

## IMPACT STATEMENT

**Legislation title:** Consider removal of conditions of approval imposed by prior Comprehensive Plan Map and Zoning Map amendment ordinances for property at 2855 SW Patton Road, at the request of Tim Sotoodeh, Southwest Hills LLC (Ordinance, Amend Ordinance Nos. 155609 and 160473; LU 18-112666 CP ZC)

**Contact name:** Mark Moffett, BDS Senior City Planner

**Contact phone:** (503) 823-7806

**Presenter name:** Mark Moffett

**Purpose of proposed legislation and background information:**

Remove conditions of approval from 1984 and 1988 “zone change” ordinances that limited use of the former Strohecker’s Grocery store in Portland Heights to a grocery store only, among an extensive list of various restrictive conditions of approval. If approved, this would allow a different use to occupy the building, and/or redevelopment of the site based on the current base zone (CM1 – Commercial/Mixed-Use 1). Per the Hearings Officer findings, and with conditions of approval ensuring some transportation capacity analysis of the future use or redevelopment, the proposal is, “on balance” more supportive of the City’s Comprehensive Plan policies than the current situation. Request is being made by a new owner of the site, who has been unable to find a grocer to occupy the space.

**Financial and budgetary impacts:**

There are no financial or budgetary impacts: this proposal, if conditionally approved, would allow a variety of potential uses or redevelopment scenarios at the site, consistent with the CM1 zone already in place.

**Community impacts and community involvement:**

The standard public involvement procedures of a Type III land use review have been followed, and extensive neighborhood testimony was given before the Hearings Officer. Some neighbors have objected that retaining the grocery-only condition is necessary to support elderly and limited mobility residents in the area, as well as to support youth, but these arguments did not sway the Hearings Officer. Many community members feel that a more extensive program of community outreach should have been pursued, in particular that the applicant team should be required to negotiate with the neighborhood on what specifically could be allowed instead of the grocery-only condition. Maintaining the grocery-only condition was not found by the Hearings Officer to support economic viability or the overall policies of Portland’s Comprehensive Plan, which included an analysis of the new/2035 Comprehensive Plan Goals and Policies.

Several neighbors are expected to testify, and again request that the proposal be denied or placed on hold until various neighborhood representatives have agreed on the specifics of any future use or redevelopment at the site. However, the applicant has no specific program, development or use in mind for the site, and simply wants the use to meet the CM1 zone use regulations and development standards (as well as the traffic-related condition).

### Budgetary Impact Worksheet

**Does this action change appropriations?**

☐ **YES:** Please complete the information below.

☒ **NO:** Skip this section

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount

## Motion Record

**August 8, 2018 continued to September 6, 2018 at 2pm Time Certain.**

**September 6, 2018 continued to September 20, 2018 at 2:45 Time Certain.**

### **September 20, 2018**

**998 TIME CERTAIN: 2:45 PM** – Consider the proposal of Tim Sotoodeh, Southwest Hills LLC and the recommendation from the Hearings Officer for removal of conditions of approval imposed by prior Comprehensive Plan Map and Zoning Map amendment ordinances for property at 2855 SW Patton Rd (Previous Agenda 954; Report introduced by Commissioner Eudaly; amend Ordinance Nos. 155609 and 160473; LU 18-112666 CP ZC) 1 hour requested for items 998 and 999

**Motion to tentatively accept the applicant's final proposal with modification to change the timeline to 12 months; no design review; and with a condition of approval that the neighborhood is consulted during the design phase with notice to nearby neighbors, the neighborhood association and those on the record of interest for this proceeding in order to allow for neighborhood input:** Moved by Fritz and seconded by Fish.

Commissioners voted as follows:

YEAS: Eudaly, Fritz, Fish and Wheeler.

NAYS: Saltzman

**TENTATIVELY APPROVE  
HEARINGS OFFICER  
RECOMMENDATION AND  
APPLICANT FINAL  
PROPOSAL WITH  
MODIFICATION AND  
CONDITION;  
PREPARE FINDINGS FOR  
OCTOBER 10, 2018  
AT 10:40 AM  
TIME CERTAIN**

### **October 10, 2018**

**1047 TIME CERTAIN: 10:40 AM** – Consider the proposal of Tim Sotoodeh, Southwest Hills LLC and the recommendation from the Hearings Officer for removal of conditions of approval imposed by prior Comprehensive Plan Map and Zoning Map amendment ordinances for property at 2855 SW Patton Rd (Previous Agenda 998; Findings; Report introduced by Mayor Wheeler; amend Ordinance Nos. 155609 and 160473; LU 18-112666 CP ZC)

**Motion to tentatively adopt Findings:** Moved by Fish and seconded by Fritz.

Commissioners voted as follows:

YEAS: Eudaly, Fritz, Fish and Wheeler.

NAYS: Saltzman

**CONTINUED TO  
OCTOBER 17, 2018  
AT 10:35 AM  
TIME CERTAIN**

### **October 17, 2018**

**1075 TIME CERTAIN: 10:35 AM** – Consider the proposal of Tim Sotoodeh, Southwest Hills LLC and the recommendation from the Hearings Officer for removal of conditions of approval imposed by prior Comprehensive Plan Map and Zoning Map amendment ordinances for property at 2855 SW Patton Rd (Previous Agenda 1047; Findings; Report introduced by Mayor Wheeler; amend Ordinance Nos. 155609 and 160473; LU 18-112666 CP ZC)

**Motion to adopt Findings:** Moved by Fish and seconded by Fritz.

Commissioners voted as follows:

YEAS: Eudaly, Fritz, Fish and Wheeler.

NAYS: Saltzman

**FINDINGS  
ADOPTED**



## CITY OF PORTLAND, OREGON - BUREAU OF DEVELOPMENT SERVICES

1900 SW Fourth Avenue, Portland, Oregon 97201, [www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)



### MEMORANDUM

**DATE:** September 5, 2018  
**TO:** City Council  
**FROM:** Mark Moffett, City Planner 503.823.7806, [mark.moffett@portlandoregon.gov](mailto:mark.moffett@portlandoregon.gov)  
**RE:** LU 18-112666 CP ZC **Strohecker's Final neighborhood/applicant offers**  
**Council Item for Thursday 9/6/18 @ 2:00 PM**

Per Council direction at the first hearing on August 8, 2018, the applicant and neighborhood representatives have met both separately and with staff to discuss options and concerns. Both parties submitted their final offers regarding the possible condition of approval for retail/grocery space to staff yesterday. Briefly stated, the final offers are as follows:

1. **NEIGHBORHOOD** offers a three-part proposal as follows:
  - a. Minimum 7,500 square feet of retail sales and service uses;
  - b. Minimum 5,000 square feet of the 7,500 square feet total dedicated to a neighborhood market with one or more tenants offering healthy, fresh foods; and
  - c. Alterations and development on the site subject to a Type II Design Review, using the Community Design Guidelines (unless exempt from Design Review in Chapter 33.825 of Zoning Code).
2. **APPLICANT** offers the following:
  - a. Minimum 3,000 square feet of retail sales and service use. Applicant shall be allowed to convert all 3,000 square feet to any other allowed use in the CM1 zone if the owner of the site demonstrates the site was marketed for retail for 6 months from substantial completion of the retail shell space but no tenant signed a lease or sale agreement for the space; and
  - b. Strong objections to neighborhood proposal for Design Review on the site.

Both final statements are attached to this memo, including extensive commentary and supporting documents and statements. Please take a chance to review them before Thursday's hearing.

With regards to the **Parks Access** condition, please see the attached page with Hearings Officer findings. I flagged two sentences in the H.O. findings which are technically incorrect: the stairs in question are on the Parks property, eliminating the adverse possession/easement possibility. City Attorney Linly Rees recommends Council avoid imposing a parks access/trail condition.

Staff will be present on Thursday at Council (9/6/18 @ 2:00 PM) for questions. Thank you!

**Attachments:**

- Parks Access findings from p. 22 of H.O. Recommendation, with staff notes
- Final memo and attachments from Christie White, applicant representative
- Final memo and attachments from John Neuman, Southwest Hills Residential League

uses is consistent with previously adopted transportation plans and the City's Transportation Planning Rule (TPR). As noted by the neighbors, the trip cap will limit potential development on the site. But it will not preclude the site from developing with any of the uses allowed in the CM1 zone, or some mix of allowed uses. Absent the trip cap, full development of the site would likely result in a significant impact on the transportation system.

#### Park Access

As discussed above, there is an existing concrete stairway near the middle of the existing parking lot on the site that provides access to the lower portion of the adjacent Portland Heights Park. In addition, neighbors and Parks Bureau staff noted that park users frequently park on the site in order to load and unload sports equipment. The Parks Bureau requests a condition of approval requiring the applicant to maintain public access to this stairway and encourage the applicant to continue allowing certain park users to park on the site.

However, the Hearings Officer finds that the City has no authority to impose such a condition. The existing restrictive conditions do not address use of the existing stairway or parking on the site and the condition does not relate to any applicable approval comprehensive plan Goals or Policies. No development is proposed on the site with this application, so there is no nexus between the application and the requested conditions. This stairway has existed on the site for many years. Therefore, the City may have a claim of adverse possession or a prescriptive easement allowing public access to the stairway. But the Hearings Officer has no authority to review any adverse possession or prescriptive easement claims. Parking on the site may be convenient for park users. However, the site is private property, not part of the park. Although the applicant is currently allowing this activity, he is not required to do so. The applicant could fence the site and prohibit parking. Parking on the site without the owner's permission is trespass. Absent condemnation of a public easement on the site, the City has no authority to require the applicant allow park users to park on the site.

It may be in the applicant's best interest to continue allowing public use of the stairway and on-site parking, as the stairway would provide park users with convenient access to any commercial uses that may be developed on the site. However, as the applicant noted, if the site is developed with exclusively residential uses, there is no need for public access through the site to the park. The existing public sidewalk on Patton Road provides adequate access to the park.

#### ZONING CODE APPROVAL CRITERIA

##### **PCC 33.810.050 Approval Criteria (Comprehensive Plan Map Amendments)**

- A. **Quasi-Judicial.** 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:

INCORRECT: STAIRS ARE ON PARKS PROPERTY / SITE



**September 20, 2018      AGENDA ITEM 998**

**SALTZMAN MOTION:**

**Motion to approve the neighborhood's proposal in part for a minimum of 7500 square feet of retail sales and service areas, a minimum 5,000 square feet of that dedicated to a neighborhood market with one or more tenants offering fresh foods.**

**No second.**

**FRITZ MOTION:**

**Move to take the applicant's proposal changing the timeline to 12 months, no design review, with a condition of approval that the neighborhood is consulted during the design phase with notice to nearby neighbors, the neighborhood association and those on the record of interest for this proceeding to be notified of the meeting to allow for neighborhood input. Seconded by Fish.**

**Y-4, Eudaly, Fritz, Fish and Wheeler; N-1 Saltzman**



CITY OF

## PORTLAND, OREGON

**Amanda Fritz, Commissioner**

1221 SW Fourth Avenue, Suite 220

Portland, Oregon 97204

(503) 823-3008

amanda@portlandoregon.gov

August 8, 2018

**TO:** Portland City Council

**FROM:** Commissioner Amanda Fritz

**SUBJECT:** Comprehensive Plan Goals and Policies relevant to  
LU 18-112666 CP ZC

### **GOAL 2.C: VALUE COMMUNITY WISDOM AND PARTICIPATION**

Portland values and encourages community and civic participation. The City seeks and considers community wisdom and diverse cultural perspectives, and integrates them with technical analysis, to strengthen land use decisions

### **POLICY 3.99 WESTERN NEIGHBORHOODS VILLAGE CHARACTER**

Enhance the village character of the Western Neighborhoods' small commercial districts and increase opportunities for more people to live within walking distance of these neighborhood anchors.

### **GOAL 4.C: HUMAN AND ENVIRONMENTAL HEALTH**

Neighborhoods and development are efficiently designed and built to enhance human and environmental health: they protect safety and livability; support local access to healthy food; limit negative impacts on water, hydrology, and air quality; reduce carbon emissions; encourage active and sustainable design; protect wildlife; address urban heat islands; and integrate nature and the built environment.

### **POLICY 4.3 SITE AND CONTEXT**

Encourage development that responds to and enhances the positive qualities of site and context — the neighborhood, the block, the public realm, and natural features.



#### **POLICY 4.5 PEDESTRIAN-ORIENTED DESIGN**

Enhance the pedestrian experience throughout Portland through public and private development that creates accessible, safe, and attractive places for all those who walk and/or use wheelchairs or other mobility devices.

#### **POLICY 4.7 DEVELOPMENT AND PUBLIC SPACES**

Guide development to help create high-quality public places and street environments while considering the role of adjacent development in framing, shaping, and activating the public space of streets and urban parks.

#### **POLICY 4.86 NEIGHBORHOOD FOOD ACCESS**

Encourage small, neighborhood-based retail food opportunities, such as corner markets, food co-ops, food buying clubs, and community-supported agriculture pickup/drop-off sites, to fill in service gaps in food access across the city.

#### **POLICY 6.66 NEIGHBORHOOD-SERVING BUSINESS**

Provide for neighborhood business districts and small commercial nodes in areas between centers to expand local access to goods and services. Allow nodes of small-scale neighborhood-serving commercial uses in large planned developments and as a ground floor use in high density residential areas.

#### **LAND USE DESIGNATION AND ZONING**

**13. MIXED USE — DISPERSED** This designation allows mixed use, multi-dwelling, or commercial development that is small in scale, has little impact, and provides services for the nearby residential areas.

Development will be similar in scale to nearby residential development to promote compatibility with the surrounding area. This designation is intended for areas where urban public services are available or planned. Areas within this designation are generally small nodes rather than large areas or corridors. The corresponding zones are Commercial Mixed Use 1 (CM1), Commercial Employment (CE), and Commercial Residential (CR).





## PORTLAND PARKS & RECREATION

Healthy Parks, Healthy Portland

### MEMORANDUM

Date: April 16, 2018

To: Mark Moffett, City Planner, Bureau of Development Services (BDS)

From: Brett Horner, Parks & Trails Planning Manager, Portland Parks & Recreation (PP&R)

RE: LU 18-112666 CP ZC

Portland Parks & Recreation (PP&R) is pleased to have the opportunity to comment on the above-mentioned application.

**Goal 8.H of the 2035 Comprehensive Plan states that:**

*All Portlanders have safe, convenient, and equitable access to high-quality parks, natural areas, trails, and recreational opportunities in their daily lives, which contribute to their health and well-being. The City manages its natural areas and urban forest to protect unique urban habitats and offer Portlanders an opportunity to connect with nature.*

To support this goal, PP&R requests that as a condition of approval of this proposal and any future applications, the applicant be required by BDS to maintain public access to and from the existing stairway in Portland Heights Park that connects to the western property edge of the subject site at 2855 SW Patton Rd. PP&R also requests to review any future applications to ensure proposed development allows for safe and inclusive accessibility to this pedestrian connection. Confirmation of meeting this condition should be required for permit approval.

Portland Heights Park is frequently used for outdoor recreation events. To better meet Goal 8.H of the 2035 Comprehensive Plan, PP&R would like to request that the future owner of the site consider the feasibility of providing automobile parking for park users transporting equipment or unable to use alternative means of transportation.

We look forward to and support future development of the site that will enhance the area, be an asset to the existing neighborhood, and complement the adjacent park. I am happy to respond to any questions if necessary.

Thank you for your consideration.

**Administration**

1120 S.W. 5th Ave., Suite 1302

Portland, OR 97204

Tel: (503) 823-7529 Fax: (503) 823-6007

*Sustaining a healthy park and recreation system to make Portland a great place to live, work and play.*

[www.PortlandParks.org](http://www.PortlandParks.org)

Amanda Fritz, Commissioner

Mike Abbaté, Director



BDS staff recommended, HO did not include as condition of approval



**City of Portland, Oregon**  
**Bureau of Development Services**  
**Office of the Director**  
**FROM CONCEPT TO CONSTRUCTION**

Chloe Eudaly, Commissioner  
Rebecca Esau, Director  
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**MEMORANDUM**

August 8, 2018

TO: Mayor Ted Wheeler  
Commissioner Nick Fish  
Commissioner Amanda Fritz  
Commissioner Chloe Eudaly  
Commissioner Dan Saltzman

FROM: Rebecca Esau, Director *RE*  
Bureau of Development Services

RE: City Council hearing on LU 18-112666 CP ZC (Strohecker's Conditions)

The purpose of this memorandum is to transmit the adopting Ordinance, Report and Ordinance Backing Sheets, Financial Impact Statement and a brief description of the land use review that will be presented to you in public hearing on August 8, 2018 at 2:00 pm.

**Site Address:** 2855 SW Patton Road

**BDS Representatives:** Mark Moffett (Senior City Planner)

1. **Land Use Reviews Requested:** Comprehensive Plan Map Amendment and Zoning Map Amendment to amend prior Ordinance conditions of approval related to "zone change" procedures in 1984 and 1988 which limited the use of the site to a grocery store, among other requirements. Because the conditions of approval are tied to a zone change, the same procedure must be followed to eliminate the conditions.

2. **Key Elements of Proposal:**

The applicant, Southwest Hills LLC (Tim Sotoodeh), has requested to eliminate the conditions of approval which limit the use of the site to a grocery store only, among a long list of other conditions. Other conditions being removed include prevention of building expansions, prohibitions on new accessory buildings, mandatory employee parking areas, traffic-related and loading restrictions, and others. The property was sold to the new owner in 2015 after the former Strohecker's grocery ceased operations and the building became vacant.

There are no changes to the Zoning Map with this project: the existing Commercial/Mixed-Use 1 zone will remain in place, as applied to the site with the 2035 Comprehensive Plan changes on May 24, 2018. The prior Neighborhood Commercial 1 (CN1) zone in place at the site previously was roughly comparable to the new CM1 zone.

Conditions of approval would require the applicant to work with Bureau of Environmental Services regarding existing sanitary sewer facilities on the site in the event of redevelopment, and impose either a “trip cap” or transportation capacity analysis in the event of new uses or redevelopment of the site.

**3. Staff and Hearings Officer Recommendation:**

This review has received extensive review/participation by BES, BPS, Parks and PBOT staff. Park Bureau staff had requested a condition regarding maintaining access to a stair from the middle western interior of the site downhill to Portland Heights Park, but this recommendation in the staff report was not carried forward by the Hearings Officer. Hearings Officer Joe Turner, otherwise consistent with staff’s recommendation, is recommending approval, with conditions.

**4. Alternatives Facing Council**

- Accept the Hearings Officer’s recommendation, with no changes.
- Accept the Hearings Officer’s recommendation with modified conditions and findings.
- Reject the Hearings Officer’s recommendation and deny the proposal.