

NOTICE OF DECISION

PLANNING DIVISION
555 LIBERTY ST. SE, RM 305
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Si necesita ayuda para comprender esta informacion, por favor llame

503-588-6173

PLANNING ADMINISTRATOR DECISION FOR SIMILAR USE DETERMINATION

CASE NO.: SUD19-02
AMANDA NO.: 19-124227-ZO
DATE OF DECISION: May 1, 2020
PROPERTY LOCATION: 5191 Portland Road NE - 97305
APPLICANT: Anthem Enterprises, LLC (Minkmas Williams and Barry Williams)
REPRESENTATIVE: Alan Sorem, Saalfeld Griggs PC

REQUEST

A Similar Use Determination, pursuant to SRC 400.015(d), to identify the appropriate use classification for a business that sells and rents shipping containers, as well as provides for limited on-site storage of client's goods within such containers on a temporary basis, on property zoned CG (General Commercial) and located at 5191 Portland Road NE – 97305 (Marion County Tax Assessor Map and Tax Lot No. 062W31D01503).

BACKGROUND

In June 2018, the applicant requested a pre-application conference to discuss development of the property with the proposed shipping container sales, rental and storage use. At the time, staff classified the proposed use as either self-service storage or warehousing and distribution. Because both potential uses were not allowed as permitted uses in the CG zone, staff identified the need for a comprehensive plan map amendment and zone change for the property before the use could be legally established on the subject property.

After the pre-application conference, the use was established on the property without receiving necessary land use approvals. In August 2019, an investigation into work done without permits on the subject property was opened. The City of Salem, Compliance Services Division sent the applicant a correction notice stating that the use of the property was not permitted in the CG zone and that the use would need to cease immediately.

On November 18, 2019, a request for a similar use determination was submitted by Alan Sorem, Saalfeld Griggs PC, on behalf of the applicant and property owner, Anthem Enterprises LLC.

The similar use determination request seeks a determination regarding which land use classification a business that sells and rents shipping containers falls within in order to determine whether the use, which has already been established, may continue with proper land use and permit approval, on the property at 5191 Portland Road NE (**Attachment A**).

FINDINGS

1. Classification of Uses.

The various land uses allowed within the City are classified under SRC Chapter 400 (Use Classifications). SRC Chapter 400 establishes a framework for the classification of land uses under general categories of land use (e.g. Single Family Residential, Office, Retail Sales, General Manufacturing, etc...) based on the common functional, product, or physical characteristics of the use and its related impacts.

The use categories identified under SRC Chapter 400 include a narrative description of the general characteristics of the use, examples of the types of activities that possess the characteristics of, and therefore fall within the use, and a list of specific activities that possess some of the characteristics of the use but which more appropriately are classified under another use.

While SRC Chapter 400 is intended to provide a comprehensive framework for the classification of land uses, it is acknowledged that in some instances a particular use may not be readily classifiable under the use categories included within the chapter. As such, SRC 400.015(d) establishes a similar use determination process whereby specific uses which cannot be readily classified as falling within a particular use, or specific uses which possess the characteristics of two or more uses, can be classified.

The applicant has requested a formal determination for the use classification of the proposed shipping container sales, rental and storage use from the Planning Administrator before proceeding with future land use applications and development permits.

2. Proposed Use.

The use subject to this similar use determination is a business involved in the sale, rental and storage of Simple Box Storage Containers (shipping containers). A written statement provided by the applicant's representative in support of the similar use determination is included in **Attachment B**. The applicant's written statement describes the different types of activities that occur on the subject property as well as a rough outline of designated office & parking, inventory storage, and packed container storage areas.

As indicated in the applicant's written statement, the following activities are identified as part of the business:

- Sales and rental of storage containers delivered to a final consumer;
- Storage yard for inventory;
- Storage of customers personal property in packed containers.

3. Classification of Proposed Use.

To determine which use classification the sale and lease of large cargo containers falls within, it is helpful to first eliminate from the analysis those use classifications does not fall within due to the characteristics of the use clearly not being contemplated by the description of the use classification.

Based upon the characteristics of the uses identified under SRC Chapter 400, sale and leasing of large cargo containers is not similar to any of the uses under the following use categories:

- Household Living;
- Group Living;

- Lodging;
- Business and Professional Services;
- Recreation, Entertainment, and Cultural Services and Facilities;
- Health Services;
- Education Services;
- Civic Services;
- Public Safety;
- Funeral and Related Services;
- Construction Contracting, Repair, Maintenance, and Industrial Services;
- Manufacturing
- Transportation Facilities;
- Utilities;
- Mining and Natural Resource Extraction; or
- Farming, Forestry, and Animal Services

The remaining uses under the following use categories do share characteristics in common with the proposed use and must be analyzed to determine which use the sale and leasing of large cargo containers is more similar to. These uses include:

- Retail Sales and Service – *Retail Sales*
- Motor Vehicle, Trailer, and Manufactured Dwelling Sales and Services – *Motor Vehicle and Manufactured Dwelling and Trailer Sales*
- Motor Vehicle, Trailer, and Manufactured Dwelling Sales and Services – *Heavy Vehicle and Trailer Sales*
- Wholesale Sales, Storage, and Distribution – *Heavy Wholesaling*
- Wholesale Sales, Storage, and Distribution – *Warehousing and Distribution*
- Wholesale Sales, Storage, and Distribution – *Self-Service Storage*

4. Analysis of Retail Sales.

Retail Sales falls within the Retail Sales and Service use category of SRC Chapter 400. SRC 400.045 describes the Retail Sales and Service use category as follows:

“Retail Sales and Service consists of the sale, lease, or rental of products or services to the general public for personal or household use. Customers typically come to the site to obtain goods or services. Some delivery or shipping may also be included.”

The characteristics of Retail Sales are described under SRC 400.045(b)(1) as follows:

“Retail Sales is characterized by the sale, lease, or rental of products directly to final consumers, but may include the sale, lease, or rental of products to contractors. Visits by customers are generally not scheduled. Stores are typically open to the general public.”

Examples of Retail Sales include:

- Appliance stores;
- Auto supply stores;
- Bicycle shops;
- Book stores;
- Candy stores;
- Catering establishments;
- Clothing, footwear, and apparel stores;
- Commercial art galleries;
- Furniture rental; grocery stores;
- Hardware stores;
- Health and beauty stores;
- Lawn and garden supply stores;
- Liquor stores;
- Lumber and building materials stores;
- Meat and seafood markets;
- Paint stores;

- Consignment shops;
- Convenience stores;
- Copy shops;
- Costume or formal wear rental;
- Department stores;
- Drug stores;
- Electronics stores;
- Fruit and vegetable markets;
- Furniture, lighting, and home furnishing stores;
- Pawn shops;
- Pet stores and pet supply stores;
- Retail bakeries;
- Retail nurseries;
- Photocopying and blueprinting;
- Sporting goods stores;
- Tobacco stores;
- Video rental.

Finding: The applicant indicates that the primary source of revenue for the business is generated by retail sales and rental of shipping containers; however, just because a business provides retail sales of products, it does not necessarily mean that the Retail Sales and Service use category is the appropriate zoning classification for such use. Uses in the retail sales and service category are characterized by the sales of products to the final consumer with stores being open to the general public and visits by customers are typical and not scheduled.

As described by the applicant, there will not be a retail store for this use that is typical of most uses in the retail sales and service category. There will be a model office provided in a shipping container where customers are able to view possible uses for a container, make on-site orders, or make arrangements to view additional inventory on site, but customers generally place orders and have the containers shipped directly to them without having a need to visit this site for any purpose. As stated by the applicant, this is a fairly focused market, it is likely that the majority of the general public will rarely visit the subject property.

SRC 400.015 offers some guidance in determining which activities occurring on a site are the principle activities and which are accessory. Based on the following factors, the retail sales activity occurring onsite appears to be an accessory use.

400.015(b)(2) Relative amount of site or floor space and equipment devoted to the activity in comparison to other activities on the site and/or in the building.

The applicant indicates that one shipping container has been converted into a model office, and is used for customers to place on-site orders. The floor area of the container is not indicated in the applicant's statement, but is estimate at 500 square feet in size. The majority of the site is devoted to outdoor storage of inventory, and outdoor storage of packed containers leased by customers for storage of personal items.

400.015(b)(4) Relative number of employees for the activity in comparison to other activities on the property.

The applicant's statement does not indicate how many employees are located on the site, just that the only on-site employees will be sales associates. The statement does not indicate how many employees are dedicated to loading/unloading, delivery, or storage operations.

400.015(b)(5) Whether the activity would likely be found independent of the other activities on the property.

The majority of the 1.85 acre property is used for outdoor storage of inventory, and outdoor storage of packed containers leased by customers for storage of personal items. It is likely that these activities would continue to occur with or without the model office. In contrast, the 500

square foot model office and sales area would not likely be located on the 1.85 acre property, if it was not for the other activities occurring on the property.

400.015(b)(7) Relative number of vehicle trips generated by the activity in comparison to other activities on the property.

The applicant's statement does not indicate how many trips to the site are from customers verse how many trips are made by shipments of product to the site, and deliveries to customers.

Based on the information provided by the applicant, the Planning Administrator determines that the retail sales activity occurring on the subject property is not the principle activity. Because retail customers do not generally visit or pick up products from the site and because the proposed on-site model office/sales container is relatively small in size when compared to the inventory storage and packed container storage areas, the proposed shipping container sales use shares more characteristics in common with Warehousing and Distribution than it does with Retail Sales.

5. Analysis of Motor Vehicle and Manufactured Dwelling and Trailer Sales.

The characteristics of Motor Vehicle and Manufactured Dwelling and Trailer Sales are described under SRC 400.055(a)(1) as follows:

"Motor vehicle and manufactured dwelling and trailer sales is characterized by the sales, leasing, and rental of new and used motor vehicles, other than heavy vehicles and heavy equipment, and the sales, leasing, and rental of manufactured dwellings and trailers. Motor vehicle and manufactured dwelling and trailer sales typically requires extensive indoor and/or outdoor display or storage areas. Customers typically come to the site to view, select, purchase, and/or pick up the vehicles, manufactured dwellings, or trailers."

Examples of Motor Vehicle and Manufactured Dwelling and Trailer Sales include:

- Sales, leasing, and rental of new and used motor vehicles including automobiles, trucks, motorcycles, motorized boats, recreational vehicles, and other personal transportation vehicles.
- Car rental agencies;
- Manufactured dwelling and pre-fabricated structures sales and display sites;
- Sales, leasing, or rental of trailers.

Finding: The proposed use does share some characteristics in common with motor vehicle, trailer, and manufactured dwelling sales and services uses in that both uses are engaged in retail sales and have extensive outdoor areas devoted to display and storage of inventory available for sale. However, uses in the motor vehicle, trailer, and manufactured dwelling sales and service category typically provide other services and site amenities that aren't apparent for the proposed use, including:

- 1) Motor vehicle sales areas are typically paved and landscaped, and customers typically have access to the entire inventory displayed on the sales lot so they can test, view and compare vehicles with an endless combination of packages and features. In contrast, the proposed use has a gravel storage yard for storage of shipping containers. With shipping containers basically being similar to each other, with the difference being size, customers interested in purchasing don't have the same need to view the entire inventory stored on the site that a customer picking a new vehicle would.

- 2) Motor vehicle sales uses typically provide vehicle service areas for customers to visit the site and drop off vehicles for maintenance. In contrast, no such maintenance service area is provided for the proposed use. If customers do have issues with a shipping container, the customer would not bring the container to the site for servicing. It is likely that a customer service representative could make arrangements to have a truck pick up a defective container, and/or have a new container shipped to a customer, but a customer would not visit the subject property to have a container serviced.

The applicant may point to manufactured dwelling and pre-fabricated structure sales and display sites as being similar to the proposed use. Pre-fabricated structures could include things like barns, sheds, and other accessory structures. Shipping containers may be similar in size to small sheds, but they do not meet the definition of a structure provided in SRC Chapter 111.

Structure means that which is built or constructed; an edifice or building of any kind; or any piece of work artificially built up or composed of parts joined together in some definite manner; any of which is an addition to or fixture on real property. The term "structure" does not include paving, or mobile homes.

Shipping containers have been used more widely for human occupancy in recent years, but before a shipping container can legally and safely support human occupancy, a building permit must first be obtained. The container itself would need to undergo significant alterations and would need to be fixed to a permanent foundation. Because shipping containers are not designed to be fixtures on real property, and are not intended for human occupancy, they do not meet the definition of structure, and cannot be included in this use classification. As such, the sale, rental, and storage of shipping containers does not qualify as a Motor Vehicle and Manufactured Dwelling and Trailer Sales use.

6. Analysis of Heavy Vehicle and Trailer Sales.

The characteristics of Heavy Vehicle and Trailer Sales are described under SRC 400.055(f)(1) as follows:

"Heavy Vehicle and Trailer Sales is characterized by establishments providing for the sales, rental, or leasing of heavy vehicles, heavy-duty trailers, and heavy equipment. In most cases, the general public rarely, if ever, come to the site. Heavy vehicles, heavy-duty trailers, and heavy equipment are often stored on-site, often outside."

Examples of Heavy Vehicle and Trailer Sales include:

- Heavy truck rental and leasing;
- Moving truck rental, with or without drivers;
- Sales, rental, and leasing of heavy trucks and heavy equipment, tractors, vehicles requiring a commercial driver license, and heavy-duty trailers.

Finding: The proposed use does share some characteristics in common with heavy vehicle and trailer sales uses in that both uses are engaged in retail sales and rental of product, outdoor storage areas and that trips by the general public are rare. The applicant may point to sales and rental of heavy equipment as being similar to the proposed use. Heavy equipment is not a term that is defined in the Salem Revised Code; however, in the context of the heavy vehicle and trailer sales the term heavy equipment is more related to vehicles and trailers, such as construction equipment, and not pieces of heavy equipment without wheels. As such, the proposed use does not qualify as a Heavy Vehicle and Trailer Sales use.

7. Analysis of Heavy Wholesaling.

The characteristics of Heavy Wholesaling are described under SRC 400.095(b)(1) as follows:

“Heavy Wholesaling is characterized by sales of physical products that are dangerous, toxic, or potentially contaminating, or that require outdoor storage, primarily to customers, other than the general public, including retailers, other wholesalers, and industrial, commercial, institutional, farm, or business users. The general public rarely comes to the site. Products are generally stored on-site, and may also be assembled, sorted, graded and/or re-packaged on-site. Activities on the site may also include on-site sales or display areas. Products may be picked up on-site or delivered to the purchaser.”

Examples of Heavy Wholesaling include:

- Wholesale sales of automobiles and other motor vehicles, manufactured dwellings, and trailers, where stored outside;
- Wholesale sales of monuments and grave markers;
- Wholesale sales of metals, coal, and other minerals and ores;
- Wholesale sales of ammunition and firearms;
- Wholesale sales of petroleum and petroleum products;
- Wholesale sales of chemicals;
- Wholesale sales of logs, timber products, wood, wood chips, nursery stock, and lumber and construction materials requiring outdoor storage;
- Grain elevators for the wholesale sale of agricultural products;
- Recovery and wholesale sale of used motor vehicle parts, including junkyards and vehicle salvage;
- Processing and wholesale sales of scrap and waste materials, including wrecking yards and scrap dealers;
- Industrial equipment.

Finding: The proposed use shares some characteristics of a heavy wholesaling use, such as requiring outdoor storage of product, an on-site sales and display area, delivery of products to the purchaser, and, as stated by the applicant, few visits by the general public to the site.

However, because the proposed business is engaged in retail sales of products to the final consumer, not wholesale sales, it does not qualify as a wholesaling use.

8. Analysis of Warehousing and Distribution.

The characteristics of Warehousing and Distribution are described under SRC 400.095(c)(1) as follows:

“Warehousing and Distribution is characterized by the storage and/or distribution of goods or personal property. Goods are generally delivered to other firms or the final consumer. Except for some will-call pickups, there is little on-site sales.”

Examples of Warehousing and Distribution include:

- Catalog and mail order houses;
- Cold storage plants and frozen food lockers;
- Distribution centers, and distribution facilities for internet retailers;
- Free standing warehouses associated with retail stores such as furniture or appliance stores;
- Grain terminals;
- Major post offices and postal distribution centers;

- Repossession service;
- Stockpiling of sand, gravel, bark dust, or other aggregate and landscaping materials;
- Truck or rail freight terminals.

Finding: SRC 400.010(b) explains that the list of examples provided for each use within SRC Chapter 400 are intended to illustrate typical activities that possess the characteristics of that use. Warehousing and Distribution involves storage and/or distribution of goods or personal property to other firms or the final customer with little on-site sales. As illustrated through the list of examples, uses in this category are generally larger-scale facilities and distribution centers where there are generally increased levels of truck traffic; on-site storage, shipping, receiving, and logistics; equipment operation; and few visits to the site by the general public.

Because of these common characteristics and their associated impacts, Warehousing and Distribution is Classified as an Industrial Use under SRC 400.005, Table 400-1, and correspondingly generally only allowed in the City's industrial zones such as IC (Industrial Commercial), EC (Employment Center), IBC (Industrial Business Campus), IP (Industrial Park), and IG (General Industrial).

It's important to note that a key component of businesses in the warehousing and distribution use category includes retail sales of goods and products stored on-site. Businesses in this category include distribution centers and catalog and mail order houses which rely on orders placed by customers who have products delivered to their home or place of business, and who do not typically visit the site where products are stored. These businesses are placed in the warehousing and distribution category because of the relatively small amount of customer trips to the site, and the large area devoted to storage of product.

In this case, the applicant's statement indicates that customers will not generally be going to the site, and aside from a sales office that will be provided in a model container for employees and the occasional customer, the majority of the 1.85 acre site will be devoted to inventory storage, packed container storage, and loading/unloading activities. Customers interested in purchasing a container may make an order online or by phone and have the container delivered to their home or place of business. Similar to a distribution center, once an order is received, on-site staff will find a container from the outdoor inventory storage yard, load the container onto a delivery vehicle and deliver the container to the customer. This is in contrast to a retail sales use where customers typically come to a store to obtain goods, and visits by customers are typically not scheduled.

As described by the applicant, the proposed shipping container sales and storage use shares several characteristics of uses in the Warehousing and Distributing category in terms of scale, location, on-site activities and customer traffic.

9. Analysis of Self-Service Storage.

The characteristics of Self-Service Storage are described under SRC 400.095(d)(1) as follows:

"Warehousing and Distribution is characterized by facilities that lease space to individuals, usually storing household or personal goods, or to businesses, usually storing excess inventory, supplies, or archived records. The storage areas are designed to allow private access by the tenant for storing or removing personal property. Generally, few, if any, employees work at the site."

Examples of Self-Service Storage include:

- Single story and multistory facilities that provide individual storage areas for rent.

Finding: The applicant's statement indicates that an activity occurring on site relates to using the containers for temporary on-site storage of personal property. The applicant states that the customers would not be allowed access to the subject property or their container, rather containers would be delivered to the customer, the customer would pack the container, and the applicant would retrieve the packed container and bring it back to the subject property for storage until the container is requested to be delivered back to the customer.

Because providing container storage for individuals is not the primary activity, no individual storage areas are provided onsite for customers to access, and it is the employees of the facility that are the primary movers of the customers containers, the proposed use does not qualify as a self-service storage use.

10. Conclusion

Though the proposed use is not readily classifiable as falling within a particular use because it possesses characteristics of multiple uses, the proposed use shares more characteristics in common with Warehousing and Distribution than it does with Retail Sales, Motor Vehicle and Manufactured Dwelling and Trailer Sales, Heavy Vehicle and Trailer Sales, Heavy Wholesaling, and Self-Service Storage. This is due to:

- 1) The significant amount of site area dedicated to the storage of containers, whether for sale/rent or for storage of client belongings as compared to the relatively small amount of site area dedicated to the sales/rental of the containers; and
- 2) The containers are delivered to the final consumer, with few customer trips to the site; and
- 3) As identified in this staff report, the use does not fit with other potential categories, including retail sales, motor vehicle and manufactured dwelling and trailer sales, heavy vehicle and trailer sales, heavy wholesaling, and self-service storage.

The Warehousing and Distribution use is not a permitted use in the CG zone and is therefore not a permitted use for the subject property.

In addition, the use seems to have been established in violation of conditions of approval placed on the subject property through a previously approved Comprehensive Plan Map Amendment and Zone Change, Case No. CPC-ZC92-23 (**Attachment C**), including, but not limited to:

Condition 1: All lot areas not lawfully developed for buildings, structures, parking, loading or driveways shall be landscaped.

Condition 3: No vehicle or equipment storage for other businesses are permitted on site.

These conditions of approval prohibit the use and development of outdoor storage areas on the subject property, including the shipping container inventory storage area and packed container storage area.

DECISION

Based on the foregoing findings and conclusions, it is determined, pursuant to SRC 400.015(d), the proposed shipping container sales, rental, and storage use falls within the scope of a Warehousing and Distribution use.



Aaron Panko, Planner III
Planning Administrator Designee

Attachments: A. Vicinity Map
B. Applicant's Similar Use Determination Request
C. CPC-ZC92-23 Planning Commission Decision

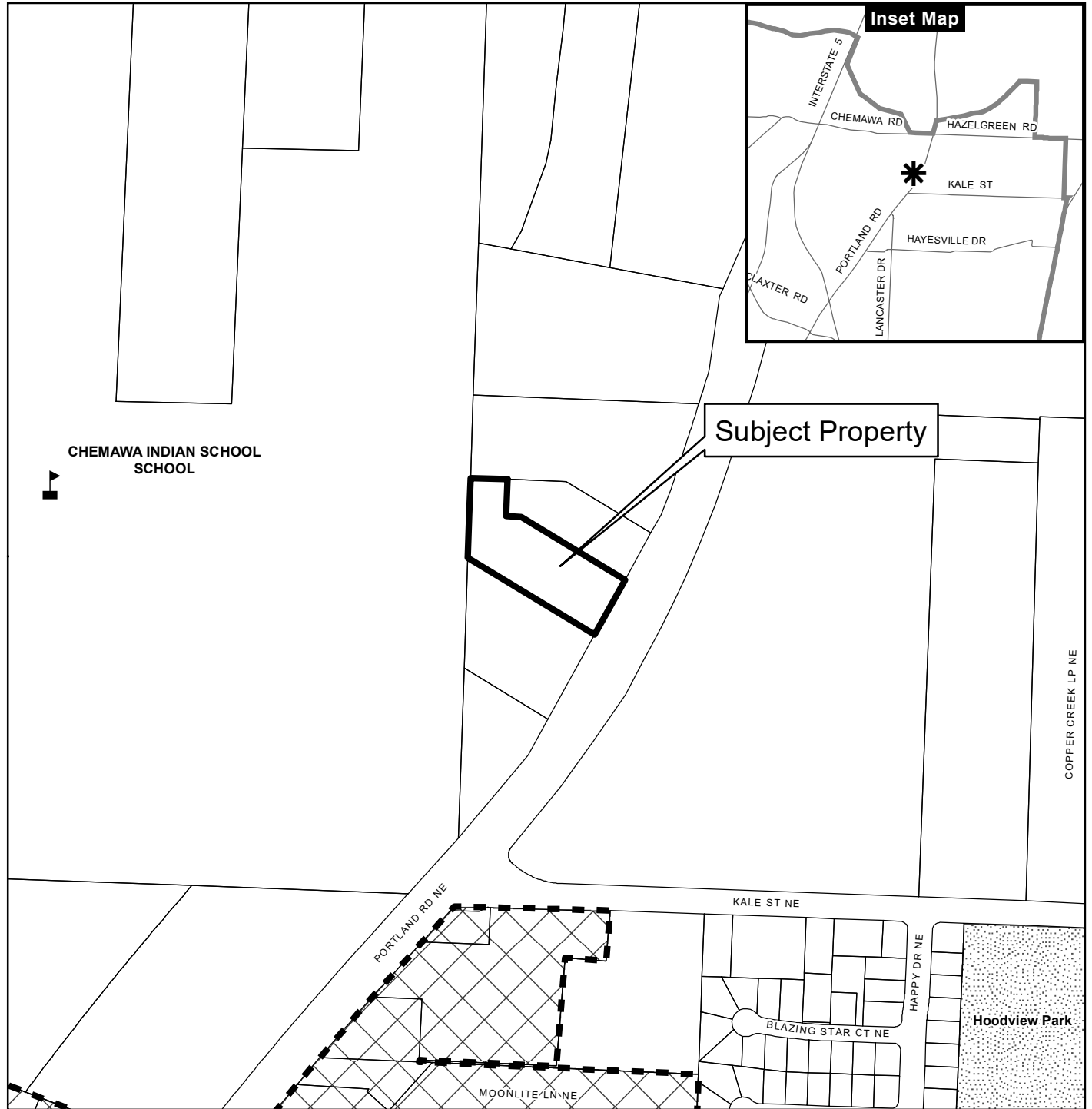
Notice of Decision Mailing Date: May 1, 2020
Decision Effective Date: May 11, 2020

Case Manager: Aaron Panko, apanko@cityofsalem.net, 503-540-2356








A copy of the complete Case File is available for review during regular business hours at the Planning Division office, 555 Liberty Street SE, Room 305, Salem OR 97301. For access to case related documents during the closure of City Hall to the public because of the Covid-19 pandemic, please contact the Case Manager.

This decision is final unless the applicant submits a written request for review of the Planning Administrator's decision with the City of Salem Planning Division by 5:00 p.m., Monday, May 11, 2020. **PLEASE NOTE: Due to the COVID-19 pandemic, City of Salem Offices are closed to the public until further notice.** The notice of appeal can be submitted electronically at planning@cityofsalem.net or mailed to City of Salem Planning, Room 320, 555 Liberty Street SE, Salem OR 97301. The Hearings Officer will review the request and may either endorse or refute the Planning Administrator's decision. The Hearings Officer's decision upon review shall be the final decision of the City.

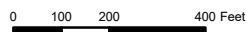
Vicinity Map 5191 Portland Road NE



Legend

-  Taxlots
-  Urban Growth Boundary
-  City Limits
-  Outside Salem City Limits
-  Historic District
-  Schools
-  Parks

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Community Development Dept.



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MEMO

To: Lisa Anderson-Ogilvie

From: Alan Sorem

cc: Anthem Enterprises, LLC, a Washington limited liability company

Date: November 19, 2019

Re: Written Narrative in Support of Application for Zoning Determination, 5213 Portland Road NE



This office represents Anthem Enterprises, LLC, a Washington limited liability company (the "**Applicant**"), which is the owner of Tax Lot 1503 of Marion County Tax Assessor Map No. 062W21D (Tax Account No. R19260), more commonly known as 5213 Portland Rd NE in Salem (the "**Subject Property**").

The Applicant has used the Subject Property for the sale and rental of Simple Box Storage Containers (the "**Current Use**"). Upon receipt of correspondence from the City of Salem (the "**City**") that the Current Use was allegedly in violation of the zoning code, Applicant engaged representation for assistance in seeking a determination regarding whether further action is necessary to allow for continued use of the Subject Property. It is Applicant's position that under the Salem Revised Code (alternately, the "**Code**" or "**SRC**"), all or portions of the Current Use are permitted, therefore, Applicant is submitting this application for a Similar Use Determination, pursuant to SRC 400.015(d).

While determining whether a use is permitted or not allowed is usually a nondiscretionary matter, there is an established process to allow for flexibility where a particular use does not fit into the specific categories set forth in the Code. SRC 400.015(d) provides a mechanism for making a similar use determination in instances when a specific use cannot be readily classified as falling within a particular use, or for specific uses that possess the characteristics of two or more uses. SRC 400.015(a) directs how to classify a use: "[t]he principal activity, or principal activities, that occur upon a property establish the use. A principal activity falls within a specific use when the principal activity possesses the characteristics of the use, and the broader use category the use falls within."

The Subject Property is zoned Commercial General (CG) under the Code. The purpose of the CG Zone is to allow for a "**a wide variety of commercial uses, including the sale of commodities, performance of services, repair facilities, motor vehicle sales and services, offices, and general wholesaling.**" SRC 523.001(**emphasis added**). The City's code compliance officer purportedly visited the Subject Property and asserted that the Current Use was not allowed in the CG Zone because it was "Self-service storage," which is not permitted in the CG Zone. However, Applicant's position is that the Current Use is not self-service storage, nor does it constitute warehousing or distribution. It is more accurately classified as either "Retail Sales" or "Heavy vehicle and trailer sales", which are a permitted uses in the CG Zone under the Code.

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I. Analysis of use.

The Code defines “Use” as “The principal activity, or principal activities, that occur upon a property establish the use. A principal activity falls within a specific use when the principal activity possesses the characteristics of the use, and the broader use category the use falls within.” SRC 400.015(a).

The “principal activity” occurring on the Subject Property is the sale and lease of large cargo containers (the “**Containers**” or “**Container**”), which occurs primarily on the Subject Property. A component of this activity is the use of one of the Containers as a model office (the “**Office**”) which allows potential customers to preview the potential uses of one of the Containers prior to the purchase or lease. Applicant is in the process of preparing an application for site plan review in order to ensure that this office use is in compliance with the Code. However, as there is a dispute as to whether the use is permitted, it is prudent for Applicant to first seek this Zoning Determination. While there is some incidental storage of the Containers on the Subject Property, the primary use is the advertising, sale, and lease of the Containers.

Accordingly, Applicant submits this request in a bifurcated manner. First, Applicant seeks a determination that the advertising, sale and leasing of containers is a permitted principal activity. Second, Applicant seeks a determination that the leased Containers may be temporarily stored on-site as a permitted accessory use provided Applicant agrees, as a condition of approval, that there shall be no onsite loading, unloading, or access to stored goods by any of Applicant’s customers.

A. The Current Use is retail sales.

Retail sales are characterized as the “sale, lease, or rental of products directly to final consumers * * * [including] the sale, lease, or rental of products to contractors. Visits by customers are generally not scheduled. Stores are typically open to the general public.” SRC 400.045(b). This accurately describes Applicant’s primary use of the Subject Property.

Applicant primarily sells, leases, and rents directly to its customer base, which is the “final consumer.” The vast majority of Applicant’s gross revenue (approximately 70%) is derived from a sale of Containers on the Subject Property. Approximately 30% of Applicant’s revenue comes from leasing the Containers. The Office allows potential customers to examine the Containers and provides a space for Applicant’s on-site employees to finalize on-site transactions. Applicant’s customers generally do not perform any loading or unloading of the Containers and do not have access to the Containers while on the Subject Property. Applicant is willing to accept as a condition of approval that no loading, unloading, nor storage of any third-party goods shall occur onsite, except as may be otherwise allowed as an acceptable accessory use. In this way, Applicant’s use of the Subject Property falls squarely within the retail uses permitted in the zone.

A potentially relevant exception to the classification of a use as “Retail” within the Code is that there is a carve-out for the sale, rental or leasing of heavy vehicles and trailers. SRC 400.045(b)(3)(E). “Heavy vehicles” and “trailers” are not defined terms within the Code, and as the Containers are not independently mobile, Applicant’s position is that the primary use occurring on the Subject Property

is properly classified as Retail Sales. Therefore, the City must allow the Current Use, i.e. the sale and leasing of large metal storage containers, within the CG Zone.

B. Alternatively, the Current Use is motor vehicle, trailer, and manufactured dwelling sales and services.

In the event the City disagrees with Applicant's classification of the use as "Retail Sales," Applicant believes that the next most appropriate classification of Applicant's use of the Subject Property is "Motor vehicle, trailer, and manufactured dwelling sales and services." All of the use classifications in the Motor vehicle, trailer, and manufactured dwelling sales and services category are permitted within the CG Zone. Applicant's use fits well within Heavy vehicle and trailer sales.

Heavy vehicle and trailer sales are characterized as "establishments providing for the sales, rental, or leasing of heavy vehicles, heavy-duty trailers, and heavy equipment." This classification contemplates rare visits by the general public to the Subject Property, but allows for the storage of heavy equipment, on-site, primarily outside.

"Heavy equipment" is not a defined term under the code, but the general definition for equipment is "the necessary items for a particular purpose" and, given the size of the Containers, "heavy" appears to be an accurate descriptor. Further, the Containers fit into this definition from the perspective of Applicant's customers. Applicant's customer base covers a wide range of industries: commercial contractors which use the Containers for tool storage; police departments which use the Containers as evidence lock-up; fire departments which use the Containers for incidental storage; service and restoration companies which use the Containers to store tools and supplies; hotels which use the Containers for on-site storage; and retail companies that use the Containers for a variety of purposes. This broad range of customers and their variety of independent uses suggests that the Containers fit well within the plain meaning of "Heavy Equipment."

This categorization generally describes Applicant's use of the Subject Property. Applicant sells the Containers on-site to individuals that visit the Subject Property. The primary reason for the general public to visit the Subject Property is to examine and purchase or lease a Container. As this is a fairly focused market, it is likely that the majority of the general public will rarely visit the Subject Property. The Containers are stored outside on the Subject Property. As the Containers are neither "farm equipment" nor "industrial equipment" the use of the Subject Property for the sale, leasing, and interim storage of the Containers is an out-right permitted use.

C. The Current Use is not self-storage nor is it warehousing or distribution.

The City may point to "Wholesale sales, storage and distribution" as a more accurate characterization of the Current Use. This is similarly an incorrect interpretation of the Current Use. The Code states that "Wholesale sales, storage and distribution" is characterized by "facilities that lease space to individuals, usually storing household or personal goods, or to businesses, usually storing excess inventory, supplies, or archived records. The storage areas are designed to allow private access by the tenant for storing or removing personal property. Generally, few, if any, employees work at the site." SRC 400.0095(d). Contained therein is an exception stating that "A transfer and storage business where there are no individual storage areas, or where employees are

the primary movers of the goods to be stored, is included in wholesale sales, storage, and distribution: warehousing and distribution.” SRC 400.095(d)(3)(B).

Applicant’s position is that this might be an accurate categorization of the accessory use, as discussed in detail below. However, the primary use of the Subject Property is centrally focused around the sale and lease of the Containers, not on-site storage or distribution. As discussed above, the principal activity on the Subject Property is the sale and lease of the Containers for off-site storage. In this instance, the “goods” are the “individual storage areas,” and the employees are not moving the “goods to be stored,” but the storage areas themselves. While the City may allow as an accessory use, some incidental storage on the Subject Property of Containers, the sale and leasing of Containers themselves is not a warehousing or distribution use. The focus of the use is not on the storage component. No storage need occur onsite nor are any storage services necessarily provided onsite. Rather, the focus is on the sale and leasing of the Containers. In this sense, the Current Use is more accurately “Retail Sales.”

II. Accessory Use - Accessory uses such as office, parking, storage of inventory and other typical accessory uses are allowed.

The Code defines “Accessory Use” as “activities that are clearly incidental, subordinate to, dependent upon, and conducted in support of one or more principal activities on a property are accessory uses. Applicant’s position is that both the Office and the storage of the Containers are accessory uses. Accessory uses must be “located on the same lot, and must be operated under the same ownership, as the principle activity.” SRC 400.015(b). The code provides ten (10) factors that are used to determine whether a use qualifies as an accessory use. These factors are set out in bold and italics with Applicant’s response following.

- 1. The location and arrangement of the activity on the site, and/or its arrangement within a building, in comparison to other activities on the property;***
- 2. The relative amount of site or floor space and equipment devoted to the activity in comparison to other activities on the site and/or in the building;***
- 3. The relative amounts of sales from the activity in comparison to other activities on the property;***
- 4. The relative number of employees for the activity in comparison to other activities on the property;***
- 5. Whether the activity would likely be found independent of the other activities on the property;***
- 6. Whether the activity aids or contributes to other activities on the property or carries on the function of other activities on the property;***
- 7. The relative number of vehicle trips generated by the activity in comparison to other activities on the property;***
- 8. Whether the activity will have its own signage;***
- 9. How the activity advertises itself in comparison to other activities on the property; and***
- 10. The hours of operation of the activity in comparison to other activities on the property.***

As there are no other buildings on the Subject Property, the presence of the Office and the Containers waiting to be purchased or leased take up the majority of the Subject Property. However,

this is true of any inventory in any retail setting, including those of heavy equipment sales. For example, this is consistent with what you would see at a car lot. In that instance, the storage of the cars is incidental to the sale of those cars. The car lot is clearly in the business of selling cars, not storing them, but the storage is necessary to allow potential customers to examine and test drive the cars. When examined within the context of the permitted use, the Office and on-site Containers are functionally equivalent to what you would see at a car lot. The storage of the Containers and the Office facilitate the business of selling and renting the Containers.

Applicant's on-site employees are sales persons who are present to show potential customers the office and facilitate the sale or lease of the on-site Containers. There are no additional employees facilitating the operation of the Office or the storage of the Containers. The Office and on-site Containers serve to facilitate the primary use of the Subject Property by providing a convenient location to facilitate the transaction as well as allowing for inspection of the product being sold. While either an office or storage of the Containers could occur independently of the primary use, in this instance the primary motivation behind their presence on the Subject Property is to facilitate the sale and lease of the Containers. All of the traffic associated with the Subject Property is related to the sale and lease of the Containers and there is no additional signage for the storage and office aspects of the use. The Office has the same hours as the sale and lease of the Containers. The on-site Containers remain on the Subject Property when they are not in use, however, this is the same with the majority of retail inventory and this factor alone does not make the storage an independent use. As outlined above, these accessory uses qualify as permitted accessory uses under the Code.

III. Accessory Uses- Limited storage of third-party goods is allowed as an accessory use.

It is Applicant's position that some incidental on-site storage of the leased Containers is permitted under the Code in between uses by the leasing customer. Subject to reasonable conditions of approval. For example, if a contractor were to lease a Container for secure storage on a variety of work sites and needs storage for the Container in between particular jobs, ideally that contractor could return the leased Container to the Subject Property for storage in the interim. An accessory use within a given zone may be a non-permitted use provided it is an incidental use, provided, on balance, that the ten (10) factors set forth above support a determination that the proposed accessory use is, in fact, incidental to the primary use.

As discussed above, a significant majority of the gross revenue associated with the sale and lease of the Containers is derived from the sale of the containers to individuals and companies. Applicant would like the ability to offer some temporary on-site storage to a small number of individuals that lease the Containers to allow for a broader range of customers. For example, residential customers that need to store home furnishing after the sale of a residential property while they locate a replacement property should be allowed to store their Containers on-site so long as they do not access such Containers until they are shipped to a third-party location. Applicant would deliver the Container to the customer. The customer would pack up the Container. The Applicant would retrieve the Container and return it to the Subject Property where it would remain until the customer requested that Applicant deliver the Container to a separate location.

In these scenarios, Applicant proposes that the Containers could be limited to a specific 16,000 square foot portion of the rear portion of the Subject Property, ensuring that at any given time the use

of the Subject Property for this type of temporary storage would be limited to an incidental use. This would ensure that only approximately 20% of the 1.85-acre Subject Property could be used for the temporary storage of Containers at any given time, and thus supporting a finding in favor of the Applicant on the first two factors. The temporary storage function of the Subject Property requires no additional equipment, as loading and unloading of the Containers is a component of the primary use of the Subject Property. See attached Concept Plan. As the gross revenues of the Container leases are approximately 30% of the revenue earned from the Subject Property, the third factor supports Applicant's position that temporary storage of Containers on the Subject Property is an incidental accessory use. The employees, hours, advertising, and signage for the temporary storage of the Containers would be comingled, supporting Applicant's position that the proposed temporary storage is an incidental use to the primary use on the Subject Property.

The remaining factors also support a finding in favor of Applicant's proposed interpretation. The temporary storage is a component of the lease transaction with repeat, and in some cases, individual customers. The ability to store the Containers on the Subject Property allows an efficient storage place for the Containers when they are not in use, adding in their ability to lease the Containers on a long term basis as well as contributing to the ability of Applicant to operate its business from a single site, rather than requiring it to obtain a secondary site operated for storage alone. Furthermore, the accessory use does not generate any additional vehicle trips. The only difference in terms of vehicle impact is that the Container will be packed upon its return to the Subject Property and upon re-delivery to its next destination. This overlapping of storage of goods with the storage of the Container itself indicates that the temporary storage is, in fact, an accessory use.

Based on the above, we respectfully request that the Hearings Officer find that as identified above, the Current Use of the Subject Property be permitted subject to the approval of the pending Site Plan Review Application and subject to reasonable conditions of approval.

Concept Plan

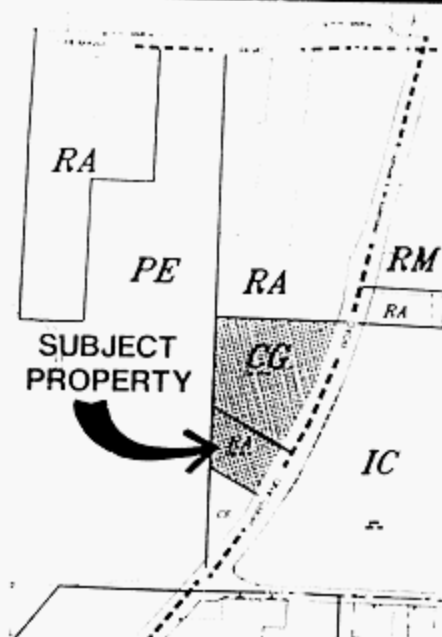




CITY
OF SALEM,
OREGON

NOTICE

PUBLIC HEARING AFFECTING THIS AREA



ZONE MAP: 47

TIME OF HEARING: 3:00 P.M.
HEARD BY: PLANNING COMMISSION
DATE OF HEARING: DECEMBER 8, 1992

LOCATION
OF
HEARING: City Council Chambers
Civic Center/Room 240
555 Liberty Street SE
Salem, OR 97301

CASE NO.

Comprehensive Plan Change/Zone Change 92-23

ADDRESS:

5113 Portland Road NE

PROPERTY OWNERS:

Churches of God in Oregon, Arthur and Lynne Lung, and George Colyer

FILER:

Gerald G. Watson

PROPOSAL

**COMPREHENSIVE PLAN
CHANGE:**

To change the Comprehensive Plan from "Developing Residential" to "Commercial."

ZONE CHANGE:

To change the zone from RA (Residential Agriculture) to CG (General Commercial).

NOTICE MAILING DATE:

November 25, 1992

PLANNING COMMISSION

City Hall / 555 Liberty St. S.E.
Zip Code 97301
PLANNING DIVISION
Room 305
Telephone No. (503)566-8173



RESOLUTION J.: PC 92-17

COMPREHENSIVE PLAN CHANGE/ZONE CHANGE 92-23

WHEREAS, a petition for a Comprehensive Plan change from
"Developing Residential" to "Commercial"
and zone change from
RA (Residential Agriculture) to CG (General Commercial)
for property located at

5113 Portland Road NE

was filed by

Gerald G. Watson

with the Planning Commission of the City of Salem, and

WHEREAS, after due notice, a public hearing on the proposed changes was held before the Planning Commission on December 8, 1992, at which time witnesses were heard and evidence received; and

WHEREAS, the Planning Commission having carefully considered the entire record of this proceeding including the testimony presented at the hearing, after due deliberation and being fully advised; NOW THEREFORE

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SALEM, OREGON:

Section 1. FINDINGS:

The Planning Commission hereby adopts as its findings of fact the staff report(s) on this matter dated December 8, 1992, herewith attached and by this reference incorporated herein.

Section 2. ORDER:

Based upon the foregoing findings and conclusions, it is hereby ordered:

- (a) The proposed Comprehensive Plan change in this matter from "Developing Residential" to "Commercial" be granted;
- (b) The zone change from RA (Residential Agriculture) to CG (General Commercial) for the above defined area be granted, subject to the following conditions:

1. All lot areas not lawfully developed for buildings, structures, parking, loading or driveways shall be landscaped.
2. Exterior lighting, if used, should be designed to provide illumination to the site and not cause glare onto Portland Road NE in addition to the surrounding residential areas. Exterior light fixtures should be so located and designed that the light source, viewed by an observer five feet above the ground at five feet outside the boundary of the commercial development shall within 50 feet of the base of the light standards be either:

- (a) Completely shielded from direct view, or

- (b) Not greater than five foot-candles.
3. No vehicle or equipment storage for other businesses are permitted on site.
 4. No billboards are permitted on site.
 5. The 125-foot-wide BPA easement on the north shall be used only for non-residential uses.
 6. The access points along Portland Road NE shall be approved by the Oregon Department of Transportation.
 7. A concrete sidewalk shall be installed at the time of development pursuant to the UGA permit.

ADOPTED by the Planning Commission this 8th day of December, 1992.


President, Planning Commission

APPEAL PERIOD ENDS: January 8, 1993

Copies of the staff report containing the Facts and Findings adopted by the Planning Commission are available upon request at Room 305, Civic Center, during City business hours, 8:00 a.m. to 5:00 p.m.

SUMMARY OF STAFF REPORT

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PROPOSED LAND USE ACTION:

Comprehensive Plan Change/Zone Change 92-23

LOCATION: 5113 Portland Road NE

OWNER/FILER: Churches of God in Oregon, Arthur and Lynne Lung, and George Colyer/Gerald G. Watson

REQUEST:

To change the Comprehensive Plan designation from "Developing Residential" to "Commercial" and to change the zone from RA (Residential Agriculture) to CG (General Commercial) for property located at 5113 Portland Road NE.

PROPOSAL:

On October 21, 1992, Samuel Dunbar representing the Churches of God in Oregon along with George Colyer, Arthur and Lynne Lung, filed Comprehensive Plan Change/Zone Change Case No. 92-23 for property at 5113 Portland Road NE. The purpose of submitting the 1992 request for a CPC/ZC is to eliminate the development conditions of CPC/ZC 90-5 and to change the designation and zoning of the southern 2 acres to be consistent with the northern 7 acres.

STAFF RECOMMENDATION:

That the Planning Commission GRANT the Comprehensive Plan Change from "Developing Residential" to "Commercial" and the Zone Change from RA (Residential Agriculture) to CG (General Commercial) for property located at 5113 Portland Road NE subject to SRC Chapter 153 and the following additional conditions:

1. All lot areas not lawfully developed for buildings, structures, parking, loading or driveways shall be landscaped.
2. Exterior lighting, if used, should be designed to provide illumination to the site and not cause glare onto Portland Road NE in addition to the surrounding residential areas. Exterior light fixtures should be so located and designed that the light source, viewed by an observer five feet above the ground at five feet outside the boundary of the commercial development shall within 50 feet of the base of the light standards be either:

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Zip Code 97301
PLANNING DIVISION
Room 305



- (a) Completely shielded from direct view,
 - (b) Not greater than five foot-candles.
3. No vehicle or equipment storage for other businesses are permitted on site
 4. No billboards are permitted on site.
 5. The 125-foot-wide BPA easement on the north shall be used only for non-residential uses.
 6. The access points along Portland Road NE shall be approved by the Oregon Department of Transportation.
 7. A concrete sidewalk shall be installed at the time of development pursuant to the UGA permit.

TO: PLANNING COMMISSION, CITY OF SALEM

FROM: KENNETH P. BATTAILE
PLANNING ADMINISTRATOR *KPB*

SUBJECT: COMPREHENSIVE PLAN CHANGE/ZONE CHANGE 92-23; 5113 PORTLAND ROAD
NE

ISSUE

To change the Comprehensive Plan designation from "Developing Residential" to "Commercial" and to change the zone from RA (Residential Agriculture) to CG (General Commercial) for property located at 5113 Portland Road NE.

BACKGROUND

The past land use actions for the subject property may be summarized as follows:

- *Annexed, 1989.
- *Urban Growth Area Development Preliminary Declaration 90-1UG, 1990.
- *Minor Partitioning Plat No. 90-16, granted tentative approval, 1990.
- *Comprehensive Plan Change/Zone Change 90-5, granted subject to conditions, 1990. The purpose of the CPC/ZC was to develop the southern 2 acres as a church administrative office (SIC #866) and develop the northern 7 acres as a manufactured home sales lot (SIC #5271). The Comprehensive Plan and zoning designations were changed to "Commercial" for the northern 7 acres. The southern 2 acres remained "Developing Residential."
- *Minor Partitioning Plat No. 90-16 recorded, 1992.
- *Urban Growth Area Development Permit, issued 1992, meeting the required condition precedent to CPC/ZC 90-5. The purpose of the UGA permit was to accommodate a church administrative office and a manufactured home sales lot.
- *Partitioning Plat No. 92-24MV, granted tentative approval, 1992. The final plat has been signed by the City.

On October 21, 1992, Samuel Dunbar representing the Churches of God in Oregon along with George Colyer, Arthur and Lynne Lung, filed Comprehensive Plan Change/Zone Change Case No. 92-23 for property at 5113 Portland Road NE. The purpose of submitting the 1992 request for a CPC/ZC is to eliminate the development conditions of CPC/ZC 90-5 and to change the designation and zoning of the southern 2 acres to be consistent with the northern 7 acres.

FACTS AND FINDINGS

1. Salem Area Comprehensive Plan (SACP)
 - (i) Map Designation

The Salem Area Comprehensive Plan (SACP) map designates the northern 7 acres of the subject property as "Commercial" and the southerly 2 acres as "Developing Residential." The requested CG zone is not consistent with the SACP "Developing Residential" designation. As a result, the applicants have submitted a Comprehensive Plan Change request for a "Commercial" designation.

(ii) The SACP addresses the Commercial designation as follows (Page 12):

"The predominant use in these areas is commercial, however, some multifamily and industrial uses may be included where appropriate. This designation indicates those areas which contain regional or community level shopping and service facilities."

The SACP Commercial Development Goal and Policies state:

"GOAL: To encourage and promote the health and vitality of the central city core as a focus of civic and business life and to encourage the following variety of commercial activities in selected outlying areas:

- a. Community shopping service facilities.
- b. Neighborhood shopping and service facilities.
- c. Convenience stores.
- d. Commercial office structures.
- e. Specialized shopping areas".

This designation indicates commercial areas throughout Salem that provide service opportunities such as commercial office, which includes a wide variety of retail and non-retail services that may be located near residential areas to serve the residents. The proposed change to a commercial designation, if granted, will provide opportunity for residential property along Portland Road to be converted to office and retail uses. The proposed uses are consistent with the requested "Commercial" designation.

Policy #2. "Development of new neighborhood and community shopping and service facilities may be approved only after reviewing a development plan consisting of maps and written statements on the following:

- a. Site plan,
- b. Layout of all off-street parking and loading facilities,
- c. Landscaping and tree planting plan,
- d. Drainage plan,
- e. Vehicular and pedestrian circulation plan,
- f. Public and private utility and service plans,
- g. Impact on adjacent neighborhoods,
- h. Impact on adjacent street networks,
- i. Demonstrated need,
- j. Proposed use or uses,
- k. Transit service capabilities, and
- l. Other information that may be required.

Redevelopment of existing neighborhood and community shopping and service facilities should be encouraged where appropriate. Such redevelopment should be approved provided redevelopment standards with respect to items "a" through "l" above are met".

The Lungs are proposing to operate a landscape service, (SIC #078 Landscape and Horticultural Services), and a retail nursery (SIC #5261 Retail Nurseries, Lawn and Garden Supplies) on the north 3.43 acres of the subject property. The Church of God is proposing to relocate to the middle 1.45 acres and construct a new office and parking area. Mr. Colyer indicates that it is his intent to buy the southernmost 1.62 acres and that he owns the southern 2 acres of the subject property where the Church's administrative office is currently located. The CPC/ZC appears to

conform to the intended parcelization of the property as approved by Partitioning Plat No. 92-24MV.

The applicants' site plan (Attachment 2) indicates the existing land use of the subject property and surrounding vicinity. Access is shown via two 30-foot-wide shared access easements to Portland Road. The retail nursery is proposing to utilize the 125-foot-wide Bonneville Power Administration (BPA) easement on the north for nursery stock. The nursery will share one access point with the church administrative office.

- Policy #3.** "Community shopping and service facilities shall be located close to major arterial and shall provide adequate parking and service areas. The zone codes, subdivision codes and other appropriate regulations shall include provisions as to siting and development which discourage major customer traffic from outside the immediate neighborhoods from filtering through nearby residential streets".

Portland Road is direct access south into Salem and west into Keizer and to the freeway interchange. The Church of God was required to obtain a permit from the Oregon Department of Transportation for driveway access to Portland Road for Partitioning Plat No. 92-24MV. The applicants submitted a copy of the ODOT permit application to the City for final plat review.

*Policies 8 through 15 pertain to all commercial activities identified in a. through e. in the Goal Statement.

- Policy #8.** "Commercial development may be permitted only where adequate systems for transportation and sewer and water services have been provided or have been scheduled for construction".

The applicants' reasons (Attachment 3) indicate that water, sewer and transportation facilities are in place. The UGA Permit was issued in 1992, meeting the requirements of the Salem Revised Code (SRC) Chapter 66, Urban Growth Management standards. Major linking facilities were required to be installed as part of the UGA Permit. Driveway spacing pursuant to the UGA Permit limits two driveway access points to the subject property. The UGA Permit does not require major storm drainage facilities to be installed. On-site detention facilities will be required at the time of development. A concrete sidewalk is required to be constructed at the time of development pursuant to the UGA Permit.

- Policy #9.** "Zone codes, subdivision codes and other regulations shall contain standards to minimize circulation conflicts between pedestrians, bicycles, automobiles and other vehicles servicing all commercial developments".

Shared access to Portland Road decreases the amount of stopping and turning movements on Portland Road and helps to avoid traffic conflicts.

Planning Commission Resolution 90-5, adopted July 17, 1990, required one precedent condition and 5 permanent development conditions for CPC/ZC 90-5. The precedent condition required a UGA Development Permit, which was issued by the Director of Public Works Department this year. The permanent development conditions of the Resolution are:

1. The use is limited to manufactured home sales (SIC #5271).

2. Access to the subject property shall be limited to the driveway spacing standards of SRC chapter 66 pursuant to the Urban Growth Area Development Permit 90-1UG.
3. In addition to the landscape requirements in SRC Chapter 153.110 the following shall be required:
 - a. The landscape yard adjacent to Portland Road shall be 10 feet wide on the subject property.
 - b. Landscaping adjacent shall include deciduous trees planted at a minimum of 50 feet on center and shall be planted close to the interior landscape setback line.
 - c. All areas not occupied by structures or paving shall be landscaped with living plant material.
 - d. All landscaped areas shall be maintained.
 - e. All plant material that dies or is diseased shall be replaced.
4. No graveled parking or driveway areas are permitted.
5. Exterior lighting, if used, should be designed to provide illumination to the site and not cause glare onto Portland Road in addition to the surrounding residential areas. Exterior light fixtures should be so located and designed that the light source, viewed by an observer five feet above the ground at five feet outside the boundary of the commercial development shall within 50 feet of the base of the light standards be either:
 - (a) Completely shielded from direct view, or
 - (b) Not greater than five foot-candles".

The permanent development conditions should be modified as needed to reflect the change in the proposal and existing conditions. These changes include the issuance of the UGA Permit; a final plat of Partitioning Plat No. 92-24MV signed by the City; the applicants' proposal changing from manufactured home sales; and the need for consistency with the proposed new landscaping standards and the City's Special Study on gateways.

- Policy #10. "Adequate off-street parking and buffer strips shall be provided for all commercial development. When appropriate, transit services and shelters shall be provided in lieu of some off-street parking. Parking and loading facilities shall be designed so that ingress and egress driveways do not disrupt the efficient flow of traffic on arterial streets, intrusion into abutting uses is minimized, and safe and convenient pedestrian circulation is provided".**

The zone code requires improved off-street parking and loading facilities as well as a landscaped setback along the street. Access, siting, and screening may be considered and required to control the number of stopping and turning movements on Portland Road and to prevent glare from headlights into abutting residential areas or the street. One bicycle space per 20 vehicles is a requirement of SRC 133 for commercial development. Shared access increases efficient traffic flow and minimizes the amount of stopping and turning movements on a major arterial and gateway into the City.

- Policy #11. "Zoning regulations governing the siting of commercial development shall take into consideration the relationship of adjacent development in terms of building height, mass, and pattern".**

The adjacent development is a mixture of low-scale commercial and residential and large-scale industrial development. The industrial development is characterized by modern-style buildings, extensive landscaping and setbacks greater than required by the IC zone. The area to the west and north of the subject property is utilized for agricultural purposes. Bufferyard landscaping and interior parking lot landscaping provide a separation between the parking lot and buildings on site, and between the proposed uses and the residential and farm uses in the vicinity.

The applicants are proposing utilizing the 125-foot-wide BPA easement for non-residential development, which is a good solution for development on the easement and should be encouraged. The applicants submitted a letter on November 13th (Attachment 4) addressing the use of the BPA easement.

- Policy #12. "Subdivision and zone codes and other regulations should require landscaping to visually soften paved areas, reduce heat and glare, and to provide separation between buildings and pedestrian and vehicular circulation".**

Parking lot and vehicular use area landscaping and bufferyards shall meet the requirements of the landscape code, Salem Revised Code (SRC) Chapter 132:

- Policy #13. "Siting regulations for commercial development shall be flexible so as to encourage public spaces such as open plazas, pedestrian malls, tot lots, etc".**

The proposed use of the site is not conducive for public use parks or playgrounds or other public recreation services because of its intended use.

- Policy #14. "Outdoor storage areas should be screened from view of the public road and from adjacent residential uses".**

Outdoor storage space is usually needed for retail nursery uses. The required bufferyard on the north, south and along Portland Road will provide screening. The bufferyard requirements are permanent code requirements and should not be permitted to be replaced by storage or retail sales yards. Trash bins or receptacles for the office structure are required by the Building and Safety Division to be contained.

- Policy #15. "Exterior lighting shall be designed to provide illumination to the site and not cause glare into the public right-of-way and adjacent properties".**

Exterior lighting, if used, should be designed to provide illumination to the site and not cause glare onto Portland Road in addition to the surrounding residential areas. Exterior light fixtures should be so located and designed that the light source, viewed by an observer five feet above the ground at five feet outside the boundary of the commercial development shall within 50 feet of the base of the light standards be either:

- (1) Completely shielded from direct view, or
- (2) Not greater than five foot-candles.

(iii) The SACP Transportation Goal and Policies (pg. 47) state:

***GOAL:** To insure the provision and coordination of transportation facilities and services that reflect desired development patterns and are timed to coincide with community needs and to minimize the adverse impacts of traffic on residential areas.

Policy #8. "The transportation system should be located and constructed to preserve the character of the neighborhoods. The need for landscaping and noise reduction shall be considered in design".

On-site parking is required. Parking lot landscaping and bufferyard screening break up the paved areas and prevent glare into the adjacent residential areas and vehicles travelling on the street. The transportation system should include provision for mass transit.

Policy #10. "Traffic movement on arterial streets should be facilitated by limiting or controlling access wherever possible".

Restricting access points on Portland Road preserves the arterial classification of Portland Road. Access control does not inhibit or restrict development of the site to a degree that the proposal is unwarranted in this location.

(iv) Detail Plans of the SACP

The subject property lies within the Northgate Neighborhood Association. There is no adopted neighborhood plan or other detail plans for this area.

2. Zoning and Surrounding Land Use

The subject property is separated into two zoning districts. The northern 7 acres is zoned CG (General Commercial). The southern 2 acres is zoned RA (Residential Agriculture).

The applicants' attorney, Gerald G. Watson of Churchill, Leonard, Brown, Lincoln, Lodine and Hendrie, has submitted detailed reasons for the request, including a past history of the land use applications on the subject property.

A church administrative office for the purpose of promoting religious activities is classified as SIC #866, Religious Organizations. Landscape and horticultural services are classified as SIC #078 and a retail nursery is classified as SIC #5261. The proposed uses are permitted in the CG zone.

Surrounding Zones and Land Uses:

North:	RA; single family residence and farm use.
South:	CR (Commercial Retail); retail motorcycle sales.
East:	IC (across Portland Road NE); Portland General Electric Regional Service Center.
West:	PE (Public and Private Education); Chemawa Boarding School, private farm land.

In addition, there are three separate mobile home parks zoned RM (Multiple Family Residential) in the vicinity, east of Portland Road. This area was annexed in 1980 and subsequent to annexation, two of the three parks have added spaces to their parks through the City's Mobile Home Park Permit Review process. A fourth mobile home park, zoned RM, has been

developed off Kale Road east of the PGE site. It is anticipated that the proposed Comprehensive Plan Change/Zone Change will not create loud noises or fumes that could have a negative impact on the mobile home parks to the east.

The PGE property to the east across Portland Road was rezoned from Marion County CG (Commercial General) to City of Salem IC (Industrial Commercial) when the property was annexed in 1980. PGE developed their regional maintenance facility in 1984.

The proposed CG zone change, if granted, would convert residential land into commercial land and result in a physical change to the subject property. The proposed zone change would permit retail uses, financial and real estate uses, business and personal services uses and automotive repair services and garages as permitted uses (SRC 153.020); used merchandise stores as special uses (SRC 153.030); animal specialty services and apartments as conditional uses (SRC 152.040).

Conditional Use Case No. 90-19 was granted for the property abutting on the south which permitted retail sales of motorcycles, snowmobiles and personal watercraft (SRC 152.040-(e)(1)) in a CR zone, subject to several conditions. The development conditions included a requirement to construct a concrete sidewalk along Portland Road "when the adjacent properties either north or south of the subject property are developed with sidewalks". Field inspection of the site indicates that the motorcycle sales lot has 2 one-way driveways and no improved sidewalk along Portland Road.

3. Natural Features

The subject property is bounded by Portland Road on the east. The subject property is relatively level adjacent to Portland Road and slopes downward at the northeast corner. Labish ditch is located on the western abutting property. There is no significant vegetation on the site. There is a 125-foot Bonneville Power Administration (BPA) easement/transmission line located along the north property line. The site is not located within a wetlands.

The site itself is triangular shaped. It stands by itself in terms of spatial and community relationship to the nearest residential uses. The property to the north is a family-owned farm business that also manages part of the mobile home development across Portland Road. The private mobile home parks operate in a manner similar to small residential communities, with narrow internal streets, community park facilities, and an on-site transit stop. It is unlikely that the subject property would develop as residential in this location.

4. Traffic Circulation and Parking

Portland Road is designated as a major arterial in the Salem Transportation Plan (STP). Portland Road has a Special Cumulative 50-foot Centerline Setback.

The applicants are proposing shared access to Portland Road. The church office and the nursery are proposing to share the most northern access, which will limit the internal circulation to one central driveway. Joint access easements are shown on the final plat for Partitioning Plat. No. 92-24MV.

5. Citizen and Neighborhood Association Comments

No written comments were received as of the date of the staff report. Any written comments received by the date of the public hearing will be transmitted to the Planning Commission.

6. Public and Private Facilities and Services Comments

The Salem/Keizer School District 24-J was advised of the proposed Comprehensive Plan Change/Zone Change. The District has advised the City that it will accommodate school growth, as growth occurs.

The City of Salem Building and Safety Division indicated no comments.

The City of Salem, Economic Development Department, indicated the site was not located within the North Gateway Redevelopment area.

The Bonneville Power Administration, Land Management Section, submitted comments indicating that BPA has no objection to the proposal as long as transmission line facilities are not adversely affected. BPA imposes certain restrictions on the use of properties encumbered by transmission line rights-of-way and indicates the applicant needs to contact BPA for information.

The Transit District indicated no objections to the proposal.

The Oregon Department of Transportation indicated that the applicant met with ODOT and access as proposed is acceptable and permits have been submitted and are being processed.

7. Public Works Department Comments

*Streets:

- a. Portland Road NE has an existing 78-foot improvement within a 125- to 170-foot-wide right-of-way. No further improvements or rights-of-way will be required.
- b. Portland Road NE is designated as a principal arterial street in the Salem Transportation Plan. Sidewalks shall be constructed along the subject property adjacent to Portland Road at the time of development (SRC 78). Public Works will approve a sidewalk 5 feet west of the west curbline of Portland Road.
- c. There appear to be five existing driveways located along the subject property.
- d. All unused driveways shall be closed as required in SRC 80.140.
- e. Access control along arterial streets limits street and driveway intersection points to 400 feet apart, more or less, with 20 percent discretion.
- f. The joint-use access points as shown on the applicant's plan are acceptable to the Department of Public Works. However, the access points along Portland Road should also be approved by the Oregon Department of Transportation.
- g. Vision clearance requirements shall be observed at all street and driveway intersections as required in SRC 130.280.
- h. Reciprocal and irrevocable access easements shall be required for all access points as required in SRC 63.285 (e).

Storm Drainage:

- a. There is an existing 24-inch storm drain located along the west line of Portland Road NE adequate to serve the subject property.
- b. The existing Labish ditch is located west of the subject property. That portion of the property that cannot be served by the line in Portland Road can drain to Labish ditch. A storm drainage easement shall be required to cross private property, as required in SRC Chapter 63.165.
- c. The applicant shall be required to design and construct a complete storm drainage system at the time of development which meets the requirements of the City of Salem Storm Water Management Design Standards.
- d. On-site detention must be provided at the time of development to contain the excess runoff generated by a 50-year design storm using a 0.3 cfs per acre release rate (SRC 63.195). A storm drainage system shall be constructed in accordance with plans and specifications to be submitted to and approved by the Department of Public Works of the City, all in accordance with the requirements of the City's Stormwater Management Design Standards.
- f. At the time of submittal of preliminary plans for a subdivision, large multifamily, or commercial projects, the applicant/developer should be required to submit a conceptual plan of the proposed detention basin. This plan should include location, size, shape, depth, and landscape design to show compatibility of the detention basin with existing or proposed development.

Water:

- a. There is an existing 16-inch water line located along the east side of Portland Road NE which is adequate to serve the subject property.
- b. All water lines shall be designed and constructed as required in the City of Salem Water Distribution Design Standards.
- c. Each lot shall have an independent water service from the meter to the lot.
- d. As a condition of water service, all developments shall be required to provide public water mains of sufficient size for fire protection to adjacent parcels. This shall include the extension of water mains in easements across the subject property to adjoining properties and across the street frontage of the subject property to adjoining properties when the main is located in the street right-of-way (Section 2.00 City of Salem Water Distribution Design Standards).

Sanitary Sewer:

- a. There is an existing 8-inch sanitary sewer line located along the west line of Portland Road NE adequate to serve the subject property. The line ends approximately 210 feet south of the north boundary of parcel 1. Due to topography, this line cannot be extended north.
- b. All sanitary sewer lines shall be designed and constructed as required in the City of Salem Sanitary Sewer Design Standards.

General comments:

- a. All development activity will require building and/or construction permits in accordance with Salem Revised Code and the Department of Public Works Design Standards and Construction Specifications. Permits will not be issued by the City of Salem Permit Application Center until all construction plans have been approved by the Department of Public Works.
- b. All utilities and roadway facilities shall be designed and constructed to meet the requirements of the City of Salem Design Standards.
- c. Building over pipelines and within utility easements is prohibited as described in SRC 63.165 and Policy and Procedure GM 1-24.
- d. All utility easements required to extend sanitary sewer, water, or storm drainage systems to or through the subject property or adjacent properties shall be the obligation of the applicant.
- e. Public Works has no objection to the proposed Comprehensive Plan Change and Zone Change 92-23*.

COMPREHENSIVE PLAN CHANGE

8. SRC 64.040(g) defines a minor plan change as a single proceeding for amendment to the Comprehensive Plan affecting less than five privately and separately owned tax lots. This is a Category 4 minor plan change. Minor plan changes are quasi-judicial acts and the burden of proof rests with the proponent of the change (SRC 64.090(a)). The applicants' reasons to support the requested Comprehensive Plan and zone change are included and made a part of the staff report (Attachment 1).

SRC 64.090(b) establishes approval criteria for minor plan changes. A summary and analysis of the approval criteria as presented by the applicant is as follows:

***Criteria 1:** A lack of appropriately designated suitable alternative sites within the vicinity for a proposed use. Factors in determining the suitability of the alternative sites are limited to one or both of the following:

- A. Size: Suitability of the size of the alternative sites to accommodate the proposed use; or
- B. Location: Suitability of the location of the alternative sites to permit the proposed use; or

Criteria 2: A major change in circumstances affecting a significant number of properties within the vicinity. Such change is defined to include and be limited to one or both of the following:

- A. The construction of a major capital improvement (e.g. an arterial or major collector, a regional shopping center, etc.) which was unanticipated when the Salem Area Comprehensive Plan (SACP) or elements of the Comprehensive Plan were adopted or last amended.
- B. Previously approved plan amendments for properties in an area that have changed the character of the area to the extent that the existing designations for other properties in the area are no longer appropriate.

Goal 8: (Recreation) - Not Applicable.

Goal 9: (Economy) - The applicants' reasons indicate that the proposal will allow commercial uses that encourage economic growth and potentially add new jobs to the area.

Goal 10: (Housing) - The applicants' reasons indicate that the site is not likely to be redeveloped as residential. The proposal does not remove any existing housing units.

Goal 11: (Public Facilities and Services) - All public facilities and services are available to the site.

Goal 12: (Transportation) - The subject property is located on Portland Road, an arterial in the STP. Portland Road provides a direct link to the City core from the subject property.

Goal 13: (Energy Conservation) - The proposal will conserve energy because the existing structure meets all building codes for energy efficiency at the time of construction. The site's relation to an arterial street makes direct and convenient access.

Goal 14: (Urbanization) - The proposal will make use of developing urban land. The subject property has all necessary urban services available and has arterial access to the central city. The subject property is located within the City limits and Urban Growth Boundary. No rural farm land is being displaced.

Goal 15: (Greenway) - Not Applicable.

Criteria 4:

The surrounding area consists of a mix of residential uses, farm land, retail motorcycle sales, and land utilized by a private utility company. The proposal would extend the CG zone on Portland Road. The applicants indicate that rezoning to CG is harmonious because of the existing PGE facility; the location in relationship to Interstate-5 interchange; and BPA easement crossing the subject property, which makes the site unsuitable for residential development.

Criteria 5:

The applicants' reasons indicate the proposal conforms to this statement by complying with the Commercial goal and policies 2, 3, and 8 through 15 of the Comprehensive Plan.

Criteria 6:

The applicants' reasons indicate that the proposal benefits the public by making land available for commercial development that is close to major transportation facilities and has urban services available.

ZONE CHANGE

10. SRC 114.160 provides the approval criteria for a zone change as quoted below:

"The applicant...shall have the burden of proving justification for the proposal. The greater the impact of the proposal in an area, the greater is the burden of the proponent.

"The proposal must be supported by proof that it conforms to all applicable criteria imposed in this zoning code; that it conforms to all standards imposed by applicable goals and policies of the comprehensive plan in light of its intent statements, including adopted

neighborhood plans; and that it conforms with all applicable land use standards imposed by state law or administrative regulation. The burden rests ultimately on the proponent to bring forward testimony or other evidence sufficient to prove compliance with these standards. At a minimum, the proponent's case should identify and evaluate the proposal in the context of all applicable standards."

In addition to the proof above, the following factors should be evaluated by the proponent and shall, where relevant, be addressed by the administrative body in its final decision (SRC 114.160(c)):"

The applicants' reasons indicate that the material submitted documents conformance with the siting criteria of the zone code and no variances to development standards are necessary. The applicable zone code criteria is imposed by SRC 153.

"(1) The existence of a mistake in the compilation of any map, or in the application of a particular land use designation to any property in this zoning code or the comprehensive plan;"

The applicants do not allege a mistake in the compilation of the SACP or implementing zone maps. The applicants indicate that the "Commercial" SACP designation is appropriate. The "Commercial" designation is implemented by the underlying zoning.

"(2) A change in the social, economic, or demographic patterns of the neighborhood or of the community;"

The applicants' reasons indicate that the zoning designation of the southern 2 acres as RA perpetuates spot zoning and is an inefficient designation of the site. The previous CPC/ZC limited the use of the northern 7 acres to sales of manufactured homes.

The applicants' reasons cite several changes that have been made in recent years in the vicinity, including the prospect of locating a major grocery store somewhere on Portland Road. The abutting property to the south has changed commercial uses several times and is now a retail motorcycles sales, requiring Conditional Use approval (Conditional Use Case No. 90-19).

"(3) A change of conditions in the character of the neighborhood in which the use or development is proposed;"

The applicants' reasons address this issue. The applicants indicate that street improvements on Portland Road, the construction of the Salem Parkway, the development of the PGE property, and the mobile home parks have changed the area.

In 1992, the applicants submitted a written request for a time extension of Comprehensive Plan Change/Zone Change Case No. 90-5. The request for the extension stated that the time CPC/ZC 90-5 was applied for, the Church had a firm offer for sales of the northernmost 7 acres from Conser Homes of Albany, Oregon to develop the site for a manufactured home sales lot. Conser Homes was unable to secure funds from a lending institution and apparently dropped their proposal to develop the site for a manufactured home sales lot. Now there are new parties interested in developing the vacant portions of the subject property.

The applicants' proposal includes moving the Church's administrative office to an adjacent parcel, eliminating the need for the Church to operate as a Special Use in the RA zone.

"(4) The effect of the proposal on the neighborhood, the physical characteristics of the subject property, and public facilities and services;"

The character of the neighborhood should be taken into consideration for any use of the subject property. The applicants' reasons indicate that the closest residential use is 250 feet north of the subject property. Portland Road serves as a dividing line between the mobile home parks located to the northeast and the subject property.

The intensity of development at this site will have a minimal impact on the adjacent residential neighborhood. Impacts such as nuisances, noises, increased traffic or hazards can be mitigated to some extent by recommending conditions for site development with this Zone Change. Mitigation of these impacts have been addressed in the staff report.

The applicants' reasons indicate that the proposal will not have a significant impact on the site, utilities or neighborhood. The reasons and site plan indicate that a low intensity commercial types of uses are proposed. The site has access to water, sewer, storm drainage, and mass transit.

"(5) All other factors relating to the public health, safety, and general welfare which the administrative body deems relevant."

The applicants' reasons do not address bill boards on site. The Council has directed that billboards should be restricted from all commercial land use actions after 1988. Accordingly, the requirements of the sign code should apply to the site.

No vehicle or equipment storage for other businesses should be permitted on site.

The Department of Energy, Bonneville Power Administration in Portland, was notified of the CPC/ZC 92-23. BPA's comments are summarized in Finding No. 6. The applicants will need to contact BPA for information on its permitting process.

RECOMMENDATION

That the Planning Commission GRANT the Comprehensive Plan Change from "Developing Residential" to "Commercial" and the Zone Change from RA (Residential Agriculture) to CG (General Commercial) for property located at 5113 Portland Road NE subject to SRC Chapter 153 and the following additional conditions:

1. All lot areas not lawfully developed for buildings, structures, parking, loading or driveways shall be landscaped.
2. Exterior lighting, if used, should be designed to provide illumination to the site and not cause glare onto Portland Road NE in addition to the surrounding residential areas. Exterior light fixtures should be so located and designed that the light source, viewed by an observer five feet above the ground at five feet outside the boundary of the commercial development shall within 50 feet of the base of the light standards be either:
 - (a) Completely shielded from direct view, or
 - (b) Not greater than five foot-candles.
3. No vehicle or equipment storage for other businesses are permitted on site.
4. No billboards are permitted on site.
5. The 125-foot-wide BPA easement on the north shall be used only for non-residential uses.

6. The access points along Portland Road NE shall be approved by the Oregon Department of Transportation.
7. A concrete sidewalk shall be installed at the time of development pursuant to the UGA permit.

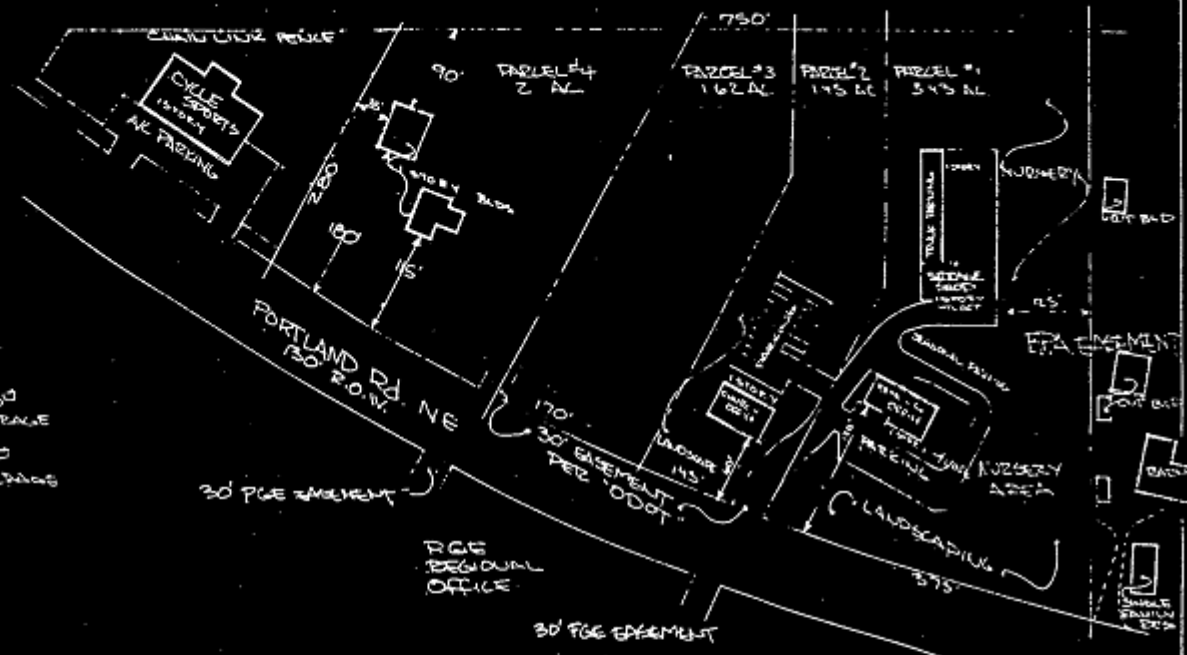
Prepared by Lynnette C. Martino, Associate Planner

Application Filing Date: October 21, 1992
State Mandated Decision Date: February 18, 1993

Attachments:

1. Public Hearing Notice Map
2. Applicants' Site Plan
3. Applicants' Reasons
4. Applicants' Letter of November 12, 1992
5. Draft Resolution

SUBJECT PROPERTY 8.5 AC



- NOTES
- PARCEL #2 APPROX. 24000 BUILDING COVERAGE
 - PARCEL #1 APPROX. 8200 BUILDING COVERAGE

NORTH
SCALE 1" = 100.0'

AREA INFORMATION MAP

C.C. CONSTRUCTION SALEM ORE.	
GEORGE COLYER 4678 HAYESVILLE CRTD	
OCT. 15, 1992	ZONE CHANGE
SITE: 5115 PORTLAND BLVE SALEM	

ATTACHMENT 2