



CITY OF
PORTLAND, OREGON
 HEARINGS OFFICE

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REPORT AND RECOMMENDATION OF THE HEARINGS OFFICER

File No.: 94-00766 CP ZC NU AD

Applicants: Garden Home Enterprises; R. L. and M. J. Hayzlett; and Lamb's, Inc. (Attention: Colin Lamb, Vice President), 7410 S.W. Oleson Road, 97223.

Represented by: Larry Derr, 53 S.W. Yamhill, 97204; Colin Lamb, Vice President, Lamb's, Inc., 7410 S.W. Oleson Road, 97223; and Tom Gibbons, Shari's Restaurant, 8205 S.W. Creekside Place, Beaverton, 97005.

Hearings Officer: Elizabeth A. Normand.

Bureau of Planning Representative: Steve Gerber.

Bureau of Traffic Management Representative: Kevin Hottman.

Bureau of Transportation Planning Representative: Ken Lindmark.

Land Use Review: Comprehensive Plan and Zone Map Amendments and Nonconforming Use and Adjustment Reviews in order to expand an existing grocery store, relocate retail shops, and add residential units and a restaurant to the property, located at 7410 S.W. Oleson Road.

Report to Hearings Officer: November 28, 1994

Recommendation Mailed: December 22, 1994

Public Hearing: The hearing was opened in Meeting Room A, 1120 S.W. 5th Avenue, Portland, Oregon, on December 5, 1994, at 9:33 a.m. and closed at 11:38 a.m.

Testified at the Hearing: Terry Moore, Metro Councilor, District 13, and on her own behalf, 600 N.E. Grand Avenue, 97232-2736; Will Moore, 8440 S.W. Godwin Court, Garden Home, 97223; and Clifford Hamby, Right-of-Way Agent, Washington County, 155 N. 1st Avenue, #350-15, Hillsboro, 97124.

Number of Letters Received: Seven.

Bureau of Planning Recommendation to Hearings Officer: Approval with conditions. Denial of the proposed CN2 zone, but approval of a CN1 zone.

Hearings Officer Recommendation to City Council: Approval with conditions. Denial of the proposed CN2 zone, but approval of a CN1 zone.

Summary Sheet

I. GENERAL INFORMATION

Location: 7410 S.W. Oleson Road.

Legal Description: Tax Lots 1000, 1100, 1300, 1400, and 1600, Section 24, 1S, 1W, (Washington County).

Quarter Section: 3822.

Neighborhoods: CPO 3 (Washington County). Ash Creek (City of Portland).

Existing Zoning/Designations: CG, General Commercial; R1, Medium-Density Multi-Dwelling Residential; R7, Medium-Density Single-Dwelling Residential.

Proposed Zoning/Designations: CG, General Commercial; CN2, Neighborhood Commercial; R1, Medium-Density Multi-Dwelling Residential.

Land Use Review: Comprehensive Plan and Zone Map Amendments, Nonconforming Use Review, and Adjustment Reviews.

Proposal: The applicant proposes an expansion of an existing nonconforming grocery store, relocation of retail shops, eight new residential units, and addition of a restaurant to replace an existing gas station. The application is made at this time partially because of impending improvements to the intersection of S.W. Oleson and Garden Home Roads which are being planned and implemented by Washington County.

Description of Site and Vicinity: This intersection serves as a gateway to the City and as the community center for an extended neighborhood made up, primarily, of detached single-dwelling residential uses, stretching in all directions for up to a mile or more. Near this intersection the use of the land is more mixed and more intense, including: institutional uses (an existing school building now being used as a community center), commercial (grocery, retail, vehicle service, restaurant, office), open space/recreational (Oregon Electric Railway right-of-way) and residential (dominated by multi-dwelling residential).

Both S.W. Garden Home and Oleson Roads are developed to County road standards, with no curbs or sidewalks, as are virtually all other roads in the vicinity. Typical pedestrian access throughout this vicinity is provided by graveled shoulders, or not at all. Washington County plans for reconstruction of this intersection includes curbs and six-foot-wide sidewalks.

The site itself is relatively flat, with the existing Thriftway store occupying the eastern portion. The center of the site is occupied by a structure with mixed commercial uses in it. This structure will be demolished. The corner of the site at the intersection of S.W. Garden Home and Oleson Roads was developed with a gas station which has been demolished. Parking and auto maneuvering occurs throughout the site. Nearly all of the site not covered by a building is blacktopped. Little landscaping has been provided and the only area of noticeable vegetation is the undeveloped northern portion, next to the Oregon Electric Railway right-of-way. This northern portion of the site lies above the grade of the adjacent right-of-way, S.W. Oleson Road.

Land Use History: The majority of this site, not including Tax Lot 1600, was annexed to the City in 1969 (PC File No. 5566, Ordinance No. 131320). The Washington County zoning of C3, retail commercial, and R7, single-family residential, were converted to City

zoning of C2, general commercial and A2.5, multifamily residential. At the time this area was annexed it contained several nonconforming uses, including: 3 and 4-plex residential units, apartment uses, and a cannery. The building permit for the existing Lamb's Thriftway was applied for in 1980. Later the City Council adopted new zoning for the site, in conjunction with the adoption of the the Comprehensive Plan, effective January 1, 1981. The new zoning adopted by the City Council is reflected in the existing zoning for the site (Exhibit B-1), including the R1, Medium-Density Multi-Dwelling Residential Zone, which made the approved store construction nonconforming.

The northern portion of the site, Tax Lot 1600, was annexed to the City in 1981, (PC File No. 7057A, Ordinance No. 152077). The Washington County single-family residential zoning was converted to the City R7, Single-Family Residential Zone, in accord with an agreement with Washington County for equivalent zoning upon annexation. The annexation ordinance requires a 15-foot setback from the Oregon Electric Railway right-of-way, which is still applicable. Parking or light, easily removed, recreational facilities are allowed in the setback. Although the Oregon Electric Railway right-of-way is no longer considered a possible light rail corridor, it does remain a recreational trail and part of the non-vehicular transportation system.

The Southwest Community Plan, begun in the spring of 1994, includes this intersection and surrounding properties within its study area. Reconfiguration of zoning patterns, due to the existence of commercial and multi-dwelling activities in inappropriate zones, is a possible outcome of the community planning process (Exhibit F-4).

II. ANALYSIS

The CG, General Commercial Zone, is intended to allow auto-accommodating commercial development in areas already predominantly built in this manner. This zone allows a full range of retail and service businesses with a local or regional market. Industrial uses are allowed, but are limited in size to avoid adverse effects different in kind or amount than commercial uses. This zone accommodates and allows the development, operation and expansion of a large array of retail uses, including the types of retail uses found here.

The R1, Medium-Density Multi-Dwelling Residential Zone, allows one dwelling unit per 1,000 square feet of site area, approximately 43 units per acre, with density as high as 65 units per acre if amenity bonus provisions are used. The retail activities within this zone are nonconforming. Expansion of the retail activities within this zone requires compliance with the approval criteria for nonconforming status and situations in PCC 33.258.075 and PCC 33.258.080. This zone also requires a setback from property lines adjacent to residential zones based upon the square footage of the wall of the building (Table 120-4). In this case an 11-foot setback applies to the eastern property line. Neither the existing store structure nor the proposed expansion meets the required setback. An adjustment has been requested to allow a one-foot setback along the eastern property line. The adjustment must meet the criteria in PCC 33.805.040.

The R7, Medium-Density Single-Dwelling Residential Zone, allows one dwelling unit on a 7,000-square-foot lot (approximately 6.2 units per acre), retail or commercial activities are not allowed. No retail or commercial activities presently occur in the portion of this site zoned R7. The applicant has requested a Comprehensive Plan and zone map amendment of this portion of the site to CN2, Neighborhood Commercial, requiring compliance with the approval criteria of PCC 33.810.040 and 33.855.050.

The CN2, Neighborhood Commercial, zone is intended for small commercial sites and areas in or near less dense or developing residential neighborhoods. The emphasis of the zone is on uses which will provide services for the nearby residential areas, and on other uses which are small scale. Uses are limited in intensity to promote their local orientation and to limit adverse impacts on nearby residential areas. Development is expected to be predominantly auto-accommodating. The CN2 Zone allows the uses proposed for this portion of the site, including: retail sales and service, office, and household living (residential).

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this process. The development standards will have to be met before a building permit is issued.

A. Zoning Code Approval criteria

33.810.050(A) Comprehensive Plan Map Amendment Approval Criteria.

Amendments to the Comprehensive Plan Map which are quasi-judicial will be approved if the review body finds that the applicant has shown that all of the following criteria are met:

1. The requested designation for the site has been evaluated against relevant Comprehensive Plan policies and on balance has been found to be equally or more supportive of the Comprehensive Plan as a whole than the old designation;

Findings:

Goal 2, Urban Development. This goal aims, in part, to "(m)aintain Portland's role as the major regional employment, population and cultural center..."

Policy 2.1, Population Growth. This request provides eight units which is all the units necessary to prevent a net loss of housing. Exhibit I-6 indicates that after dedication of additional right-of-way, the parcel size is reduced so that the housing potential is eight units. With preservation of the full housing potential, the proposal is equally supportive of this policy.

Policy 2.2, Urban Diversity. The proposal is supportive of this policy by providing for expanded commercial opportunity, while preserving the existing housing potential.

Policy 2.11, Commercial Centers. The proposed designation, neighborhood commercial, would be supportive of this existing commercial center and planning for this area. A designation for mixed commercial residential, would be even more supportive. It would set a precedent for a designation that is not only directly supportive of locally oriented commercial activity, but indirectly supportive through allowance for a higher density residential component, creating a greater intensity of use and activity, in turn, more supportive of the "Main Street" regional planning designation.

Policy 2.12, Transit Corridors. This proposal would preserve the existing mix of commercial activities in this node, while also preserving the existing residential potential. However the majority of the existing zoning in the immediate vicinity of this transit stop provides for medium- (R1) and low- (R2) density apartments. The proposal for a designation of neighborhood commercial is contradictory to a trend, begun with Washington County, to allow greater densities near this intersection and commercial node, than found in the exclusive detached single-dwelling residential development further removed from this community center. Within one-quarter mile of this

intersection, the generally accepted distance people will walk to use a bus, the densities will likely continue to increase, providing sufficient density to support transit oriented zoning. Such a concept is better supported by a designation that allows and supports a greater density, like mixed commercial residential.

Policy 2.13, Auto-Oriented Commercial Development. The neighborhood commercial designation has two possible implementing zones, CN1 and CN2. The applicant has proposed CN2 to implement the neighborhood commercial designation. Increased auto-oriented commercial opportunity with the CN2 zone complies with this policy inasmuch as both streets are district or neighborhood collector streets. However, this compliance is only valid "...where allowed densities will not support development oriented to pedestrians." A trend towards increased density, in the near vicinity of this commercial node, in combination with the existing multi-dwelling developments, reflective of recent City zoning and past County permitted development, is likely only to increase with the upgrade and remodeling of this commercial node.

The more recent City zoning does not reflect all of the dwelling units already in place, within approximately one-quarter mile of this intersection. In addition to the various multi-dwelling structures in the immediate vicinity of this node, the multi-dwelling residential development extends east to the intersection of S.W. Garden Home Road and Multnomah Boulevard and beyond, and north and south of this intersection along S.W. Oleson Road. The existing and allowed densities will "support development oriented to pedestrians." While the proposed neighborhood commercial designation could be considered appropriate in this situation, the proposed CN2 zone is not.

Policy 2.18, Utilization of Vacant Land. The development proposed is supportive of this policy in that it proposes full utilization of a vacant property.

Policy 2.21, Buffering. The proposed Comprehensive Plan and zone map amendment effects a parcel of land that is naturally buffered by the Oregon Electric Railway right-of-way from the existing multi-dwelling residential uses to the north.

Goal 3, Neighborhoods. This goal calls for stability and diversity of the City's neighborhoods, while allowing for increased density. This proposal provides the opportunity for stability, by preserving a quality environment for commercial uses, serving the surrounding neighborhood. The proposal preserves the existing density. The proposal is equally supportive of this goal.

Goal 4, Housing. This goal calls for diversity in the type, density and location of housing, to provide an adequate supply of safe, sanitary housing at various price or rent levels. This proposal would result in the opportunity for further diversity of housing in this neighborhood. The proposal is equally supportive of this goal.

Policy 4.8, Maintain Housing Potential. This proposal does provide for the preservation of all the housing potential identified on Tax Lot 1600.

Goal 5, Economic Development. The proposal is supportive of this goal, because of business retention, improved access and development supportive of public infrastructure investments (transit).

Policy 5.2, Business Development. This proposal will help to ensure the retention of established Portland businesses, which is supportive of this policy.

Policy 5.4, Transportation System. The development proposed takes into account transit/pedestrian and bicycle access at the intersection of two designated transit streets, and it will retain the only full service grocery store in the immediate area. Both of these consequences are supportive of this policy.

Policy 5.6, Area Character and Identity Within Designated Commercial Areas. This proposal includes voluntary private improvements to the physical environment within an established commercial area. These private improvements are being proposed in concert with public improvements to the transportation system, both of which will enhance this commercial areas identity. The proposal is supportive of this policy.

Goal 6, Transportation. The Office of Transportation, Division of Transportation Planning notes that the required parking for the proposed uses is 147 parking spaces. However, the 170 proposed parking spaces are justified in that this site has and will continue to provide overflow parking for the community center and other activities.

The neighborhood commercial designation proposed here is at least equally supportive of this policy as the existing medium-density single-dwelling residential designation. However, a mixed-commercial residential designation would be at least as supportive of transit and pedestrian needs and more in concert with recent residential development within one-quarter mile of this intersection.

Policy 6.4, Land Use/Transportation. The 2040 Plan, adopted by the Metro Council on December 8, 1994, identifies S.W. Garden Home and Oleson Roads as "Main Streets". S.W. Garden Home Road is identified as a "Main Street" from approximately S.W. 67th to 77th Avenues, and Oleson Road from S.W. Shirley to Canby Streets. Although the 2040 Plan does not provide mandatory approval criteria for this case, a "Main Street" designation is indicative of plans to maintain or create an intense, transit-supportive, pedestrian-oriented, mixed-use center. The neighborhood commercial designation is too limiting in terms of "Main Street" development. A mixed-commercial residential designation would allow for and encourage a greater intensity than would the neighborhood commercial, providing more of the intensity necessary for successful "Main Street" development.

Typically, such areas include multi-storied, mixed-use development, with buildings located close to or at the street property line and parking at the side or behind the structure. Extensive use of on-street parking is also typical. This area does not now display many of these characteristics, and it would be counterproductive to the on-going planning work to add a designation here that continues to cater to less intense development.

Auto-oriented zones, such as CN2, require minimum setbacks from the street, require a minimum amount of parking, allow parking between the structure and the street, and encourage low-intensity development in general. This area is already dominated by CG, general commercial zoning, which is an auto-oriented zone, despite the smaller lots available and shallow commercial zoning. Smaller lots are more suited to pedestrian-oriented development. Auto-oriented uses typically need larger lots for parking and maneuvering areas. Additional auto-oriented uses here will only worsen an already difficult parking situation.

The Southwest Community Plan staff (Exhibit F-4) note that "the CN2 zone is inappropriate for this site" and recommend application of the CM, Mixed Commercial

Residential Zone. The Southwest Community Plan staff argues that the "Main Street" designation in the Recommended Metro 2040 Plan, intends a transit-oriented area character. The CM zone is in accord with that intention, a transit/pedestrian-oriented zone. The Southwest Community Plan staff further note, in support of the CM zone:

"The CM zone is intended for busier streets but does not foster a strip commercial appearance. The type of development allowed in this zone will support transit use, provide a buffer between busy streets and residential neighborhoods as well as provide new housing alternatives."

Policy 6.7, Transit First. This proposed mix of commercial, employment and residential opportunities, on an existing transit route, supports this policy. However, while the specific proposal is not without transit and pedestrian-oriented aspects, the designation and zoning are the crucial issues. The proposal for a neighborhood commercial designation is not supportive of this policy, because of the limited intensity allowed by the regulations of the implementing zones.

Policy 6.9, Transit-Oriented Development. The applicant notes that "(t)his mixed use development with transit stops at the property and internal pedestrian ways connecting all parts of the development with the stops is supportive of this policy." However, the applicant proposes a neighborhood commercial designation, to be implemented by an auto-oriented zone, CN2. While the specific proposal is not without transit and pedestrian-oriented aspects, the designation and zoning are the crucial issues. The proposal for a neighborhood commercial designation is only nominally supportive of this policy.

Policy 6.16, Off-Street Parking. The Office of Transportation notes that the 170 parking spaces proposed could be considered "excessive" and, hence, out of compliance with this policy. Only 147 parking spaces are required by code. However, the additional parking spaces are justified because this site provides overflow parking for the community center and other nearby activities.

Goal 10. Plan Review and Administration

Policy 10.6, Amendments to the Comprehensive Plan Map. This policy requires that quasi-judicial requests to amend the Comprehensive Plan map be in compliance with the following:

- (1) Consistent and supportive of the appropriate Comprehensive Plan Goals and Policies,

The proposed neighborhood commercial designation, is not necessarily inconsistent with all of the applicable Comprehensive Plan goals and policies. In many instances identified above, a neighborhood commercial designation would be consistent with the goals or policies, but the proposed implementing auto-oriented CN2 zone is not. While the applicant's proposed development is not without transit and pedestrian-oriented aspects, the designation and zoning are the crucial issues to this review. Establishing a neighborhood commercial designation and auto-oriented zoning here, now, is counter to the long-range planning goals for this area.

The designation and zoning for the portion of this site for which this amendment of the designation and zone has been requested (Tax Lot 1600), was dictated by the Multnomah County zoning in place at the time of annexation to the City. The land use pattern for the surrounding properties was established by Washington County zoning at the time of annexation (1969), and later modified by the City of Portland (1981).

The existing pattern creates an island of R7, single-dwelling residential zoning (Tax Lot 1600) between R2, low-density multi-dwelling residential to the north and R1, medium-density multi-dwelling residential to the south. The existing land use pattern is incongruous, inasmuch as a small area of single-dwelling residential is surrounded by multi-dwelling residential, a physical relationship that is not a preferred market situation for single-dwelling residential development. The zoning pattern is made even more incongruous by the insertion of the R1 zoning in the middle of this site, south of Tax Lot 1600, making the Thriftway store a nonconforming use even as the site was being prepared for construction.

The R1 designation and zoning is an unfortunate result of timing. The land use survey, identifying this commercially zoned area as vacant and appropriate for multi-dwelling use, was done for the comprehensive planning process and preceded the permit application and start of construction by a matter of months. It was after the permit for the grocery store was applied for in 1980, that the adoption of the Comprehensive Plan Map and Zoning Maps (January 1, 1981) converted this portion of the site to R1. Following shortly thereafter (1981), Tax Lot 1600 was annexed, retaining zoning equivalent to the Washington County zoning, as required by agreement. Despite the agreement for equivalent zoning, the Bureau of Planning Staff was convinced (PC File No. 7057A) that Tax Lot 1600 should have been zoned for multi-dwelling residential use.

The unfortunate timing of events in 1980 and 1981, resulted in a pattern of Comprehensive Plan map designations, zoning and land uses that are poorly matched. The area with R7 (proposed CN2) zoning is 28 percent of the site area and presently vacant (proposed for mixed use), the R1 zoned area is 38 percent of the site area and includes the existing Thriftway store, and the CG zoned area is 34 percent of the site area and includes parking lots and an abandoned gas station (proposed to be removed and replaced by a restaurant). Despite this, the applicant has proposed only redesignation of the vacant property that these uses would expand into, Tax Lot 1600.

A better response to this situation would be for consolidation of zoning on this site, which the applicant clearly recognizes. However, in response to this situation the applicant states:

"Comprehensive Plan Policy 10.6, requiring provision for housing at the R1 density makes it impractical for the owner to seek a plan and zone map amendment for this portion of the property. The City should address the inequity of the situation through its legislative zoning review." (Exhibit A, pg 2)

There is an opportunity for the City to accomplish just such a review of this site, the Southwest Community Plan has been initiated and will include this site in considerations. While we cannot at this time know what the outcome of those considerations will be, the staff of the Southwest Community Plan has responded to this application (Exhibit F-4) and noted that the mixed-commercial residential designation, would be a better fit for this site than the proposed neighborhood commercial.

In light of the comments from the Southwest Community Plan staff, and the recommended 2040 Plan showing this site as a "Main Street" and community center, with transit supporting density, the proposed neighborhood commercial designation is not sufficiently intense to be compatible with the planned use and character for this area. The mixed commercial residential designation will be compatible with the planned use and character of this area..

- (3) Consistent with the Statewide Land Use Planning Goals, and

The City's Comprehensive Plan has been accepted by the State and thus is deemed to comply with the Statewide Planning Goals. In complying with the City's Planning Goals the proposal is also complying with these Statewide Planning Goals.

- (4) Consistent with any adopted applicable area plans adopted as part of the Comprehensive Plan.

There are no area plans for this area, adopted as part of the City of Portland Comprehensive Plan. This criterion does not apply.

A "Main Street" designation is indicative of plans to maintain or create an intense, transit-supportive, pedestrian-oriented, mixed use center. The addition of neighborhood commercial in this area would be counter to regional planning.

2. When the requested amendment is from a residential designation to a commercial, employment or industrial designation, or from the urban commercial designation to another commercial, employment, or industrial designation, the requested designation will not result in a net loss of potential housing units.

Findings: The maximum density is 1 units per 7,000 square feet of site area. After dedication of additional right-of-way to Washington County, the potential housing on this site is eight units.

- c. Replacement of potential units may be accomplished through any of the following means:
- (1) Rezoning and redesignating land off site from a commercial, employment, or industrial designation to residential;
 - (2) Rezoning and redesignating lower-density residential land off site to higher-density residential land;
 - (3) Rezoning land on or off site to the CM zone;

- (4) Building residential units on the site or in a commercial or employment zone off site. When this option is used to mitigate for lost housing potential in an RX, RH, or R1 zone, only the number of units required by the minimum density regulations of the zone are required to be built to mitigate for the lost housing potential; or
 - (5) Any other method that results in no net loss of potential housing units, including units from the housing pool as stated in 33.810.060 below.
- d. When housing units in commercial or employment zones are used to mitigate for lost housing potential, a covenant must be included that guarantees that the site will remain in housing for the credited number of units for at least 25 years.

Findings: The applicant has proposed to build 8 apartment units. This requirement is met.

The applicant states that construction of the apartment units will occur at the same time as redevelopment of the shopping center, but no covenant guaranteeing that the site will remain in housing has been submitted. Such a covenant is necessary for compliance with this criterion.

The CM, Mixed Commercial/Residential Zone, promotes development that combines commercial and housing uses on a single site. It is intended to allow development on busier streets without fostering a strip commercial appearance. This zoning will support transit use, provide a buffer between busy streets and residential neighborhoods, and provide new (or in this case retained) housing opportunity. The allowed commercial uses include: retail sales and service, and office, which would allow the proposed commercial uses. The commercial uses are limited only in that there must be a one-to-one correlation between commercial floor area and residential floor area. A greater floor area ratio (1:1) is allowed in the CM Zone than in the proposed CN2 Zone (0.75:1). Residential and commercial uses may be combined in the same structure, typically with commercial on the ground floor and residential above, or the uses may be in separate structures, as proposed.

Additionally, the CN1 zone is more supportive of the recommended 2040 Plan and more in accord with the comments from the Southwest Community Plan staff, because it provides for pedestrian-oriented development and use. The CN2 Zone is defined as an auto-oriented zone. The proposed development pattern is more pedestrian-oriented than is the existing development pattern; however, these criteria apply to designation and zoning, not the development pattern.

33.855: Zoning Map Amendments

33.855.050 Approval Criteria for Base Zone Changes. An amendment to the base zone designation on the Official Zoning Maps will be approved if the review body finds that the applicant has shown that all of the following approval criteria are met:

- A. **Compliance with the Comprehensive Plan Map.** The zone change is to a corresponding zone of the Comprehensive Plan Map.
 1. When the Comprehensive Plan Map designation has more than one corresponding zone, it must be shown that the proposed zone is the most appropriate, taking into consideration the purposes of each zone and the zoning pattern of surrounding land.

Findings: The neighborhood commercial designation sought by the applicant has two implementing zones, CN1 and CN2. The proposed CN2 zone is an auto-oriented zone intended for "less dense" neighborhoods, while the CN1 zone is a pedestrian-oriented zone intended for "dense" neighborhoods. The immediate vicinity is characterized by numerous multi-dwelling uses and significant amounts of multi-dwelling zoning, creating a relatively "dense" residential character. The CN2 zone intended for "less dense" neighborhoods is not appropriate and should be denied. Also, given the regional planning effort at Metro, in which this area has been designated as a "Main Street" area, the pedestrian-oriented CN1 zone would be the appropriate implementation of the neighborhood commercial designation.

2. Where R zoned lands have a C, E, or I designation with a Buffer overlay, the zone change will only be approved if it is for the expansion of a use from abutting nonresidential land. Zone changes for new uses that are not expansions are prohibited.
3. When the zone change request is from a higher-density residential zone to a lower-density residential zone, or from the CM zone to the CS zone, then the approval criterion in 33.810.050 A.2 must be met.

Findings: These criteria do not apply.

B. Adequate public services. Public services for water supply, transportation system structure and capacity, and police and fire protection are capable of supporting the uses allowed by the zone or will be capable by the time development is complete, and proposed sanitary waste disposal and stormwater disposal systems are or will be made acceptable to the Bureau of Environmental Services.

1. Adequacy of services applies only to the specific zone change site.
2. Adequacy of services is based on the projected service demands of the site and the ability of the public services to accommodate those demands. Service demands may be determined based on a specific use or development proposal, if submitted. If a specific proposal is not submitted, determination is based on City service bureau demand projections for that zone or area which are then applied to the size of the site. Adequacy of services is determined by the service bureaus, who apply the demand numbers to the actual and proposed services to the site and surrounding area.

Findings:

- **Water Supply:** The Water Bureau (Exhibit F-2) notes that this site has several existing water services and additional water supply is available from City of Portland water mains. Water supply for fire, commercial and/or residential uses is more than adequate.
- **Sanitary Sewage and Stormwater Disposal:** The Bureau of Environmental Services (Exhibit F-8) notes existing adequate sanitary sewer lines available in both S.W. Garden Home and Oleson Roads; in the absence of a public storm sewer, stormwater disposal must be to an approved on-site subsurface system or to a public storm sewer built in conjunction with the intersection and street improvements; and, lastly, warn that erosion control plan will be necessary, prior to issuance of a building permit.

- **Transportation Capabilities (Streets):** The Transportation Planning Division of the Office of Transportation notes that S.W. Garden Home Road, east of S.W. Oleson Road is designated a district collector traffic street, minor transit street, bicycle path, and pedestrian path. S.W. Oleson, north of S.W. Garden Home Road is a neighborhood collector traffic street, minor transit street, bicycle path, and pedestrian path. Washington County designates these streets, outside of Portland's jurisdiction, as minor arterials.

Tri-Met Line No. 45, serves this area, connecting downtown Portland with Washington Square.

Washington County has scheduled a complete reconstruction and expansion of both S.W. Oleson and Garden Home Roads, in the immediate vicinity of their intersection. Curbs, sidewalks and additional turn lanes will be constructed, as well as new signalization installed.

Questions have been raised regarding the adequacy of the proposed six-foot sidewalks. Six feet does not ensure an unobstructed pathway for pedestrians when bus shelters and street trees will be placed within that six feet. Ten-foot sidewalks would provide the unobstructed pathway needed to encourage pedestrian use of the sidewalks. The five foot bus shelters will leave at least five feet for pedestrians. Although some testimony indicated that 6 feet was desirable to really support pedestrian use, a reduction to five feet for the one bus shelter will not substantially interfere with the open pathway of a ten-foot sidewalk. Street trees will not significantly obstruct a 10-foot-wide sidewalk.

Although there may be street furniture placed outside the espresso bar on the south end of the expanded Thriftway store, there is an additional 10 feet of area between the 10-foot sidewalk and the store. This area can be paved and provided adequate space for such furniture so there will be no obstruction of the public sidewalk.

A 15-foot sidewalk is not justified at this site. Although such a requirement might encourage Washington County to consider narrowing the vehicle right-of-way, there is no guarantee that such a result would occur, and not substantial evidence to show that such a result is desirable. A requirement for a wider sidewalk might simply preclude the proposed design of the site, if Washington County could or would not provide more right-of-way for the sidewalk by narrowing the travel lanes. And the design standards for the redevelopment of the vehicular right-of-way are really not at issue in this proceeding. The proposed design has been found adequate to serve the traffic generated by the proposed uses. That is all that is necessary for this proceeding.

It has also been suggested that the two driveways into the site should be lined up with existing roadways and driveways on the other side of Oleson Road and Garden Home Road. In particular, it was proposed that the driveway on S.W. Garden Home Road be lined up with S.W. 74th, and a pedestrian crossing created at this location. However, Washington County indicates that pedestrian crossing should be focused at the intersection of Oleson Road and Garden Home Road and that additional crossings are not appropriate. The County has concluded that the driveway should be to the east of 74th to create more stacking distance for turning vehicles and so as to not create another four-way intersection at 74th.

The County is working with the applicant to line up the driveways on both sides of S.W. Oleson Road, but will also design the accessways without a pedestrian crossing, again orienting pedestrian traffic to the main intersection of Oleson and Garden Home Roads.

With 10-foot-wide sidewalks, the transportation capabilities will be more than adequate for the designation, zoning and construction proposed.

- **Police and Fire Protection:** Both the Police Bureau and the Fire Bureau indicate that services are adequate to serve the proposal.

33.258: NONCONFORMING USES AND DEVELOPMENT

33.258.075 Determination of Legal Nonconforming Status Review

- A. Purpose.** This review will determine if a use or site has legal nonconforming situation rights. In addition, it will determine what the current legal use is, based on the use categories in Chapter 33.920.
- B. When this review is required.** Determination of Legal Nonconforming Status Review is required where a land use review or building permit is requested, and the applicant does not provide standard evidence or the Director does not find the evidence to be satisfactory (see 33.258.038). This review also may be requested by an applicant when it is not required.
- C. Procedure.** Determination of Legal Nonconforming Status Reviews are processed through a Type II procedure.
- D. Approval criteria.**
 - 1. The legal status of the nonconforming situation will be certified if the review body finds that:
 - a. The nonconforming situation would have been allowed when established; and
 - b. The nonconforming situation has been maintained over time.
 - 2. The review body will determine, based on the evidence, what the current legal use is, using the definitions in Chapter 33.910 and the use categories in Chapter 33.920.

Findings: The alleged nonconforming portion of this site is the grocery store. The grocery store applied for and received a permit for construction in 1980, under Washington County's retail commercial, C3 zoning, which permitted the proposed grocery store. Later, on January 1, 1981, the City Council adopted the Comprehensive Plan and with it a redesignation and rezoning of a large portion of this site to a medium-density multi-dwelling residential designation and R1 zoning. It was this latter action that creates the present nonconforming status of this grocery store.

The applicant has submitted materials (Exhibit A-2) showing continuous use.

The current use is legally a grocery store, included in the use category Retail Sales and Service. It is a legal nonconforming use in the R1 zone.

33.258.080 Approval Criteria for Nonconforming Use Reviews

- A. **Procedure.** This review is processed through a Type III procedure because it is in an R zone.
- B. **Approval criteria.** The request will be approved if the review body finds that the applicant has shown that all of the following approval criteria are met:
1. With mitigation measures, there will be a net decrease in overall detrimental impacts (over the impacts of the previous use or development) on the surrounding area taking into account factors such as:

- a. The hours of operation;

Findings: The hours of operation are not proposed for change. The store currently operates from 6 a.m. to 12 a.m. daily and has operated on a 24-hour basis. The hours of operation will not change. This criterion is met.

- b. Vehicle trips to the site and impact on surrounding on-street parking;

Findings: Vehicle trips to the site will remain the same, however, relocation and reduction of the number of driveways from eight to two will result in more efficient access to and from the site, reducing the impact of access on the adjacent streets. On-street parking has not been noted as a problem, and this redevelopment will not change that situation. Expansion of the store will result in an overall reduction of vehicle miles traveled, by reducing the need for neighborhood residents to travel out of the neighborhood to other larger stores. Reconfiguration of the site will also reduce vehicle travel by providing better on-site circulation, reducing the incidence of vehicle travel from one part of the site to another. This criterion is met.

- c. Noise, vibration, dust, odor, fumes, glare, and smoke;

Findings: The store and parking area produce negligible noise, vibration, dust, fumes, glare or smoke. Reconfiguration of the trash area and acquisition of a trash compactor will further reduce any incidental on-site trash or odors. This criterion is met.

- d. Potential for increased litter;

Findings: Reconfiguration of the trash area and acquisition of a trash compactor will further reduce any incidental on-site trash or litter. This criterion is met.

- e. The amount, location, and nature of any outside displays, storage, or activities; and

Findings: Current activities and use of the site include display of plant and produce in a tent, at times, and a Tualatin Hills Little League equipment storage box at the southeast corner of the store. Reconfiguration of the site and the addition of wider covered walkways will eliminate need for the tent and will allow the Little League equipment storage box to be moved out of sight. This criterion is met.

2. If the nonconforming use is in an OS or R zone, and if any changes are proposed to the site, the appearance of the new use or development will not lessen the residential character of the OS- or R-zoned area. This is based on taking into account factors such as:

a. Building scale, placement, and facade;

Findings: The proposed new center, including the store subject to this review, will have an integrated and designed character, whereas the existing structures and configuration have no such design or integration. The existing site has little cohesive orientation, with parking occurring in separate areas, including adjacent to the apartments to the east. The proposed configuration places parking central to the various proposed commercial and residential structures which will, in effect, screen the apartments to the east with the store expansion. The south wall of the store, presently blank, will be extended out near the right-of-way and proposed sidewalk. The new south wall of the store will have windows and an entrance, enhancing the appeal and function of the store from the sidewalk and right-of-way. A large reader board, currently located in the R1-zoned property, will be replaced by a more attractive sign on the CG zoned property. This criterion is met.

b. Parking area placement;

Findings: Parking areas will be consolidated in the center of the site and buffered by the surrounding commercial uses from adjacent residential uses, including the proposed residential units on the north portion of this property. Currently, parking areas are scattered about the site, with a significant negative effect on the apartments to the east. This criterion is met.

c. Buffering and the potential loss of privacy to abutting residential uses;

Findings: As noted above, buffering from the commercial activities and parking area will be improved with this reconfiguration. This criterion is met.

d. Lighting and signs; and

Findings: As noted above, the existing reader board, on R1 zoned property will be replaced by a new sign on the CG zoned property. No additional parking lot lighting will occur within the R1 zoned area, and lighting south of the store will be eliminated. This criterion is met.

3. If the nonconforming use is in a C, E, or I zone, and if any changes are proposed to the site, the appearance of the new use or development will not detract from the desired function and character of the zone.

Findings: The nonconforming use is not located in a C, E, or I zone. This criterion is not applicable.

33.805.040 Adjustment Approval Criteria. Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A through F stated below have been met.

This adjustment request is to reduce the required 11-foot setback along the east property line to one foot. The existing store is located one foot from this property line, and this proposal includes expansion of the existing store to the south, continuing the same building wall location and alignment. The property to the east is developed as multi-dwelling residential, with three structures located approximately 10 feet from the subject property line.

- A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified;

Findings: The purpose of the setbacks regulation to be modified includes the following:

- Maintain light, air, separation for fire protection and access for fire fighting;
- Maintain the general building scale and placement of buildings;
- Promote a reasonable physical relationship between structures;
- Promote options for privacy for neighboring properties;
- Front yard requirements are intended to promote open, visually pleasing front yards; and
- Provide flexibility in siting of structures to achieve compatibility with the neighborhood and topography, and allow for required outdoor areas and architectural diversity.

The setback of the adjacent apartment building provides light to apartment windows, air and separation for fire protection. The relationship between buildings remains essentially the same, the store building will not be increased in height and no structure will be constructed closer to the apartment buildings than is now the case. The privacy of residents in the apartment buildings will be enhanced; expanding the store to the south will eliminate an existing parking lot with day and night activity and nighttime lighting. The east wall of the store does not include windows or other openings to effect the privacy of the apartments residents. Adjustment of the required setback will provide the needed flexibility to improve compatibility with adjacent uses. This criterion is met.

- B. If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in a C, E, or I zone, the proposal will be consistent with the desired character of the area;

Findings: The appearance of the store and this commercial center will be significantly improved with this proposal, enhancing the livability of the nearby residences. This criterion is met.

- C. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone;

Findings: Only one adjustment is requested. This criterion does not apply.

- D. City-designated scenic resources are preserved;

Findings: This criterion does not apply, no scenic resources effect this site.

- E. Any impacts resulting from the adjustment are mitigated to the extent practical; and

Findings: Elimination of the parking lot adjacent to the next door apartment building will be significant mitigation, resulting in improved livability for the residents of the apartment building. This criterion is met.

- F. If in an environmental zone in the Columbia South Shore Plan District, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable.

Findings: The site is not effected by environmental zones, nor is it in the Columbia South Shore Plan District. This criterion does not apply.

B. PLANS AND POLICIES

Transportation Planning Rule

Portions of the State Transportation Planning Rule became directly applicable to land use decisions and limited land use decisions May 6, 1994. Applicable provisions address pedestrian and bicycle facilities, transit improvements, and reduced dependence on the automobile. These provisions will apply directly to land use decisions until such time that the City amends its Planning and Zoning, and Subdivision regulations to comport with state standards.

Required Pedestrian and Bicycle Facilities [OAR 660-12-045(3)]

- A. Bicycle parking facilities as part of new multi-family residential developments of four units or more, new retail, office and institutional developments, and all transit transfer stations and park and ride lots.

Findings: The proposal displays bicycle parking. This regulation is met as long as the bicycle parking complies with the requirements of Chapter 33.266, Parking and Loading.

- B. Facilities providing safe and convenient pedestrian and bicycle access within and from new subdivisions, planned developments, shopping centers and industrial parks to nearby residential areas, transit stops, and neighborhood activity centers, such as schools, parks and shopping. This shall include:
1. Sidewalks along arterials and collectors in urban areas;
 2. Bikeways along arterials and major collectors; and
 3. Where appropriate, separate bike or pedestrian ways to minimize travel distances within and between the areas and developments listed above.

Findings: Improvements planned for this intersection by Washington County will substantially improve the safety and convenience of pedestrian and bicycle access. There are no such facilities now. Additionally, this proposal includes a complete on-site pedestrian circulation system. However, the proposed six-foot sidewalks are not adequate to provide an unobstructed pedestrian pathway. As previously discussed, with 10-foot sidewalks, the facilities will be adequate. This regulation is met.

- C. "Safe, convenient and adequate" means bicycle and pedestrian routes, facilities and improvements which:
1. Are reasonably free from hazards, particularly types or levels of automobile traffic which would interfere with or discourage pedestrian or cycle travel for short trips;
 2. Provide a direct route of travel between destinations such as between a transit stop and a store; and,

3. Meet travel needs of cyclists and pedestrians considering destination and length of trip.

Findings: The proposed six-foot-wide sidewalks, although exceeding Washington County standards, are insufficient for the kind of commercial development envisioned for this area. Commercial areas, served by transit, can generate substantial amounts of pedestrian traffic. Six-foot sidewalks do not accommodate the potential for increased pedestrian traffic in the future.

Additionally, the placement of various fixtures necessary for information, safety, or street function (telephone poles, light standards, fire hydrants, standpipes, signs, street trees, etc.) within or next to the sidewalk, further impair the ability of these sidewalks to serve an active and successful community center, or provide for a convenient or safe feeling environment for pedestrians.

Additional sidewalk width is needed to provide for safe and convenient pedestrian access. A six-foot sidewalk, adjacent to an arterial and with no parking lane, places pedestrians uncomfortably close to moving automobiles. Washington County designates S.W. Oleson, south of this intersection, and Garden Home Road, west of this intersection, as minor arterials. The City of Portland designates S.W. Oleson north of this intersection as a neighborhood collector and S.W. Garden Home, east of this intersection as a district collector. Collector streets are roughly equivalent to minor arterials. Typically accepted treatments for sidewalks in commercial districts along arterials include, separation of the sidewalk from traffic either by a parking lane, with parked cars, or a wider sidewalk with or without street trees. Where on-street parking is not allowed, a wider sidewalk provides a greater feeling of safety and convenience, particularly in conjunction with street trees. A parking strip (landscaping other than just trees) between the curb and sidewalk presents difficulties for getting in and out of cars, where on-street parking is allowed and is typically considered appropriate only for residential areas.

The "Best Management Practices, Working Draft", Oregon Department of Transportation, August 1992, page 22, notes the following:

"Additional width is required in areas with higher volumes of pedestrian traffic - commercial areas, downtown CBDs, near schools, higher density residential, etc., and on collector and arterial streets with higher traffic volumes and speeds."

This document, created to help local jurisdictions implement the Transportation Planning Rule, identifies the minimum sidewalk width for a collector street adjacent to commercial activities as 8 feet, and 10 feet for arterials.

To accommodate the existing conditions, a 10-foot-wide sidewalk should be provided. The absence of on-street parking along these frontages places an additional burden on the pedestrian environment, by the lack of a comfortable separation from traffic on the adjacent arterial/collector street. These roads have posted speeds of 35 miles per hour, and not surprisingly, many cars will exceed the posted speed limit. Additional sidewalk width is necessary to avoid discouraging pedestrian traffic.

An additional four feet of sidewalk can be provided on the private property, through easement, or with the permission and cooperation of Washington County, may be provided for by an expansion of the planned right-of-way.

- D. Provision of internal pedestrian circulation in new office parks and commercial developments through clustering of buildings, construction of pedestrian ways, skywalks, where appropriate, and similar techniques.

Findings: The applicant's proposal shows a complete and usable internal pedestrian system, providing connections between on-site activities and between these activities and the public sidewalk. This regulation is met.

Required Transit Improvements [OAR 660-12-045 (4) (a) through (e)]

- A. Design of transit routes and transit facilities to support transit use through provision of bus stops, pullouts and shelters, optimum road geometry, on-road parking restrictions and similar facilities, as appropriate.

Findings: Tri-Met will make a determination on whether any transit facilities are required. In the absence of such a determination, this criterion is not applicable.

- B. New retail, office, and institutional buildings at or near existing planned transit stops to provide preferential access to transit through the following measures:

1. Orienting building entrances to the transit stop or station;
2. Clustering buildings around transit stops; and,
3. Locating buildings as close as possible to transit stops.

Findings: Two bus stops are near this development. One is south of the site, across S.W. Garden Home Road, on S.W. Oleson Road. The other is at the east edge of the site on S.W. Garden Home Road.

There are three structures on this site that must be analyzed under this regulation: (1) existing grocery store, to be expanded; (2) proposed restaurant; and (3) proposed multiple tenant, retail structure:

- (1) Expansion of the existing grocery store, on the east side of this property, includes bringing the exterior wall out to within 15 feet of the S.W. Garden Home right-of-way, including windows and an entrance, and an on-site sidewalk all along the west front of the store. With the expansion the building will be closer to the bus stop, and an entrance will provide access to the public sidewalk. The grocery store building will be "as close as possible" to the transit stop on the east edge of the site, in light of the fact that it is an existing building. The building entrances are oriented to this bus stop. A new entrance will be in the facade closest to the bus stop, and the existing entrance connects to Garden Home Road via an on-site sidewalk. This building and its entrances are in accord with this regulation, particularly given that the development is an expansion and not a new building.

The plans submitted show an area of landscaping between the building facade and private sidewalk, and the public sidewalk. This landscaping should be eliminated and the private sidewalk should be constructed all the way out to and connected with the public sidewalk, to provide a continuous pedestrian area. A continuous pedestrian area will create better access and visibility from the store to the adjacent bus stop.

- (2) The proposed restaurant at the southwest corner of the site will be just across S.W. Garden Home from the bus stop on S.W. Oleson Road. The building will be as close as possible to that bus stop, and sidewalk/crosswalk facilities will provide convenient access between the restaurant and that bus stop. The sidewalk on Garden Home Road will also provide access to the bus stop on the east edge of the site, although that bus stop is farther away than the Oleson Road bus stop.

The site plan shows the entrance to this restaurant on the north side of the building, facing away from both bus stops. A representative of the national restaurant franchise provided several reasons for the location of the door. The representative pointed out that: 1) it faces and will be visible to the largest volume of traffic; 2) the building design is set as a Shari's Restaurant and rotating the building will put the service drive in a location that would result in trucks blocking drive lanes within the parking lot; 3) this orientation places the handicapped parking spaces within easy access of the door; and 4) the site slopes downward towards Garden Home Road and orienting the door to the south would be more difficult from a design and construction standpoint. The franchise representative also pointed out that there are sidewalks within the site that will connect the restaurant to Lamb's Thriftway. Also, the difference in distance to the Oleson Road bus stop is only between 10 and 20 feet, and the distance to the other bus stop is only about 40-50 feet more.

This entrance orientation does, however, result in an entrance that is most removed from and less visible to the bus stops. It also only faces one direction of traffic. Locating the entrance so that it faces south towards Garden Home Road would make it closer to both bus stops and visible to traffic on both Oleson and Garden Home Roads. The traffic on S.W. Oleson Road is in large part commuter traffic or shopper traffic going and coming from Washington Square. In either case, the individual vehicles typically travel both ways on S.W. Oleson Road. In the majority of cases, drivers will see the entrance whether it is oriented north or south. There is also argument that the larger volume of traffic turns from Garden Home Road onto Oleson Road heading south. This traffic would not see the entrance if it is oriented to the north towards Oleson Road. A southerly orientation also places the entrance nearest S.W. Garden Home Road where it is visible from that street and the public sidewalk that leads to the bus stops to the east. Although the applicant has explained why the plans show the entrance oriented to the north, those reasons do not justify failure to comply with the requirement for orienting the entrance to the transit stops. None of the reasons given preclude changing the orientation of the door. It may be more difficult, and more expensive, but the evidence indicates the southerly orientation will actually make the entrance visible to more drivers and pedestrians and more easily accessed from both transit stops. Changing the orientation of the entrance will better serve the stated purpose of the franchise and satisfy the requirements of the Transportation Rule.

- (3) The proposed new retail building on the northern portion of this site is located at the back of the site in relation to the bus stops. The building itself is removed almost as much as possible from the nearest bus stops. It is located adjacent to S.W. Oleson Road, which will have a public sidewalk linking to the intersection and crosswalk to the bus stops on S.W. Oleson Road, but it is not oriented to S.W. Oleson Road. It is oriented and connected to the on-site sidewalk system, in turn connecting it to both S.W. Oleson and Garden Home Roads and the bus stops, indirectly. Despite these connections, the orientation for this structure and its entrances is essentially to the parking lot.

However, the reality of this site is that not every building within the site can be located adjacent to the bus stops. The site must be treated as a cluster, with the location and orientation of the buildings taken as a whole in relation to the bus stops. The site is clearly integrated, the structures are connected each to the other and to the public sidewalks, and parking is shared. The residential building is located away from from the transit stops, so the commercial buildings can better meet the requirements of this rule. While the retail building is located more than 400 feet from either bus stop, the grocery store and the proposed restaurant are located "as close as possible" to the nearby bus stops; the grocery store being adjacent to the nearest bus stop, and the restaurant just across the street from the nearest bus stop. By far, the majority of commercial floor area in this cluster is located close to the S.W. Garden Home Road frontage.

One of the prominent features of a typical "Main Street" such as is the proposed future vision for this area, is a wall of development, creating an enclosure or definition of the public right-of-way, including pedestrian areas such as sidewalks or entrance plazas. This cluster does not provide either the physical reality of that enclosure or, in design terms, the "sense" of such a wall. It could. There is sufficient frontage along S.W. Garden Home Road to include the retail shops. However, this would require the parking to be adjacent to the residential units. As proposed, the retail structure will provide a buffer between the commercial parking lot and the residential units. In addition, there is also room along the Garden Home Road frontage for development at some later date. As an integrated whole, the proposed development will be clustered around the two nearby bus stops.

- C. New industrial and commercial developments to provide preferential parking for carpools and vanpools.

Findings: The employment generated by the proposed uses is not sufficient to warrant designated carpool or vanpool parking. This regulation does not apply.

- D. An opportunity for existing development to redevelop a portion of existing parking areas for transit oriented uses, including bus stops and pullouts, bus shelters, park and ride stations, transit oriented developments, and similar facilities, where appropriate.

Findings: Redevelopment of the site includes both public sidewalks and an on-site pedestrian circulation system that will significantly enhance its transit/pedestrian friendliness. The nearest bus stop, at the southeast corner of this site, will be specifically enhanced by the construction of a private sidewalk area in conjunction with the public sidewalk. Moving that bus stop closer to the site will create a better connection, and allow for other pedestrian-oriented activities, such as sidewalk dining, or street furniture. The pedestrian friendliness of the area will also be enhanced by the provision of windows in this facade of the store. This regulation is met.

- E. Road systems for new development which can be adequately served by transit, including provision of pedestrian access to existing and identified future transit routes. This shall include, where appropriate, separate bicycle and pedestrian ways to minimize travel distances.

Findings: Tri-Met will make a determination on whether any transit facilities are required. In the absence of such determination this criterion must be considered not applicable.

Reduce Reliance on Automobile [OAR 660-12-045 (5) (d)]

- D. Require all major industrial, institutional, retail and office developments to provide either a transit stop on site or connection to a transit stop along a transit trunk route when the transit operator requires such an improvement.

Findings: The proposed site configuration provides for connection to the nearest bus stops. This regulation is met.

III. CONCLUSIONS

AMENDMENT OF COMPREHENSIVE PLAN MAP DESIGNATION. The proposed Neighborhood Commercial designation is equally or more supportive of the Comprehensive Plan goals and policies than is the existing Medium-Density Single-Dwelling Residential designation, but only if implemented through the CN1, pedestrian-oriented neighborhood commercial zone, rather than the CN2, auto-oriented neighborhood commercial zone as proposed. This proposal does provide mitigation for the loss of all eight potential dwelling units. However, the proposal does not assure the development and continuation of the proposed dwelling units. The applicant needs to provide a covenant guaranteeing the continuance of the housing.

The applicant has justified the requested 170 parking spaces in that the parking lot receives use from other than just shoppers, including overflow from the community center across S.W. Oleson, and other activities. The proposed 170 spaces is also a more than 10 percent reduction from the existing 190 spaces.

AMENDMENT OF ZONING MAP. The proposed CN2 zone is an auto-oriented zone intended for "less dense" neighborhoods, while the CN1 zone is a pedestrian-oriented zone intended for "dense" neighborhoods. The immediate vicinity is characterized by numerous existing multi-dwelling uses and significant amounts of multi-dwelling zoning, creating a "dense" residential character. The CN2 zone, intended for "less dense" neighborhoods, is not appropriate. Also, although the Metro 2040 Plan may not be mandatory approval criteria, this area has been designated as a "Main Street" area. The pedestrian-oriented CN1 zone would be the appropriate implementation of the neighborhood commercial designation under both the City Comprehensive Plan and the Metro regional planning.

With the addition of 10-foot sidewalks, public services are adequate for the proposed uses, or other uses allowed by the CN1, CN2 or CM zones.

EXPANSION OF NONCONFORMING USE. The grocery store is a legal nonconforming use. The building permit for construction of the store was issued prior to this site receiving a multi-dwelling residential designation. The store has been in continuous use since that time.

The proposed store expansion meets the approval criteria for expansion of nonconforming uses by reducing the impacts of parking and parking lot activity on the adjacent apartment building, and by the relocation of the trash receptacle and the Little League's storage box. The new building facade will be an improvement over the existing. It will orient more directly to the adjacent sidewalk and bus stop, it will have an entrance at the street, and it will have ground floor windows. Signage now occurring in the R1-zoned area will be redone and located in the CG zone. Parking is consolidated and provided with better separation from surrounding uses.

The housing potential of this portion of the site is not lost by the continued existence of the nonconforming use. The potential remains although it is not realized while the site is in a nonconforming use. The code does not require replacement of housing units not developed on a nonconforming site.

To promote the pedestrian environment, the proposed landscaping between the south facade of the proposed grocery store and the public sidewalk should be eliminated. Providing a continuation of the public pedestrian facilities, as would be required of development in the CN1, CO1, CM and CG zones (Section 33.130.240, Pedestrian Standards), will make access and visual recognition easier and more convenient. It will also create an opportunity for "sidewalk" activity, further promoting the pedestrian environment.

ADJUSTMENT REVIEW. The adjustment requested, in combination with the other changes proposed, equally or better meets the purpose of the required setback. The negative impacts of this commercial center on the apartments to the east, including those impacts from the parking lot, parking lot activity and trash storage, will be eliminated by this proposal. The adjustment request meets the applicable criteria.

STATE TRANSPORTATION PLANNING RULE. Additional width for the public sidewalks is necessary to comply with these regulations. Six-foot sidewalks do not assure a pedestrian system that meets the travel needs of pedestrians in a commercial district. Sidewalks under these circumstances should be a minimum of 10 feet wide.

Building and entrance orientation to bus stops is achieved through placing 84 percent of the retail/commercial floor area close to S.W. Garden Home Road, providing a complete and convenient pedestrian circulation system integrating the activities of the site, and with multiple connections to the public sidewalk. This configuration creates a cluster of development located in between two bus stops.

The configuration of this site also leaves open the option of future development along the S.W. Garden Home Road right-of-way, if and as market conditions warrant.

The entrance to the restaurant must be re-oriented to meet the State Transportation Planning Rule. The entrance must be oriented to the south, facing S.W. Garden Home Road, or the intersection of both Garden Home Road and Oleson Roads. This will bring the entrance closer to both bus stops and orient the entrance to those bus stops. Although this may create more design challenges for the franchise, the evidence indicates such an orientation is reasonable, and that sidewalk, parking and loading can reasonably be accommodated with such an orientation. In fact, changing the orientation of the entrance will probably better meet the goal of the franchise to orient the entrance to the largest traffic volume.

Tri-Met will be moving the bus stop on S.W. Garden Home Road to the west edge of the proposed Thriftway expansion. Tri-Met has provided drawings of the required "clear zone" needed for operation of the new bus stop. Tri-Met has also recommended a road edge landscaping, and system of awnings for the protection of pedestrians and transit riders from inclement weather.

Several concerns were also raised regarding the kinds of trees to be placed on the site and within the right-of-way, the lighting of the site, the bike racks. These issues are resolved through design review and building permit processes. The concerned citizens, the City and County, and the applicant are encouraged to work together on these issues through those processes.

IV. RECOMMENDATION

Approval of the Comprehensive Plan map amendment, for Tax Lot 1600, from medium-density single-family residential to pedestrian-oriented neighborhood commercial;

Denial of the CN2, auto-oriented neighborhood commercial, zone for Tax Lot 1600;

Approval of the CN1, pedestrian-oriented neighborhood commercial, zone for Tax Lot 1600;

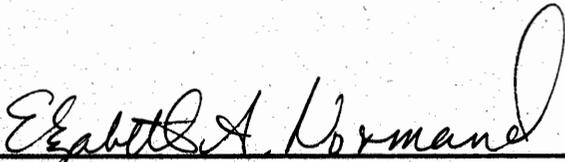
Approval of the proposed expansion of the nonconforming grocery store, as detailed in Exhibits A-1 and D-1, attached to this report; and

Approval of the requested adjustment to reduce the east side yard setback from 11 feet to 1 foot.

All the above approvals are subject to the following conditions:

- A. Eight dwelling units will be constructed to preserve the housing potential of Tax Lot 1600. Permits for construction of the dwelling units must be applied for prior to issuance of an occupancy permit for the retail structure on Tax Lot 1600.
- B. A covenant, in accord with PCC 33.700.060, must be submitted and accepted prior to the issuance of building permits, guaranteeing that at least eight residential dwelling units will remain on Tax Lot 1600 for at least 25 years.
- C. The public sidewalks adjacent to this site will be constructed to be at least 10 feet wide. Either easements assuring public access or additional dedication to the street rights-of-way will be an acceptable means of providing for the construction of the additional four feet of sidewalk required herein.
- D. Landscaping between the south facade of the grocery store and the public sidewalk will be limited to required street trees plus no more than 100 square feet of additional permanent landscaping. Any landscaping beyond the 100 square feet of permanent landscaping must be temporary in nature, such as in planters. This area will be treated as a continuation of the public sidewalk and constructed of a hard surfaced material, compatible with the public sidewalk. Street furniture is allowed in this area.
- E. The total number of parking spaces will be limited to no more than 170 spaces.
- F. A customer entrance to the restaurant proposed for the corner of S.W. Garden Home and Oleson Roads must be located on the south side of the structure, orienting to S.W. Garden Home Road.
- G. A 29-foot by 8-foot clear zone must be provided for transit operations, as identified on the attachment to Exhibit I-4, "Bus Stop Landing Pad Standards".

Recommendation mailed this 22nd day of December, 1994.



Elizabeth A. Normand
Hearings Officer

City Council Hearing. The City Code requires the City Council to hold a public hearing on this case and you will have the opportunity to testify. The hearing will be scheduled by the City Auditor upon receipt of the Hearings Officer's Recommendation. You will be notified of the time and date of the hearing before City Council. If you wish to speak at the Council hearing, you are encouraged to submit written materials upon which your testimony will be based, to the City Auditor.

If you have any questions contact the Bureau of Planning Representative listed on the Summary Sheet of this Recommendation (823-7700).

EXHIBITS
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Narrative for Lamb's Thriftway Application (attached)
 - 2. Proof of Continuous Use
 - 3. Transportation Impact Analysis
- B. Zoning Maps (attached)
 - 1. Existing Zoning
 - 2. Proposed Zoning
- C. Land Use Map (not available)
- D. Plans
 - 1. Site Plan (attached)
 - 2. Landscape Site Plan
 - 3. Perspective
 - 4. Grocery Elevations
 - 5. Retail Building Elevations
 - 6. Restaurant Elevations
 - 7. Existing Conditions
- E. Notification information
 - 1. Posting letter sent to applicant
 - 2. Notice to be posted
 - 3. Applicant's statement certifying posting
 - 4. Mailed notice
 - 5. Mailing list
- F. Agency Responses
 - 1. Bureau of Buildings
 - 2. Water Bureau
 - 3. Bureau of Environmental Services (10/27/94)
 - 4. Community Planning Section of the Bureau of Planning
 - 5. Bureau of Transportation Engineering
 - 6. Bureau of Traffic Management
 - 7. Transportation Planning Section of the Office of Transportation
 - 8. Bureau of Environmental Services (11/9/94)
- G. Letters
 - 1. Washington County, Department of Land Use and Transportation
 - 2. CPO#3
 - 3. Brown
- H. (Exhibit Letter Not Used)
- I. Documents Received Before the Hearing
 - 1. Klotz Letter
 - 2. Washington County Letter (Lapo)
 - 3. Stroud Letter
 - 4. Tri-Met Letter (page 4 attached)

Documents Submitted at the Hearing

 - 5. Bureau of Planning Supplemental Recommendation
 - 6. Lamb Letter with Attachments
 - 7. Metro (Moore) Letter with Attachment
 - 8. Plan Showing Location of Shari's Restaurant

NARRATIVE FOR LAMB'S THRIFTWAY APPLICATION

MIXED USE DEVELOPMENT AT SW GARDEN HOME
AND OLESON ROADS

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 - 4.1.5. 2.13 - Auto-Oriented Commercial Development
 - 4.1.6. 2.16 - Strip Development
 - 4.1.7. 2.18 - Utilization of Vacant Land
 - 4.1.8. 2.20 - Mixed Use
 - 4.1.9. 2.21 - Buffering
 - 4.1.10. 3.5 - Neighborhood Involvement
 - 4.1.11. 4.4 - Housing Choice and Neighborhood Stability
 - 4.1.12. 4.8 - Maintain Housing Potential
 - 4.1.13. 5.1 - Business Retention and Recruitment
 - 4.1.14. 5.2 - Economic Environment
 - 4.1.15. 5.13 - Area Character and Identity
 - 4.1.16. 5.14 - Land Use
 - 4.1.17. 5.15 - Transportation
 - 4.1.18. 5.16 - Business Environment
 - 4.1.19. 6.4 - Land Use/Transportation
 - 4.1.20. 6.6 - Urban Form
 - 4.1.21. 6.7 - Transit First
 - 4.1.22. 6.9 - Transit-Oriented Development
 - 4.1.23. 6.10 - Barrier-Free Design
 - 4.1.24. 6.11 - Pedestrian Network
 - 4.1.25. 6.12 - Bicycle Network
 - 4.1.26. 6.16 - Off-Street Parking
 - 4.1.27. 6.18 - Clean Air and Energy Efficiency
 - 4.1.28. SW District Policies
 - 4.1.29. Transportation Planning Rule
 - 4.1.30. 7.4 - Energy Efficiency through Land Use Regulations
 - 4.1.31. 8.3 - Air Quality Maintenance Strategies
 - 4.1.32. 8.17 - Wildlife

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(i)

- 4.2 Preservation of Potential Housing Units
- 5. Zone Map Amendment
 - 5.1 Compliance with the Comprehensive Plan Map
 - 5.2 Adequate Public Services
- 6. Nonconforming Situation Review
 - 6.1 Documenting the Nonconforming Situation
 - 6.2 Area of Expansion
 - 6.3 Conformance with Development Standards
 - 6.4 Approval Criteria
- 7. Setback Adjustment
 - 7.1 Request
 - 7.2 Approval Criteria
- 8. Development Standards

Exh. A-1

(ii)

NARRATIVE FOR LAMB'S THRIFTWAY APPLICATION

MIXED USE DEVELOPMENT AT SW GARDEN HOME
AND OLESON ROADS

1. Summary of Proposal

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Planned street improvements by Washington County and changing market demands force a redevelopment of the Lamb's Thriftway and shopping center at SW Garden Home and Oleson Roads. This resulting mixed use project requires a Comprehensive Plan Map change from Medium Density Single-Dwelling to Neighborhood Commercial and a Zone Map change from R7 to CN2 to accommodate eight new multiple family dwelling units and relocated retail shops; a Nonconforming Situation Review to allow expansion of the existing grocery store; and an Adjustment for yard setback for the grocery expansion.

2. Existing Conditions

2.1 Land Uses

Lamb's Thriftway has been a family grocery business since 1932 and has operated at this intersection for over 35 years. When a portion of the property was annexed to the City in 1970, the grocery store was in what is now the hardware store. In 1980 and 1981, the current store was built and the former store became additional retail space, joining the other shops, the restaurant and the service station on Tax Lot 1301 and a portion of Tax Lot 1100. The current commercial uses are on Tax Lots 1000, 1100, 1301 and 1400 comprising a total of 3.75 acres. The 1.46 acre balance of the site, Tax Lot 1600, is vacant. Due to grade differences it has no practical access except through the adjacent commercial property to the south. The grocery store is approximately 27,000 square feet and the restaurant, retail and service commercial space combined, exclusive of the gas station, are approximately 19,000 square feet.

The intersection of SW Garden Home and Oleson Roads serves as a neighborhood center with commercial uses on three corners and a Tualatin Valley Park and Recreation District Community Center in the former school on the fourth. Additional commercial uses are nearby to the east on Garden Home. There are apartments adjacent to many of the commercial uses, including the abutting property east of the grocery store. The balance of the neighborhood is primarily low density single family residential. Immediately north of Tax Lot 1600 and separating it from single and multiple family residential property is the former Oregon Electric RR ROW.

2.2 Zoning

When Tax Lots 1000, 1100, 1301 and 1400 were annexed to the City in 1970 they were zoned C2 commercial along with additional land to the east and the two south quadrants of the intersection. Tax Lot 1600 was annexed at a later date and zone R7.

In November, 1980 Lamb's received a building permit for the new store and parking located on Tax Lots 1000, 1400 and a portion of 1100 and began construction. The building permit and the occupancy permit that was issued December 16, 1981, both recite the zoning as C2. Unknown to Lamb's, in October, 1980 the City Council adopted the City's Comprehensive Plan and rezoned Tax Lot 1000, 1400 and a portion of 1100 to R1, effective January 1, 1981. The zoning district lines split property lines, leaving in the C2 (now CG) zone only the original commercial buildings and their parking fronting on Garden Home. The Existing Conditions Site Plan included with this application shows the current zoning in relation to the site and existing improvements. Lamb's first learned of the change when they contacted the City to discuss the present redevelopment.

As a result of the rezoning, the grocery store expansion can only occur as a change to a nonconforming use on property zoned R1. In fact, the current store had become a nonconforming use before it opened for business. Comprehensive Plan Policy 10.6 requiring provision for housing at the R1 density makes it impractical for the owner to seek a Plan and Zone map amendment for this portion of the property. The City should address the inequity of the situation through its legislative zoning review.

3. Proposal

Washington County has designed and is ready to begin construction of major improvements to SW Garden Home and SW Oleson Roads adjacent to the site. Among other effects of the improvements is the removal of the gas station and the County's desire to eliminate the curb cuts to the existing restaurant and commercial shops at the intersection. In its current condition, customers of the grocery store cannot reach the shops and restaurant by car without driving onto the adjoining streets and there is no convenient pedestrian access between the uses.

At the same time that the County and the neighborhood planning organization, CPO 3, were working with Lamb's to resolve potential conflicts between the existing shopping center and the road improvements, Lamb's was becoming increasingly aware of a need to expand the grocery store to meet the shopping needs of its current customers. While the customers continued to shop at Lamb's, they were making additional trips outside of the neighborhood to larger stores in Raleigh Hills, Tigard and Beaverton that

offer more fish, produce and bakery products and a pharmacy, as well as a larger variety of other groceries.

These concerns were substantiated by a market study. A map from that study is attached to this narrative that graphically illustrates the unique location of Lamb's Thriftway to serve the Garden Home community. The closest grocery stores are out of the neighborhood at least one and one-half miles in any direction. Lamb's concluded that it could only expand the store to meet the neighborhood needs by relocating the shops and redesigning the restaurant. Fortunately, by doing so, it is also able to meet the County's and neighborhood's needs for street improvements unencumbered by inappropriate curb cuts at the intersection. The expansion area to the north on Tax Lot 1600 is larger than needed for the shops and provides an opportunity to provide all of the potential R7 housing within the development.

The result of these considerations is a mixed use development designed around the existing grocery store with the following elements. The gas station is eliminated. The grocery store will expand to approximately 50,000 square feet. A new Shari's family restaurant will locate at the intersection with pedestrian access from the new sidewalks and the transit stops. The commercial shops will be replaced by a new building on Oleson Road. Eight apartments will be adjacent to the old RR ROW and access through the development. All elements of the development will be connected by pedestrian walks, including a route to nearby apartments to the northeast with no direct auto access. The curb cuts will be reduced from eight including those at the intersection to two, located well away from the intersection on Garden Home and Oleson.

Among the features that the new development will bring to the community are the following. The enhancements to the grocery products available in the neighborhood described above will reduce out of neighborhood auto trips. The first 24 hour family oriented and affordable restaurant will come to the area. Additional affordable housing steps away from shopping and transit will be developed. The land at the east end of Tax Lot 1600 will have birdhouses and feeders to encourage native birds to the area. There will be a weather forecaster on the grocery building as a focal point for the neighborhood commercial center. Services currently offered by Lamb's will be improved, including barbecue facilities used by area service clubs, monthly recycling for hard to dispose of plastic products, bus ticket and stamp sales and US West pay station and the pedestrian connection to residential property across the RR ROW.

To achieve these results, the Plan and Zone Map designations of Tax Lot 1600 will change from R7 to C2. This will accommodate the new retail shops building, a small extension of the grocery store, and the number of housing

units potentially available on the parcel. The majority of the grocery store expansion will occur on the south and west sides of the existing store on land zoned R1, pursuant to a Nonconforming Situation Review. The new restaurant is a permitted use in the CG zoned property at the intersection. The existing store has a one foot setback on the east property line. Extension of this face of the building south will require an adjustment from the R1 setback requirement.

4. Plan Map Amendment

4.1. Comprehensive Plan Policies

The proposed Neighborhood Commercial designation for Tax Lot 1600 is equally or more supportive of the Comprehensive Plan as a whole than the Medium Density Single-Dwelling designation based on an evaluation of the following relevant Plan policies.

4.1.1. 1.4 - Intergovernmental Coordination

The Metropolitan Coordination Goal is primarily a process goal not generally applicable to a quasi-judicial application. However, this application demonstrates the best of intergovernmental coordination in the manner in which the City and Washington County have dealt with the proposed County road improvements, City planning jurisdiction and the needs of the applicant. The plan amendment is a key element in realizing the benefits of this coordination.

4.1.2. 2.9 - Residential Neighborhoods

The property has no practical access except through the existing shopping center and is too small to effectively buffer low density housing from the adjacent street and commercial enterprise. The change to neighborhood commercial permits a mixed use development and a unique opportunity for affordable housing steps away from shopping and transit. It will be an ideal location for families without cars and for people employed in the adjacent stores.

4.1.3. 2.11 - Commercial Centers

Although the Garden Home commercial center is not a major center in the context of greater Portland, it is the only such center in the Garden Home neighborhood. This proposal will significantly strengthen the center while remaining compatible with surrounding residential uses.

4.1.4. 2.12 - Transit Corridors

Not only will this proposal provide residential development on a parcel that would probably remain vacant under its existing designation, but it does so in a location that provides shopping opportunities next to Tri-Met Route #45 on the adjacent streets.

4.1.5. 2.13 - Auto-Oriented Commercial Development

While the project enhances pedestrian shopping opportunities, it is located in a generally low density residential neighborhood largely dependent on auto transportation. SW Garden Home Road, east of Oleson is a District Collector traffic street. SW Oleson Road, north of Garden Home is a Neighborhood Collector traffic street. The Washington County designations to the west and south are comparable. The proposal is consistent with the policy by allowing neighborhood commercial in this setting where densities will not support development solely oriented to pedestrians.

4.1.6. 2.16 - Strip Development

Although the existing development is relatively focused, rather than strip in nature, this proposal will expand the existing center and thus reduce pressure for strip commercial elsewhere in the community.

4.1.7. 2.18 - Utilization of Vacant Land

The land is currently vacant. As noted above, it is unlikely to develop under its current designation. This proposal is definitely supportive of the full utilization of vacant land.

4.1.8. 2.20 - Mixed Use

This proposed change allows use of the Neighborhood Commercial designation as a mechanism to foster mixed use development that both acts a buffer to lower density residential use and allows the continuation and growth of a commercial node.

4.1.9. 2.21 - Buffering

This policy applies in the current situation where a residential designation will be changed to commercial. Access will be limited to two curb cuts through the existing commercial property and the planned residential uses as well as the RR ROW provide buffering, thereby fully implementing the policy.

4.1.10. 3.5 - Neighborhood Involvement

The policies of the Neighborhoods Goal are program policies carried out through the planning process. However, this application demonstrates how that process can operate at its best. Lamb's has long been actively involved in the neighborhood planning organization. From the outset of planning the redevelopment of the shopping center, Lamb's sought the input of the organization and shaped its plan to follow as nearly as possible the consensus desires of the organization. The success of the process is evident from the unanimous endorsement of the project by the organization.

4.1.11. 4.4 - Housing Choice and Neighborhood Stability

By making possible a mixed use development with multiple family housing as an integral part of a commercial development, this proposal increases the number of housing alternatives for renters.

4.1.12. 4.8 - Maintain Housing Potential

By facilitating development of the housing called for by the existing designation, this proposal meets the policy requirement.

4.1.13. 5.1 - Business Retention and Recruitment

Lamb's Thriftway has been a family owned business in Portland since 1932 and in this location for over 35 years. Due to a combination of the unfortunate down zoning of property under commercial development and the housing policies of the City, this amendment is necessary to allow the business to continue to operate and to grow in this location.

4.1.14. 5.2 - Economic Environment

The key location of this commercial center to serve the Garden Home community is demonstrated on the map of grocery outlets noted above. Opportunities for commercial expansion in other locations in the community are both unavailable and undesirable to the residents, while they heartily endorse expansion in this location. Acceptance of this proposal by the City is consistent with a policy to enhance Portland's economic environment by ensuring that sufficient land exists for private development.

4.1.15. 5.13 - Area Character and Identity

The citizens, through their neighborhood association, have spoken clearly their view of their neighborhood identity and the fact that this project is supportive of it. The designation change is necessary to promote and enhance that identity.

4.1.16. 5.14 - Land Use

For all of the reasons noted above, this proposal is both consistent with and necessary to achieve the Land Use policy.

4.1.17. 5.15 - Transportation

The redevelopment of the existing shopping center made possible by this change supports the Transportation policy by removing curb cuts near the intersection of the soon to be improved streets, creates convenient patron parking that allows access to all parts of the center without additional vehicle trips onto the streets to reach parts of the center, provides bicycle access and parking, increases the shopping opportunities in an existing commercial area, facilitates the planned street improvements and reduces pedestrian-auto conflict by providing perimeter and internal pedestrian circulation routes.

4.1.18. 5.16 - Business Environment

The redevelopment of the existing shopping center made possible by this change supports the Business Environment policy by permitting an existing business to remain and grow at its present location in the City.

4.1.19. 6.4 - Land Use/Transportation

This Plan Map Amendment and Zone Change applies the Transportation Goal and Policies 6.1 through 6.25 where relevant, the District Policies, the Classification Descriptions and the Maps as mandatory approval criteria where such provisions use mandatory language.

4.1.20. 6.6 - Urban Form

The proposed Map change permits a new mixed use development of an existing center served by District and Neighborhood Collector streets. In addition, the development will be connected by pedestrian access to nearby multiple family development.

4.1.21. 6.7 - Transit First

By permitting expansion of retail commercial, employment and residential activity on an existing transit route, this proposal supports the Transit First policy.

4.1.22. 6.9 - Transit-Oriented Development

SW Garden Home and SW Oleson Roads are Minor Transit streets. This mixed use development with transit stops at the property and internal pedestrian ways connecting all parts of the development with the stops is supportive of the policy.

4.1.23. 6.10 - Barrier-Free Design

All facilities in the new development will be constructed in accordance with the Americans With Disabilities Act of 1990 as applicable.

4.1.24. 6.11 - Pedestrian Network

The Washington County project to rebuild SW Garden Home and SW Oleson Roads will include sidewalks and bikeways. All parts of the project are connected internally and to the perimeter sidewalks with pedestrian facilities. The project has a pedestrian connection to the residential property to the northwest for which there is no direct street access.

4.1.25. 6.12 - Bicycle Network

Bicycle parking facilities are included in the new development and will meet the requirements of Chapter 33.266.

4.1.26. 6.16 - Off-Street Parking

Minimum off-street parking requirements pursuant to Chapter 33.266 are 8 for the residential units, 122 for the retail commercial and 16 for the restaurant. The site plan provides 8 for the residential and 162 for the combined retail commercial and restaurant use. The 24 spaces over the minimum requirement is not excessive and is necessary in part to accommodate overflow event parking from the THPRD Community Center across Oleson Road which Lamb's Thriftway has historically permitted as well as the frequent community events and recycling programs conducted on the property.

4.1.27. 6.18 - Clean Air and Energy Efficiency

The development is located on transit streets and has adjacent transit stops. Pedestrian connections to nearby residential neighborhoods are provided. As a mixed use development, on site residential encourages pedestrian trips for shopping and discourages off-site vehicle trips. All of these uses of modes of travel other than individual auto contribute to clean air and energy efficiency.

4.1.28. SW District Policies

Policy No. 1 emphasizes improved pedestrian and bicycle access by incorporating pedestrian facilities and bicycle corridors in new transportation projects. The Washington County project to improve SW Garden Home and SW Oleson Roads addresses these objectives.

4.1.29. Transportation Planning Rule

As a threshold issue, the TPR requires a plan or zone amendment to address the adequacy of any transportation facilities adversely affected by the proposed change and that will operate below an acceptable level of service. The Transportation Impact Analysis (TIA) prepared by Kittleson & Associates notes that the Garden Home/Oleson intersection presently operates at a minimally acceptable service level of D but has no unused available capacity. However, the TIA also notes that the improvements soon to be constructed by Washington County will dramatically improve traffic operations. The volume to capacity ratio will change from 1.02 to .84. The TIA also concludes that the new mixed use development will produce exactly the same peak hour trips as the current development on the property and that the reduced number and relocated driveways will operate more efficiently. This supports the conclusion that the development permitted by the plan and zone amendments will improve rather than worsen conditions, and coupled with the street improvements, service levels will be more than acceptable.

The interim requirements under the TPR that are applicable to this project focus on the provision of internal and external pedestrian and bicycle improvements and transit facilities. All of these are provided for in the combined plans of Washington County and Lamb's Thriftway.

The pattern of development regulation can reduce the number and length of vehicle trips, thereby reducing pollution, energy consumption and demand for more and wider roads. The current proposal provides a unique opportunity to meet all of these objectives. Lamb's experience supported by their market analysis shows that a significant number of neighborhood residents are making out of neighborhood trips of a mile and a half or longer to find grocery products not available in the existing store. The only way to satisfy this unmet demand is to expand the store size. Doing so will keep the neighborhood shoppers in the neighborhood, eliminating multiple auto trips and reducing the length of trips. The neighborhood planning organization recognizes the value of such planning and unanimously endorses the proposed redevelopment. City planning also recognizes the value of neighborhood centers located to reduce the length and number of vehicle trips. Adoption of the map changes that will facilitate this

mixed use project will make a notable contribution to achieving the goal of the TPR to reduce vehicle miles traveled.

4.1.30. 7.4 - Energy Efficiency through Land Use Regulations

See the preceding paragraph.

4.1.31. 8.3 - Air Quality Maintenance Strategies

See the next preceding paragraph.

4.1.32. 8.17 - Wildlife

The land at the east end of Tax Lot 1600 will have birdhouses and feeders to encourage native birds to the area.

The foregoing evaluation of relevant Plan policies and other applicable plans and documents demonstrates that the proposed Plan Map Amendment is in all instances at least equally, and in most instances more, supportive of the provisions than the existing designation.

4.2. Preservation of Potential Housing Units

The Medium Density-Single Dwelling property proposed to change to Neighborhood Commercial is 1.46 acres in size and is zoned R7. Assuming a reduction of 20% for streets, the net developable area is 50,878 square feet. Dividing by the minimum lot size of 7,000 square feet produces a potential for 7.27 housing units on the property under the R7 zoning. Lamb's Thriftway will construct 8 multi-family units. Construction of the housing will be assured by doing the work concurrent with redevelopment of the shopping center.

5. Zone Map Amendment

The proposal is to change the Zone Map designation for Tax Lot 1600 from R7 to CN2 at the same time that the Plan Map designation for the property is changed from Medium Density-Single Dwelling to Neighborhood Commercial. There are two criteria for Zone Map changes.

5.1. Compliance with the Comprehensive Plan Map

The Neighborhood Commercial Plan designation is implemented by either the CN1 or the CN2 zone designation. The CN2 designation is the most appropriate taking into account the purposes of each zone and the zoning pattern of surrounding land.

The CN1 zone is intended for sites in or near dense residential neighborhoods. Development is intended to be pedestrian-oriented. In contrast, the CN2 zone is intended for sites in or near less dense residential neighborhoods. Development is expected to be predominantly auto-accommodating. The Garden Home area is generally fully developed with a zoning and development pattern of low density single family housing. Although there is multi-family housing near the site and the development proposal enhances opportunity for pedestrian trips, the majority of the visits to the site will be by auto from the surrounding single family neighborhoods. The CN2 zone is best suited to implement the new Plan designation.

5.2. Adequate Public Services

Adequacy of public services is determined by the service bureaus in the context of the development plans submitted by the applicant. Initial responses indicate that all services are available and adequate. The road system is under the jurisdiction of Washington County. The TIA by Kittleson & Associates demonstrates that the road system is adequate and will be enhanced by improvements to be constructed by Washington County at or prior to redevelopment of the property. A letter from the project manager for the Washington County street improvements is attached describing the road and related improvements.

6. Nonconforming Situation Review

The existing grocery store and its associated parking are on property zoned R1 and are therefore nonconforming. The grocery store expansion, with the exception of a small segment at the north end of the store, will all take place within the R1 area. To allow the expansion, the applicant must document the nonconforming situation and satisfy the criteria for a nonconforming situation review.

6.1. Documenting the Nonconforming Situation

When Tax Lots 1000, 1100, 1301 and 1400 were annexed to the City in 1970 they were zoned C2 commercial along with additional land to the east and the two south quadrants of the intersection. In November, 1980 Lamb's received a building permit for the new store and parking located on Tax Lots 1000, 1400 and a portion of 1100 and began construction. The building permit and the occupancy permit that was issued December 16, 1981, both recite the zoning as C2. Unknown to Lamb's, in October, 1980 the City Council adopted the City's Comprehensive Plan and rezoned Tax Lot 1000, 1400 and a portion of 1100 to R1 effective January 1, 1981. The zoning district lines split property lines, leaving in the C2 (now CG) zone only the original commercial buildings and their parking fronting on Garden Home. The Existing Conditions Site Plan included with this application shows the current zoning

in relation to the site and existing improvements. Lamb's first learned of the change when they contacted the City to discuss the present redevelopment.

Included with this application is a copy of the building permit and the occupancy permit for the new store and various documents from each subsequent year to the present showing the continued and unbroken maintenance of the nonconforming use.

6.2. Area of Expansion

Section 33.258.050 C. imposes limitations on the area in which a nonconforming use may expand pursuant to a nonconforming situation review. All of the area within Tax Lots 1000, 1100 and 1400 zoned R1 have been used for the grocery store and parking use since the store construction began in 1980. All of these areas are proposed to continue in grocery store and parking use following the review.

6.3. Conformance with Development Standards

Section 33.258.070 D.2.b. requires that under certain circumstances the alteration of a nonconforming development must conform with certain development standards. The proposed redevelopment will comply with the listed standards.

6.4. Approval Criteria

With the mitigation measures incorporated into the development plans there will be a net decrease in overall detrimental impacts on the surrounding area. In nearly all instances the redevelopment will reduce the impacts and in no instance will it increase them. The plan presented in this application is the result of extensive work with the neighborhood planning organization and specific neighbors. During that work many changes and improvements were made with the result that the plan has the unanimous approval of the neighborhood planning organization. Specific considerations follow.

The hours of operation for the grocery store will not change. It has been staffed throughout a 24 hour period and will continue to be so operated. This has not created any problems.

The Kittleson TIA shows that overall peak hour vehicle trips to the site will be exactly the same before and after the redevelopment. However, the impact of the trips will be reduced because the number of driveways will be reduced from 8 to 2 and they will function more efficiently. The peak hour trips will include a greater number to the grocery store than in past (offset by reductions for other uses so that there is no net gain). As explained above,

these trips will represent a reduction of total vehicle miles traveled in the community because they will largely replace out of neighborhood trips to other grocery stores in other neighborhoods. On street parking has not been a problem and will not be with the redevelopment. Vehicle trips in and out of the property will be reduced because in the present configuration vehicles must enter the street to travel between the grocery parking and the restaurant/service station/shops parking.

The store and parking area do not produce noise, vibration, dust, fumes glare or smoke and will not do so with the expansion. At present, the garbage container is not sealed and does produce some odor. The expansion will include a sealed garbage compactor that will eliminate odor. The expansion will not produce any potential for increased litter, and by providing for a garbage compactor, will actually reduce the potential for loose paper and other litter on the site.

The minimal impact of present outside storage and displays will be lessened. At present a tent is used for display of plants and produce. The expanded store will have wider covered walkways where these products can be displayed without the tent. Lamb's allows the Tualatin Hills Little League to store its equipment in a large container at no charge at the southeast corner of the store. With the expansion there will be room to move the container to a location where it is not visible. The south wall of the store is now blank. The expanded store will move that wall to the street on Garden Home and will include windows for seasonal and community displays.

The existing center grew over the years without a cohesive design or plan. As the site plan and perspective and elevation drawings show, the new center will have a pleasing and integrated design with distinct architectural character. It will blend well with the new apartments Lamb's will build on the property. Parking and the major activity areas will be oriented toward Oleson and Garden Home which is away from the adjacent apartments to the east. At present those apartments are impacted by the parking area south of the grocery store. By extending the store south to Garden Home, any disruption and loss of privacy from the parking area will be eliminated. All parking will be buffered from the apartments by the expanded store and by landscaping to the north and south. The new apartments on the property and the RR ROW to the north will thoroughly buffer all other nearby residential areas. No additional parking lot lighting will occur within the R1 area and the lighting south of the existing store will be eliminated. The large reader board sign on the R1 property will be removed and replaced with a more attractive sign on the CG property.

7. Setback Adjustment

7.1. Request

The existing grocery store is located one foot from the east property line of Tax Lot 1000 on property zoned R1. The adjacent property, also zoned R1, supports an apartment building set back some distance from the common line and extending south beyond the southerly wall of the store to Garden Home Road. The area west of the apartment building on Tax Lot 1000 and south of the existing store wall is presently store parking. The proposal is to extend the east wall of the store at the same one foot set back to a point 13' 6" from the south property line and eliminate the parking.

The required side yard setback in the R1 zone varies between 5' and 14' and is a function of the area of the plane of the building wall facing the side yard. In this case the extended wall will have a plane area of under 2800 square feet so the required setback is 11' and the requested adjustment is 10'. *setback reduction to a 1' setback.*

The wall of the store will also be extended at the north end on Tax Lot 1600. Although there will be ample setback measured perpendicularly from the wall in this location, at some points the wall will be less than the required setback from the closest point on the adjoining property. If necessary, the adjustment will also include this portion of the expanded grocery store.

7.2. Approval Criteria

The requested adjustment satisfies the approval criteria of Sections 33.805.040 A. through E.

A. Granting the adjustment will equally or better meet the purposes of the sideyard setback set forth in Section 33.120.220 A.

Adequate light and air is provided by the setback on the adjacent property and has not been a problem where the apartment building and the existing store wall face each other. Building Code compliance will assure there is no fire hazard created and the existing apartment setback provides ample access for fire fighting.

Extension of the grocery store to the south is consistent with the existing relationship of the store and the apartment building and will continue the same building scale of the store. Since only one of the structures is a residence, there is no physical relationship between residences to promote.

Extension of the store as a replacement for the parking lot will enhance the privacy of the apartment building. There will be no windows or other penetrations in the east face of the store wall. Maintaining a greater setback would do nothing to enhance the privacy of the apartment building.

Since this is a side yard, the statement of purpose regarding front yard setbacks is not applicable. Under the present circumstances the setback requirement does not provide the needed flexibility.

B. The proposed side yard reduction will not significantly detract from the livability or appearance of the residential area. The only affected property is the apartment property to the east. As explained above, the apartment has not been negatively impacted by the existing store and extension of that wall to the south will enhance the privacy of the apartments.

C. Only one adjustment is being requested, although it may apply at both ends of the building. If an adjustment is needed for the extension to the north, it should be noted that there will be substantially greater separation between the store and the apartment building in that location than to the south.

D. There are no City-designated scenic resources in the area.

E. There are no negative impacts from the adjustment to mitigate. Extension of the store and elimination of the adjacent parking lot will enhance the privacy and quiet for the apartment building.

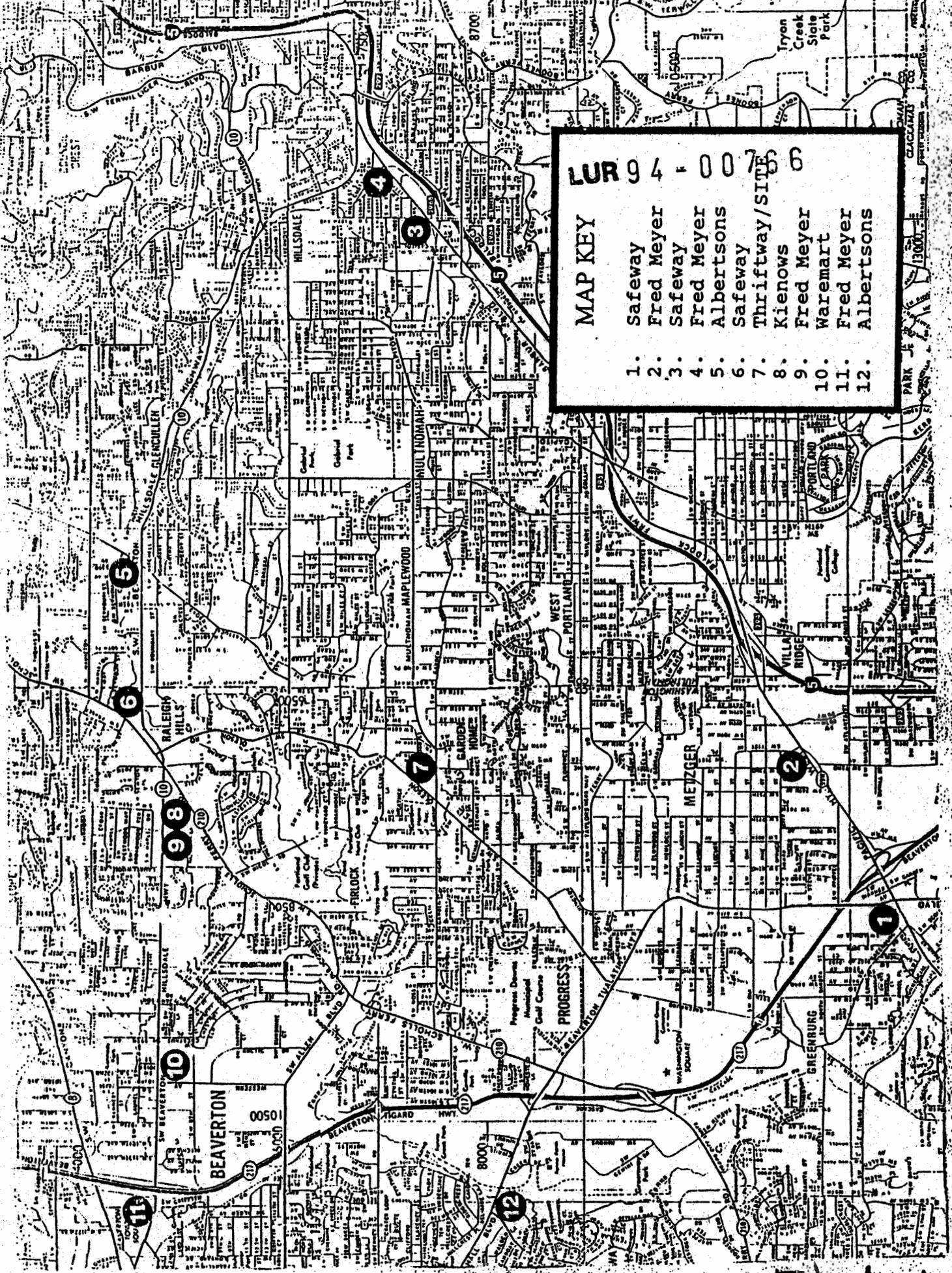
8. Development Standards

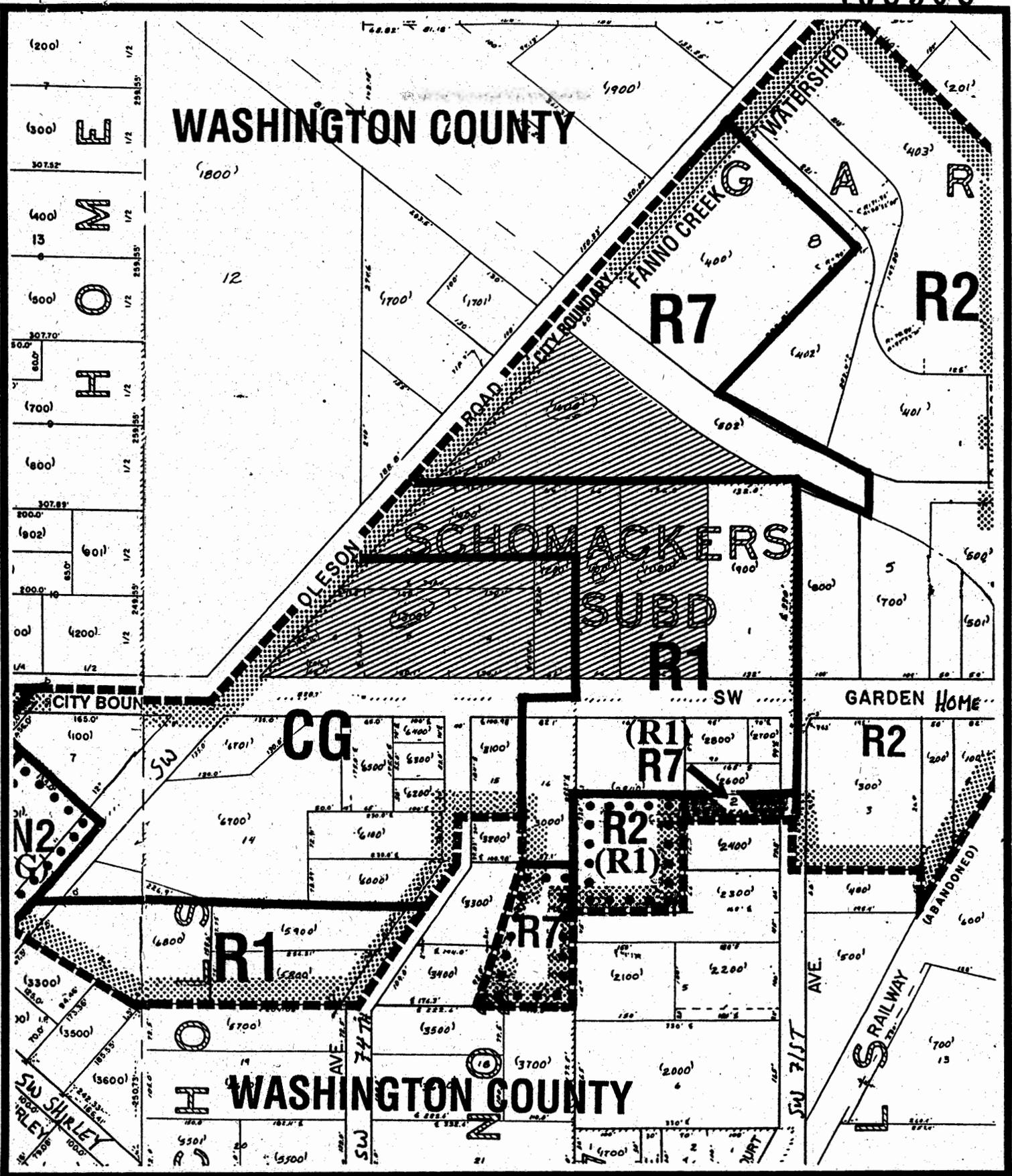
Except for the side yard adjustment described above, the application materials demonstrate that all applicable development standards have been met by the proposed development plan or that it is feasible for the plan to meet the standards. Detailed development review will occur in connection with submission of plans for building permits.

LUR 94 - 00756

MAP KEY

- 1. Safeway
- 2. Fred Meyer
- 3. Safeway
- 4. Fred Meyer
- 5. Albertsons
- 6. Safeway
- 7. Thriftway/SIT
- 8. Kienows
- 9. Fred Meyer
- 10. Waremart
- 11. Fred Meyer
- 12. Albertsons

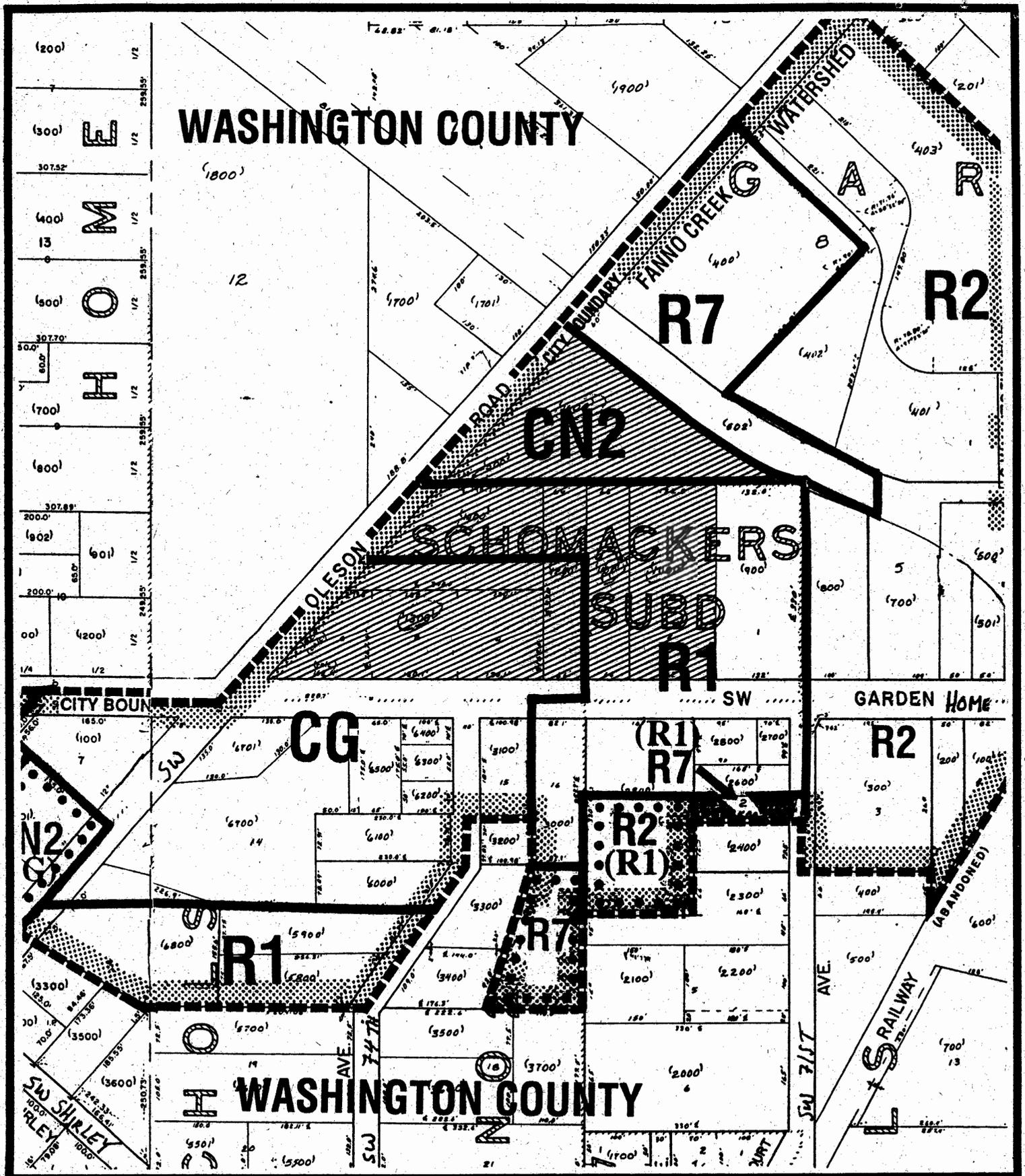




Zoning existing This site lies within the FANNO CREEK WATERSHED

File No. LUR 94-00766 NU,ZC
 1/4 Section 3822
 Scale 1" = 200'
 Request _____
 Exhibit B-1

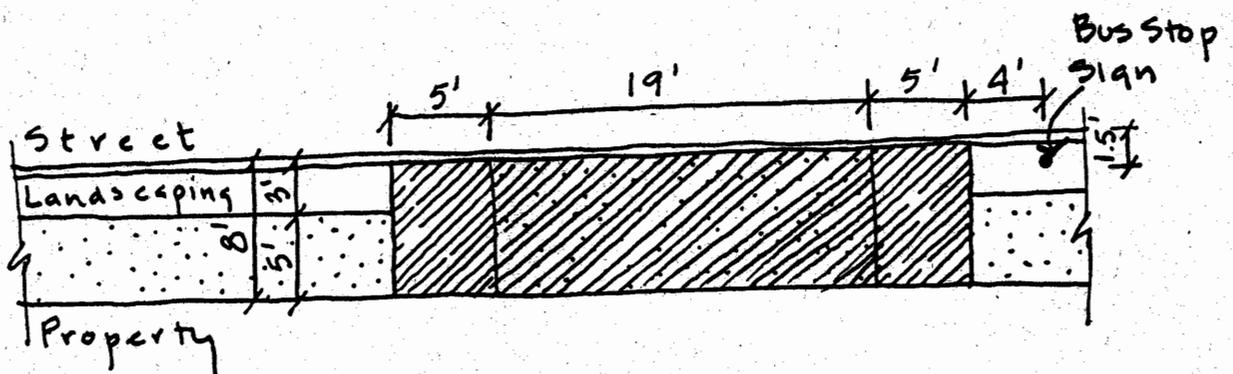
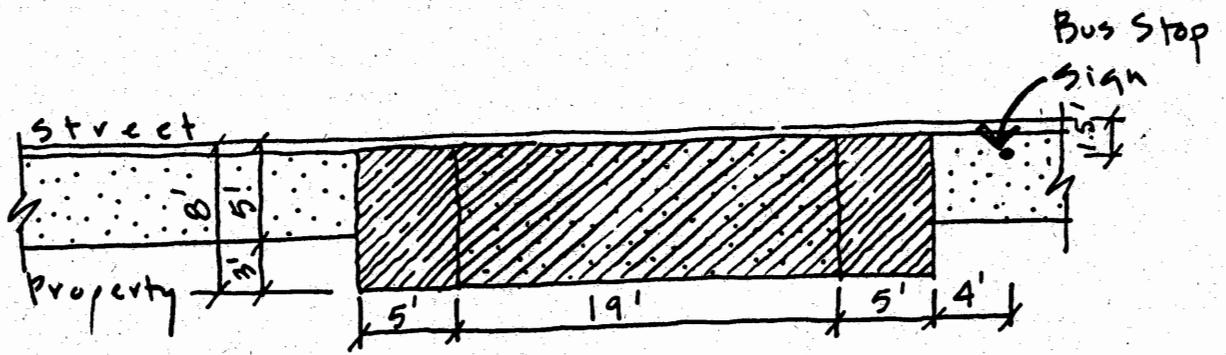


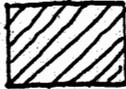


Zoning This site lies within the
proposed FANNO CREEK WATERSHED

File No. LUR 94-0766 NU, ZC
 1/4 Section 3822
 Scale 1" = 200'
 Request _____
 Exhibit B-2





Bus Stop Landing 
 Paved Area

Bus Stop Landing Pad Standards
 11.29.94

ORDINANCE NO. **168508**

*Amend the Comprehensive Plan Map and change the zone of property at 7410 S.W. Oleson Road from R1, Residential, to CN1, Commercial. (Ordinance; LUR 94-00766 CP ZC NU AD)

The City of Portland ordains:

Section 1. The Council finds:

1. The applicants, Garden Home Enterprises, Inc., R. L. and M. J. Hayzlett, and Lamb's, Inc., seek a Comprehensive Plan Map Amendment from medium-density single-dwelling residential to neighborhood commercial, in order to allow expansion of an existing grocery store, relocation of shops, addition of new residential units and a restaurant use on Tax Lots 1000, 1100, 1300, 1400, and 1600, Section 24, 1S, 1W, (Washington County), located at 7410 S.W. Oleson Road.
2. An application complying in all respects with all requirements of Title 33, Planning and Zoning, of the Code of the City of Portland and seeking such a Comprehensive Plan Map Amendment and Zoning Map Amendment has been received.
3. Applicants have paid the proper fee for the filing of such application.
4. The City's Hearings Officer by Report and Recommendation dated December 22, 1994 (Planning Commission File No. LUR 94-00766 CP ZC NU AD), after and as a result of a duly authorized and conducted public hearing held December 5, 1994, on said property, has recommended approval of the CN1, pedestrian-oriented neighborhood commercial, zone for Tax Lot 1600, with conditions.
5. The notice requirements for public hearings were fulfilled according to law.
6. This rezoning constitutes an amendment of the City's Comprehensive Plan Map. Based upon the facts and findings and conclusions of the Hearings Officer's Report and Recommendation, this amendment of the Comprehensive Plan Map from R1 to CN1 is found to be in accordance with the Comprehensive Plan.
7. This rezoning is in conformance with the Comprehensive Plan for the City, is in accordance with generally accepted land use planning standards and with applicable City and State legislative enactments as indicated in the Report of the Hearings Officer.

NOW, THEREFORE, the Council directs:

- a. That the facts, findings, conclusions and recommendation of the Hearings Officer in P.C. File No. LUR 94-00766 CP ZC NU AD are adopted by City Council.
- b. The zone of Tax Lot 1600, Section 24, 1S, 1W, (Washington County) is changed to CN1 and the Comprehensive Plan Map is amended to conform thereto.

c. This Zone Map amendment is granted under the following conditions:

- 1) Eight dwelling units will be constructed to preserve the housing potential of Tax Lot 1600. Permits for construction of the dwelling units must be applied for prior to issuance of an occupancy permit for the retail structure on Tax Lot 1600.
- 2) A covenant, in accord with PCC 33.700.060, must be submitted and accepted prior to the issuance of building permits, guaranteeing that at least eight residential dwelling units will remain on Tax Lot 1600 for at least 25 years.
- 3) The public sidewalks adjacent to this site will be constructed to be at least 10 feet wide. Either easements assuring public access or additional dedication to the street rights-of-way will be an acceptable means of providing for the construction of the additional four feet of sidewalk required herein.
- 4) Landscaping between the south facade of the grocery store and the public sidewalk will be limited to required street trees plus no more than 100 square feet of additional permanent landscaping. Any landscaping beyond the 100 square feet of permanent landscaping must be temporary in nature, such as in planters. This area will be treated as a continuation of the public sidewalk and constructed of a hard surfaced material, compatible with the public sidewalk. Street furniture is allowed in this area.
- 5) The total number of parking spaces will be limited to no more than 170 spaces.
- 6) A customer entrance to the restaurant proposed for the corner of S.W. Garden Home and Oleson Roads must be located on the south side of the structure, orienting to S.W. Garden Home Road.
- 7) A 29-foot by 8-foot clear zone must be provided for transit operations, as identified on the attachment to Exhibit I-4, "Bus Stop Landing Pad Standards".

d. No change shall be made to the zoning maps until the effective date of this ordinance.

Section 2. The Council declares an emergency exists because there should be no delay in the beneficial use of the above-described property; therefore this ordinance shall be in force and effect from and after its passage by the Council.

Passed by the Council,
Commissioner Hales
December 22, 1994
E.A. Normand/ja

FEB 08 1995

BARBARA CLARK
Auditor of the City of Portland
By *Bretta Olson* Deputy