



**OFFICE OF COUNTY COUNSEL**

**PUBLIC SERVICES BUILDING**  
 2051 KAEN ROAD OREGON CITY, OR 97045

May 2, 2019

Board of County Commissioners  
 Clackamas County

Members of the Board:

Approval of Settlement Agreement in the Case of  
Castro v. Clackamas County, Christopher Hoy, et al.

**Stephen L. Madkour**  
 County Counsel

**Kathleen Rastetter**  
**Scott C. Ciecko**  
**Amanda Keller**  
**Nathan K. Boderman**  
**Shawn Lillegren**  
**Jeffrey D. Munns**  
**Andrew R. Naylor**  
**Andrew Narus**  
**Sarah Foreman**  
 Assistants

<b>Purpose/Outcomes</b>	Authorize settlement of lawsuit brought by former Deputy Judith Castro against the Clackamas County, Chief deputy Christopher Hoy, and Patricia Snow
<b>Dollar Amount and Fiscal Impact</b>	\$100,000
<b>Funding Source</b>	\$25,000 CCSO Budget, and \$75,000 County Risk Fund
<b>Duration</b>	Full and Final Release and Settlement
<b>Previous Board Action</b>	The Board has been apprised of various developments in this case over the course of the litigation, the most recent being on April 9, 2019.
<b>Strategic Plan Alignment</b>	Build public trust through good government
<b>Contact Person</b>	Jeffrey D. Munns, Assistant County Counsel
<b>Contract No.</b>	N/A

**BACKGROUND:**

Judith Castro was formerly a Deputy with the Clackamas County Sheriff's Office. Ms. Castro filed suit against Clackamas County, Chief Deputy Hoy and Patricia Snow. In that lawsuit she alleged claims of aiding unlawful employment practice, worker's compensation discrimination, discrimination because of accommodation request, and discrimination because of disability.

The Board of County Commissioners has exclusive settlement authority of those settlements of \$100,000 or more.

The proposed settlement reached by the parties in this case is \$100,000. The terms of the proposed settlement are set forth in the attached Settlement Agreement and General Release of Claims. Once settled, plaintiff will dismiss all claims alleged in the suit.

**RECOMMENDATION:**

Staff respectfully requests that the Board of County Commissioners authorize the settlement as proposed and as set forth in the draft Settlement Agreement and General Release of Claims.

Respectfully submitted,



Jeffrey D. Munns  
Assistant County Counsel

Attachment:  
Settlement Agreement and General Release of Claims

## SETTLEMENT AGREEMENT AND GENERAL RELEASE OF CLAIMS

This Settlement Agreement and General Release of Claims ("Agreement") is made and entered into on the one hand by Judith Castro ("Castro"), an individual, and on the other hand by Clackamas County, and employees Christopher Hoy and Patricia Snow, (shall be known collectively as "County"). This Agreement becomes effective and enforceable after seven calendar days have passed following Castro's execution of the Agreement as provided in Section 7 of this Agreement and after a majority of the County Commissioners have approved the Agreement as provided in Section 4 of this Agreement (hereinafter referred to as "Effective Date").

1. Meaning of Terms.

- a. As used herein, "Castro" shall mean Judith Castro, her spouse, heirs, executors, administrators, agents, insurers, attorneys, assigns, and anyone claiming through her.
- b. As used herein, "County" shall mean Clackamas County, all divisions and departments within Clackamas County, including the Clackamas County Sheriff's Office, all past and present employees and managers (in their individual and representative capacities), all past and present officers, all past and present commissioners, insurers, attorneys, and agents to include Christopher Hoy and Patricia Snow.
- c. As used herein, "Hoy" shall mean Christopher Hoy, his spouse, heirs, executors, administrators, agents, insurers, attorneys, assigns, and anyone claiming through him.
- d. As used herein, "Snow" shall mean Patricia Snow, her spouse, heirs, executors, administrators, agents, insurers, attorneys, assigns, and anyone claiming through her.
- e. As used herein, "Defendants" shall mean County, Hoy, and Snow.
- f. As used herein, "County Releasees" shall mean collectively County, Hoy, and Snow.
- g. As used herein, "Parties" shall mean collectively Castro, County, Hoy, and Snow.

2. Purpose. The Parties desire to settle and compromise fully and finally any and all differences between them including, but not limited to, disputes related to Castro's employment and separation from employment as well as all claims asserted in Castro's lawsuit and all claims asserted in correspondence between them, and all matters which could have been asserted, and any and all additional claims Castro has or might have asserted against County Releasees.

3. Consideration. In consideration of this Agreement, the County will provide payment inclusive of all damages, costs and attorneys' fees to be paid in two separate checks the first to be payable as wages to Castro in the amount of Twenty-Five Thousand and No/100 Dollars (\$25,000) and the second to be paid to the client trust account of Bennett, Hartman, Morris & Kaplan in the amount of Seventy-Five Thousand and No/100 Dollars (\$75,000) (the "Consideration"). The County shall cause the Consideration to be delivered to Castro's attorney of record, Richard B. Myers, Bennett, Hartman, Morris & Kaplan, LLP, 210 SW Morrison Street, Suite 500, Portland, OR 97204-3149.

4. Settlement Requires Approval By the Board of Commissioners. The Parties acknowledge that the signature on behalf of Clackamas County below will be added only after a majority of the five-member Clackamas County Board of Commissioners approve of the settlement and the settlement documents at a duly noticed public meeting. A signature on behalf of Clackamas County below represents that the County Commissioners approved this Agreement.
  
5. Payment of Applicable Taxes. Castro is and shall be solely responsible for all federal, state, and local taxes that may be owed by Castro by virtue of the receipt of all or any portion of the monetary payment or Consideration provided under this Agreement, except, however, with respect to any liability or obligation that the County may have as to payroll-related tax withholdings and/or as required by applicable law. Castro agrees to indemnify and hold the County harmless from any and all liability, including, without limitation, all penalties, interest, and other costs that may be imposed by the Internal Revenue Service or other federal or state agencies regarding any tax obligations that may arise from the treatment of the monetary consideration under this Agreement. Castro acknowledges that the County has provided no advice concerning tax, benefits, or benefit eligibility issues in connection with the negotiation of this Agreement.
  
6. Mutual Releases.
  - a. Castro's Release to County Releasees. In consideration of the Agreement, Castro, for Castro personally and Castro's spouse, heirs, executors, administrators, successors and assigns, fully, finally, and forever releases and discharges County Releasees and their affiliates, as well as her, its, or their respective successors, assigns, officers, owners, spouses, agents, representatives, employees, managers, commissioners, attorneys, insurers, and employees (collectively, "County Releasees") of and from all claims, demands, actions, causes of action, suits, damages, losses, and expenses, of any and every nature whatsoever, as a result of actions or omissions occurring through the Effective Date of this Agreement. Specifically included in this waiver and release are, without limitation, all claims Castro may have that arose prior to the signing of this Agreement, and she hereby specifically waives and releases all claims against the County Releasees to the extent any such claim could be asserted, including, but not limited to, those arising under any federal or state law or local ordinances. That includes by way of illustration those arising under the Age Discrimination in Employment Act, any federal employment law, Oregon Chapters 652, 653, 659 and 659A; any tort, employment contract (express or implied, oral, or written), public policy, claims of retaliation including claims based upon prior grievances, complaints, or lawsuits including the filing of this lawsuit, whistleblower claims, claims of aiding and abetting, or any other claims; under the common law, intentional infliction of emotional distress, reckless infliction of emotional distress, negligent infliction of emotional distress, harassment, hostile work environment, assault and battery, negligence or gross negligence, or defamation, whether such claims arose or may have arisen individually, through a governmental agency, class of employees; and any and all claims for attorneys' fees. This release includes any and all claims of any nature that Castro may have that arose prior to the date of his signature on this Agreement. This is a full and final waiver and release of any such claims that Castro has or might have asserted against the Defendant Releasees and she intends that the release have the broadest effect possible under law. Castro represents that she has no claim against the Defendant Releasees which is not released under this Agreement.

- b. Defendants' Release to Castro. In consideration of the Agreement, Defendants fully, finally, and forever release and discharge Castro and her respective successors, assigns, spouse, agents, representatives, attorneys, and insurers (collectively, "the Castro Releasees") of and from all claims, demands, actions, causes of action, suits, damages, losses, and expenses, of any and every nature whatsoever, as a result of actions or omissions occurring through the Effective Date of this Agreement. Specifically included in this waiver and release are, without limitation, all claims Defendants may have that arose prior to the signing of this Agreement, and Defendants hereby specifically waive and release all claims against the Castro Releasees to the extent any such claim could be asserted, including, but not limited to, those arising under any federal or state law or local ordinances. That includes by way of illustration those arising under any federal employment law, Oregon Chapters 652, 653, 659 and 659A; any tort, employment contract (express or implied, oral, or written), public policy, claim of retaliation, claim of aiding and abetting, or any other claim; under the common law, claims for wrongful discharge, intentional infliction of emotional distress, reckless infliction of emotional distress, negligent infliction of emotional distress, harassment, hostile work environment, assault and battery, negligence or gross negligence, or defamation, whether such claims arose or may have arisen individually, through a governmental agency, class of employees; and any and all claims for attorneys' fees. This release includes any and all claims of any nature that Defendants may have that arose prior to the date of their signatures on this Agreement. This is a full and final waiver and release of any such claims that Defendants have or might have asserted against the Castro Releasees and they intend that the release have the broadest effect possible under law. Defendants represent that they have no claim against the Castro Releasees which is not released under this Agreement.
7. Compliance with the Older Workers Benefit Protection Act. This Agreement is subject to the terms of the Older Workers Benefit Protection Act of 1990 ("OWBPA"), which provides that an individual cannot waive a right or claim under the Age Discrimination in Employment Act ("ADEA") unless the waiver is knowing and voluntary. Pursuant to the terms of the OWBPA, Castro acknowledges that she has executed this Agreement voluntarily and with full knowledge of its consequences. Castro is hereby advised to seek counsel regarding whether to sign this Agreement and acknowledges that she has done so. Castro further acknowledges that this Agreement is written in a manner that is calculated to be understood, that she does understand it, that it applies to any rights she may have under the ADEA, that it releases claims up to the date it is signed but not claims or rights that she may have under the ADEA that arise after it is signed, that she is receiving consideration or benefits in addition to those to which she is already entitled, and that she has a period of up to 21 (twenty-one) calendar days to consider this Agreement, but knowingly and voluntarily waives that right by signing it on an earlier date if he does so. Castro further acknowledges, understands, and agrees that this Agreement shall not become effective or enforceable as a waiver of his ADEA claims until seven (7) calendar days after it is executed by her and that until seven (7) days have passed he may revoke this Agreement. Castro will provide written notice of any such revocation to CCSO.
8. No Filings and Covenant Not to Sue of the Parties. A "covenant not to sue" is a legal term that means a person promises not to file a lawsuit or other legal proceeding. It is different from the release of claims contained above. Besides waiving and releasing the claims

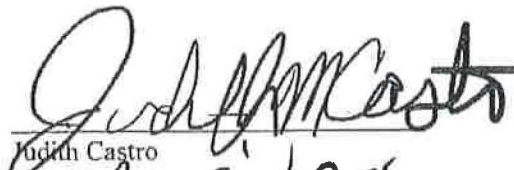
above, the Parties promise never to file or prosecute any legal claim of any kind against each other in any forum for any reason based on any act, omission, event, occurrence, or non-occurrence, through the Effective Date of this Agreement, including but not limited to claims, laws, or theories covered by the Parties' Releases contained in Section 6 above.

9. Dismissal of Litigation. This release is given in full compromise and settlement of the claims of Castro against Defendants in Civil Case No. 18CV20202 in the Circuit Court of the State of Oregon for Clackamas County wherein Judith Castro appears as Plaintiff and Clackamas County Sheriff's Office, Christopher Hoy and Patricia Snow appear as Defendants. In consideration of the foregoing, Castro and Defendants direct entry of judgment of dismissal with prejudice as to all of Castro's claims against Defendants and without attorneys' fees or costs to any party in that certain action (Civil Case No. 18CV20202).
10. Exceptions to the Release. This Agreement is not intended to waive or release any claims by either party to enforce this Agreement, and those matters contained in Claims Disposition Agreements and Disputed Claim Settlements for claims 10-W-061, and 15-W-087 to be entered into by the parties separate from this Agreement.
11. Letter of Reference. After the execution of this Agreement, the County will provide to Castro the letter of reference attached hereto as Exhibit A on the letterhead of the County and signed by Captain Lee Eby.
12. Non-Admission. This Agreement shall not be construed as an admission by any party of any liability or acts of wrongdoing or statutory violations, nor shall it be considered to be evidence of such liability, wrongdoing, or statutory violations.
13. Waiver. No waiver of any term of this Agreement shall constitute a waiver of any other terms, whether or not similar, nor shall any waiver be a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver. Any party may waive any provision of this Agreement intended for its benefit, but such waiver shall in no way excuse the other party from the performance of any of its other obligations under this Agreement.
14. Voluntary and Knowing Agreement. Each party hereto states that the party has carefully read this Agreement, that the party has had the opportunity to have it reviewed and explained to the party by an attorney of his choosing, that the party fully understands its final and binding effect, and that the party is signing this Agreement voluntarily and with the full intent of releasing the applicable Releasees from all claims.
15. Entire Agreement. This Agreement sets forth the entire agreement between the Parties. Castro is not relying on any other agreements or oral representations not fully addressed in this Agreement. Any prior agreements between or directly involving Castro and County Releasees are superseded by this Agreement. The provisions of this Agreement are severable, and if any part of this Agreement is found by a court of law to be unenforceable, the remainder of this Agreement will continue to be valid and effective. The headings in this Agreement are provided for reference only and shall not affect the substance of this Agreement.

16. Counterparts. This Agreement may be executed by email or facsimile and in any number of counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts shall constitute one agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement and General Release of Claims on the respective dates set forth below.

CLACKAMAS COUNTY



Judith Castro

Date: April 24, 2019

Approved as to form.



Richard B. Myers, OSB #131264  
Of Attorneys for Plaintiff

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2019

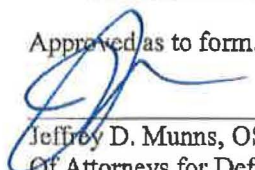
Christopher Hoy

Date: \_\_\_\_\_, 2019

Patricia Snow

Date: \_\_\_\_\_, 2019

Approved as to form.



Jeffrey D. Munns, OSB #983048  
Of Attorneys for Defendants

4/24/19

**Exhibit A**

May 1, 2019

To Whom It May Concern:

This letter of reference is written on behalf of Judith Castro.

Judith worked for Clackamas County as a jail deputy from 2005 to 2017. She took pride in her work and showed a strong commitment to service in law enforcement.

Clackamas County thanks Judith for her many years of service and wishes her the best in this new chapter of her career.

Sincerely,

Captain Lee Eby





May 2, 2019

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of a Board Order Related to a Previously Denied Comprehensive  
Plan Map Amendment and Zone Change Application

**Stephen L. Madkour**  
County Counsel

**Kathleen Rastetter**  
**Scott C. Ciecko**  
**Amanda Keller**  
**Nathan K. Boderman**  
**Shawn Lillegren**  
**Jeffrey D. Munns**  
**Andrew R. Naylor**  
**Andrew Narus**  
**Sarah Foreman**  
Assistants

<b>Purpose/Outcomes</b>	Adopt a board order and findings related to a previously denied land use action
<b>Dollar Amount and Fiscal Impact</b>	None identified
<b>Funding Source</b>	N/A
<b>Duration</b>	Indefinitely
<b>Previous Board Action</b>	Board of County Commissioners ("Board" or "BCC") held a public hearing on March 27, 2019, at which time the BCC voted 4-0 to deny the application, and directed staff to draft the board order and the findings of fact, both of which are included with this report.
<b>Strategic Plan Alignment</b>	Build public trust through good government
<b>Contact Person</b>	Nate Boderman, 503-655-8364
<b>Contract No.</b>	None

**BACKGROUND:**

On March 27, 2019 a public hearing was conducted before the BCC to consider a Comprehensive Plan Map Amendment from Low Density Residential (LDR) to Corridor Commercial (COR) with a corresponding zone change from Low Density Residential (R-5) to Corridor Commercial (CC) for an approximately 10,000 square-foot parcel located at 8220 SE Cornwell Avenue, during which the BCC orally voted 4-0 to deny the application. The reason for the denial was that the proposal did not comply with two specific sets of policies in the Clackamas Regional Center Design Area section of Chapter 10 of the Comprehensive Plan:

- (1) A policy that requires expansion of commercial zoning into residential neighborhoods be "limited" along the corridor where the subject site is located; and
- (2) Policies that require housing capacity lost through a Plan amendment or zone change be replaced on another site or constructed on site as part of a mixed-use development. The applicant did not propose required replacement housing as part of the application in a manner provided by the Comprehensive Plan.

The Board then directed staff to draft and order and findings consistent with its decision. A copy of the Board Order implementing the oral decision, and findings and conclusions to be adopted by the Board has been attached.

**RECOMMENDATION:**

Staff recommends the Board approve the attached Board Order and the findings and conclusions which are attached thereto.

Respectfully submitted,



Nate Boderman  
Assistant County Counsel

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of a Comprehensive  
Plan Map Amendment and Zone  
Change from Washman LLC, on  
property described as T1S R2E Section  
28BB Tax Lot 12500

File Nos.: Z0375-18-CP and Z0376-18-  
ZAP

Board Order No. \_\_\_\_\_  
*Page 1 of 2*

**Whereas**, this matter coming regularly before the Board of County Commissioners, and it appearing that Washman LLC made an application for a Comprehensive Plan Map Amendment from Low Density Residential (LDR) to Corridor Commercial (COR) with a corresponding zone change from Low Density Residential (R-5) to Corridor Commercial (CC) for an approximately 10,000 square-foot parcel located at 8220 SE Cornwell Avenue, on the property described as T1S R2E Section 28BB, Tax Lot 12500; and

**Whereas**, it further appearing that the subject property is located within an area identified in the County's Comprehensive Plan as a "Corridor" and, as such, is subject to the specific policies applicable to the SE 82nd Corridor that are found in the Clackamas Regional Center Design Area Section of Chapter 10; including policies that require housing capacity lost through a Plan amendment or zone change be replaced on another site or constructed on site as part of a mixed-use development, which has not been proposed as part of the application; and

**Whereas**, it further appearing that after appropriate notice public hearings were held before the Planning Commission on January 28, 2019, at which testimony and evidence was presented, and on February 25, 2019, at which the Planning Commission deliberated and, by the vote of 5-3, recommended denial of this request; and

**Whereas**, it further appearing that after appropriate notice a public hearing was held before the Board of County Commissioners on March 27, 2019, at which testimony and evidence were presented, and that, at that hearing, a decision was made by the Board, by the vote of 4-0 to deny the application;

Based on the evidence and testimony presented this Board makes the following findings and conclusions:

1. The applicant requests a Comprehensive Plan Map Amendment from Low Density Residential (LDR) to Corridor Commercial (COR) with a corresponding zone change from Low Density Residential (R-5) to Corridor Commercial (CC) for an approximately 10,000 square-foot parcel located at 8220 SE Cornwell Avenue.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of a Comprehensive  
Plan Map Amendment and Zone  
Change from Washman LLC, on  
property described as T1S R2E Section  
28BB Tax Lot 12500

File Nos.: Z0375-18-CP and Z0376-18-  
ZAP

Board Order No. \_\_\_\_\_  
*Page 2 of 2*

2. This Board adopts as its findings and conclusions the Findings of Fact and Conclusions of Law for Z0375-18-CP & Z0376-18-ZAP document attached hereto and incorporated herein as Order Exhibit A, which finds the application not to be in compliance with the applicable criteria.

**NOW THEREFORE, IT IS HEREBY ORDERED** that:

1. The requested Comprehensive Plan designation amendment from Law Density Residential (LDR) to Corridor Commercial (COR) and with a corresponding zone change from Low Density Residential (R-5) to Corridor Commercial (CC) are hereby DENIED.
2. This Board adopts as its findings and conclusions the *Findings of Fact and Conclusions of Law for Z0375-18-CP & Z0376-18-ZAP* document attached hereto and incorporated herein as Order Exhibit A, which finds the application not to be in compliance with the applicable criteria.

**DATED** this 2<sup>nd</sup> day of May, 2019.

**BOARD OF COUNTY COMMISSIONERS**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary



**FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR  
Z0375-18-CP & Z0376-18-ZAP:  
WASHMAN LLC  
COMPREHENSIVE PLAN MAP AMENDMENT & ZONE CHANGE**

**SECTION 1 - GENERAL INFORMATION**

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Planning File Nos.: Z0375-18-CP & Z0376-18-ZAP

Adoption Date: May 2, 2019

Applicant(s): Mark Hanna & David Tarlow/Washman LLC, PO Box 4124, Portland, OR 97028

Owner: Washman LLC, 3208 SE 13<sup>th</sup> Ave., Portland, OR 97202

Proposal(s): The applicant is proposing two actions for an approximately 10,000 square-foot parcel located at 8220 SE Cornwell Avenue:

- (1) Z0375-18-CP is a proposed Comprehensive Plan Map Amendment from Low Density Residential (LDR) to Corridor Commercial (COR); and
- (2) Z0376-18-ZAP is a corresponding Zone Change from Low Density Residential (R-5) to Corridor Commercial (CC),

Property Location: Approximately 100 feet east of SE 82nd Avenue, along SE Cornwell Ave.

Legal Description: T1S, R2E, Section 28BB, Tax Lot(s) 12500, W.M.

Site Address: 8220 SE Cornwell Ave.

Comprehensive Plan Designation: Low Density Residential (LDR)

Zoning District: Urban Low Density Residential (R-5)

Total Area Involved: 0.23 acres/ ≈10,018 sq.ft.

## **SECTION 2 - DECISION**

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The Board of County Commissioners (“Board”) finds that this application does not satisfy all the applicable state, regional and county criteria for the proposed change in the Comprehensive Plan and zoning designation for the subject property. Specifically, the proposal fails to meet all the applicable policies in Chapter 10 of the County’s Comprehensive Plan.

Therefore, the Board hereby denies the Plan designation change from Low Density Residential (LDR) to Corridor Commercial (COR) and corresponding zone change from Urban Low Density Residential (R-5) to Corridor Commercial (CC), as proposed in Planning files Z0375-18-CP and Z0375-18-ZAP.

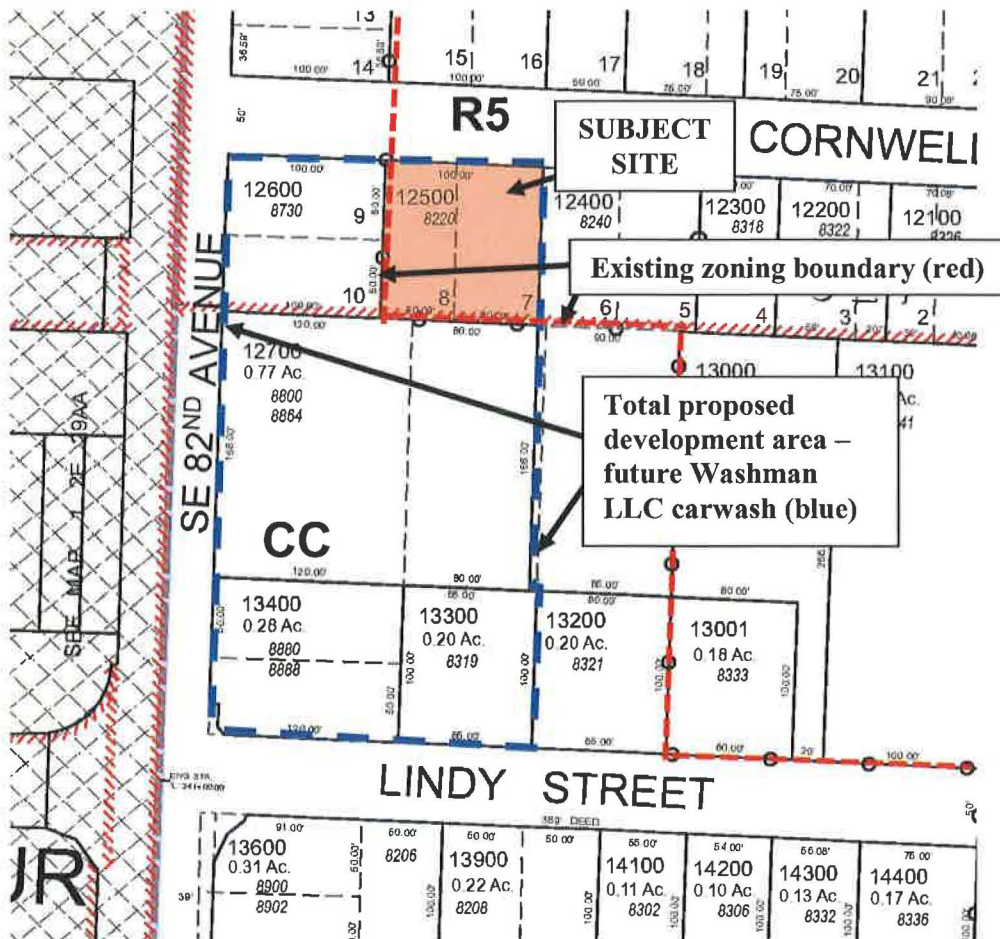
## **SECTION 3 – BACKGROUND INFORMATION**

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1. Site Description: The subject site includes approximately 10,000 square feet of land and contains two legal lots record that have been combined into one development parcel. This parcel is nearly square shape, measuring approximately 100 feet by 100 feet. The parcel has 100 linear feet of frontage on SE Cornwell Ave.

The site currently contains one (1) single family dwelling built in 1925, according to the tax assessor. This dwelling is vacant. There are no wetlands, streams, creeks or other significant natural features on the subject property and the site is relatively flat, with no discernable slope.

This property has a Comprehensive Plan (“Plan”) designation of Low Density Residential (HDR), with a zoning designation of Urban Low Density Residential (R-5). As such, the site has the potential to contain two (2) dwellings, one on each underlying ≈5,000 square feet.



2. Surrounding Conditions: The subject site is bordered on the north by SE Cornwell Avenue (a local street) and is surrounded by lots of various sizes, ranging in size from 0.20 acres to 0.77 acres. The existing zoning district boundary between the CC and R-5 zones follows the western and southern boundary of the subject site, then continues east through the adjacent parcel and continues south along the eastern boundary of that parcel.

The lot abutting the subject site to the east is developed with six (6) units of multifamily housing on a site that is partially zoned R-5 (northern portion) and partially zoned CC (southern portion). These parcels are all zoned Corridor Commercial (CC). The parcel that abuts Lindy St. contains a single-family dwelling, built in 1945; the parcels with frontage on SE 82<sup>nd</sup> Avenue appear to have most recently been used for automobile and/or recreational vehicle sales. There are three small commercial structures on this property but it is predominantly a paved parking area.

Further west of the site, across SE 82<sup>nd</sup> Avenue, are properties zoned CC and developed with commercial uses, including a large Fred Meyer shopping center development. To the north, across SE Cornwell Ave are properties zoned CC along SE 82<sup>nd</sup> Avenue, also used for automobile sales, and properties zoned R-5 along SE Cornwell, which primarily contain

single-family dwellings built in the 1920s through the 1950s.



3. Soils: The subject property has one soil type: Multnomah Silt Loam (61A)\*

Soil Type *	Rating *	Slopes *	Location on Site	Native Vegetation *	General Elevations *
61A – Multnomah Silt Loam	Class III	0 to 3 percent slopes	Entire site	Native grasses, bigleaf maple, western hazel, Douglas fir, and Oregon white oak.	150 to 400 feet

\*The Soils Survey of Clackamas County Area, published by the United States Department of Agriculture.

As noted in the Soils Survey document, the soils on the subject site are well-suited for development: *Permeability of this Multnomah soil is moderate to a depth of 38 inches and rapid below this depth... This unit is suited to homesite development. It has few limitations... Removal of gravel and cobbles in disturbed areas is needed for best results when landscaping, particularly in areas uses for lawn. In summer, irrigation is needed for lawn grasses, shrubs, vines, shade trees and ornamental trees.*



4. Future Development of Site: As noted in the applicants' submitted materials and information presented at the public hearings, the subject site is planned for development in conjunction with adjacent properties being leased and/or purchased by Washman LLC and that abut SE 82<sup>nd</sup> Ave and Lindy Ave. This development would include a car wash and associated vacuum stations.

It is the Board's understanding, based on information provided at the public hearings, that Washman LLC could develop a carwash facility only on the adjacent parcels that abut SE 82<sup>nd</sup> Ave. and Lindy Street (meaning without the subject site), but the shape/configuration of that parcel limits the design of the facility and potentially creates more difficult access. If the subject site were included and zoned for commercial use, the development site becomes more rectangular in shape, which the applicant asserts allows for a more efficient design and safer ingress/egress to the development.

*As the applicant states, the purpose of this proposal is to even out the west side commercial zone line. The small residential zone lot is an encroachment into the commercial area creating a difficult to develop commercial site as the site would not be a rectangle (ie the northwest side would have a large area removed from a commercial site). The commercial site not has size edges as opposed to four if it were a rectangle. A commercial use would need to buffer three edges from residential uses as opposed to one. The existing residential lot is surrounded on two sides by commercial uses.*

*For example; a proposed car wash facility (8880 SE 82<sup>nd</sup>) could be developed on the full rectangle to allow better and safe access on the site's north and south side. A rectangular site plan would allow for the Tri-Met pull out on SE 82<sup>nd</sup> and provide room for more substantial landscaping on the east side. The car wash provided important entry level employment opportunities. The car wash allows people to have their car washed in a completely environmentally sound facility and avoid washing cars on public streets and driveways and the requested map amendments will allow the development of a car wash facility in the most efficient site design.*

5. Service Providers:
- a. Sewer: Clackamas County Service District #1
  - b. Water: Clackamas River Water
  - c. Surface Water: Clackamas County Service District #1
  - d. Fire Protection: Clackamas County Fire District #1
6. Responses Requested:
- a. City of Milwaukie
  - b. Clackamas County Service District #1
  - c. Clackamas River Water
  - d. Clackamas County Fire District #1
  - e. Oregon Dept. of Transportation (ODOT), Region 1
  - f. DTD, Traffic Engineering
  - g. Dept. of Land Conservation and Development
  - h. Metro

i. Property Owners within 300'

7. CPO Recommendation: The subject property is located within the Southgate (CPO), which is currently inactive.
8. Public Hearings: After appropriate notice, a public hearing was held before the Planning Commission on January 28, 2019, at which testimony and evidence was presented. During the public testimony period of that hearing, a member of the public requested the record be left open to provide more time for the Planning Commission to receive testimony. Subsequent to that request, the written record was left open for a total of three weeks for submission of additional written testimony and the public hearing was continued to February 25, 2019 for deliberation and decision only.

At the February 25, 2019 hearing, the Planning Commission engaged in deliberations and ultimately voted 5-3 to recommend denial of the proposal in Z0375-18-CP and Z0376-18-ZAP.

The Board of County Commissioners conducted a *de novo* review of the applications, at a public hearing held before the Board of County Commissioners on March 27, 2019. At this hearing testimony and evidence were presented and the Board made the decision, by the vote of 4-0, to deny the applications.

## **SECTION 4 – ANALYSIS AND FINDINGS**

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This proposal is subject to the relevant Statewide Planning Goals; Oregon Revised Statutes (ORS); Oregon Administrative Rules (OARs); Metro's Urban Growth Management Functional Plan; County Comprehensive Plan (Plan) policies, and the County's Zoning and Development Ordinance (ZDO). In an effort to be efficient and concise, only the applicable sections, regulations, and/or policies are noted below and discussed in these Findings.

### **1. Statewide Planning Goals and Guidelines**

- a. Goal 1: Citizen Involvement. The zone change and map amendment does not propose to change the structure of the county's citizen involvement program. Section 1307 of the Zoning and Development Ordinance (ZDO) contains adopted and acknowledged procedures for citizen involvement and public notification for legislative actions. This application has been processed consistent with the notification requirements in Subsection 1307.11, including public notice to local media sources and newspapers. Notice of the proposed amendment was provided to the relevant Community Planning Organization, all property owners within 300 feet of the subject property and a list of interested parties and agencies. Also, notice of the Planning Commission and Board of County Commissioners hearings was published in the newspaper and posted on the county's website. The Department of Land Conservation and Development (DLCD) and Metro were notified of this proposal, but neither has provided a response.

**The Board finds that the relevant requirements of Statewide Planning Goal 1 and related provisions of the ZDO have been satisfied.**

- b. Goal 2: Land Use Planning. The zone change and map amendment does not propose to change the county's land use planning process. The county will continue to have a comprehensive land use plan and implementing regulations that are consistent with the plan. No exceptions from the Goals are required.

Goal 2 requires coordination with affected governments and agencies. Notice of this application has been provided to potentially affected agencies and governments.

Goal 2 also requires that all land use actions be consistent with the acknowledged Comprehensive Plan. As noted above and again in Section 4, Subsection 3 of this document, this proposal is not consistent with all the applicable criteria in the county's Comprehensive Plan found in Chapter 10, including policies relating to the replacement of lost housing due to the rezone and limiting the expansion of commercial zoning into residential areas

**The Board finds that the relevant requirements of Statewide Planning Goal 2 have not been satisfied.**

- c. Goal 9: Economy of the State: This Goal is intended to ensure the Comprehensive Plan contributes to a stable and healthy economy in all regions of the state. Goal 9 also requires jurisdictions to provide for an adequate supply of sites of suitable sizes, types, locations and services for a variety of industrial and commercial uses consistent with Plan policies. This proposal does not propose to change the county's Plan or implementing regulations regarding employment lands and, in fact, would add a very small amount of employment land to the county's inventory. OAR 660-009, which implement Goal 9 does contain requirements for changes to Plan designations concerning employment land but these requirement do not apply to a site smaller than two (2) acres in size and contemplate reductions of employment land supply rather than increases, as would be the case in this proposal.

**The Board finds that this proposal is in compliance with Statewide Planning Goal 9.**

- d. Goal 10: Housing: This goal requires local jurisdictions to provide for an adequate number of housing units and to encourage the efficient use of buildable land within urban growth boundaries. OAR 660-007 and 660-008 define the standards for determining compliance with Goal 10.

This proposal does not propose to change any of the implementing regulations regarding residential lands, but does propose to change the designation of and subsequently the overall density of the county's land zoned for housing.

OAR 660-007 (Metropolitan Housing) contains the administrative rules for compliance with Goal 10 within the Portland Metropolitan urban area. Specifically, at OAR 660-0007-0060, this Rule states that:

(2) For plan and land use regulation amendments which are subject to OAR 660, Division 18, the local jurisdiction shall either:

(a) Demonstrate through findings that the mix and density standards in this Division are met by the amendment; or

(b) Make a commitment through the findings associated with the amendment that the jurisdiction will comply with provisions of this Division for mix or density through subsequent plan amendments.

The result of the proposed change would result in the decrease of two (2) dwelling units in the overall housing stock of the county, which the applicant notes and the Board agrees represents a negligible loss in the overall supply of housing in the county. As noted by the applicant and the applicants consultants, *the loss of the potential of two dwelling units is not significant or material in the context of the housing potential that exists in Clackamas County and the impact on theoretical residential capacity [due to this proposed zone change] is extremely limited, and more than offset by recent changes in entitlements, development patterns, and existing residential development on commercially-zoned properties.*

Furthermore, the Board finds the information summarized below and included in the record for this application demonstrates that indeed the *mix and density standards in this Division are met by the amendment.*

1. The most recent complete housing analysis the county has undertaken and adopted was in 2000. At that time it was found to have a sufficient mix and density to meet the Metropolitan Housing Rule and Goal 10. The county is no longer required to go through Periodic Review - the process under state law during which a jurisdiction would be required to update its housing and employment land inventory. However, as evidenced in the attached documents, zone changes involving residential-zoned property in the unincorporated area that have been approved by the county since that time, have resulted in a nominal change in the county's overall housing mix.
2. In 2004, WRG Design Inc. completed an assessment for a proposed zone change and development, in which the change in dwelling unit capacity since the completion of the 2000 housing inventory was calculated. Based on that analysis, the urban area contained a surplus of approximately 48 single family dwelling units and 69 multi-family units.
3. An analysis completed by Planning Staff of the net change in single-family and multi-family housing units due to zone changes that have occurred from 2005 to 2017<sup>1</sup>, indicates that there was a net increase of 24 single family units and two (2) multi-family units due to zone changes during that period. The majority of the zone changes that occurred from 2005 to 2017 were from lower to higher density single-family residential districts on relatively small parcels; a few changes from residential to commercial districts balanced out the increases on those properties.

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<sup>1</sup> Note: This assessment does not account for new units in the market that resulted from annexations into cities and changes from rural or future urban zones to urban zones.

This result is not surprising, given the regulations both in Goal 10 and Metro's Urban Growth Management Functional Plan that are intended to ensure housing stock remains sufficient. If approved, the proposal under Z0375-18-CP and Z0376-18-ZAP would decrease the capacity for single-family dwellings by two (2) units, resulting in not only a negligible effect on the overall housing capacity in the county's urban area, but also allowing the county to maintaining a small surplus of dwelling unit capacity in the urban area.

Based on the information summarized above, the Board finds there is sufficient evidence to reasonably conclude that the Comprehensive Plan amendment and zone change proposed in Z0375-18-CP and Z0376-18-ZAP would allow the County to remain in compliance with the mix and density standards found in the Metropolitan Housing Rule (OAR 660-007).

**The Board finds that this proposal is in compliance with Statewide Planning Goal 10.**

- k. Goal 12: Transportation: Goal 12 is implemented by Oregon Administrative Rules Chapter 660, Division 12, the Transportation Planning Rule (TPR). Regulations described in the TPR are largely directed at the development of a jurisdiction's Transportation System Plan (TSP) as a whole or at a land use regulation and land use changes that affect the transportation system.

However, OAR 660-012-0060 outlines the TPR requirements that are applicable in consideration of a proposed change in Comprehensive Plan and zoning designations. This section requires that a proposed change not significantly affect an existing or planned transportation facility unless mitigation measures are put into place.

As discussed in more detail in Section 4, Subsection 3 (Comprehensive Plan Policies) of this document and in comments provided by ODOT, the traffic analysis provided by the applicant demonstrates that the proposed zone change will not have a significant effect on the transportation system and that the safety of the transportation system is adequate to serve the level of development anticipated by the proposed zone change.

**The Board finds that the relevant requirements of Statewide Planning Goal 12 have been satisfied.**

## **2. Metro Urban Growth Management Functional Plan:**

- a. Title 1. Housing Capacity. Title 1 contains regulations related to housing density in the urban area, design type boundaries, permitted densities or accessory dwelling units. Section 3.07.120 Housing Capacity, outlines circumstances under *which a city of county may reduce the minimum zoned capacity in a Central City or a Regional Center, Town Center, Corridor, Station Community or Main Street* and clearly allows for such under subsection (e) *A city of county may reduce the minimum zoned capacity of a single lot or*

*parcel so long as the reduction has a negligible effect on the city's or county's overall minimum zoned residential capacity.*

As discussed in Section 1, Subsection 1 (Statewide Planning Goal 10) and as noted in the application and in the memorandum provided in the record by Johnson Economics LLC, dated January 16, 2019 and in the public hearings, the loss of two potential dwelling units in the broader context of the county's overall housing stock, and particularly in light of recent development in the Clackamas Regional Center area, can reasonably be considered negligible.

**The Board finds that this proposal is consistent with the relevant requirements in Title 1.**

### **3. County Comprehensive Plan Policies**

- a. **Chapter 11 (The Planning Process):** This section of the Comprehensive Plan (Plan) contains a section titled *City, Special District and Agency Coordination*. The Oregon Department of Transportation (ODOT), the Oregon Department of Land Conservation and Development (DLCD), several special service districts and other identified interested parties are on a standing list to receive notice of all proposed amendments. This level of notification furthers the goals and policies of this section of the Plan.

Chapter 11 of the Plan also contains a section entitled *Amendments and Implementation*. This section contains procedural standards for Plan amendments, requires the Plan and the ZDO to be consistent with Statewide Planning Goals and Guidelines and Metro's Urban Growth Management Functional Plan, and requires the ZDO to be consistent with the Plan. Policy 3.0 establishes the procedural standards. The process followed for Z0375-18-CP and Z0376-18-ZAP is in compliance with these standards. Specifically, notice was mailed to Department of potentially affected agencies and interested parties at least 35 days before the scheduled public hearing, and DLCD and ODOT were provided with an opportunity to review and comment on the proposed amendments. The subject is within the boundaries of an inactive Community Planning Organization (CPO) so no CPO was sent notice. Public hearings were held before the Planning Commission and the Board of County Commissioners to consider the proposed amendments.

**The Board finds that the relevant policies in Chapter 11 are met.**

- b. **Chapter 4 (Land Use) and Chapter 10 (Community Plans and Design Plans):** Chapter 4 of the Plan includes the definitions of urban and rural land use categories and outlines policies for determining the appropriate Comprehensive Plan land use designations for all lands within the County. These policies are further refined by those in Chapter 10 if a property is located within the boundaries of an area with an adopted Community Plan or Design Plan. The subject site is located within the boundaries of the Clackamas Regional Center (CRC) Area Design Plan, and more specifically, is located within the boundaries of the SE 82<sup>nd</sup> Avenue "Corridor".

Chapters 4 and 10 of the Plan contains several policies that address the designation of land for urban uses, and specifically for corridor commercial uses. Policies 4.I.1 and 4.I.2 in the Land Use Section of Chapter 4 of the Comprehensive Plan identify the policies applicable to Corridor design type areas and Policies 1 through 3 of the Corridor Land Use Policies section of Chapter 10 identify the policies applicable to the Corridor Commercial Plan designation and Policies 1 through 5 in the Housing section of Chapter 10 identify the policies applicable to potential comp plan/zone changes that involve the loss of housing in the CRC.

#### **Chapter 4 (Land Use)**

##### **Policy 4.H. Corridor Policies**

*The Corridor design type designation is applied to sites adjoining the Corridor streets shown on Map 4-8. Corridor design type areas may be either continuous or development nodes. The areas of application for the Corridor design type are specified in Chapter 10 for all of the Corridor streets.*

This policy is informational. The subject site is located within an area identified on Map 4-8 and on Map X-CRC-1 as a Corridor. The specific policies applicable to the SE 82<sup>nd</sup> Corridor are found in the Clackamas Regional Center Design Area Section of Chapter 10.

##### **Policy 4.I.1 Policies that apply to all Corridor design type areas include:**

- 4.I.1.1 Provide for both employment and housing, including mixed use.*
- 4.I.1.2 Provide for a high level of bus usage, with land uses and transportation facilities to support bus use.*
- 4.I.1.3 Encourage and support pedestrian travel with supportive land uses, frequent street connections, and sidewalks and pedestrian-ways.*
- 4.I.1.4 Provide for vehicular traffic and auto-oriented uses, while expanding the share of trips via transit and other modes.*
- 4.I.1.5 Enhance connectivity between neighborhoods adjacent to the Corridor Design Type Area and the Corridor Street.*

Generally, these policies are broad and apply to the Corridor area as a whole and many are implemented by the planned transportation system and by the uses allowed under specific zoning districts allowed within the Corridor. However, the applicant has noted that *the configuration of the rectangular site allows for a Tri-Met pull out bus stop. The configuration also allows egress and ingress to occur away from SE 82<sup>nd</sup> on Lindy (at a controlled intersection directly north of a setback from 82<sup>nd</sup> access on SE Cromwell (p.5 application narrative), which would further these policies.*

In fact, the applicant asserts several times in the application narrative and the public hearings that the more rectangular configuration of the development site that would result from approval of this Comprehensive Plan/zone change would benefit the transit system, and specifically a Tri-Met bus stop. Although The Board has no reason to not believe

these assertions, no evidence appears to have been provided to demonstrate that the existing configuration somehow prevents a bus stop, while the configuration after a zone change would allow for the bus stop. That said, to the extent that approval of this proposed zone change would allow a more efficient and safe development for both the transit and the overall street system, as asserted by the applicant, then this proposal would indeed further the policies listed under Policy 4.I.1. **This policy is met.**

**Policy 4.I.2.** *Specific policies for the SE 82<sup>nd</sup> Ave, SE Johnson Creek Boulevard and SE Sunnyside Road (from 82<sup>nd</sup> Ave to approximately SE 117<sup>th</sup> Ave.) Corridor design type areas are located in Chapter 10: Clackamas Regional Center Area Design Plan.*

This policy is also informational. The subject site is located within the SE 82<sup>nd</sup> Ave Corridor design type area, and is therefore subject to the policies found in Chapter 10.

**The Board finds that the relevant policies in Chapter 4 are met.**

## **CHAPTER 10 (Community and Design Plans); Clackamas Regional Center Design Area Plan Section**

### **I. GENERAL LAND USE POLICIES**

#### **Policy 2.0. Commercial**

*The following Commercial land use plan designations shall be provided in the Clackamas Regional Center Area: Regional Center Commercial, Retail Commercial, Corridor Commercial, Regional Center Office, and Office Commercial.*

This proposal requests a designation to Corridor Commercial (COR). **This policy is met.**

### **III. CORRIDOR LAND USE POLICIES**

**Policy 1.0.** *Land uses in Corridors shall be planned to:*

- 1.1 Provide for both employment and housing, including mixed use.*
- 1.2 Emphasize providing for a high level of bus usage, with land uses and transportation facilities to support bus use.*
- 1.3 Encourage and support pedestrian travel with supportive land uses, frequent street connections, and sidewalks and pedestrian-ways.*
- 1.4 Provide for vehicular traffic and auto-oriented uses, while expanding the share of trips via transit and other modes.*

As noted above (with respect to the nearly identical Policy 4.I.1), these policies are broad and apply to the Corridor area as a whole and many are implemented by the planned transportation system and by the uses allowed under specific zoning districts allowed within the Corridor. That said, to the extent that approval of this proposed zone change



would allow a more efficient and safe development for both the transit and the general street system, as asserted by the applicant, then this proposal would indeed further the policies listed under Policy 1. **This policy can be met.**

## **Policy 2.0 Corridor Land Use Plan Designations**

*A range of land use plan designations may be applied within a designated Corridor identified on Map X-CRC-1. Each corridor shall include within its area designations that provide primarily for employment and shopping, and designations that provide primarily for dwellings.*

**2.1 Commercial land use plan designations that may be applied include: Corridor Commercial, Retail Commercial, and Office Commercial. Any site designated for a commercial use shall be located adjacent to the Corridor street.**

This proposal requests the designation of Corridor Commercial (COR) for a parcel located within the corridor designation on Map X-CRC-1. The applicant provides no discussion or justification that the site is adjacent to the Corridor street to meet this policy. If viewed in isolation, the approximately 10,000 SF subject site is clearly not adjacent to the Corridor street, which is SE 82<sup>nd</sup> Avenue, because it contains frontage only of SE Cornwell Ave. However, as discussed in the applicant's supplemental materials and below in relation to Policy 3.1, it may be possible and indeed may even be more appropriate to view the entire proposed development site as a whole, when considering compliance with the applicable Plan policies. When viewed as a whole the larger development "site" is bound by SE Cornwell to the north, SE Lindy St to the south and SE 82<sup>nd</sup> Ave to the west and, as such, the "site" clearly is adjacent to the corridor street, which is SE 82<sup>nd</sup> Avenue.

**This policy can be met.**

## **Policy 3.0. Corridor Commercial**

**3.1.***The following areas may be designated Corridor Commercial when located within a Corridor as identified on Map X-CRC-1 and when all of the following criteria have been met:*

*a. The site has an historical commitment to commercial uses;*

The applicant's supplemental materials contain an October 1, 2018 memorandum from Dunn Carney Allen Higgins & Tongue LLP. In this memorandum, there is some discussion about the area to which this policy is applicable. As noted in that discussion, there is not a definition of "site" in the county's Plan or its Zoning and Development Ordinance (ZDO) and the county may rely on the dictionary definition to interpret a specific term. As noted in that memorandum, *Merriam-Webster defines "site" as "the special location of an actual or planned structure of set of*

*structures....” and therefore “the reference to a planned structure of “set of structures” in this definition makes clear a “site” refers to the development as a whole rather than to an individual parcel situate therein”. The Board agrees that including all the parcels in the development site is a reasonable interpretation of “site” in this particular instance.*

In that memorandum, it is further stated, *when evaluating the site as a whole, it has an established historical commitment to commercial use.* Again, this last assertion is not accompanied by any evidence aside from some oral testimony that mentioned past uses during the public hearings. However, in this case, it is easy for Planning Staff to view past aerial photography and permit history, which clearly indicate that the portion of the larger development site (the portion that is currently planned and zoned Corridor Commercial) has clearly housed a number of commercial businesses for several decades, including most recently automobile and recreational vehicle (RV) sales. There is one single-family dwelling on that portion of the site, which, according to the tax assessor was built in 1945.

It is equally as obvious that the approximately 10,000SF subject site has historically been developed with a single-family dwelling; according to the tax assessor, the dwelling was built in 1925 and appears to continue to be assessed as a dwelling.

Again, since the Board agrees that it is reasonable to assess the larger development site as the “site” for the purposes of this policy, then the conclusion is simple. Given that the vast majority of the development site has been both zoned for and developed with commercial uses for at least several decades, and therefore it can be reasonably concluded by the Board that the “site” has an historical commitment to commercial uses. **This policy is met.**

*b. The designation will not cause a decrease in housing capacity in the County;*

The October 1, 2018 memorandum from Dunn Carney Allen Higgins & Tongue LLP also discusses the decrease in housing capacity issue and appears to reach the conclusion that a negligible reduction in housing capacity is allowed through Metro rules and therefore that is how the county’s policy should be interpreted. Similarly, a memorandum provided by Johnson Economics LLC, dated January 16, 2019 (Exhibit 7) also reaches the conclusion that the loss of two housing units is negligible.

Indeed, Metro does allow for a negligible decrease in housing potential and indeed it does require each city and county to maintain its housing capacity and indeed each county must comply with these regulations. The Board does not disagree that the removal of two housing units from the overall housing capacity in the county can reasonably be considered negligible; however that conclusion is not directly on point in this particular case.

There is nothing in state law or Metro code that prevents a city of county from being

more restrictive than the regulations of either of those jurisdictions, rather a jurisdiction cannot be *less* restrictive. The county's Comprehensive Plan has been determined to be in compliance both with state law and the Metro Urban Growth Management Functional Plan. As such, any land use proposal must be in compliance with all applicable plans at all jurisdictional levels. Indeed, this proposal may be and has been found by The Board to be compliant with the Metro' code but that does not exempt it from having to also comply with the county's Comprehensive Plan.

This policy and related policies in the Housing Section of Chapter 10, Clackamas Regional Center, were the subject of much testimony and discussion at both the Planning Commission and Board of County Commissioners hearings. Central to this discussion is the debate about the manner in which "capacity" is interpreted. In isolation, this policy could reasonably be interpreted to mean the "theoretical" housing capacity available in each zoning district. In this case, that would mean no housing "capacity" would be lost, since the CC zone allows for plexes and multifamily housing. However, the Board finds that, because other related housing policies that more specifically outline how the housing capacity issue is to be addressed during a zone change from a residential zone to a commercial zone (see discussion below about Housing Policies 5.0 through 5.5), this policy cannot be viewed in isolation and that "capacity" must have the same meaning here as in the other related policies, which very clearly lead to not a "theoretical" capacity but a "literal" interpretation of capacity. Specifically, it is clear from the other policies that housing capacity in a commercial zone may only be considered as replacement capacity for the loss of the housing that occurs with the loss of the residential zoning designation if there is an approved development in a commercial zone demonstrating the housing will be developed. As this is not the case with this application, the Board finds that **this policy is not met.**

*c. The designation will not cause a significant traffic increase on local streets serving residential areas;*

As discussed in Section 4, Subsection 1 (Statewide Planning Goal 12), the Transportation Impact Study (TIS) provided by the applicant, demonstrates that this proposed zone change would have no significant effect on the transportations system. **This policy is met.**

*d. Adverse effects, including, but not limited to, traffic and noise, will have a minimal effect on adjacent neighborhoods, or can be minimized through on-site improvements; and*

Any specific development impacts will be evaluated at the time of design review, which is required for any new development in a commercial zone. **This policy can be met.**

*e. The designation will not substantially increase an existing commercial strip or create new strips.*

This policy was not address in the application; however The Board finds that an increase of approximately 10,000 square feet of a commercial strip is not likely to ever be considered a “substantial increase”, especially in the context of the rather large Corridor Commercial zoned area along the norther portion of SE 82<sup>nd</sup> Avenue. **This policy is met.**

3.2 *Provide commercial areas located in transportation corridors to meet at local and regional needs for a wide range of goods and services.*

SE 82<sup>nd</sup> Avenue has been designated as a corridor in Chapters 4 and 10 of the Comprehensive Plan because it is a major transportation corridor in the county. **This policy is met.**

## **XVII. HOUSING POLICIES**

3.0 *Limit expansion of commercial zoning into residential neighborhoods along the 82<sup>nd</sup> Avenue corridor.*

The applicant did not provided evidence or findings to adequately address this policy in the applicant materials. As such, it became the subject of some discussion at both public hearings. It is important to keep in mind that this policy does not *prohibit* the expansion of commercial zoning into residential areas, rather it requires a finding that demonstrates how this proposal is consistent with this policy to *limit* such encroachment.

To that end, some of the Planning Commission members expressed concern that approval of this zone change could “open the door” to more properties in the area seeking a similar change. Several County Commissioners shared the same concerns and the concern that, by allowing this zone change, it would indeed create encroachment of commercial uses into the residential neighborhood.

The applicant did note that the subject property surrounded on two sides by commercial zoning and uses; on one side by a 6-unit apartment development; and on one side (across the street) by single-family development and often multifamily development is intentionally placed between commercial and single-family housing areas to serve as a transition or buffer area. The Board does not find there to be sufficient evidence that this proposal is consistent with this policy, and absent any additional findings, the Board finds that **this policy is not met.**

5.0 *Replace housing capacity lost in the study area by future Comprehensive Plan amendments or zone changes. Any application for a change in land use plan designation within the Clackamas Regional Center Area will be accompanied by a demonstration of how an equal amount of housing capacity is replaced on another site, or constructed on the site as part of a mixed-use development.*

- 5.1 *The purpose of this policy is to maintain the potential for the amount of housing identified in the Clackamas Regional Center Area Design Plan.*
- 5.2 *This policy would apply to Comprehensive Plan amendments or zone changes made subsequent to adoption of the Clackamas Regional Center Area Design Plan.*
- 5.3 *This policy would apply to quasi-judicial changes from residential to a non-residential use.*
- 5.4 *Replacement housing capacity could be located anywhere within unincorporated Clackamas County located within the Urban Growth Boundary.*
- 5.5 *Approval of a design review application and any other applicable land use permit for the required amount of replacement housing on a site in a commercial or office district, not including PMU sites, will meet the requirements of policy 5.0.*

As noted previously, the issue of “housing capacity” was the topic of much discussion at the Planning Commission and the Board hearings. Planning Commissioners were divided between:

- Interpreting this to allow for an argument that the change to the CC would result in no loss in housing capacity because the CC zone allows for (but does not require) multi-family housing development, so, in other words, there is no loss in “theoretical capacity”; and
- Interpreting this in a literal way to mean that the two housing units of capacity that would be lost if this site were rezoned from residential use, have to actually be replaced through up-zoning another site or as part of a development in a commercial or mixed-use zone that has already obtained Design Review approval.

The Board agrees with the latter interpretation of these Plan policies. The language is indeed very directive and the Board finds the most reasonable interpretation of these policies is to only allow for consideration of replacement housing on commercial or mixed-use zoned if the land use approvals (Design Review, etc.) have been obtained. Otherwise the housing capacity lost with the removal of a property from a residential zoning district would need to be replaced by increasing capacity in another residential zone.

Subsequent to the Planning Commission hearing, the applicants indicated that, to meet this criteria, they are willing to construct two housing units on the property as part of a mixed-use development. In a letter dated March 8, 2019 (Exhibit 16) the applicant requests the BCC give the zone change “tentative” approval while they proceed through Design Review; however an application for site Design Review for the carwash cannot be approved in anticipation of the zone change if the site design includes the R5-zoned portion because the County is required to apply the standards that exist at the time of the application.

The applicant has been advised by Planning Staff that running a "mixed-use" development site Design Review concurrent with the zone change may be able to work, but it would require withdrawal of this application and the submittal of an entirely new application. As there has not yet been an approved Design Review application for the actual replacement of the housing on the subject site, the Board finds that **these policies are not met**.

- c. **Chapter 5 (Transportation):** This section of the Plan identifies transportation needs and priorities to guide the development and maintenance of a multi-modal transportation system in the county.

Integration of Land Use and Transportation Policies: Policies 5.F.1-5.F.7 in Chapter 5 (Transportation) of the Comprehensive Plan identify policies related to the ensuring a strong relationship between land use and transportation planning in the county.

Policy 5.F.6 – Require changes in land use plan designation and zoning designation to comply with the Transportation Planning Rule (Oregon Administrative Rules (OAR) 660-012-0060).

The applicant has submitted a Transportation Impact Study (TIS) completed by Clemow Associates LLC, dated July 9, 2018. The TIS concluded, and ODOT concurs (as noted in comments entered into the record) that the proposed Comprehensive Plan/Zone change is not anticipated to significantly affect a transportation facility and no further TPR analysis is necessary to address the Transportation Planning Rule (TPR) criteria outlined in OAR 660-012-0060. Therefore this application complies with the requirements in the Transportation Planning Rule. **This policy is met.**

**The Board finds that the proposed Corridor Commercial (COR) Plan designation and corresponding zoning designation (CC) is not consistent all applicable goals and policies in the Comprehensive Plan.**

#### **4. County Zoning & Development Ordinance (ZDO) Criteria**

This application is subject to the zone change criteria in Section 1202 of the Clackamas County Zoning and Development Ordinance (ZDO). ZDO Section 1202.03 states that a zone change shall be subject to the following standards and criteria:

- a. **Section 1202.03(A):** *The proposed zone change is consistent with the applicable goals and policies of the Comprehensive Plan.*

As discussed in detail in Section 4, Subsection 3 (Comprehensive Plan Policies), the Board has found that this proposal is not consistent with all the applicable criteria in the county's Comprehensive Plan found in Chapter 10, including policies relating to the

replacement of lost housing due to the rezone and limiting the expansion of commercial zoning into residential areas. **This criterion is not met.**

- b. **Section 1202.03(B)**: *“If development under the proposed zoning district designation has a need for any of the following public services, the need can be accommodated with the implementation of the applicable service provider’s existing capital improvement plan: sanitary sewer, surface water management, and water. The cumulative impact of the proposed zone change and development of other properties under existing zoning designations shall be considered.”*

The subject property is located in the CCSD#1 sewer district and Clackamas River Water District which provide sewer, water, and surface water facilities and services in the area. The applicant has submitted a Preliminary Statement of Feasibility signed by these agencies indicating that adequate sewer, water, and surface water facilities are available or can be made available through improvements completed by the district or developer (see attached application). **This criterion is met.**

- c. **Section 1202.03(C)**: *“The transportation system is adequate and will remain adequate with approval of the proposed zone change. For the purpose of this criterion:”*

1. *Adequate means a maximum volume-to-capacity ratio (v/c), or a minimum level of service (LOS), as established by Comprehensive Plan Tables 5-2a, Motor Vehicle Capacity Evaluation Standards for the Urban Area, and 5-2b, Motor Vehicle Capacity Evaluation Standards for the Rural Area.*
2. *The evaluation of transportation system adequacy shall be conducted pursuant to the Transportation Planning Rule (Oregon Administrative Rules 660-012-0060).*
3. *It shall be assumed that the subject property is developed with the primary use, allowed in the proposed zoning district, with the highest motor vehicle trip generation rate.*
4. *The methods of calculating v/c and LOS are established by the Clackamas County Roadway Standards.*
5. *The adequacy standards shall apply to all roadways and intersections within the impact area of the proposed zone change. The impact area shall be identified pursuant to the Clackamas County Roadway Standards.*
6. *A determination regarding whether submittal of a transportation impact study is required shall be made based on the Clackamas County Roadway Standards, which also establish the minimum standards to which a transportation impact study shall adhere.*
7. *Notwithstanding Subsections 1202.03(C)(4) through (6), motor vehicle capacity calculation methodology, impact area identification, and transportation impact study*

*requirements are established by the ODOT Transportation Analysis Procedures Manual for roadways and intersections under the jurisdiction of the State of Oregon.*

A Transportation Impact Study (TIS) was completed for the subject property by Clemow Associates LLC and dated July 9, 2018. This study concluded that the proposed zone change is not anticipated to significantly affect the transportation facility. Based on comments received from ODOT (see Exhibit 3) that agency concurs with the conclusions of the TIS. The Board finds no reason to dispute these findings. **This criterion is met.**

- d. **Section 1202.03(D):** *“Safety of the transportation system is adequate to serve the level of development anticipated by the zone change.”*

The Transportation Impact Study (TIS) also found that the safety of the transportation system is adequate for the proposed zone change. **This criterion is met.**