

Date: October 1, 2017

To: City of Portland Planning and Sustainability Commission

Re: Map Refinement Project Testimony
5024 NE Fremont St.

To Whom It May Concern:

We are writing to express our strong opposition to the proposed land use designation change and zoning change at 5024 NE Fremont Street from multi-family residential to mixed use commercial. 5024 NE Fremont Street is a small lot with a modest house built in 1925 and occupied by owners or renters since it was built. The lot is bordered on the east and south sides by residential houses on residential lots slated to remain residential in the Comprehensive Plan. The lot was not presented by the Bureau of Planning and Sustainability (BPS) staff to City Council for re-designation or up-zoning during the Comprehensive Plan process. The City Council never considered nor heard testimony on 5024 NE Fremont St. during the Comprehensive Plan process, and the property is not listed among those that the City Council asked BPS to review post-Plan adoption.

BPS staff has failed to articulate a coherent reason why 5024 NE Fremont St. should be recommended for re-designation and up-zoning during the post-Plan adoption Map Refinement Project rather than considered in a standard quasi-judicial process with application, fees, notice to neighbors, and hearing. The property is included in the Map Refinement Project Proposed Draft as one of many proposed “technical map changes.” The subset of “technical changes” upon which the BPS relies is the “split zone” rationale, under which the City seeks “to rectify split-designated and zoned properties.” (Proposed Draft, page 18).

5024 NE Fremont Street is not, in fact, split zoned; the entire lot is currently designated residential and has been so designated and utilized for decades. Every other property included in the Map Refinement Project with the “split zone” reasoning is actually split zoned – i.e., a single lot that currently has two different land use and/or zoning designations. The BPS states that 5024 NE Fremont St., unique among all other lots included in the Proposed Draft, is nonetheless a “split zoned site based on ownership.” (Proposed Draft, page 56). The BPS is arguing, in effect, that this lot should be designated commercial in a mere “technical” change to the Plan because the owners’ adjacent empty corner lot and the lot south of it along NE 50th Ave. (3430 NE 50th Ave.) will be designated commercial after the Comprehensive Plan land use designations go into effect in 2018. There are several problems with this reasoning:

- The adjacent lots do not in fact have identical ownership. 5024 NE 50th Ave. is owned by Rick and Blair Peterson. The empty corner lot and 3430 NE 50th Ave. are owned by Jason Peterson (½ interest) and Blair and Sara Peterson (½ interest). There is no owner who has an undivided interest in all three properties. Thus, the BPS’s reasoning should more accurately be described as “split zoning based on adjacent ownership by family members.”
- The common ownership (by family members) reasoning could lead to absurd results: Under the BPS staff’s reasoning, if owners or their family members purchased four more contiguous lots on the block, then all of those properties should be re-designated and re-zoned to address the “split zoning based on family ownership.” In contrast, if 5024 NE Fremont was owned by an unrelated owner, it would not be included as a proposed change in the Map Refinement Project

because there could be no split zoning argument. We contend that the inclusion of a property in the Map Refinement Project and recommendations for up-zoning should not depend entirely on the identity and family relationships of the property owners. Each lot should be treated as a unique property and separately considered. Owners who own several lots should not have special consideration or advantages not enjoyed by owners who own just one lot.

- Neighbors have submitted the attached objection/appeal to the Comprehensive Plan's re-designation and re-zoning of 3430 NE 50th Ave. to the Oregon Department of Land Conservation and Development based on an insufficient and failed neighbor notification process as well as the fact that 3430 NE 50th Ave. has been used as a residential property since at least the 1920's and does not front on or even touch a neighborhood corridor. A decision is not due from the DLCDD until December 2017. Thus, it is inappropriate for the City to rely on the proposed commercial designation of 3430 NE 50th Ave. in support of its argument for re-designation of 5024 NE 50th (see Proposed Draft, p. 22), when the designation of the former is not yet settled and may well be reversed.

Finally, the up-zoning of this property along with the empty corner lot next to it (already up-zoned in the Comprehensive Plan) would leave a single ¼ block length of residential property between NE 50th and 51st Avenues on Fremont. At no other location along the south side of Fremont is there a block where ¾ of the Fremont facing property will be commercial, leaving only a single ¼ block residential lot. While it is difficult to comprehend the City's planned scatter-shot designation of commercial vs. residential zoning on the south side of Fremont in the 2035 Comprehensive Plan, the Plan at least changes designations in half-block or whole-block increments, so that no one residential property remains an island among commercial properties.

The Comprehensive Plan process, with its ineffective neighborhood notice process, resulted in a complete lack of neighbor input and testimony, and significant harm to adjacent and nearby neighbors at and around NE 50th Ave. and NE Fremont St., as detailed in the attached appeal letter. The City should not compound the harm already done by making additional changes to our block – changes that simply do not qualify as mere technicalities – during the Map Refinement Project.

We, the same 59 co-signers of the attached letter to the DLCDD, request that 5024 NE Fremont be excluded from the Map Refinement Project. Current or future owners may seek a land use designation change in a quasi-judicial process after appropriate application, fees, burden of justification, and due process.

Thank you for your consideration,

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May 3, 2017

Department of Land Conservation & Development
Attn: Jim Rue, Director
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Salem, OR 97301-2540

Re: Objection to City of Portland 2035 Comprehensive Plan Update – Amendment #M39/ Land Use Map and Zoning Map Change #1470

Dear Mr. Rue,

We are residents near NE 50th Avenue and Fremont Street in Northeast Portland. We submit this letter as our strenuous objection to Amendment #M39 to the 2035 Portland Comprehensive Plan and corresponding Land Use and Zoning Maps Change #1470. We object to the flawed process leading to City approval of the Amendment in Fall 2016 and to the re-designation and rezoning of the lot at 3430 NE 50th Ave. from a multifamily residential designation (R2) to a commercial mixed-use designation (CM1), without notice to or conferral with neighbors and without consideration of the historical uses of this property, the impacts on neighboring residents, or the housing needs in the Beaumont-Wilshire and Rose City Park neighborhoods. Both the process failure and the resulting re-designation and rezoning of 3430 NE 50th Ave. contravene statewide and City planning goals related to citizen involvement and housing, as we detail below.

We believe that the only reasonable remedy to the combined failures of process and substance is that the zoning of 3430 NE 50th Ave. remain multifamily residential in the 2035 Portland Comprehensive Plan.

1. Overview

On March 8, 2017, after “For Sale” and “Development Opportunity” signs were posted at three contiguous lots at and near the corner of NE 50th Ave. and Fremont St., nearby residents made calls to the City’s Bureau of Development Services and Bureau of Planning and Sustainability and thereby learned for the first time that the City planned to re-designate and rezone these lots, which had been designated residential since at least 1980, to commercial mixed-use as part of the 2035 Comprehensive Plan Update. The lots are:

1. 3430 NE 50th Ave., containing a modest house facing NE 50th Ave., built in 1927 and occupied by owners or renters since it was built. 3430 NE 50th Ave. is bordered by a residential house on the south side, two residential houses on the east side, and an empty corner lot on the north side. It contains a

driveway accessed from NE 50th Ave. It faces two residential driveways directly across NE 50th Ave. (See Attachments A-C);

2. An empty corner lot at the southeast corner of NE 50th Ave. and Fremont St., used every December to sell the owners' Christmas trees grown off-site; and
3. 5024 NE Fremont St., containing a modest house facing Fremont St., built in 1925 and occupied by owners or renters since it was built, and bordered on the east and south sides by residential houses and on the west side by an empty corner lot.¹

The re-designation and rezoning of all three lots was first proposed by Rick and Blair Peterson² in testimony submitted to the City by the Rose City Park Neighborhood Association on November 13, 2015.³ This request and related testimony was discovered for the first time by neighboring residents in March 2017. The testimony did not distinguish among the three separate properties. It stated

1 Only the 3430 NE 50th Ave. and empty corner lot were presented by Bureau of Planning and Sustainability (BPS) staff to City Council in Amendment M39 and now are slated for commercial zoning in the current 2035 Comprehensive Plan Zoning Map. BPS staff have stated that the 5024 NE Fremont property was also meant to be proposed for re-designation and rezoning but was "accidentally" left out of the proposed Amendment. The City Council never even considered 5024 NE Fremont St. BPS staff have stated that this alleged "error" will be fixed through the "Map Refinement project." We believe this alleged error is further evidence of the haphazard nature of the City's approach to the south side of NE Fremont Street, discussed in greater detail below. Further, we are shocked that the City believes it can now re-designate and rezone this property, after adoption of the Comprehensive Plan, through a "refinement" process, without standard rezoning application procedures, fees, and due process to the neighbors. Neighbors will strongly oppose the rezoning of 5024 NE Fremont St., which borders residential lots on the east and south sides, on the grounds of improper process.

2 Rick Peterson owns 5024 NE Fremont St. Blair and Jason Peterson, Rick's sons, co-owns with other family members 3430 NE 50th Ave. and the empty lot at the corner of NE 50th Ave. and Fremont St.

3 The Rose City Park Neighborhood Association Board (RCPNA) endorsed the Peterson re-designation request based solely on the owners' misleading testimony, with no notice to or conferral with any adjoining or nearby neighbors. (At least one RCPNA Land Use Committee member recalls asking Rick Peterson whether he'd communicated with adjoining property owners, to which he gave a misleading or evasive response. In any case, the owners never communicated their plans or intended request to adjoining or nearby neighbors, and neither the RCPNA Land Use Committee nor Board took steps to verify or ensure that any notification occurred. We are confident that the RCPNA never would have endorsed the owners' request as to 3430 NE 50th Ave. had they heard the overwhelming opposition of nearby residents and homeowners, including those cosigning below.) To the extent the City would argue that it relies on volunteer neighborhood associations to communicate the City's plans and intentions to affected local residents, clearly such reliance was unreasonable, unwarranted, and wholly ineffective in this case.

that the “property... has been used for retail/commercial sales for the last 44 years,” apparently referencing the four weeks per year Christmas tree sales and occasional, temporary farm produce stand in the empty corner lot. It further stated that “residential zoning on Fremont Street is no longer an appropriate option... There is increased traffic and it is no longer safe to have residential driveways on to Fremont.” As detailed below, these statements are false or misleading, but due to lack of notification, neighbors had no opportunity to counter these statements prior to the City Council’s vote to re-designate these properties mixed use, despite the significant impacts the change will have on the character of the narrow residential streets near NE Fremont Street and NE 50th Avenue.

The rezoning of 3430 NE 50th Ave., the residential house facing NE 50th Ave., is particularly shocking to neighbors, and could not reasonably have been foreseen by neighbors, for the following reasons:

- 3430 NE 50th Ave. is a residential lot with a house lived in by owners or renters since it was built in 1927, with its own driveway and garage off of NE 50th Ave. See Attachments A-C.
- The lot faces a residential side street; and most importantly, no part of the lot touches Fremont Street, so it is separated from the Fremont Street neighborhood corridor. See Attachments A-C.
- While the City re-designated and rezoned two or three non-conforming use lots on the south side of Fremont, there was no non-conforming use at 3430 NE 50th Ave. The lot contains a single-family house, driveway, and garage. Neighbors report that the lot has been used as a residence, not as a commercial enterprise, for as long as they’ve lived in the neighborhood (which is over 40 years for some).⁴ The Bureau of Planning and Sustainability staff affirmed, in a letter forwarded to neighbors from the Mayor’s office on March 15, 2017, that this property “was not flagged as a nonconforming use site.”
- Of the few lots that are slated for re-designation from residential to mixed use on the south side of Fremont between NE 45th and NE 56th Avenues, every single one but this one is directly facing/adjacent to Fremont. See Attachments D-F.
- In fact, we are unable to locate on the Comprehensive Plan Zoning Map any other location along Fremont St., from N. Fremont near I-405 all the way to Rocky Butte at NE 91st Ave., where a residential zoned lot not directly

⁴ The occasional produce stand and tree sale use at the adjacent empty lot does not change the longstanding residential nature and use of 3430 NE 50th Ave. Nor does the temporary storage of extra or unused Christmas trees in the backyard of 3430 NE 50th Ave. render this property “commercial” or make its use non-conforming with its residential designation. Directly adjoining and nearby neighbors would have strongly protested to the City had the owner attempted ongoing non-conforming use at 3430 NE 50th Ave.

adjacent to Fremont is being rezoned to a commercial designation. That this lot was treated so differently from others with no actual notice to or input from neighbors is shocking and reprehensible.

- NE 50th Avenue is a very narrow street and passage can be difficult when cars are parked on both sides of the street. Our public school bus, which stops at 50th and Klickitat St., frequently is unable to turn off of Fremont St. on to NE 50th Ave. when cars are parked on both sides of NE 50th Ave. near Fremont. Garbage and delivery trucks frequently have difficulty navigating the street. Dozens of neighbors cite danger and close-calls while attempting to turn off of NE 50th Ave. on to Fremont because vehicles parked close to the corner on the south side of Fremont block visibility. All of these problems will be exacerbated with commercial development, with its lack of required setback and increased vehicle traffic and parking. Neighborhood residents could not reasonably have anticipated that the City would support a course of action that would exacerbate dangers on or near our residential street with no notice to or conferral with residents.

The City clearly does not have a comprehensive or uniform plan for the south side of Fremont Street. The south side of Fremont between NE 45th and NE 56th Avenues, uniformly zoned R2 since at least 1980, is not now being uniformly designated for mixed use. The 2035 Comprehensive Plan designated for mixed use only a few scattered lots – namely, those lots, and only those lots, where individual owners requested the re-designation during the Comprehensive Plan process or, in two instances, where there had been obvious, longstanding nonconforming uses (that is, a restaurant and a print shop).⁵ See Attachments D-E. The 2035 Comprehensive Plan leaves most of the residential properties on the south side of Fremont untouched. The only reasonable conclusion is that the City relied exclusively on owners' requests to determine which residential use lots to designate mixed use and rezone along the south side of Fremont, rather than relying on any comprehensive vision for the street⁶, study, evidence, or the input or interests of neighborhood residents. For owners seeking development and/or money-making opportunities

5 Lots slated for re-designation where owners requested the re-designation to commercial/mixed use during the Comprehensive Plan process:

- 3436 NE 47th Ave. (corner of 47th and Fremont)
- 4714 NE Fremont St.
- 3436 NE 48th (corner of 48th and Fremont)
- 3430 NE 50th Ave. and the adjacent empty corner lot

Lots slated for re-designation that have long-established, licensed, well-advertised businesses:

- 4730 NE Fremont St. (Paperjam Press printing company)
- 4929-4936 NE Fremont St. (Eclectic Kitchen restaurant)

All other lots between NE 45th and NE 56th Avenues are slated to remain multi-family residential.

on the south side of Fremont, rezoning through the Comprehensive Plan process proved a bonanza, as the usual fees, notice requirements, and hearings associated with rezoning applications did not apply.⁷

The result is a scatter-shot approach to planning and zoning without coherent rationale or predictability. The unique nature of this property that does not touch a commercial street, the fact that the City proposes only sporadic rezoning along the south side of Fremont, and the fact that the proposal for re-designation and rezoning occurred so late during Plan development strongly suggest that the proposal itself is not aligned with any important, overarching City planning goal.

Further, we are unable to locate any other testimony (aside from that of the owner and the RCPNA) about this property, either in the Comprehensive Map App showing all online comments and submitted letters, or in the City Council meeting minutes during which oral testimony was heard. We have seen no evidence that the City Council specifically debated or discussed 3422 NE 50th Ave. or that Councilors even were informed or acknowledged that it was not adjacent to a “neighborhood main

6 The City’s lack of comprehensive or well-thought out process or reasoning for its rezoning decisions on the south side of NE Fremont was highlighted during a recent informal meeting of neighbors with Neighborhood Association Board members and Bureau of Planning and Sustainability Staff. BPS staff reported that the reason for the inclusion of 3430 NE 50th in the rezoning proposal, despite it not touching a commercial or neighborhood corridor, was that the City would not generally approve commercial rezoning on a parcel less than 100 feet deep (and thus it would not rezone the corner empty 50th and Fremont lot without including the second lot south of it on NE 50th Ave.). In fact, none of the R2 properties slated for rezoning on the south side of Fremont St. extend 100 feet deep; they are generally 75 feet deep, a fact easily verified by glancing at a City map. Clearly, the City does not require or mandate a certain depth for commercial development. It could approve CM1 zoning solely for the empty lot, or it could leave both lots zoned R2, just as it did on many other lots along the south side of Fremont St. Quite strikingly, aside from the BPS staff member’s incorrect statement, we have not heard from the City any rationale supporting its decision to rezone 3430 NE 50th Ave. (We anticipate that the City may point to the fact that 3430 NE 50th Ave. and the adjacent empty lot directly fronting Fremont St. are owned by the same family. This does not strike us as a legitimate or reasonable basis for designating 3430 NE 50th Ave. commercial/mixed use. Each lot must be separately considered, particularly in light of each lot’s different historical and current uses, adjacency to a commercial street (or lack thereof), and neighboring residents’ reasonable expectations based on those separate uses and locations.)

7 See City of Portland Chapter 33.730 and <https://www.portlandoregon.gov/bds/article/67127> (Land Use Services Fee Schedule). Outside of the Comprehensive Plan process, an owner who seeks a zoning map amendment must submit an application and fee in the amount of several thousands of dollars. The Bureau of Development Services is required to mail notice to all property owners within 400 feet of the site. A public hearing is required.

street” or “neighborhood corridor” (as this portion of Fremont St. is designated in the Plan).

In summary, the re-designation and rezoning of a residential side street lot that does not touch a commercial corridor is unprecedented in our neighborhood and could not reasonably be anticipated by neighbors. Actual notice to the owners and residents near the lot is essential to a fair, transparent, evidence-based, and accurate process. The City’s lack of notice led to a decision that is uniformly opposed by neighboring residents. Had neighbors known of the request or proposal, we would have vigorously opposed it prior to adoption, presenting evidence in letters and oral testimony before the City Council that contradicts the owner’s and the Neighborhood Association’s stated reasoning for the rezoning request.

2. The process leading to the proposed rezoning of 3430 NE 50th Ave. failed to meet Oregon’s Statewide Planning Goal 1: Citizen Involvement (OAR 660-015-0000(1)).

While the City of Portland accepted citizen comments and testimony during Comprehensive Plan Land Use Map development, the City’s failure to directly notify neighbors about the proposed re-designation and rezoning highlights critical process flaws that dramatically reduced the effectiveness of the City’s citizen involvement efforts in this instance (and, it seems likely, in many others). We believe these flaws violate statewide Planning Goal 1, which seeks to ensure consistent two-way communication with citizens (subsection 2) and meaningful opportunity to be involved in the planning process (subsection 3), even in minor changes to the Plan. Further, if the City in fact created a citizen involvement committee (subsection 1), such committee never contacted either the Rose City Park Neighborhood Association or the neighbors near NE 50th Avenue and Fremont Street.

The City also failed to comply with its own Comprehensive Plan Policy 2.39, which requires that the City “notify affected and interested community members... about administrative, quasi-judicial, and legislative land use decisions with enough lead time to enable effective participation.” In this instance, lack of actual notice of the proposed Amendment M39 resulted in the wholesale exclusion of neighbors’ participation. Among dozens of neighbors on or near 50th Ave., not a single one was aware of the owner’s rezoning request, the RCPNA testimony, the BPS recommendation, or the City Council’s action on this property.

The process failures have resulted in an outcome harmful to our neighborhood and directly at odds with City and State planning goals. Because the re-designation to mixed use was not part of the initial proposed Plan, because the Amendment itself was approved very late during Plan development, because no actual notice was provided to neighbors, and because our options for engaging in the process on the specific proposal are therefore extremely limited, we believe that a remand to the

City for reversal of the proposed re-designation and rezoning is the only reasonable remedy to this specific situation. We have also contacted City staff and elected representatives to encourage the City to correct these processes to avoid similar problems in the future.

In sum, a significant harm to our neighborhood stems directly from the complete lack of notice to neighborhood residents when this land use designation and zoning change was advocated and made in late 2015 and 2016. The failure of notice was at the neighbor-to-neighbor level, then at the Neighborhood Association level (the Rose City Park Neighborhood Association recommended the zoning change based solely on the owner's testimony, with no investigation and no notice to or conferral with residents), and finally, and most importantly, at the City level. It is truly outrageous that the Comprehensive Plan re-designation and rezoning process apparently requires no actual notice to neighbors, even directly adjacent neighbors who may be greatly harmed by proposed zoning changes. This lack of notice was particularly egregious in the case of 3430 NE 50th Ave., which was always residential in use, does not touch a commercial street, and was recommended for re-designation late in the process through an amendment. We, the neighborhood residents who will be most adversely effected by the rezoning, are uniformly opposed to this rezoning and are armed with facts and evidence that weigh heavily against this proposal, but we never had a voice in the process. The lack of notice, and our resultant collective lack of input, contravenes Oregon's statewide planning goal of ensuring adequate citizen involvement.

3. The proposed rezoning of 3430 NE 50th Ave. conflicts with Oregon's Statewide Planning Goal 10: Housing, as interpreted in Chapter 5 of Portland's 2035 Comprehensive Plan

CM1 zoning does not require a housing component and is unlikely to include family-friendly, ground-floor housing. The re-designation and rezoning on 3430 NE 50th from multi-family residential will not further the City's housing goals, which the City developed consistent with Statewide Planning Goal 10. Relevant City housing goals include maintaining sufficient residential development capacity (policy 5.1), enabling and encouraging development of middle housing, including multi-unit or clustered residential buildings (policy 5.6), and encouraging preservation of small affordable single-family homes (policy 5.39):

- The rezoning will result in demolition of yet another small family home in a residential neighborhood, reducing the City's actual and potential stock of modest single-family homes (see policy 5.1, policy 5.6, and policy 5.39);
- The rezoning will create an abrupt incursion of commercial development with no mandated transition in uses from commercial to the directly adjacent single-family homes facing a residential street (see policy 5.6); and

- Our neighborhood is increasingly inaccessible to middle class families. The City’s decision to remove two parcels of residential property, including one with an existing, modest housing unit, from close-in Northeast Portland’s depleted inventory will only worsen this problem (see policy 5.39)

We live in a neighborhood where housing is in very high demand, where middle-class families are increasingly unable to buy or rent, and where gentrification and replacement of modest homes with expensive homes and condos has led to a decrease in both socioeconomic and racial diversity. The City’s commercial zoning of small residential lots – particularly a lot on a residential side street – only exacerbates these problems and is directly at odds with its own stated housing goals.

4. Remedy: Remand to the City to revert the land use designation and zoning of 3430 NE 50th Ave. to residential

In summary, the City adopted a scattering of rezoning, in small pockets, on the south side of Fremont between 45th and 56th Avenues without any “comprehensive” or uniform plan for this area. In only one location along the 5.4 mile stretch of Fremont between I-405 and Rocky Butte does the City seek to rezone a residential lot not directly adjacent to Fremont Street: 3430 NE 50th Ave. All evidence suggests that the decision as to 3430 NE 50th Ave. was based solely on the owner’s self-interested and misleading request. There was no notice to or conferral with neighboring residents, and thus the most important voices – those of the neighbors who will live in, work in, and support this neighborhood and this City for decades to come – were never heard. The result of this ineffective, poorly run process is this: The City’s re-designation and rezoning proposal will remove residential housing stock and replace it with commercial development on a narrow residential side street, thus directly undermining the City’s own housing goals.

We believe the simplest remedy is to remand the Plan to the City to reverse the re-designation and rezoning at 3430 NE 50th Ave. Alternatively, the Plan should be remanded to the City to determine, in a transparent process with actual neighbor notification and meaningful neighbor involvement, a comprehensive approach to the south side of Fremont between 45th and 56th Avenues that limits harm to surrounding residential lots and neighborhood streets.⁸

⁸ As part of this process, the City should be required to clearly articulate responses to the following questions: What factors does the City use to determine whether a residential lot directly adjacent to a neighborhood corridor will be designated mixed use? When, if ever, should a nearby residential lot that is not adjacent to a neighborhood corridor be designated mixed use? How many lots away from a neighborhood corridor should neighbors expect that the City will support and encourage commercial incursion on a residential street?

Thank you for your consideration,

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Attachments:

- A. Photographs of 3430 NE 50th Ave. (house and driveway off of NE 50th Ave.)
- B. Aerial photograph of 3430 NE 50th Ave. and surrounding neighborhood
- C. Map showing lot dimensions at corner of NE 50th Ave. and Fremont
- D. Map showing existing zoning at 3430 NE 50th Ave. and nearby lots
- E. Comprehensive Plan Land Use Map showing proposed land use designation changes at 3430 NE 50th Ave. and nearby lots
- F. Comprehensive Plan Zoning Map showing proposed zoning changes at 3430 NE 50th Ave. and nearby lots