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PLANNING AND ZONING DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING  
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

NAME: Mark Hanna & David Tarlow / Washman LLC  
FILE NO: Z0375-18-CP, Z0376-18-ZAP  
REPORT AUTHOR: Martha Fritzie, Sr. Planner/ Planning & Zoning Division, DTD  
HEARING DATE: Planning Commission – January 28, 2019  
REPORT DATE: January 18, 2019

**PLANNING STAFF REPORT AND RECOMMENDATION  
TO THE PLANNING COMMISSION**

**SECTION 1- GENERAL INFORMATION**

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

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

Proposal: 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 a 10,000 square-foot parcel located at 8220 SE Cornwell,

The primary uses allowed in the proposed CC zoning district are identified in Section 510 of the Clackamas County Zoning and Development Ordinance and include service commercial uses; professional offices and outpatient offices; recreational facilities; retail uses; restaurants; hotels and motels; and multifamily dwellings. If approved, the subject parcel is proposed to be developed with a car wash, in conjunction with adjacent parcels along SE 82nd Avenue that are currently zoned 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)

Zone: Urban Low Density Residential (R-5)

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

## **SECTION 2 – DECISION**

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Staff 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, Staff recommends denial of 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.

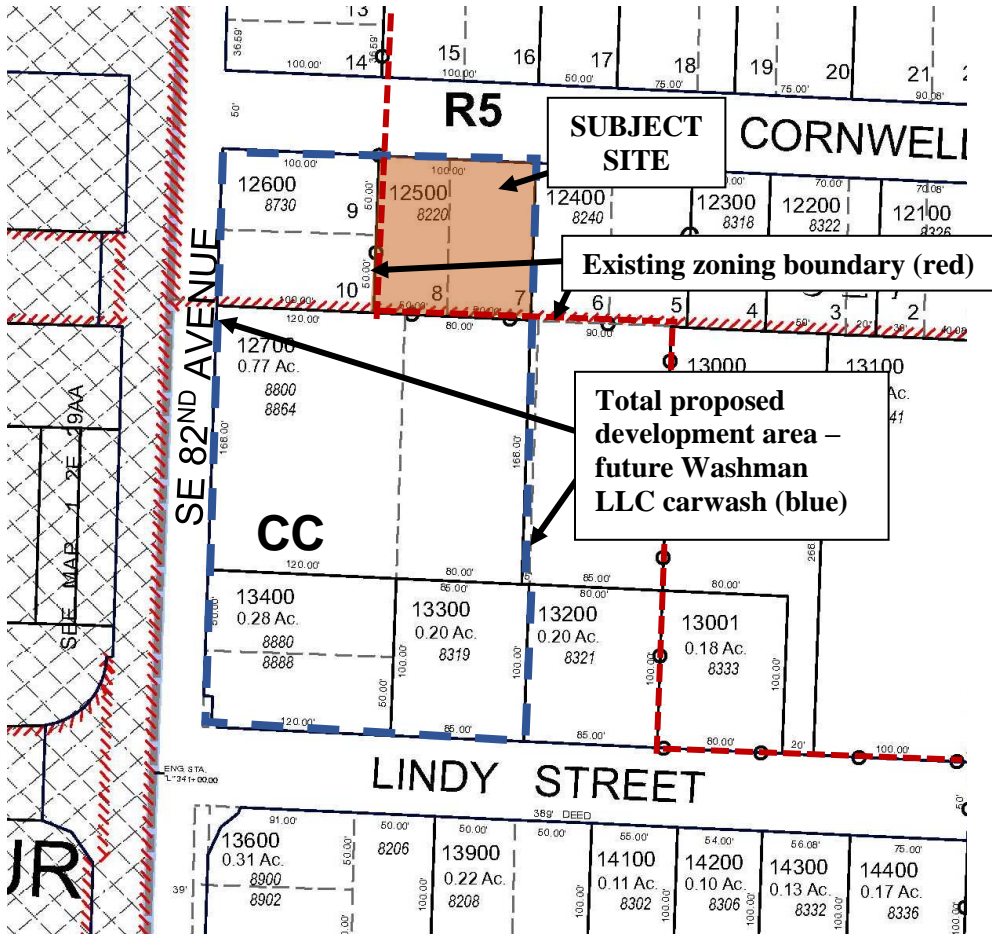
## **SECTION 3 – BACKGROUND INFORMATION**

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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 has reportedly been vacant for a number of years and is in very poor condition. 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).

Immediately south and west of the subject site are parcels that are currently being leased by or purchased by Washman LLC for eventual development of a carwash (see Exhibit 6). 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 (attached to this Staff Report), the subject site is planned for development in conjunction with adjacent properties being leased and/or purchased by Washman LLC and that about SE 82<sup>nd</sup> Ave and Lindy Ave. This development would include a car wash and associated vacuum stations.

It is Staff's understanding, based on information discussed in the pre-application conference, that Washman LLC could develop a carwash facility only on the adjacent parcels that about 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.*

Also states in the application that 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. Attachments and Exhibits: The submitted application, including the applicant's narrative, is attached to this Staff Report. See Exhibit List following the last page of this report for additional information and any comments received.

## **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 this Staff Report.

### **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 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 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.

**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 Staff agrees represents a negligible loss in the overall supply of housing in the county. As noted by the applicant, *the loss of the potential of two dwelling units is not significant of material in the context of the housing potential that exists in Clackamas County.* (p.4 application narrative) and in the 1/16/19 Johnson Economics LLC memorandum (Exhibit 7), *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, Staff finds the information summarized below and included in the Exhibit 8 demonstrate 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 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.

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.

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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.



Based on the information summarized above, Staff 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).

**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 relevant requirements of Statewide Planning Goal 12 have been satisfied.**

Summary:

**Staff finds that this application is not consistent with all applicable Statewide Planning Goals.**

**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 by Johnson Economics LLC, dated January 16, 2019, 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.

**This proposal is consistent with the relevant requirements in Title 1.**

Summary:

**Staff finds that this application is consistent with all applicable regulation in Metro's Urban Growth Management Functional Plan.**

### **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. Advertised public hearings are scheduled before the Planning Commission and the Board of County Commissioners to consider the proposed amendments.

**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 appropriated 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 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 Staff 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.

Summary:

**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 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.

If decision makers can reasonably conclude that the entire proposed development site is the appropriate locale for assessment then it is clear that this "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, *Miriam-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”. Staff 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; however, in this case, it is easy for Staff to view past aerial photography and permit history, which indicates 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, to the extent that decision makers are comfortable with assessing 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 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. Staff 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 Staff to be compliant with the Metro' code but that does not exempt it from having to also comply with the county's Comprehensive Plan.

To date, the applicant has not provided any evidence to demonstrate that the proposal does indeed meet the county policies for no loss of housing in the Clackamas Regional Center or any discussion about why these policies should not be interpreted to mean anything other than a simple literal interpretation of no loss of housing in the county.

**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 Staff 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 provided no findings or discussion regarding how policy could be met by this proposal. **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.*

The applicant provided no findings or discussion regarding how this policy is met by this proposal. Again, findings related to the loss of the two housing units were provided but both memorandums discussing this issue found the loss to be “negligible.” **This policy is 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 (Exhibit 3) 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.**

Summary:

**Staff 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 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. Staff 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.**