinity Map
2. Planning Commission Decision CPC-ZC-ZC19-10
3. West Salem Neighborhood Association Appeal
4. Oregon Department of Transportation Response to Appeal